MACFARLANE PARTNERS

December 13, 2007

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

Re: The Jazz @ Florida Avenue RFP

Dear Omar:

MacFarlane Partners is pleased to continue working with you and to join, as your investor/equity partner, the team led by your firm ("Banneker") in submitting a final plan to WMATA to develop The Jazz @ Florida Avenue in response to the WMATA Request for Proposal that was submitted on May 31, 2007. Having looked at other projects with you, we recognize Banneker as a leading minority-owned developer in the Washington, D.C., region, and believe that our financial strength can enhance your team's development capability. We also recognize the strong participation of another leading Washington, D.C., minority-owned developer – District Development Group.

We have reviewed your most recent proposal for the development of The Jazz @ Florida Avenue mixed-use project and believe your development plan to be qualitatively sound and attractive. Based on our discussions and negotiations, MacFarlane Partners will provide Banneker with the required equity for pre-development and development activities, including land acquisition. Based on the current development plan, the team expects the total development costs to be approximately $35 million, which will require approximately $8 million of equity. Our investment will be made on the terms upon which the team has previously agreed. These terms are consistent with structures we have utilized with other local developers in our most recent ventures.

MacFarlane Partners is a minority-owned real estate investment management firm that invests primarily in development and redevelopment projects, such as The Jazz @ Florida Avenue, in urban areas nationwide. The firm's investments to date are helping to develop, redevelop or reposition $19 billion in urban properties, encompassing 20 million square feet of commercial space and 26,000 multifamily housing units in Washington, D.C.; New York City; Los Angeles; Orange County; and the San Francisco Bay Area. We maintain several offices around the country, including one in Washington, D.C.

Having invested in urban, mixed-use development projects – sometimes serving as developers ourselves -- we believe we have the requisite experience and skill to assist you and the rest of the team in developing The Jazz @ Florida Avenue that is successful for both WMATA and District residents. We specialize in complex projects that require creative financing and innovative structuring. We also are accustomed to working with our development partners and local government agencies to form public/private partnerships, as well as resolve the regulatory and environmental issues that urban-infill projects typically encounter.

---- Connecticut Avenue, NW 3rd Floor Washington, DC 20036 Phone 202.572.0700 Fax 202.572.0699

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014064

Highlighted below are a few of the projects in which we have invested.

- **JBG Urban**, a joint venture with The JBG Companies and Morgan Stanley Real Estate that will develop and redevelop 93 assets on 42 sites located throughout the Washington, D.C., metropolitan area. The assets – which are in various stages of entitlement, planning, development or renovation – range from completed properties slated for renovation or demolition to undeveloped urban-infill sites. A majority of the sites are adjacent to or near existing and proposed transit stations along the area's Metro light-rail system; 25 sites are located in northern Virginia, 13 are in suburban Maryland, and four are within the District of Columbia. When fully developed, the portfolio will total eight million square feet of office space, 1.9 million square feet of retail space; 13,400 multifamily housing units; and 2,500 hotel rooms.

- **The Yards**, a mixed-use redevelopment project planned by Forest City Washington for the 44-acre Southeast Federal Center, which once was an annex to the Washington Navy Yard on the Anacostia River in Washington, D.C. The proposed uses envisioned for the project include 1.8 million square feet of office space, 2,700 residential units, destination and neighborhood serving retail space and a large riverside park. Development began in late 2007.

- **Half Street**, a mixed-use project that is being developed in multiple phases in Southeast Washington, D.C., immediately north of the new ballpark for the Washington Nationals Major League Baseball team. The first phase of the project, which began construction in January 2007, will consist of 260,000 square feet of office space, 328 for-sale condominiums, 50,000 square feet of retail space, and a 200-room boutique hotel in four adjacent buildings occupying the entire city block on the eastern side of Half Street SE, between M Street SE and N Street SE. Future phases will be built on adjacent blocks to the west and north of the first phase and are likely to include a mix of office, retail and multifamily residential space.

- **Solea**, a six-story residential mid-rise building located in the District's Columbia Heights neighborhood that is being developed in partnership with JLC and NCRC. With construction underway, Solea will include 55 for-sale condominiums, seven live/work units and 4,700 square feet of retail space when completed.

- **Bay Street Emeryville**, a mixed-use "urban village" developed on a former industrial site near the eastern approach to the San Francisco-Oakland Bay Bridge in Emeryville, Calif., that included a 365,000-square-foot lifestyle retail center, with 284 rental apartments (20% of which are designated for low-income residents) and 95 town homes on three to six floors above the retail stores. The retail component was completed in 2002 and was named "Best New Retail Development of the Year" in April 2003 by the *San Francisco Business Times*. The residential units were completed in 2006 and garnered a Market-Rate Residential Real Estate Deal of the Year award in March 2007 from the *San Francisco Business Times*.

- **Wilshire Vermont Station**, a mixed-use "transit village" that was developed atop an existing underground rail transit station, approximately three miles west of downtown Los Angeles. Completed this past August, the property consists of two connected seven-story buildings with 449 apartment units (20% of which will be designated for low-income residents) and 36,000 square feet of street-level retail space that are configured around a public plaza and entrance to the Wilshire/Vermont Metro Red Line subway station.

- **NoMa West**, three mid-rise residential buildings (five to six stories in height) with approximately 500 rental apartments that will be developed on a four-acre, infill site in the emerging North of Massachusetts Avenue ("NoMa") neighborhood of Washington, D.C. Construction is expected to begin in the fall of 2008.

- **Metropolitan Lofts**, an eight-story apartment community that was completed in the summer of 2006 on a former commercial/industrial site near the Staples Center in downtown Los Angeles. It consists of 264 apartment units (20% of which are designated for low-income residents), 11,000 square feet of ground-floor retail space and an attached parking structure. The property, which is currently 97% leased and 96% occupied, is operated on a long-term ground lease from the City of Los Angeles Redevelopment Agency.

Founded in 1987, MacFarlane Partners has provided investment management services across a broad range of real estate strategies for institutional investors over the past 20 years, including the California Public Employees' Retirement System ("CalPERS"), the Teacher Retirement System of Texas, and the defined-benefit pension plans of AT&T and General Motors Corporation.

As managing member of an urban real estate joint venture with the CalPERS, the nation's largest public pension plan with $255 billion in assets, we have investment discretion over $1.45 billion in equity capital for investment in urban development and redevelopment projects in major cities throughout the U.S. We also manage a private institutional fund targeting urban property markets that was formed in 2006 and has an equity capitalization of $1.01 billion.

Both the CalPERS' venture and the urban investment fund have revolving credit facilities; the CalPERS' venture has a debt facility with Sumitomo Bank that currently totals $600 million, while the private fund has a debt facility with Bank of America that can be as large as 90% of the fund's eligible equity.

MacFarlane Partners strongly supports your proposal and is pleased to continue to be a part of Bannecker's team for this innovative and worthwhile project for the citizens of Washington, D.C.

Sincerely,

Bradford H. Dockser
Principal, Investments

David H. Rosenthal
Interim Chief Executive Officer

Ball Street Ventures, LLC
1000 Wisconsin Avenue, NW
Suite G-100
Washington, D.C. 20007

202.625-2440 direct dial
202.625-2360 facsimile
DRosenthal@ballstreetfund.com

December 14, 2007

Joel R. Washington
Director
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

RE: Letter of Interest – The Jazz @ Florida Avenue

Dear Mr. Washington:

We are pleased to provide this Letter of Interest to the Banneker Ventures, LLC, District Development Group, and Donatelli Development team in response to a Washington Metropolitan Area Transit Authority Request for Proposal to develop three parcels on the 700 and 800 blocks of Florida Avenue, NW, Washington, D.C. We recognize this team as a leading developer in the region and are excited to partner with you to build an exceptionally-designed, transit-oriented, mixed-use housing, and retail community located on these key Florida Avenue/U Street corridor sites.

As you may be aware, Ball Street Fund (Ball Street) was founded by Brian Davis and Christian Laettner and is headquartered in Washington, D.C. Ball Street is a vertically-integrated development and investment company focused on mixed-use developments located in strategically-targeted, urban communities throughout the United States. The success of Ball Street's flagship development in Durham, North Carolina, West Village (http://www.westvillageapts.com/), demonstrates the strength and success of our vision. Our vision is based primarily on creating population and service density within an underserved, urban locale; ensuring the creation of an energetic, vibrant, integrated community benefitting many constituents, and; building a sustainable, flexible development with an eye toward future generation's needs, the development's economic viability, sensitivity to the natural environment, and preservation/conservation of natural resources.

We have reviewed the proposed plans for The Jazz @ Florida Avenue, and believe it to be both financially feasible and the best use for this location. As such, we are energized about the possibility of working with the Banneker/District Development/Donatelli Development team should this group be selected as WMATA's development partner on this site.

Although we have not finalized a term sheet, based on our preliminary review and discussions, Ball Street would provide Banneker, District Development and Donatelli Development with 100% of the equity requirements necessary to complete the development, or approximately $8.0MM, based on the current budget and financial projections.

Ball Street is extremely energized about this letter of interest and is pleased to be part of this very capable team. We look forward to building a healthy, prosperous and multi-faceted relationship by partnering on this particular opportunity.

Very truly yours,

David H. Rosenthal

FOIA CONFIDENTIAL TREATMENT REQUESTED

BANK OF GEORGETOWN

December 13, 2007

CORPORATE OFFICES
1054 31st Street, NW
Suite 18
Washington, DC 20007
Phone 202.355.1200
Fax 202.355.1201
bankofgeorgetown.com

GEORGETOWN
1001 Wisconsin Ave., NW
Washington, DC 20007

FRIENDSHIP HEIGHTS
5236 44th Street, NW
Washington, DC 20015

ARLINGTON/COURTHOUSE
2300 Wilson Blvd.
Arlington, VA 22201

CONNECTICUT AVENUE
1101 Connecticut Ave., NW
Washington, DC 20036

Mr. Joel R. Washington
Director Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Subject: Letter of Interest – The Jazz @ Florida Avenue

Dear Mr. Washington:

We are pleased to provide this letter of interest to the Banneker Ventures, District Development Group and Donatelli Development-led team in response to a Washington Metropolitan Area Transit Authority Joint Development Solicitation to develop three parcels on the 700 and 800 blocks of Florida Avenue, NW, Washington, DC. We recognize this team as a leading developer in the region and are excited about the possibility of partnering with you to build an incredibly designed, transit oriented mixed-use housing and retail project on these key Florida Avenue/U Street corridor sites.

We have worked with both Omar A. Karim and Chris Donatelli and the two firms of which they are the principals of and we are pleased to have the opportunity to work with them on The Jazz.

We have reviewed the proposed plans for the project and look forward to working with this team., should it be selected, to develop this key parcel along the Florida Avenue/U Street corridor.

As you may know, The Bank of Georgetown is a District of Columbia Chartered Bank with four branch locations.

The Bank of Georgetown is very pleased to provide this letter of reference and interest for the Banneker, District Development, and Donatelli led project.

Sincerely,

Jeffrey A. Banks
Managing Director, Business Development
The Bank of Georgetown

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

- Finance the $36 million development with an allocation of tax exempt bonds, equity from the sale of 4% low income housing tax credits (LIHTCs), institutional equity and possibly secondary permanent financing from the District of Columbia Department of Housing and Community Development (DHCD).

Although this letter does not represent a financing commitment from DCHFA, it does represent the Agency's strong interest in financing the subject project. Based on our current and projected bond volume cap for multifamily housing, DCHFA will be able to allocate tax exempt and/or taxable bonds and 4% LIHTCs to the Project. The final allocation of bond volume cap and low income housing tax credits will depend on the final build out, tenant mix and the resultant eligible basis of the Project.

We eagerly await your submission of a formal application for financing and are looking forward to working with you to bring this much needed and exciting project to fruition.

Sincerely,

Anthony L. Waddell
Director, Public Finance

cc: Mr. Harry D. Sewell
Mr. Cedric M. Brown
General Counsel's Office
LOI File

835 4460

202 ~~434 4536~~

PNC
REAL ESTATE FINANCE

a) no business with any of the group in recent past

b) prelim. meeting - familiar with apts + area

c) Whoever wins - rental apts = home run in this night

d) need to assess ability + financial strength once ~~the~~ a decision is made

December 13, 2007

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

Re: The Jazz @ Florida Avenue

Dear Omar,

We understand that your development team, including Banneker Ventures, District Development Group and Donatelli Development Inc. are responding to a Request for Proposals for the development of three parcels of land located on Florida Avenue, between 7th and 9th Streets, NW. I have reviewed the preliminary information provided on the proposed development, The Jazz @ Florida Avenue, which will be developed to include 103 rental apartments and 13,000 SF of retail space.

PNC Bank believes that the development of this project will be a boost to the redevelopment of the U Street Corridor and we look forward to working with you to try to provide construction financing on this exciting project.

PNC Bank typically provides construction loans up to 80% loan to cost, subject to a maximum 75% LTV based on the appraised value and a minimum 1.30X DSC based on the projected stabilized operations. Construction loan rates will typically be in the range of 1.75% - 2.75% above LIBOR.

This letter is not a commitment or an offer to lend and does not create any obligation on the part of PNC. PNC will not be deemed to extend any commitment unless and until the transaction is approved by PNC and a formal Commitment Letter is issued.

Should your team be the successful bidder, PNC looks forward to further discussing the financing of this project.

Sincerely,

Casey Brill

Casey Brill
Vice President

Member of The PNC Financial Services Group
1601 K Street NW Washington DC 20006

HSBC

December 12, 2007

called back several weeks later 3rd Week of Jan wants to be involved

Knows both teams

Omar Karim
Danneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005

RE: Financing Interest Letter in connection with The Jazz @ Florida Avenue

To Whom It May Concern in the Washington DC District Government:

HSBC Real Estate Finance has followed with great interest the proposals surrounding the sites located on Florida Avenue on 7th and 8th streets. HSBC has both the ability to deliver the required financing and a strong interest in providing the financing required to bring this highly visible project to fruition. We have a high regard for the development team that has been put in place to execute on The Jazz @ Florida Avenue and would go so far as to indicate to you that under the proper circumstances it is a project that we would consider financing without financial recourse, with the understanding that the completion guaranty and other factors would have to be in place for our bank to proceed on that basis.

Although this is not a commitment to lend on the proposed project, which commitment would require the necessary internal approvals at HSBC, we look forward to continuing to work on the financing mandate.

Should any of you have questions relative to either HSBC or its interest in financing this project, please do not hesitate to call me at 202 496-8752.

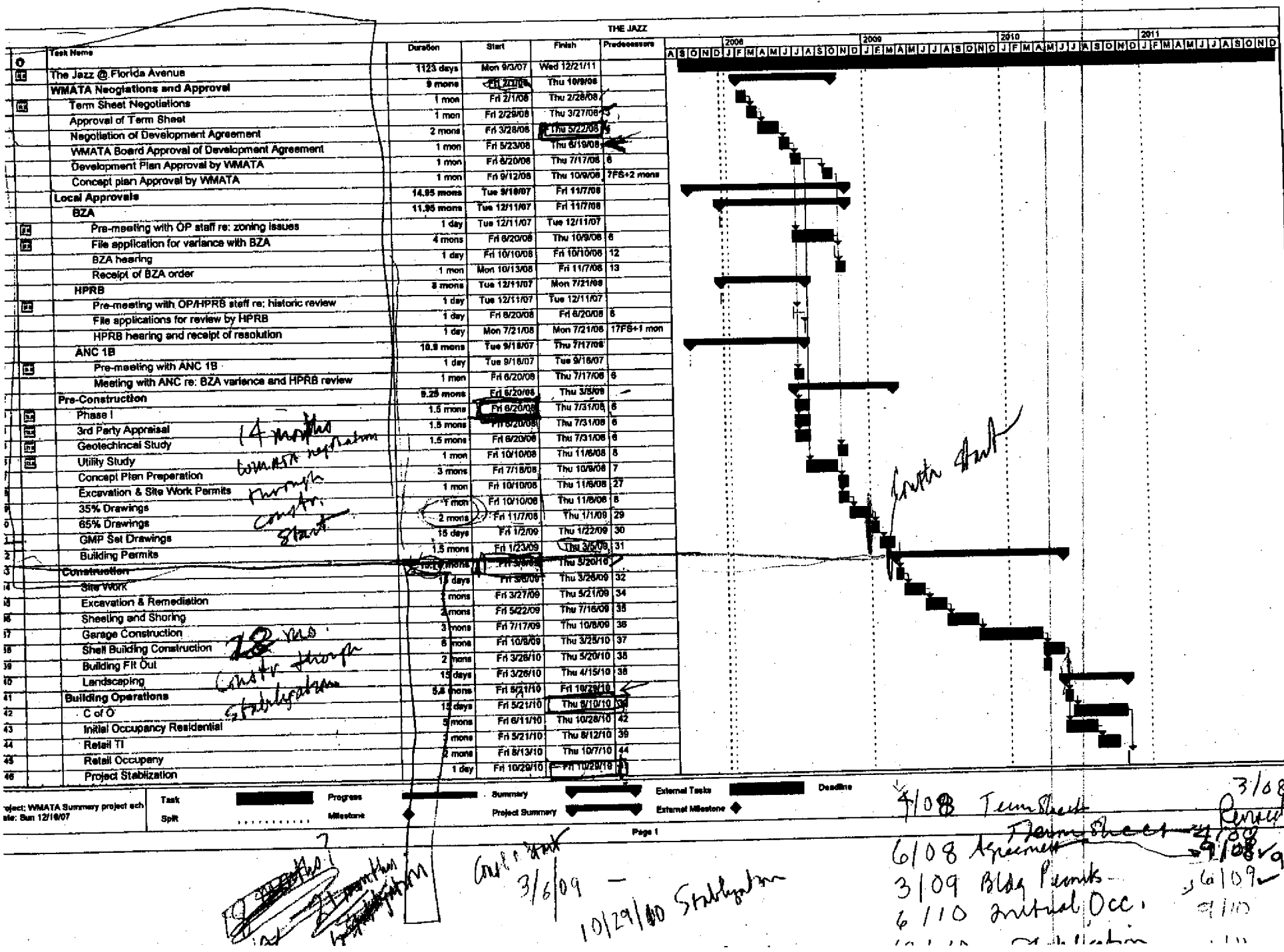
Sincerely:

Antonio F. Marquez
Senior Vice President
DC Real Estate Finance

FOIA CONFIDENTIAL TREATMENT REQUESTED

Updated Project Schedule

FOIA CONFIDENTIAL TREATMENT REQUESTED



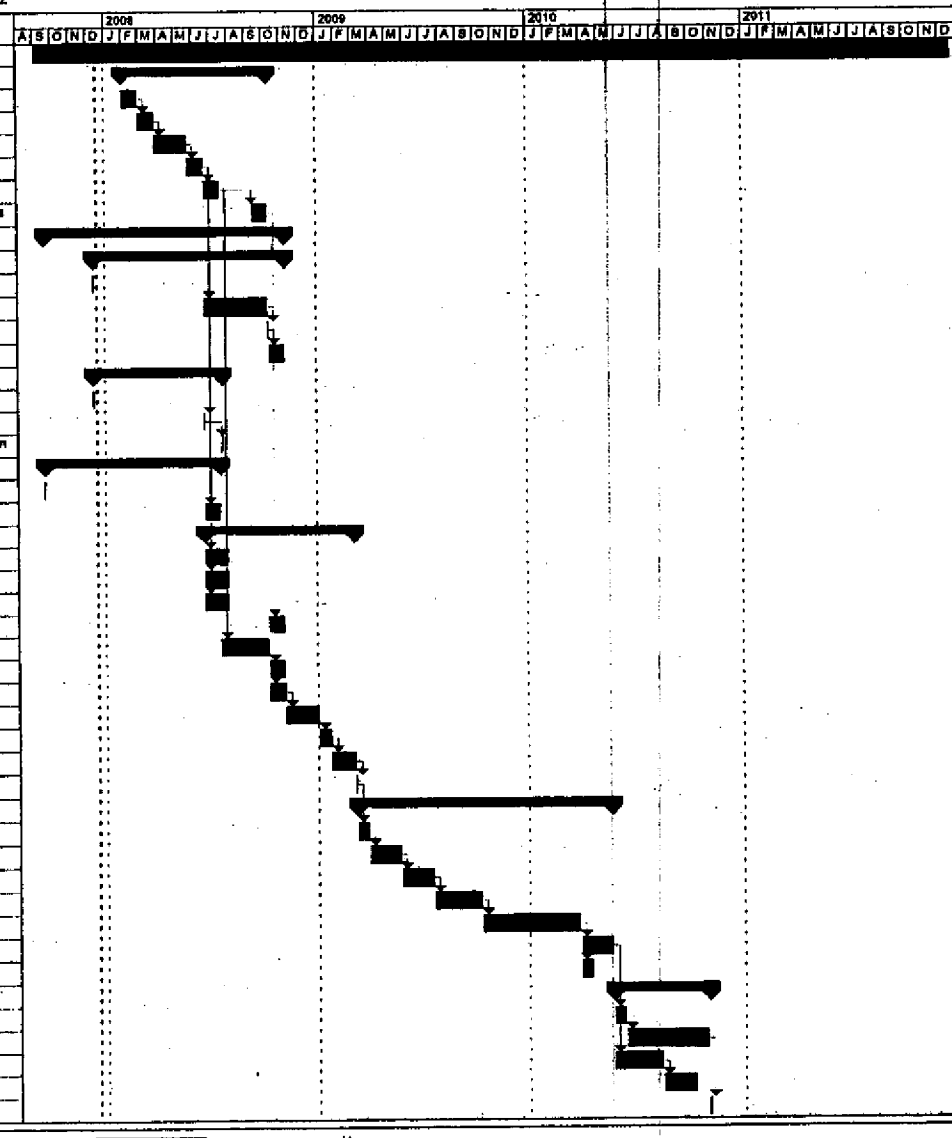
WMATA-INV 014075

Updated Project Pro Forma

FOIA CONFIDENTIAL TREATMENT REQUESTED

THE JAZZ

ID	Task Name	Duration	Start	Finish	Predecessors
1	The Jazz @ Florida Avenue	1123 days	Mon 9/3/07	Wed 12/21/11	
2	**WMATA Negotiations and Approval**	8 mons	Fri 2/1/08	Thu 10/9/08	
3	Term Sheet Negotiations	1 mon	Fri 2/1/08	Thu 2/28/08	
4	Approval of Term Sheet	1 mon	Fri 2/29/08	Thu 3/27/08	3
5	Negotiation of Development Agreement	2 mons	Fri 3/28/08	Thu 5/22/08	4
6	WMATA Board Approval of Development Agreement	1 mon	Fri 5/23/08	Thu 6/19/08	5
7	Development Plan Approval by WMATA	1 mon	Fri 6/20/08	Thu 7/17/08	6
8	Concept plan Approval by WMATA	1 mon	Fri 9/12/08	Thu 10/9/08	7FS+2 mons
9	**Local Approvals**	14.95 mons	Tue 9/18/07	Fri 11/7/08	
10	**BZA**	11.95 mons	Tue 12/11/07	Fri 11/7/08	
11	Pre-meeting with OP staff re: zoning issues	1 day	Tue 12/11/07	Tue 12/11/07	
12	File application for variance with BZA	4 mons	Fri 6/20/08	Thu 10/9/08	6
13	BZA hearing	1 day	Fri 10/10/08	Fri 10/10/08	12
14	Receipt of BZA order	1 mon	Mon 10/13/08	Fri 11/7/08	13
15	**HPRB**	8 mons	Tue 12/11/07	Mon 7/21/08	
16	Pre-meeting with OP/HPRB staff re: historic review	1 day	Tue 12/11/07	Tue 12/11/07	
17	File applications for review by HPRB	1 day	Fri 6/20/08	Fri 6/20/08	6
18	HPRB hearing and receipt of resolution	1 day	Mon 7/21/08	Mon 7/21/08	17FS+1 mon
19	**ANC 1B**	10.9 mons	Tue 9/18/07	Thu 7/17/08	
20	Pre-meeting with ANC 1B	1 day	Tue 9/18/07	Tue 9/18/07	
21	Meeting with ANC re: BZA variance and HPRB review	1 mon	Fri 6/20/08	Thu 7/17/08	6
22	**Pre-Construction**	9.25 mons	Fri 6/20/08	Thu 3/5/09	
23	Phase I	1.5 mons	Fri 6/20/08	Thu 7/31/08	6
24	3rd Party Appraisal	1.5 mons	Fri 6/20/08	Thu 7/31/08	6
25	Geotechincal Study	1.5 mons	Fri 6/20/08	Thu 7/31/08	6
26	Utility Study	1 mon	Fri 10/10/08	Thu 11/6/08	8
27	Concept Plan Preperation	3 mons	Fri 7/18/08	Thu 10/9/08	7
28	Excavation & Site Work Permits	1 mon	Fri 10/10/08	Thu 11/6/08	27
29	35% Drawings	1 mon	Fri 10/10/08	Thu 11/6/08	8
30	65% Drawings	2 mons	Fri 11/7/08	Thu 1/1/09	29
31	GMP Set Drawings	15 days	Fri 1/2/09	Thu 1/22/09	30
32	Building Permits	1.5 mons	Fri 1/23/09	Thu 3/5/09	31
33	**Lease execution with WMATA**	1 day	Fri 3/6/09	Fri 3/6/09	32
34	**Construction**	15.75 mons	Mon 3/9/09	Fri 5/21/10	
35	Site Work	15 days	Mon 3/9/09	Fri 3/27/09	33
36	Excavation & Remediation	2 mons	Mon 3/30/09	Fri 5/22/09	35
37	Sheeting and Shoring	2 mons	Mon 5/25/09	Fri 7/17/09	36
38	Garage Construction	3 mons	Mon 7/20/09	Fri 10/9/09	37
39	Shell Building Construction	6 mons	Mon 10/12/09	Fri 3/26/10	38
40	Building Fit Out	2 mons	Mon 3/29/10	Fri 5/21/10	39
41	Landscaping	15 days	Mon 3/29/10	Fri 4/16/10	39
42	**Building Operations**	5.8 mons	Mon 5/24/10	Mon 11/1/10	
43	C of O	15 days	Mon 5/24/10	Fri 6/11/10	40
44	Initial Occupancy Residential/Stabilization	5 mons	Mon 6/14/10	Fri 10/29/10	43
45	Retail TI	3 mons	Mon 5/24/10	Fri 8/13/10	40
46	Retail Occupany/Stabilization	2 mons	Mon 8/16/10	Fri 10/8/10	45
47	Project Stabilization	1 day	Mon 11/1/10	Mon 11/1/10	44



Project: WMATA Summary project sch
Date: Mon 12/17/07

Task | Progress | Summary | External Tasks | Deadline
Split | Milestone | Project Summary | External Milestone

Page 1

WMATA-INV 014077

Financial Statements

BANNEKER VENTURES, LLC

FINANCIAL STATEMENTS

AS OF NOVEMBER 30, 2007

BANNEKER VENTURES, LLC
FINANCIAL STATEMENTS
AS OF NOVEMBER 30, 2007

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BANNEKER VENTURES,LLC
BALANCE SHEET
AS OF NOVEMBER 30, 2007

ASSETS	
CURRENT ASSETS	
Cash	$ 24,437
Due from Affiliates	17,001
Loan to Other	2,000
Total Current Assets	43,438
PROPERTY AND EQUIPMENT	
Total Property and Equipment	37,646
Accumulated Depreciation	(2,000)
Property and Equipment, net	35,646
OTHER ASSETS	
Investments in 814 Thayer, LLC	351,000
Total Other Assets	351,000
TOTAL ASSETS	430,084
LIABILITIES AND MEMBERS' EQUITY	
MEMBERS' EQUITY	
Members' Equity	430,084
Total Members' Equity	430,084
TOTAL LIABILITIES AND MEMBERS' EQUITY	$ 430,084

BANNEKER VENTURES, LLC
STATEMENT OF INCOME
AS OF NOVEMBER 30, 2007

REVENUE	
Fees - 814 Thayer	$ 173,440
Fees - Park Morton	252,386
Fees - Walker Jones	30,322
Other Revenue	8,019
Interest	37
Total Revenue	464,204
EXPENSES	
Salaries, wages & related taxes	$ 188,855
Automobile	3,279
Bank Service	1,029
Contributions	7,925
Dues and Subscriptions	1,997
Licenses and Permits	260
Miscellaneous	6,648
Postage and Delivery	416
Printing and Reproduction	347
Legal Fees	1,807
Consulting	147,311
Architect Fees	86,303
Meals and Entertainment	2,187
Office, General and Administrative	8,250
Repairs	5,394
Telephone	3,776
Travel	7,856
Utilities	2,621
Total Expenses	476,261
NET INCOME (LOSS)	(12,057)
Accumulated deficit, at January 1	(15,147)
Accumulated deficit, at November 30	$ (27,204)

FOIA CONFIDENTIAL TREATMENT REQUESTED

BANNEKER VENTURES, LLC
STATEMENT OF CASH FLOWS
AS OF NOVEMBER 30, 2007

CASHFLOWS FROM OPERATING ACTIVITIES:	
NET INCOME/(LOSS)	$ (12,057)
Adjustments To Reconcile Net Income/(Loss) To Net Cash From Operations:	
Loan to Other	(2,000)
NET CASH FROM OPERATING ACTIVITIES	(14,057)
CASHFLOWS FROM INVESTING ACTIVITIES:	
Purchase of Property, Plant, & Equipment	(5,276)
CASHFLOWS FROM FINANCING ACTIVITIES:	
Distributions to members'	(63,750)
Contributions by members'	96,000
NET CASH FROM FINANCING ACTIVITIES	32,250
Net (Decrease) Increase in Cash	12,917
Cash Balance at January 1, 2007	11,520
Cash Balance at November 30, 2007	$ 24,437

BANNEKER VENTURES, LLC
STATEMENT OF MEMBERS' EQUITY
AS OF NOVEMBER 30, 2007

EGINNING MEMBERS EQUITY	$ 174,488	$ 235,403	$ 409,891
	Omar A. Karim	*Warren C. Williams*	Total
Share of Net Income	(6,029)	(6,028)	(12,057)
Contribution	96,000	-	96,000
Withdrawals	-	(63,750)	(63,750)
ENDING MEMBERS' EQUITY (DEFICIT)	$ 264,460	$ 165,625	$ 430,084

Updated Project Pro Forma

June 26, 2008

MEMORANDUM FOR: Chairman and Members of the Board

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Record Review

A review of the Shaw-Howard/Florida Avenue Joint Development Developer selection process and record, as requested by Mr. Graham, is provided in this memorandum. The following supporting documents are attached:

- Expression of Interest Response evaluation sheet
- Letter to Banneker Ventures dated December 4, 2007
- Letter from Banneker Ventures dated December 14, 2007
- Condensed Balance Sheet for Metropolis Development Company
- Biography of Mr. Warren C. Williams, Jr.
- Letter to Moddie Turay dated December 4, 2007
- Letter from Moddie Turay dated December 17, 2007
- Certification of Minimum Net Worth from Clark Enterprises
- Letter to Lakritz Adler dated December 4, 2007
- Letter from Lakritz Adler dated December 18, 2007
- Balance Sheets for Lakritz Adler
- Financial Assumptions used by Bolan Smart Associates to determine Net Present Value (includes calculations for two competitive proposals)
- Letter from Metropolis Development Company to Banneker Ventures dated January 28, 2008
- Memorandum from N. Bottigheimer to J. Catoe recommending Banneker Ventures, and attached thereto, a Memorandum from R. Doggett through J. Washington to N. Bottigheimer recommending Banneker Ventures. (Also includes proposal evaluation score sheet.)
- Outline of Operating Agreement Between Banneker Ventures, LLC, District Development Group, Inc. and Metropolis Development Company, LLC, dated March 11, 2008

ATTORNEY-CLIENT PRIVILEGED DOCUMENT

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

Background

In Spring 2007, Metro issued a Request for Expressions of Interest ("REI") for its Shaw-Howard/Florida Avenue joint development sites (hereinafter the "Property" or the "JD Site"). Staff review of the REI evaluated the proposals based on conformity with the Duke Plan; WMATA Return; Schedule (time to completion); Developer's Ability to Perform; and Developer's Track Record. Staff in WMATA's Office of Station Area Planning and Asset Management of the Department of Planning and Joint Development ("SAAM"), evaluated and ranked these proposals and requested detailed proposals from those six developers who met the minimum requirements.

On October 5, 2007, in response to WMATA's request, detailed proposals were received from teams led by: Banneker Ventures; Lakritz Adler; and Moddie Turay Company. In each case the lead developer included other partners to strengthen their proposal and provide needed technical and financial support. Proposals were reviewed by Staff and Staff interviewed each team to discuss both the financial and technical aspects of the proposals. The evaluation criteria used by staff were those stated in the request for detailed proposals:

Technical Criteria

- Does the development reflect transit oriented development principles?
- Is the project viable/marketable?
- What is the Development Team's experience?
- Is the development innovative/creative?
- Is the development proposal compatible with the local land use plan?
- What benefits are provided to the local jurisdiction?

Economic Criteria

- What is the financial benefit to WMATA?
- What is the financial viability of the Proposal?
- Will the development enhance ridership?

Each development team was given the opportunity to 1) supplement their submissions where those submissions were found to be lacking; and 2) increase compensation to WMATA. The proposals received a numeric ranking on a scale of one to 100. Staff recommendation to management was the highest ranked developer, Banneker Ventures. Staff was aware, at the time of its recommendation, that Metropolis Development had replaced Donatelli Development as a partner on the Banneker team. Management agreed with Staff recommendation and made its recommendation to the General Manager on February 26, 2008.

ATTORNEY-CLIENT PRIVILEGED DOCUMENT

FOIA CONFIDENTIAL TREATMENT REQUESTED

Banneker Ventures Financial Submissions

Banneker Ventures made a timely submission in response to WMATA's request for a detailed proposal. As part of Staff's review, several deficiencies were identified and Staff sent a letter to Banneker dated December 4, 2007 requesting, among other things:

- Evidence of the interest of MacFarlane Partners in providing equity for this project;
- Documentation of the creditworthiness of the entire team, and
- Balance sheets [of Banneker Ventures, LLC].

Banneker Ventures provided written responses, with supporting documentation on December 14, 2007. The response included financial documentation from MacFarlane Partners; letters of interest from three additional investment entities; and the Balance Sheet, Income Statement and Statement of Cash Flow from Banneker Ventures, LLC. As shown by the hand-written notes on the Letters of Interest, Staff communicated with the potential financial backers of the Banneker development and received positive feedback. Staff communication with these investment interests are not clearly dated, but appear to have occurred on or before January 8, 2008.

Substitution of Metropolis Development Company

The Florida Avenue Joint Development Site: Proposal Submission Requirements address the eventuality of a Change in Composition of Developer or Development Team at Section 5.1.C.1. This section states that "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."

By letter dated January 28, 2008, Metropolis Development Company ("Metropolis") joined Banneker Ventures and District Development Group as part of the Banneker Team. This partnership was later memorialized in that Outline of Operating Agreement Between Banneker Ventures, LLC., District Development Group, Inc. And Metropolis Development Company, LLC, dated March 11, 2008.

No additional documentation regarding this substitution is found in the file, however, as the January 28th letter indicates, Metropolis is a known entity having participated in the development of the Langston Lofts project with Metro at 14th and V Streets. It is my understanding that the substitution of Metropolis had no impact on the financial strength of the Banneker team. This is because

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014088

of the high marketability of the proposed project at the JD Site and because of the strength of another equity partner of the team: MacFarlane Partners D.C. Rather, the impact of the removal of Donatelli Development was to call into question the team's ability to manage the construction of the project. The construction management experience, shown in the January 28, 2008 letter, allowed Staff to accept the change in membership and advance Banneker Ventures as the proposed developer. In addition, on or about June 16, 2008, Metropolis did submit a Condensed Balance Sheet showing its financial strength as of December 2007.

Carol B. O'Keeffe
General Counsel

ATTORNEY-CLIENT PRIVILEGED DOCUMENT

FOIA CONFIDENTIAL TREATMENT REQUESTED

Selected Documents from the File
Shaw-Howard/Florida Avenue Joint Development

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- Letter to Banneker Ventures dated December 4, 2007 2
- Letter from Banneker Ventures dated December 14, 2007 4
- Condensed Balance Sheet for Metropolis Development Company 34
- Biography of Mr. Warren C. Williams, Jr. 35
- Letter to Moddie Turay dated December 4, 2007 36
- Letter from Moddie Turay dated December 17, 2007 38
- Certification of Minimum Net Worth from Clark Enterprises 55
- Letter to Lakritz Adler dated December 4, 2007 57
- Letter from Lakritz Adler dated December 18, 2007 59
- Balance Sheets for Lakritz Adler 69
- Financial Assumptions used by Bolan Smart Associates to determine Net Present Value (includes calculations for two competitive proposals) . 78
- Letter from Metropolis Development Company to Banneker Ventures dated January 28, 2008 81
- Memorandum from N. Bottigheimer to J. Catoe recommending Banneker Ventures, and attached thereto, a Memorandum from R. Doggett through J. Washington to N. Bottigheimer recommending Banneker Ventures. (Also includes proposal evaluation score sheet) 90
- Outline of Operating Agreement Between Banneker Ventures, LLC, District Development Group, Inc. and Metropolis Development Company, LLC, dated March 11, 2008 98

ATTORNEY-CLIENT PRIVILEGED DOCUMENT

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014090

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 partners 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 dependent Clark 5	never headed up needs Clark 10	50
P N Hoffman	too low 0	too low 0	15	10	20	35
SED Center	too low unrelated use 0	10	10	needs partner 5	5	30
Symmetry	20	25	5	did office reverted 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

December 4, 2007

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

Re: Shaw-Howard Florida Avenue Joint Development Site

Dear Mr. Karim:

Thank you for the submission of your proposal for the above-referenced 2007 Joint Development Solicitation (JDS) site.

The purpose of this letter is to bring to your attention missing or incomplete items or items that require further discussion and clarification. We would like to schedule an oral presentation by your team on December 17, 2007 at 10:30 a.m. at WMATA headquarters and have attached instructions for the presentation. We ask that you provide 10 copies of the supplementary information requested in this letter not later than the presentation and preferably before so that we may first review it.

The following items need clarification, correction or completion:

Technical Information
Within the schedule you presented, please indicate the outside, firm date by which a lease would be executed.

What, if any, zoning approvals or variances will you be seeking for Parcels 1 or 3?

Please explain your schedule more fully. It appears to build in very long time periods for negotiating a WMATA agreement and not enough time for local historic preservation, zoning, and building permit approvals.

Also, please provide an outside date for stabilization.

How will you finance affordable housing piece?

Washington Metropolitan Area Transit Authority
00 Fifth Street, NW
shington, DC 20001
202/962-1234

By Metrorail:
diary Square—Red Line
ery Place-Chinatown—
Red, Green and
Yellow Lines
By Metrobus:
outes D1, D3, D6, P6,
70, 71, 80, X2

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014092

Assess the market for rental apartments in the area now that conversions of condominium projects to rental product are occurring. Is the market becoming oversaturated with rentals and would you expect to experience difficulty in obtaining financing for your project?

Do you have prospective tenants for the Robeson museum or themed restaurant?

Have you discussed with DDOT the proximity of the Parcel 2 garage entrance to Florida Avenue?

Economic Information

WMATA expects escalation in the sale or rent amount from today's values if closing is delayed beyond a year. Please indicate how you would satisfy this requirement.

The pro forma rents do not seem to square with the schedule. For example, stabilization seems to take 7 months in the schedule but the pro forma appears to show a longer time. Please reconcile.

WMATA also expects and receives participations in capital events and in cash flow (or, alternatively to cash flow, revaluation of the project in which rent values do not fall below the previous year). Please provide your proposal.

Provide evidence of the interest of MacFarlane Partners in providing equity for this project. Do you have alternative equity sources?

Document the creditworthiness of the entire team. Banking references are provided only for the Donatelli part of the partnership, which is 30% of the team.

Please submit the balance sheets that the proposal indicates will be provided under separate cover.

We look forward to your presentation and to further discussion on this project.

Sincerely,

Joel R. Washington

Joel R. Washington, Director
Station Area Planning and Asset Management

Attachment

FOIA CONFIDENTIAL TREATMENT REQUESTED

Working Copy

BANNEKER VENTURES, LLC

December 14, 2007

BY HAND

To

Joel R. Washington, Director
Station Area Planning and Asset Management
Washington Metropolitan Transit Authority
600 Fifth Street, NW
Washington, DC 20001

RE: Clarification from Response to Shaw – Howard Florida Avenue Joint Development Solicitation

Dear Mr. Washington:

Thank you for your letter dated December 4, 2007 regarding items in our team's response to the Joint Development Solicitation for the above-referenced site. We are extremely excited about the possibility of partnering with the Washington Metropolitan Area Transit Authority ("WMATA") to develop this key site along the Florida Avenue/U Street corridor.

Below, please find our responses to the issues that you raised in your letter. We hope that these answers, along with our presentation on December 17th will demonstrate our capability and commitment to developing these key parcels.

Technical Information

Within the schedule you presented, please indicate the outside, firm date, by which a lease would be executed? March 6, 2009 how long

What, if any, zoning approvals or variances will you be seeking for Parcels 1 or 3? A zoning variance (for parking and loading) would be sought for Parcel 1. A zoning variance (for parking) would be sought for Parcel 2. No variance will be sought for Parcel 3.

700 12th Street, NW • Suite 700 • Washington, D.C. 20005 • (202) 667-4110
814 Thayer Avenue • Suite 300 • Silver Spring, Maryland 20910 • (301) 565-4960
www.bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014094

Please explain your schedule more fully. A detailed schedule is attached which includes time for historic preservation review, zoning review, and building permit approvals.

Please provide an outside date for stabilization. October 29, 2010

Assess the market for rental apartments in the area. According to the most recent (Third Quarter 2007) Delta Associates Mid-Atlantic Market Report, the "Washington metro area remains healthy despite softening conditions. Unemployment remains one of the lowest in the nation [3.3% as of July 2007] and jobs continue to expand at an above-average pace." According to the Report, the effective rent per square foot (as of September 2007) for Class A rental high-rise apartments is $2.86 with the average effective rent at $2,447 per unit, with a 1.2% concession. Stabilized vacancies remain at 1.3% and overall vacancies are at 4.1%. The monthly absorption pace per project for the most recently delivered market-rate projects are at 5 months; our project has 7 months in the schedule which provides some cushion to the market.

Delta reports that "[a]lthough the [apartment] pipeline has grown significantly in response to the recent robust performance of the apartment market and as a result of developers reprogramming condo projects in light of the slowing condominium market." The "District's 36-month pipeline of projects has grown to 6,353 units as of September 2007, a large jump from the previous quarter. Despite this uptick in the pipeline, the District currently retains the healthiest supply-demand balance in the region. The report further states that "[v]acancies are extremely low – up to 1.3% from a paltry 0.8% one year ago – and rent growth is the strongest in the region at 6.5% per annum. Additional development of exceptionally designed and well located projects would appear warranted. Since The Jazz @ Florida Avenue is exceptionally designed (according to the Office of Planning) and is well located (2 blocks from 2 Metro stations), we believe that a proposed rental project at this located is warranted.

Do you have prospective tenants for the Paul Robeson Theatrical Museum or themed restaurant? Yes. We have prospective tenants for the museum as evidenced by the letter of interest on the following pages. Moreover, the Utopia Jazz Restaurant, a national restaurant based in Charlotte, NC and partially owned by NBA and former co-owner of the Washington Wizards Michael Jordan, a letter of interest of which is also attached.

Have you discussed with DDOT the proximity of the Parcel 2 garage entrance to Florida Avenue? We have met with DDOT and OP about the proximity of the garage entrance to Parcel 2 and they prefer that the alley between Parcels 1 and 2 be widened

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014095

to allow for the garage entrance to come off the alley. Our proposed design can certainly accommodate their preference.

Economic Information

WMATA expects escalation in the sale or rent amount from today's values if closing is delayed beyond a year. If closing is delayed beyond a year, we will be prepared to pay WMATA a 3% increase in the pre-development rent.

The pro forma rents do not seem to square with the schedule. Attached is a revised schedule that reconciles with the stabilization date of the pro-forma.

WMATA expects and receives participations in capital events and in cash flow. Please provide your proposal. We will be prepared to pay WMATA 10% of the net proceeds upon the sale or revaluation of the project.

Provide evidence of the interest of MacFarlane Parnters in providing equity for this project. Attached please find letters of interests from MacFarlane Partners, D.C. Housing Finance Agency, The Bank of Georgetown, PNC Bank, BB&T Bank and Fidelity & Trust Bank.

Document the creditworthiness of the entire team. Banking references are enclosed as part of the letters of interests.

Please submit balance sheets. Financial statements for each of the developer's will be delivered to the WMATA staff at the presentation on Monday.

Thank you for the opportunity to be considered for your development partner. We look forward to further expounding upon our capabilities during the oral presentation on Monday, December 17th at 10:30 am at your headquarters.

Sincerely,

Omar A. Karim

FOIA CONFIDENTIAL TREATMENT REQUESTED

Letter of Interests from Prospective Retail Tenants

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014097

3030 NEBRASKA AVENUE | PENTHOUSE | SANTA MONICA, CA 90404 | TEL: 310 453 1400 | FAX: 310 453 6760

HIDDEN
BEACH
RECORDINGS

July 15, 2007

Mr. Omar Karim
Banneker Ventures, L .C
700 12th Street, NW, Suite 700
Washington, D.C. 20005

Re: The Jazz@ Florida Avenue Project/ The Utopia Jazz Restaurant & Lounge

Omar:

I am writing this letter to express my interest in trying to open a live jazz restaurant as apart of the Jazz@ Florida Avenue Project. Being a co-founder of the music label Hidden Beach Recordings which is home of artists like Jill Scott, Mike Phillips, and Kindred the Family Soul, I could not think of a way better way to come back and thank the Washington, D.C. community for their support for our label and our artists than to put this live music venue in the nation's capitol.

I am currently in the process of opening a similar restaurant in Charlotte, N.C. called Utopia, which is due to open in September 2007 with two partners named Kennedy Howard and Juvenile Ogbuneke. Kennedy and Juvenile are currently owners of a restaurant in Charlotte. N.C. called The Jazz Café, which opened May 29, 2005. The Jazz Café has had shows with national recording artists such as Mike Phillips, D.C. native Marcus Johnson, Marion Meadows, Pieces of a Dream, Ronnie Laws, Walter Beasley, D.C. natives Spur of the Moment, and Hidden Beach Recording artist Jeff Bradshaw just to name a few.

Our interest in being apart of this exciting new venture is great and I would definitely like to continue dialog with you to see if we can make this a reality. Please let me know if you have any questions and I can be reached at 310-489-3122.

Best Regards,

Charles Whitfield
Hidden Beach Recordings
Santa Monica, Ca.

FOIA CONFIDENTIAL TREATMENT REQUESTED

HANDSHAKE
PRODUCTIONS

To: Omar Karim, Banneker Ventures, LLC
From: Bryant "Preacher" Moss, Handshake Productions
Re: Letter of Interest for Café Space in The "Jazz@ Florida Avenue"

Mr. Omar Karim,

This letter is to inform you of Handshake Production LLC interest in becoming a tenant for the proposed café at The "Jazz& Florida Avenue."

My organizational team has a combined forty years of entertainment, and event management experience. We have experience in cultural programming, diversity programming, and event marketing. Furthermore, our organization has extensive experience in developing branded content, and marketing.

Our goals for the space above mentioned is to develop it as a multi-night establishment with a result defined as being a "community project." We intend on using an integrated model of 1) community artistic need, 2) balanced project management, 3) technology, and 4) a strong marketing plan. We wish to offer several options such as cross-cultural, and cross-community events. As well it is our hope to have comedy, as the anchor program in it's initial start up stages. We believe that we can leverage our entertainment networks to deliver high quality, affordable, "community relevant" programming to the Washington Metropolitan Area.

Our organizational and concept development team are:

Bryant "Preacher" Mr. Moss- Moss is the current CEO of the internationally acclaimed, "Allah Made Me Funny" Comedy Tour. He has produced numerous multi-media projects, and also produced the upcoming feature film, "Allah Made Me Funny-Live in Concert." He has over twenty-three years in various aspects of entertainment, brand development, and project management.

Azhar Usman- Mr. Usman is an equity partner in "Allah Made Me Funny" The Official Muslim Comedy Tour, and a practicing lawyer. He serves as the contract and negotiations lead for new product, and project development. As well, he is the Creative Director for Handshake Productions.

John Xeras- Mr. Xeras has over twenty years in the restaurant and entertainment

FOIA CONFIDENTIAL TREATMENT REQUESTED

business. He has owned and managed two Washington area nightclubs. He is still a managing partner in the IMPROV comedy club, and the Riot Act Comedy club. He also has over twenty years of brand content development, and event management. He is also the CEO of Riot Act Entertainment.

In closing we look forward to hear from regarding this opportunity.

B. "Preacher" Moss, Handshake Productions
240.432.7133

FOIA CONFIDENTIAL TREATMENT REQUESTED

Letter of Interests from Financing Partners

FOIA CONFIDENTIAL TREATMENT REQUESTED

MACFARLANE PARTNERS

December 13, 2007

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

Re: The Jazz @ Florida Avenue RFP

Dear Omar:

MacFarlane Partners is pleased to continue working with you and to join, as your investor/equity partner, the team led by your firm ("Banneker") in submitting a final plan to WMATA to develop The Jazz @ Florida Avenue in response to the WMATA Request for Proposal that was submitted on May 31, 2007. Having looked at other projects with you, we recognize Banneker as a leading minority-owned developer in the Washington, D.C., region, and believe that our financial strength can enhance your team's development capability. We also recognize the strong participation of another leading Washington, D.C., minority-owned developer – District Development Group.

We have reviewed your most recent proposal for the development of The Jazz @ Florida Avenue mixed-use project and believe your development plan to be qualitatively sound and attractive. Based on our discussions and negotiations, MacFarlane Partners will provide Banneker with the required equity for pre-development and development activities, including land acquisition. Based on the current development plan, the team expects the total development costs to be approximately $35 million, which will require approximately $8 million of equity. Our investment will be made on the terms upon which the team has previously agreed. These terms are consistent with structures we have utilized with other local developers in our most recent ventures.

MacFarlane Partners is a minority-owned real estate investment management firm that invests primarily in development and redevelopment projects, such as The Jazz @ Florida Avenue, in urban areas nationwide. The firm's investments to date are helping to develop, redevelop or reposition $19 billion in urban properties, encompassing 20 million square feet of commercial space and 26,000 multifamily housing units in Washington, D.C.; New York City; Los Angeles; Orange County; and the San Francisco Bay Area. We maintain several offices around the country, including one in Washington, D.C.

Having invested in urban, mixed-use development projects – sometimes serving as developers ourselves – we believe we have the requisite experience and skill to assist you and the rest of the team in developing The Jazz @ Florida Avenue that is successful for both WMATA and District residents. We specialize in complex projects that require creative financing and innovative structuring. We also are accustomed to working with our development partners and local government agencies to form public/private partnerships, as well as resolve the regulatory and environmental issues that urban-infill projects typically encounter.

1730 Connecticut Avenue, NW 3rd Floor Washington, DC 20036 Phone 202.572.0700 Fax 202.572.0699

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014102

Highlighted below are a few of the projects in which we have invested.

- **JBG Urban**, a joint venture with The JBG Companies and Morgan Stanley Real Estate that will develop and redevelop 93 assets on 42 sites located throughout the Washington, D.C., metropolitan area. The assets – which are in various stages of entitlement, planning, development or renovation – range from completed properties slated for renovation or demolition to undeveloped urban-infill sites. A majority of the sites are adjacent to or near existing and proposed transit stations along the area's Metro light-rail system; 25 sites are located in northern Virginia, 13 are in suburban Maryland, and four are within the District of Columbia. When fully developed, the portfolio will total eight million square feet of office space, 1.9 million square feet of retail space; 13,400 multifamily housing units; and 2,500 hotel rooms.

- **The Yards**, a mixed-use redevelopment project planned by Forest City Washington for the 44-acre Southeast Federal Center, which once was an annex to the Washington Navy Yard on the Anacostia River in Washington, D.C. The proposed uses envisioned for the project include 1.8 million square feet of office space, 2,700 residential units, destination and neighborhood serving retail space and a large riverside park. Development began in late 2007.

- **Half Street**, a mixed-use project that is being developed in multiple phases in Southeast Washington, D.C., immediately north of the new ballpark for the Washington Nationals Major League Baseball team. The first phase of the project, which began construction in January 2007, will consist of 260,000 square feet of office space, 328 for-sale condominiums, 50,000 square feet of retail space, and a 200-room boutique hotel in four adjacent buildings occupying the entire city block on the eastern side of Half Street SE, between M Street SE and N Street SE. Future phases will be built on adjacent blocks to the west and north of the first phase and are likely to include a mix of office, retail and multifamily residential space.

- **Solea**, a six-story residential mid-rise building located in the District's Columbia Heights neighborhood that is being developed in partnership with JLC and NCRC. With construction underway, Solea will include 55 for-sale condominiums, seven live/work units and 4,700 square feet of retail space when completed.

- **Bay Street Emeryville**, a mixed-use "urban village" developed on a former industrial site near the eastern approach to the San Francisco-Oakland Bay Bridge in Emeryville, Calif., that included a 365,000-square-foot lifestyle retail center, with 284 rental apartments (20% of which are designated for low-income residents) and 95 town homes on three to six floors above the retail stores. The retail component was completed in 2002 and was named "Best New Retail Development of the Year" in April 2003 by the *San Francisco Business Times*. The residential units were completed in 2006 and garnered a Market-Rate Residential Real Estate Deal of the Year award in March 2007 from the *San Francisco Business Times*.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014103

- **Wilshire Vermont Station,** a mixed-use "transit village" that was developed atop an existing underground rail transit station, approximately three miles west of downtown Los Angeles. Completed this past August, the property consists of two connected seven-story buildings with 449 apartment units (20% of which will be designated for low-income residents) and 36,000 square feet of street-level retail space that are configured around a public plaza and entrance to the Wilshire/Vermont Metro Red Line subway station.

- **NoMa West,** three mid-rise residential buildings (five to six stories in height) with approximately 500 rental apartments that will be developed on a four-acre, infill site in the emerging North of Massachusetts Avenue ("NoMa") neighborhood of Washington, D.C. Construction is expected to begin in the fall of 2008.

- **Metropolitan Lofts,** an eight-story apartment community that was completed in the summer of 2006 on a former commercial/industrial site near the Staples Center in downtown Los Angeles. It consists of 264 apartment units (20% of which are designated for low-income residents), 11,000 square feet of ground-floor retail space and an attached parking structure. The property, which is currently 97% leased and 96% occupied, is operated on a long-term ground lease from the City of Los Angeles Redevelopment Agency.

Founded in 1987, MacFarlane Partners has provided investment management services across a broad range of real estate strategies for institutional investors over the past 20 years, including the California Public Employees' Retirement System ("CalPERS"), the Teacher Retirement System of Texas, and the defined-benefit pension plans of AT&T and General Motors Corporation.

As managing member of an urban real estate joint venture with the CalPERS, the nation's largest public pension plan with $255 billion in assets, we have investment discretion over $1.45 billion in equity capital for investment in urban development and redevelopment projects in major cities throughout the U.S. We also manage a private institutional fund targeting urban property markets that was formed in 2006 and has an equity capitalization of $1.01 billion.

Both the CalPERS' venture and the urban investment fund have revolving credit facilities; the CalPERS' venture has a debt facility with Sumitomo Bank that currently totals $600 million, while the private fund has a debt facility with Bank of America that can be as large as 90% of the fund's eligible equity.

MacFarlane Partners strongly supports your proposal and is pleased to continue to be a part of Banneker's team for this innovative and worthwhile project for the citizens of Washington, D.C.

Sincerely,

Bradford H. Dockser
Principal, Investments

FOIA CONFIDENTIAL TREATMENT REQUESTED

David H. Rosenthal
Interim Chief Executive Officer

Ball Street Ventures, LLC
1000 Wisconsin Avenue, NW
Suite G-100
Washington, D.C. 20007

202.625-2440 direct dial
202.625-2360 facsimile
DRosenthal@ballstreetfund.com

December 14, 2007

Joel R. Washington
Director
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

RE: Letter of Interest – The Jazz @ Florida Avenue

Dear Mr. Washington:

We are pleased to provide this Letter of Interest to the Banneker Ventures, LLC, District Development Group, and Donatelli Development team in response to a Washington Metropolitan Area Transit Authority Request for Proposal to develop three parcels on the 700 and 800 blocks of Florida Avenue, NW, Washington, D.C. We recognize this team as a leading developer in the region and are excited to partner with you to build an exceptionally-designed, transit-oriented, mixed-use housing, and retail community located on these key Florida Avenue/U Street corridor sites.

As you may be aware, Ball Street Fund (Ball Street) was founded by Brian Davis and Christian Laettner and is headquartered in Washington, D.C. Ball Street is a vertically-integrated development and investment company focused on mixed-use developments located in strategically-targeted, urban communities throughout the United States. The success of Ball Street's flagship development in Durham, North Carolina, West Village (http://www.westvillageapts.com/), demonstrates the strength and success of our vision. Our vision is based primarily on creating population and service density within an underserved, urban locale; ensuring the creation of an energetic, vibrant, integrated community benefitting many constituents, and; building a sustainable, flexible development with an eye toward future generation's needs, the development's economic viability, sensitivity to the natural environment, and preservation/conservation of natural resources.

We have reviewed the proposed plans for The Jazz @ Florida Avenue, and believe it to be both financially feasible and the best use for this location. As such, we are energized about the possibility of working with the Banneker/District Development/Donatelli Development team should this group be selected as WMATA's development partner on this site.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Although we have not finalized a term sheet, based on our preliminary review and discussions, Ball Street would provide Banneker, District Development and Donatelli Development with 100% of the equity requirements necessary to complete the development, or approximately $8.0MM, based on the current budget and financial projections.

Ball Street is extremely energized about this letter of interest and is pleased to be part of this very capable team. We look forward to building a healthy, prosperous and multi-faceted relationship by partnering on this particular opportunity.

Very truly yours,

David H. Rosenthal

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014106

BANK OF GEORGETOWN

December 13, 2007

CORPORATE OFFICES
1054 31st Street, NW
Suite 18
Washington, DC 20007
Phone 202.355.1200
Fax 202.355.1201
bankofgeorgetown.com

GEORGETOWN
1001 Wisconsin Ave., NW
Washington, DC 20007

FRIENDSHIP HEIGHTS
5236 44th Street, NW
Washington, DC 20015

ARLINGTON/COURTHOUSE
2300 Wilson Blvd.
Arlington, VA 22201

CONNECTICUT AVENUE
1101 Connecticut Ave., NW
Washington, DC 20036

Mr. Joel R. Washington
Director Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Subject: Letter of Interest – The Jazz @ Florida Avenue

Dear Mr. Washington:

We are pleased to provide this letter of interest to the Banneker Ventures, District Development Group and Donatelli Development-led team in response to a Washington Metropolitan Area Transit Authority Joint Development Solicitation to develop three parcels on the 700 and 800 blocks of Florida Avenue, NW, Washington, DC. We recognize this team as a leading developer in the region and are excited about the possibility of partnering with you to build an incredibly designed, transit oriented mixed-use housing and retail project on these key Florida Avenue/U Street corridor sites.

We have worked with both Omar A. Karim and Chris Donatelli and the two firms of which they are the principals of and we are pleased to have the opportunity to work with them on The Jazz.

We have reviewed the proposed plans for the project and look forward to working with this team., should it be selected, to develop this key parcel along the Florida Avenue/U Street corridor.

As you may know, The Bank of Georgetown is a District of Columbia Chartered Bank with four branch locations.

The Bank of Georgetown is very pleased to provide this letter of reference and interest for the Banneker, District Development, and Donatelli led project.

Sincerely,

Jeffrey A. Banks
Managing Director, Business Development
The Bank of Georgetown

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014107

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014108

- Finance the $36 million development with an allocation of tax exempt bonds, equity from the sale of 4% low income housing tax credits (LIHTCs), institutional equity and possibly secondary permanent financing from the District of Columbia Department of Housing and Community Development (DHCD).

Although this letter does not represent a financing commitment from DCHFA, it does represent the Agency's strong interest in financing the subject project. Based on our current and projected bond volume cap for multifamily housing, DCHFA will be able to allocate tax exempt and/or taxable bonds and 4% LIHTCs to the Project. The final allocation of bond volume cap and low income housing tax credits will depend on the final build out, tenant mix and the resultant eligible basis of the Project.

We eagerly await your submission of a formal application for financing and are looking forward to working with you to bring this much needed and exciting project to fruition.

Sincerely,

Anthony L. Waddell
Director, Public Finance

cc: Mr. Harry D. Sewell
Mr. Cedric M. Brown
General Counsel's Office
LOI File

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014109

835 4460

PNC
REAL ESTATE FINANCE

December 13, 2007

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

Re: The Jazz @ Florida Avenue

Dear Omar,

We understand that your development team, including Banneker Ventures, District Development Group and Donatelli Development Inc. are responding to a Request for Proposals for the development of three parcels of land located on Florida Avenue, between 7th and 9th Streets, NW. I have reviewed the preliminary information provided on the proposed development, The Jazz @ Florida Avenue, which will be developed to include 103 rental apartments and 13,000 SF of retail space.

PNC Bank believes that the development of this project will be a boost to the redevelopment of the U Street Corridor and we look forward to working with you to try to provide construction financing on this exciting project.

PNC Bank typically provides construction loans up to 80% loan to cost, subject to a maximum 75% LTV based on the appraised value and a minimum 1.30X DSC based on the projected stabilized operations. Construction loan rates will typically be in the range of 1.75% - 2.75% above LIBOR.

This letter is not a commitment or an offer to lend and does not create any obligation on the part of PNC. PNC will not be deemed to extend any commitment unless and until the transaction is approved by PNC and a formal Commitment Letter is issued.

Should your team be the successful bidder, PNC looks forward to further discussing the financing of this project.

Sincerely,

Casey Brill
Vice President

Member of The PNC Financial Services Group
1601 K Street NW Washington DC 20006

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014110

HSBC

December 12, 2007

called back several weeks later 3rd week of Jan wants to be involved

Knows both teams

Omar Karim
Danneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005

RE: Financing Interest Letter in connection with The Jazz @ Florida Avenue

To Whom It May Concern in the Washington DC District Government:

HSBC Real Estate Finance has followed with great interest the proposals surrounding the sites located on Florida Avenue on 7th and 8th streets. HSBC has both the ability to deliver the required financing and a strong interest in providing the financing required to bring this highly visible project to fruition. We have a high regard for the development team that has been put in place to execute on The Jazz @ Florida Avenue and would go so far as to indicate to you that under the proper circumstances it is a project that we would consider financing without financial recourse, with the understanding that the completion guaranty and other factors would have to be in place for our bank to proceed on that basis.

Although this is not a commitment to lend on the proposed project, which commitment would require the necessary internal approvals at HSBC, we look forward to continuing to work on the financing mandate.

Should any of you have questions relative to either HSBC or its interest in financing this project, please do not hesitate to call me at 202 496-8752.

Sincerely:

Antonio P. Marquez
Senior Vice President
DC Real Estate Finance

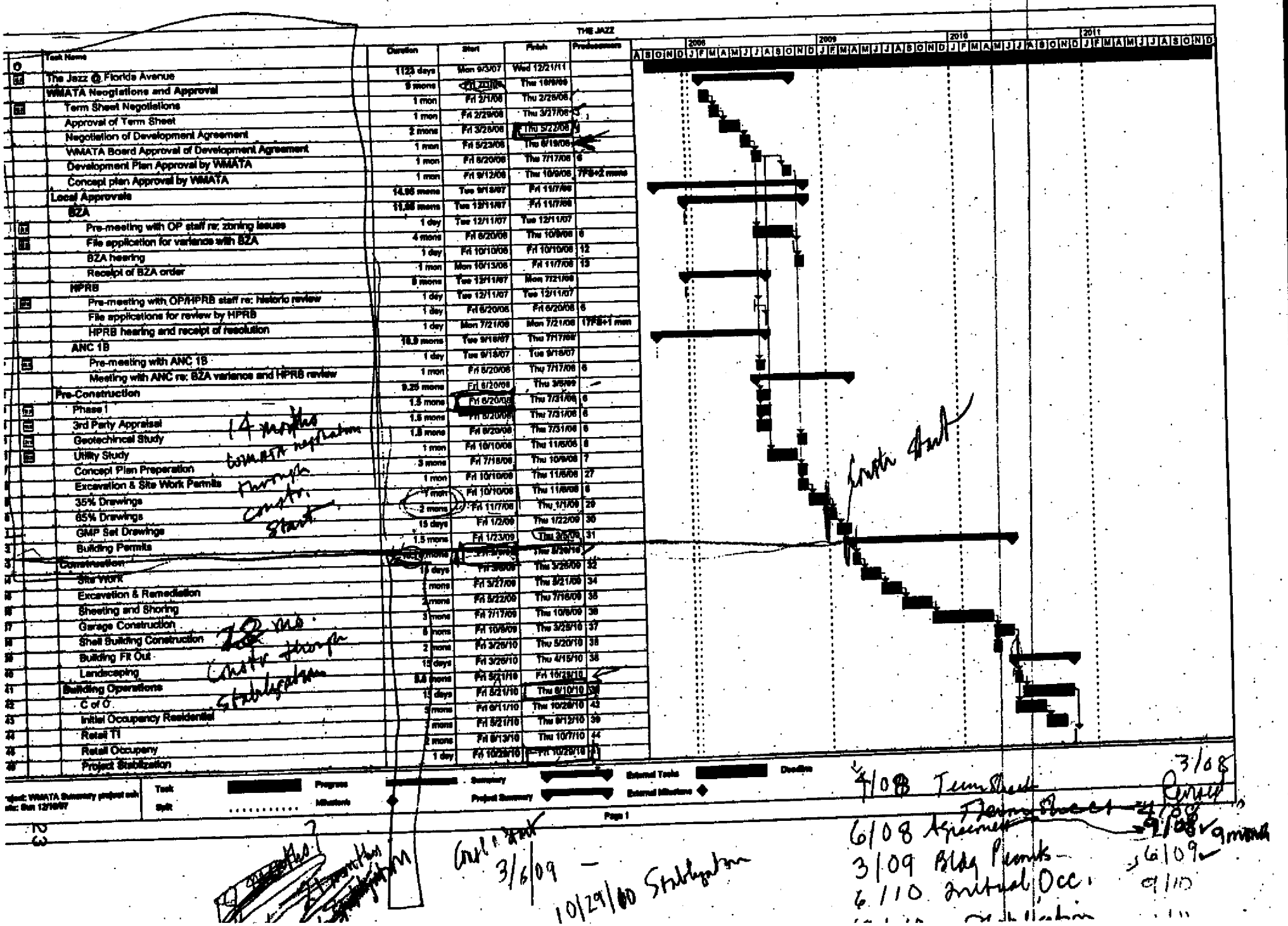
HSBC Bank USA, National Association

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014111

Updated Project Schedule

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014112

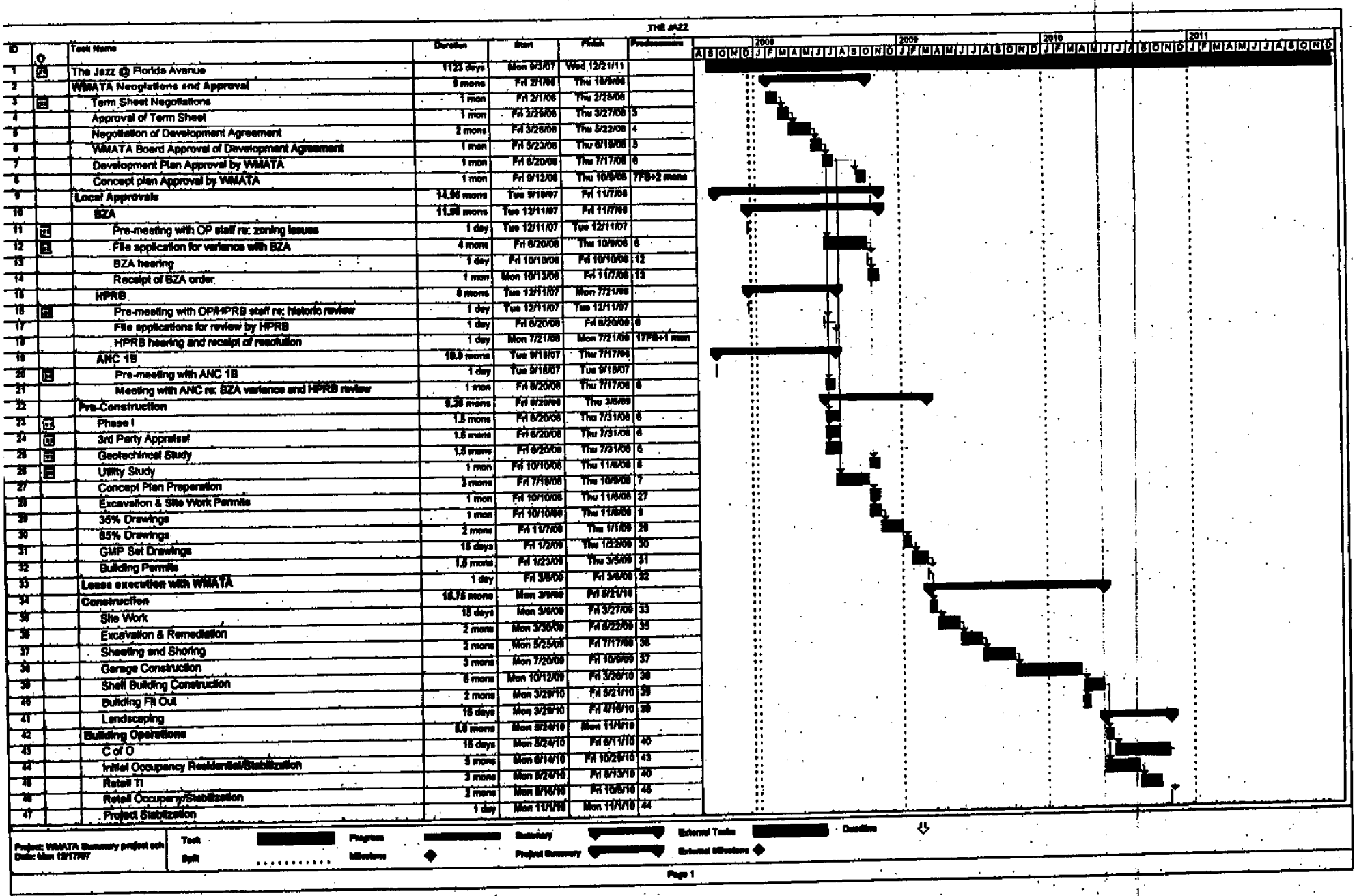
FOIA CONFIDENTIAL TREATMENT REQUESTED



Updated Project Pro Forma

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED



ID	Task Name	Duration	Start	Finish	Predecessors
1	The Jazz @ Florida Avenue	1123 days	Mon 9/3/07	Wed 12/21/11	
2	WMATA Negotiations and Approval	9 mons	Fri 2/1/08	Thu 10/9/08	
3	Term Sheet Negotiations	1 mon	Fri 2/1/08	Thu 2/28/08	
4	Approval of Term Sheet	1 mon	Fri 2/29/08	Thu 3/27/08	3
5	Negotiation of Development Agreement	2 mons	Fri 3/28/08	Thu 5/22/08	4
6	WMATA Board Approval of Development Agreement	1 mon	Fri 5/23/08	Thu 6/19/08	5
7	Development Plan Approval by WMATA	1 mon	Fri 6/20/08	Thu 7/17/08	6
8	Concept plan Approval by WMATA	1 mon	Fri 9/12/08	Thu 10/9/08	7FS+2 mons
9	Local Approvals	14.96 mons	Tue 9/18/07	Fri 11/7/08	
10	BZA	11.96 mons	Tue 12/11/07	Fri 11/7/08	
11	Pre-meeting with OP staff re: zoning issues	1 day	Tue 12/11/07	Tue 12/11/07	
12	File application for variance with BZA	4 mons	Fri 8/29/08	Thu 10/9/08	6
13	BZA hearing	1 day	Fri 10/10/08	Fri 10/10/08	12
14	Receipt of BZA order	1 mon	Mon 10/13/08	Fri 11/7/08	13
15	HPRB	8 mons	Tue 12/11/07	Mon 7/21/08	
16	Pre-meeting with OP/HPRB staff re: historic review	1 day	Tue 12/11/07	Tue 12/11/07	
17	File applications for review by HPRB	1 day	Fri 8/29/08	Fri 8/29/08	6
18	HPRB hearing and receipt of resolution	1 day	Mon 7/21/08	Mon 7/21/08	17FS+1 mon
19	ANC 1B	10.9 mons	Tue 9/18/07	Thu 7/17/08	
20	Pre-meeting with ANC 1B	1 day	Tue 9/18/07	Tue 9/18/07	
21	Meeting with ANC re: BZA variance and HPRB review	1 mon	Fri 8/29/08	Thu 7/17/08	6
22	Pre-Construction	8.29 mons	Fri 8/29/08	Thu 3/5/09	
23	Phase I	1.5 mons	Fri 8/29/08	Thu 7/31/08	6
24	3rd Party Appraisal	1.5 mons	Fri 8/29/08	Thu 7/31/08	6
25	Geotechincal Study	1.5 mons	Fri 8/29/08	Thu 7/31/08	6
26	Utility Study	1 mon	Fri 10/10/08	Thu 11/6/08	6
27	Concept Plan Preperation	3 mons	Fri 7/18/08	Thu 10/9/08	7
28	Excavation & Site Work Permits	1 mon	Fri 10/10/08	Thu 11/6/08	27
29	35% Drawings	1 mon	Fri 10/10/08	Thu 11/6/08	6
30	85% Drawings	2 mons	Fri 11/7/08	Thu 1/1/09	29
31	GMP Set Drawings	15 days	Fri 1/2/09	Thu 1/22/09	30
32	Building Permits	1.5 mons	Fri 1/23/09	Thu 3/5/09	31
33	Lease execution with WMATA	1 day	Fri 3/6/09	Fri 3/6/09	32
34	Construction	18.75 mons	Mon 3/9/09	Fri 8/21/10	
35	Site Work	15 days	Mon 3/9/09	Fri 3/27/09	33
36	Excavation & Remediation	2 mons	Mon 3/30/09	Fri 5/22/09	35
37	Sheeting and Shoring	2 mons	Mon 5/25/09	Fri 7/17/09	36
38	Garage Construction	3 mons	Mon 7/20/09	Fri 10/9/09	37
39	Shell Building Construction	6 mons	Mon 10/12/09	Fri 3/26/10	38
40	Building Fit Out	2 mons	Mon 3/29/10	Fri 5/21/10	39
41	Landscaping	15 days	Mon 3/29/10	Fri 4/16/10	39
42	Building Operations	6.8 mons	Mon 5/24/10	Mon 11/1/10	
43	C of O	15 days	Mon 5/24/10	Fri 6/11/10	40
44	Initial Occupancy Residential/Stabilization	5 mons	Mon 6/14/10	Fri 10/29/10	43
45	Retail TI	3 mons	Mon 5/24/10	Fri 8/13/10	40
46	Retail Occupancy/Stabilization	2 mons	Mon 8/16/10	Fri 10/8/10	45
47	Project Stabilization	1 day	Mon 11/1/10	Mon 11/1/10	44

WMATA-INV 014115

Financial Statements

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014116

BANNEKER VENTURES, LLC

FINANCIAL STATEMENTS

AS OF NOVEMBER 30, 2007

FOIA CONFIDENTIAL TREATMENT REQUESTED

BANNEKER VENTURES, LLC
FINANCIAL STATEMENTS
AS OF NOVEMBER 30, 2007

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INCOME STATEMENT	2
STATEMENT OF CASHFLOWS	3

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014118

BANNEKER VENTURES,LLC
BALANCE SHEET
AS OF NOVEMBER 30, 2007

ASSETS	
CURRENT ASSETS	
Cash	$ 24,437
Due from Affiliates	17,001
Loan to Other	2,000
Total Current Assets	43,438
PROPERTY AND EQUIPMENT	
Total Property and Equipment	37,646
Accumulated Depreciation	(2,000)
Property and Equipment, net	35,646
OTHER ASSETS	
Investments in 814 Thayer, LLC	351,000
Total Other Assets	351,000
TOTAL ASSETS	430,084
LIABILITIES AND MEMBERS' EQUITY	
MEMBERS' EQUITY	
Members' Equity	430,084
Total Members' Equity	430,084
TOTAL LIABILITIES AND MEMBERS' EQUITY	$ 430,084

FOIA CONFIDENTIAL TREATMENT REQUESTED

BANNEKER VENTURES, LLC
STATEMENT OF INCOME
AS OF NOVEMBER 30, 2007

REVENUE	
Fees - 814 Thayer	$ 173,440
Fees - Park Morton	252,386
Fees - Walker Jones	30,322
Other Revenue	8,019
Interest	37
Total Revenue	464,204
EXPENSES	
Salaries, wages & related taxes	$ 188,855
Automobile	3,279
Bank Service	1,029
Contributions	7,925
Dues and Subscriptions	1,997
Licenses and Permits	260
Miscellaneous	6,648
Postage and Delivery	416
Printing and Reproduction	347
Legal Fees	1,807
Consulting	147,311
Architect Fees	86,303
Meals and Entertainment	2,187
Office, General and Administrative	8,250
Repairs	5,394
Telephone	3,776
Travel	7,856
Utilities	2,621
Total Expenses	476,261
NET INCOME (LOSS)	(12,057)
Accumulated deficit, at January 1	(15,147)
Accumulated deficit, at November 30	$ (27,204)

FOIA CONFIDENTIAL TREATMENT REQUESTED

BANNEKER VENTURES, LLC
STATEMENT OF CASH FLOWS
AS OF NOVEMBER 30, 2007

CASHFLOWS FROM OPERATING ACTIVITIES:	
NET INCOME/(LOSS)	$ (12,057)
Adjustments To Reconcile Net Income/(Loss) To Net Cash From Operations:	
Loan to Other	(2,000)
NET CASH FROM OPERATING ACTIVITIES	(14,057)
CASHFLOWS FROM INVESTING ACTIVITIES:	
Purchase of Property, Plant, & Equipment	(5,276)
CASHFLOWS FROM FINANCING ACTIVITIES:	
Distributions to members'	(63,750)
Contributions by members'	96,000
NET CASH FROM FINANCING ACTIVITIES	32,250
Net (Decrease) Increase in Cash	12,917
Cash Balance at January 1, 2007	11,520
Cash Balance at November 30, 2007	$ 24,437

FOIA CONFIDENTIAL TREATMENT REQUESTED

BANNEKER VENTURES, LLC
STATEMENT OF MEMBERS' EQUITY
AS OF NOVEMBER 30, 2007

GINNING MEMBERS EQUITY	$ 174,488	$ 235,403	$ 409,891
	Omar A. Karim	*Warren C. Williams*	Total
Share of Net Income	(6,029)	(6,028)	(12,057)
Contribution	96,000	-	96,000
Withdrawals	-	(63,750)	(63,750)
NDING MEMBERS' EQUITY (DEFICIT)	$ 264,460	$ 165,625	$ 430,084

FOIA CONFIDENTIAL TREATMENT REQUESTED

Updated Project Pro Forma

FOIA CONFIDENTIAL TREATMENT REQUESTED

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 Clinc	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

Warren C. Williams, Jr

Principal

Mr. Williams oversees all land acquisitions for the firm while helping to guide the firm through the implementation of its $1 billion development goal. A native of Washington, DC, Mr. Williams grew up working in several local family-owned and operated businesses which allows him to leverage this experience for Banneker.

Prior to joining Banneker as a Principal, Mr. Williams was responsible for helping Washington, DC transform its neighborhoods through the development of two of the most recognized residential projects in the heart of the urban core of Washington: The Warrenton West, a 24,000 square foot upscale residential condominium project in the 16th Street Heights neighborhood, and The Warrenton, a 12,000 square foot market rate residential condominium project in the Brookland neighborhood. Each of these projects have been recognized by the Washington real estate community as "jewels" of their neighborhoods, literally transforming perceptions and exceeding expectations.

Mr. Williams received a Bachelor's degree from Drexel University. After a brief stint with Wilmer Cutler & Pickering LLP, he began his real estate career as a property manager with his family-owned firm, Williams Management. His experience managing his family's portfolio of properties, led him to leverage this portfolio and turn them into "jewels" within the urban core of Washington. During this period, Mr. Williams was able to create numerous strategic partnerships with financial, architectural, and construction institutions which have been invaluable to the success of the firms that he has been involved with, most recently Banneker.

Mr. Williams is a member of the District of Columbia Building Industry Association, Urban Land Institute and African American Real Estate Professionals of Washington, DC.

FOIA 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?

FOIA CONFIDENTIAL TREATMENT REQUESTED

You appear to close the alley between 8th and 9th streets. Do you regard this as feasible? Can you obtain agreement from adjacent property owners?

Calculations of annual property, sales and any other taxes to the local jurisdiction are missing from your proposal. Please provide.

Economic Information

Note that your valuation of the site is considerably below WMATA's appraisal and needs to be increased substantially or your offer cannot be considered.

WMATA expects escalation in the sale or rent amount from today's values if closing is delayed beyond a year. Please indicate how you would satisfy this requirement.

Please be more precise about how you derived fair market value indicated as $6,496,200.

The pro forma rent, $279,000 annually does not seem to square with your statement that you will pay 8% of land value. Nor does escalation, stated as 2.5% annually , appear to take place in the pro forma.

Schedule: since rent does not start until stabilization, please indicate the outside date for stabilization.

WMATA also expects and receives participations in capital events and in cash flow (or, alternatively to cash flow, revaluation of the project in which rent values do not fall below the previous year). Please provide your proposal.

Is it expected that Clark Enterprises will provide the equity for this project? Do you have alternative equity sources?

Please submit the balance sheet that the proposal indicates will be provided under separate cover.

We look forward to your presentation and to further discussion on this project.

Sincerely,

/s/

Joel R. Washington, Director
Station Area Planning and Asset Management

Attachment

FOIA CONFIDENTIAL TREATMENT REQUESTED

MTC
Moddie Turay Company

December 17, 2007

Mr. Joel R. Washington, Director
Station Area Planning and Asset Manager
Washington Area Metropolitan Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Re: SHAW-HOWARD FLORIDA AVENUE JOINT DEVELOPMENT SITE

Dear Mr. Washington:

Thank you for reviewing my proposal. I hope the following responses address your questions and provide clarifications on our proposal.

I. Technical Information

1. What is the experience of the team in actually carrying out a residential development? This was not apparent from your proposal.

Our development team has significant residential development experience in the Washington DC Metropolitan Area and nationwide. Clark's portfolio of projects includes some of the most prominent in the market and reflects the company's extensive knowledge of the residential real estate industry. Clark has acted as the developer and co-developer in numerous joint ventures with qualified development partners, such as Moddie Turay Company, LLC (MTC). Clark has decided to form an ongoing strategic partnership with MTC based on MTC's principal's significant experience in managerial roles, while at Western Development Corporation, on some of the most complex mixed-use projects in the Washington DC Metropolitan Area.

MTC also has significant experience working with District officials and community members. Clark offers unparalleled resources to meet the needs of any joint venture. Clark has, in-house and at the ready disposal of our development team, substantial expertise to bring to every phase of the development process. Further, Clark is not only the largest, private general contractor in the United States, but also one of the largest residential developers in the Washington Metropolitan Area. In the past seven years, Clark has developed (or has under development) more than $6 billion of real estate, including numerous large-scale residential real estate developments. Clark will provide the equity for the project and act as the co-developer and general contractor in the joint venture with MTC, providing all of the necessary development services needed to create a world-class mixed-use project along Florida Avenue.

Below are some examples of our most recent residential projects:

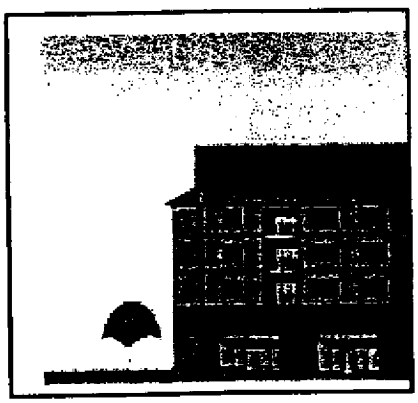
Moddie Turay Company
moddie@moddieturay.com
3222 M St., NW, Suite 140
Washington, DC 20007
(P): 202.413.4160
(F): 202.342.1458

FOIA CONFIDENTIAL TREATMENT REQUESTED

MTC
Moddie Turay Company

Fort Totten Park Apartments
308-Unit, Transit-Oriented Development

Phase I at Fort Totten is a joint-development project with Clark and Washington Metropolitan Area Transit Authority (WMATA). This 308-unit luxury apartment community is located directly adjacent to Fort Totten Metro transit station. The four- story buildings feature hardi-plank "Italianate train station" architecture, garage and surface parking, and 5,000 square feet of retail. Residences have a variety of features, including private terraces or balconies, washer/dryers, and loft-style studios. Community amenities include a swimming pool, a fitness center, a room for parties and event, and a lounge.



Address: Galloway and Third ST, NE WDC
Architect: Burt Hill Kosar Rittelmann Associates
Completion: December 2007
Clark's Role: Developer, Manager

3883 Connecticut Avenue:
Nine-Story, 157-Unit Class A Apartment Community

3883 Connecticut Avenue is a luxury, nine-story apartment community offering 157 homes with state-of-the-art amenities in the upper northwest section of Washington, DC, in the desirable Cleveland Park neighborhood. The apartment are pre-wired for high-speed Internet access in each kitchen, living room, bedroom, and den, and they will also offer multiple phone lines and cable television jacks. Interior amenities include full-size washers/dryers, dishwashers, granite kitchen countertops, ceramic title entry foyers, and optional soaker tubs. Recreational amenities include a rooftop pool, fully-equipped fitness center, business center, and multipurpose room. The building also features a grand lobby, 24-hour doorman, and concierge service. Parking is provided in three-level underground garage.

Address: 3883 Connecticut Avenue, WDC
Architect: Weihe Partnership
Completion: August 2002
Clark's Role: Owner, Developer, General Contractor, Property Manager

Moddie Turay Company
moddie@moddieturay.com
3222 M St., NW, Suite 140
Washington, DC 20007
(P): 202.413.4160
(F): 202.342.1458

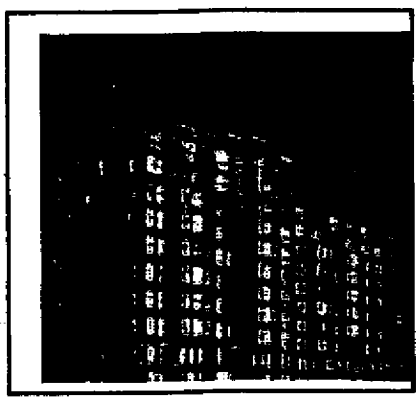
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014129

MTC
Moddie Turay Company

The Clarendon
292 Luxury Apartment Units

The Clarendon is a unique 292-unit luxury community incorporating unusual architectural features, as it integrates a 12-Story tower with a four-story building and has a public street passing through its center.

The Clarendon offer more than 60 distinct floor plans, including industrial-style loft units. Select apartments offer balconies, private terraces, oversized windows, French doors, sliding glass doors, fireplaces, and granite kitchen countertops. In addition, each apartment is pre-wired for high-speed internet access and satellite television. Community amenities include a courtyard pool with sundeck, underground parking, a business center, 24-hour fitness center, and concierge services.



Address: 1200 N. Herndon Street, Arlington, VA
Architect: Torti Gallas and Partners
Completion: March 2005
Clark's Role: Owner, Developer, General Contractor, Property Manager

2. **What is the contractual arrangement between Moddie Turay Company and Clark Enterprises? Has an agreement been worked out?**

   Clark and the Moddie Turay Company have formed a joint venture under the legal entity, Renaissance Row LLC, and are currently in the final stages of negotiating the joint venture terms. An agreement is expected to be signed by the end of December. The arrangement provides that Clark will fund 100% of the total equity for the project. Clark and Moddie Turay Company will jointly develop the project and will use resources of both companies.

3. **What, if any, zoning approvals or variances will you be seeking Parcels 1 or 3?**

   We are confident that we can build what we have presented based on our preliminary evaluation of the current zoning. However, as we proceed with the entitlement process and as our project is refined, we may determine that may require a variance. At this time, we do not anticipate needing a variance. However, if we are selected, we will remain in consultation with our land use counsel.

4. **Assess the market for rental apartments in the area now the conversions of condominium projects to rental product are occurring. Is the market becoming oversaturated with rentals and would you expect to experience difficulty in obtaining financing for your project?**

Moddie Turay Company
moddie@moddieturay.com
3222 M St., NW, Suite 140
Washington, DC 20007
(P): 202.413.4160
(F): 202.342.1458

FOIA CONFIDENTIAL TREATMENT REQUESTED

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 Zenoff, CBRE, which confirms our ability to obtain financing.*

5. Do you have prospective tenants for retail components of your project?

Renaissance Row, LLC provided letters of interest from prospective tenants in our proposal, and we have re-attached them to this response for your review. The following are local retailers we believe will greatly contribute to our vision of creating a first class mixed use project with a neighborhood feel that will speak to the past present and future Shaw neighborhood.

Tryst: We have a letter of interest from the owner, Constantine Stavropoulos, of Tryst Coffeehouse, Open City restaurant, and the Diner. All three of his establishments are wildly successful neighborhood and DC staples. Constantine is extremely excited about creating what he calls "neighborhood gathering places" at Renaissance Row.

Yes! Organic Market: Yes! Organic Grocery has six locations in Washington DC and considers the Shaw neighborhood a key area for its growth. An organic grocery such as Yes! is a great addition to the retail mix and will further promote a neighborhood feel. The concept for this location will be relatively similar to Dean & Deluca in Georgetown with wine and spirits, prepared foods and outdoor seating that will help activate the streetscape.

Hank's Oyster Bar: With locations in Dupont Circle and Old Town Alexandria, Hank's is a well-established neighborhood restaurant with a strong following and great food. The owner, Jamie Leeds, established her reputation for serving creative American comfort foods at 15 Ria and continues her artistry with New England style beach fare.

Art Vines: Art Vines is a new Art Gallery/Lounge Bar concept scheduled to open in downtown on 7th St NW in the spring of 2008. This venue would be a home run for the 24/7 environment we want to create at Renaissance Row and will promote local artists and serve as a gathering place for both wine and art enthusiasts.

6. You appear to close the alley between 8th and 9th streets. Do you regard this as feasible? Can you obtain agreement from adjacent property owners?

Yes, we do regard this as feasible. It is called for in the Duke Ellington Plan and thus supported by the regulatory agencies. We also believe we can obtain agreements from the adjacent property owners. Also, as an alternative strategy, we could re-configure the site plan to create an alley throughput to transverse the WMATA property if alley access is necessary.

7. Calculations of annual property, sales and any other taxes to the local jurisdiction are missing from your proposal.

Moddie Turay Company
moddie@moddieturay.com
3222 M St., NW, Suite 140
Washington, DC 20007
(P): 202.413.4160
(F): 202.342.1458

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.**

   In the scenario of an out-right sale, we propose that the land value escalate 2.5% annually until closing. In the scenario of a ground lease, we propose that the land value escalate 2.0% until stabilization.

3. **Please be more precise about how you derived fair market value indicated as $6,496,200.**

   The land market has significantly changed since the condo run up of values in 2005 and the credit crunch during the past year. Accordingly, we value the WMATA land at $50 per FAR SF. We arrived at this number by analyzing comparable land sales in the surrounding neighborhood and adjusting to account for the market differences in the Shaw neighborhood as compared to the more mature U Street area. An example is set forth below:

   a. 2400 14th Street – located at 14th and Florida near the 14th and U ST market. The land traded to Level 2 Development on 3/7/2006 for $13,270,000 or $55 per FAR SF. Rental rates are $2.90-3.00 per SF in the 14th and U ST market. We are projecting slightly lower rents for the WMATA site of $2.65 per SF based on market information. As such, the land should be valued at less than $55 per FAR SF.

   The land is zoned Arts Overlay/C-2-B. With the Arts Overlay, we can build up to a 4.5 FAR. This results in a fair market value of $6,496,200 at $50 per FAR SF. Should we decide to pursue a Planned Unit Development, the FAR will increase up to 6.0. Accordingly, this results in an increased fair market value of $8,661,600 at $50 per FAR SF.

If we purchase the land out-right from WMATA, we are prepared to pay $6,496,200 upon closing and up to an additional $2,165,400 upon rezoning for a total of $8,661,600.

If WMATA would prefer a ground lease, we are prepared to value the land up to an above-market number of $65 per FAR SF with 2.0% annual escalations until stabilization. This equates to a fair market value of $8,445,060 by-right and up to $11,260,080 if we pursue a Planned Unit Development.

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MTC
Moddie Turay Company

4. **The pro forma rent, $279,000 annually does not seem to square with your statement that you will pay 8% of land value. Nor does escalation, stated as 2.5% annually, appear to take place in the pro forma.**

   The pro forma has been adjusted to reflect the ground rent based upon 8% of the land value (please find our pro forma attached). We are prepared to value the land up to an above-market number of $65 per FAR SF with 2.0% annual escalations until stabilization, projected to be December 2011. In this scenario, the ground lease payment would be $716,957 annually. Thereafter, the fair market value will be adjusted every 10 years to appraised value using the "three appraiser method."

5. **Schedule: since rent does not start until stabilization, please indicate the outside date for stabilization.**

   Based on positive market indicators and our past positive experiences with WMATA, we anticipate the project will be stabilized by December 2011. The fair market value of the land will be escalated by 2.0% annually until stabilization. In the event the project is not stabilized by December 2012, we will pay WMATA one-half of the stabilized ground rental amount due and owing to WMATA as set forth above (payable monthly beginning in December 2012). The land value will continue to escalate by 2.0% annually until stabilization is reached.

6. **WMATA also expects and receives participations in capital events and in cash flow (or, alternatively to cash flow, revaluation of the project in which rent values do not fall below the previous year). Please provide in your proposal.**

   We propose that WMATA receives participations in the amount of 3% of gross proceeds upon certain "capital events" to be further defined. We do not propose that WMATA receive a participation in operating cash flow; however, as noted above, we have increased the fair market value of the land resulting in substantially larger ground lease payment.

7. **Is it expected that Clark Enterprises will provide the equity for this project? Do you have alternative equity sources?**

   Yes, Clark Enterprises or an affiliate thereof will provide the equity for this project. At this time, we do not anticipate other equity sources will be necessary.

8. **Please submit the balance sheet that the proposal indicates will be provided under separate cover.**

   Please see the attached statement of net worth from Clark Enterprises, Inc.

Thank you for your consideration and allowing me to give a presentation of our proposal.

Sincerely,

Moddie Turay

Moddie Turay Company
moddie@moddieturay.com

3222 M St., NW, Suite 140
Washington, DC 20007

(P): 202.413.4160
(F): 202.342.1458

FOIA CONFIDENTIAL TREATMENT REQUESTED

Attachments:

a. CBRE Letter
b. Fiscal Impact Calculations
c. Statement of Net Worth
d. Pro forma

Moddie Turay Company
moddie@moddieturay.com

3222 M St., NW, Suite 140
Washington, DC 20007

(P): 202.413.4160
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FOIA CONFIDENTIAL TREATMENT REQUESTED

COMMERCIAL REAL ESTATE SERVICES

CBRE
CB RICHARD ELLIS

Maury E. Zanoff
Managing Director

CB Richard Ellis, Inc.
Capital Markets

750 9th Street, NW
Suite 900
Washington, DC 20001-4516

202 585 5645 Tel
202 585 5786 Fax

maury.zanoff@cbre.com
www.cbre.com/capitalmarkets

December 11, 2007

King Davidson
Development Associate
Clark Enterprises, Inc.
7500 Old Georgetown Road, 15th Floor
Bethesda, MD 20814

Re: Clark Enterprises

To whom it may concern:

Based upon Clark Enterprises' excellent credit and reputation in the lending community, we feel confident that they should not have difficulty in obtaining financing for their Renaissance Row apartment project located at 9th Street and Florida Avenue in Washington, DC.

Sincerely,

Maury E. Zanoff
Managing Director
CBRE Capital Markets

FOIA CONFIDENTIAL TREATMENT REQUESTED

naissance Row
mmary of Estimated Economic and Fiscal Impacts
NSTRUCTION PERIOD

onomic Impacts			
	170	148	318
os (FTE)	$ 5,089,684	$ 3,928,218	$ 9,017,901
yroll			

cal Impact to the District	
come Tax (Direct)	$ 358,823
come Tax (Indirect)	$ 282,313
rect Sales Tax	$ 1,786,207
OTAL	$ 2,427,342

oject Cost	$ 43,566,0

timated Income Taxes (Direct and Indirect Labor)

ype of Labor	Construction Value	Labor Hours per $1,000	Total Hours	Total FTE Jobs	Annual Earning/FTE	Direct Income Taxes
irect Construction	$ 43,566,016	8	352,885	170	$ 5,089,684	######## #########

ype of Labor	Total Annual Earnings	Earnings Multiplier	Indirect Earnings Impact	Total Earnings Impact	Indirect Income Taxes
ndirect Construction	$ 5,089,684	1.7718	########## ###	$ 9,017,901	######## #########

utput Type	Total FTE Jobs	Employment Multiplier	Indirect Employment Impact	Total Employment Impact
onstruction Labor	170	1.8728	148	318

otal Economic Impact

utput	Output Multiplier	Indirect and Induced Economic Impact	Total Economic Impact
$ 43,566,016	1.6929	$ 30,186,892	$ 73,752,908

aterial Purchases

ype of Purchases	Per $1,000 Construction Cost	Expenditure
egionally Purchased	$ 305	$ 13,287,635
urchased Out of Region	$ 105	$ 4,574,432
otal Material Purchase		$ 17,862,067

FOIA CONFIDENTIAL TREATMENT REQUESTED

Renaissance Row
Summary of Estimated Economic and Fiscal Impacts
OPERATIONS PERIOD

FISCAL IMPACT TO THE DISTRICT	ANNUAL	20 YEAR TOT
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		$ 5,691,266	
Restaurant	10,000	$ 500	$ 5,000,000	10.00%	$ 500,000		$ 14,139,841	
Grocery	7,495	$ 300	$ 2,248,500	5.75%	$ 129,289		$ 3,656,245	
TOTAL	27,495		$ 10,748,500		$ 830,539		$ 23,487,372	

INCOME TAXES							
Employees (FTE)	Gross Square Feet	FTE per SF	No. of FTE	Annual Wages	Annual Tax Revenue		20 Year Total
General Retail/Entertainment	10,000	350	29	714,286	$ 51,857		$ 1,466,503
Restaurant	10,000	350	29	714,286	$ 51,857		$ 1,466,503
Grocery	7,495	350	21	535,357	$ 38,867		$ 1,099,144
TOTAL	27,495	350	79	1,963,929	$ 142,581		$ 4,032,151
Employees (FTE)	Percent	FTE per SF	No. of FTE	Annual Wages	Annual Tax Revenue		20 Year Total
Maintenance	60%	1000	3	109,200	$ 11,204		$ 316,843
Security	40%	1000	2	72,800	$ 5,198		$ 146,996
TOTAL			5	182,000	$ 16,402		$ 463,839

REAL ESTATE TAXES					
Type	Assessed Value	Tax Rate	Annual RE Taxes		20 Year Total
Residential	$ 23,687,573	0.85	$ 201,344		$ 5,693,955
Retail	$ 5,312,034	1.85	$ 98,273		$ 2,779,119
Total	$ 28,999,607		$ 299,617		$ 8,473,073

FOIA CONFIDENTIAL TREATMENT REQUESTED

F. Summary Table
Sources and Uses
9/18/2007
Ground Lease Scenario

Sources and Uses					
Sources of Funds:			**Uses of Funds**		
		Total		Per Unit	Total
Equity	25.0%	10,891,504	Land	$ 9,260	$ 1,496,570
Debt	75.0%	32,674,512	Net GMP/HC Cont.	$ 174,537	$ 28,208,283
	100.0%	$ 43,566,016	Soft Costs	$ 54,905	$ 8,873,592
			Development Fee	$ 10,412	$ 1,682,778
			Pre Devel Rent	$ 2,475	$ 400,000
			Financing Costs	$ 2,022	$ 326,745
			Interest Expense	$ 15,951	$ 2,578,048
				$ 269,562	$ 43,566,016

WMATA-INV 014138

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 014139

G. WMATA Assumptions
9/18/2007
Ground Lease Scenario

Financing		
Construction Loan		
Loan Rate	7.00%	
Term	24 months	
Amount	$32,674,812	
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%	

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014140

WMATA Sources and Uses Assumptions Backup
9/18/2007
Ground Lease Scenario

WMATA-INV 014141

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

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	$63,736,604
Loan to Value	68.59%
Rate	6.75%
Amortization	30 Years
Loan Amount	$30,462,209
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 Servic	$3,558,415
Stabilized NOI for Perm Loan (2022)	$4,446,018
DSCR	1.25
Closing Costs/Fees	1.0%
Ground Lease (WMATA):	
Market Value (Escalated 3 years)	$ 8,961,985
Escalations	2.0%

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	$ 9,280	$ 1,206,370
Hot GNP/MC Cost.	174,537	22,690,283
Soft Costs	51,905	6,671,582
Development Fee	10,412	1,662,778
Pre Devel Rent	2,476	400,000
Financing Costs	2,022	326,746
Interest Expense	15,951	2,570,046
	$ 268,562	$ 43,566,016

Revenue Assumptions:	
Apartments:	
Month Renting Begins	19
Rent Per Sq. Ft. (Current)	$2.65
Rent increase per year	3.0%
Preleases (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)	$30.00
Retail rent increase per year	3.0%
Absorption	6,000
Retail Vacancy	5.00%
Expense Assumptions:	
Gross Operating Expenses	$ 11,862
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

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

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014142

Fee, Income, Reserve Breakout
Ground Lease Scenario

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Developer Fee	$ -	$ 232,417	$ 813,748	$ 264,198	$ 264,198	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
*4% of Hard Costs (excluding land)															
Replacement Reserves	$ -	$ -	$ -	$ (20,769)	$ (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	$ -	$ -	$ -	$ (230.88)	$ (276.19)	$ (281.36)	$ (288.82)	$ (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)	$ (0.26)	$ (0.26)	$ (0.27)	$ (0.28)	$ (0.29)	$ (0.30)	$ (0.30)	$ (0.31)
Cash Flow After Debt Service Available to Partners	$ -	$ -	$ -	$ -	$ 668,448	$ (1,231,309)	$ 788,966	$ 881,706	$ 977,273	$ 1,076,426	$ 1,179,235	$ 1,275,777	$ 1,386,127	$ 1,484,319	$ 14,796,033

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014143

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014144

CONFIDENTIAL

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014145

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014147

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

FOIA CONFIDENTIAL TREATMENT REQUESTED

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
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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.)

[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 Costs	$ (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 014159

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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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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%

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WMATA-INV 014161

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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%

FOIA CONFIDENTIAL TREATMENT REQUESTED

CONFIDENTIAL

LaKritz Adler Development
(consolidated holdings of LaKritz Adler Development LLC and affiliates)

Balance Sheet
As of December 31, 2006

LIABILITIES & PARTNERS' EQUITY

rrent 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%
ong 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%
)ther 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%

FOIA CONFIDENTIAL TREATMENT REQUESTED

CONFIDENTIAL

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%

FOIA CONFIDENTIAL TREATMENT REQUESTED

CONFIDENTIAL

LaKritz Adler Development
(consolidated holdings of LaKritz Adler Development LLC and affiliates)

Balance Sheet
As of July 31, 2007

ASSETS

rrent 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%
xed 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%
ther 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%

FOIA CONFIDENTIAL TREATMENT REQUESTED

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%

FOIA CONFIDENTIAL TREATMENT REQUESTED

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%

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Avenue Proposals
Bolan Smart Associates
October 2007

Common Assumptions

1. 60-year analysis proxy for 60-year ground lease terms.
2. Bidding on all three parcels, assume as one transaction.
3. Nonrefundable $100K option fee from WMATA award to negotiate.
4. Minimum development requirements maximizing 4.5 Matter of Right FAR totaling 130,000+/- square feet.
5. WMATA discount rate of 5.73% is used for NPV calculations using FY09 as starting point.

Moddie Turay (see BSA Table 1)

1. Retail / rental residential uses, totaling 132,475 sf.
2. No evidence presented of market value.
3. 8.0% of fair market value at stabilization ($519,696) estimated Dec 2011, appraiser method adjusted every 10 years. Fair market value set at $50 / FAR from Oct. 2007, escalated annually at 2.5%. What is definition of "stabilization"? Will pay for additional FAR if achieved at par. No additional participation offered.
4. Pre-stabilization predevelopment rent of $120K / year, commencing at execution of Ground Lease (six months after execution of Dev Agreement).
5. Under fee sale, would pay $50 / FAR ($6,496,200) within six months of execution of Dev Agreement. Suggest open to purchase price escalation discussions, but no commitment.
6. Remediation Plan??? BSA does not understand.
7. Indicate control of land adjoining parcel 1.
8. Claim no contingencies other than "permits and approvals". (WMATA should affirm a minimum of by-right land value.)
9. Financial capability all Clark, as is most of real development experience.

Lakritz / Alder (see BSA Table 2)

1. Variety of possible (and alternate) uses.
2. Indicates control of land adjacent to parcel 2.
3. Why a 120-day study period after execution of Dev Agreement?

FOIA CONFIDENTIAL TREATMENT REQUESTED

4. No predevelopment WMATA payments other than deposit.
5. Delivery Dec 2012 / rent commencement Jan 2013.
6. 29-year initial plus seven 10-year extensions. What happened to 60-year lease term requirement?
7. Does 29-year lease term with renewals effectively circumvent DC tax recordation law / intent / WMATA willingness to collaborate?
8. Base rent commences at COO for each building, not to exceed 60 months from "contract ratification"?
9. Total initial base rent $233,253 (4.77% tracked to 30-year US Treasuries) (with 2.0% escalation if developer delayed).
10. Base rent increase 20% every ten years.
11. Fee sale would occur 120-days after building permits issued, not to exceed 42 months from contract ratification, totaling $4,890,000 (with 3.0% escalation if developer delayed). Nothing for greater density.
12. WMATA has all remediation responsibilities.

Banneker / District / Donatelli (see BSA Table 2)

1. Retail / arts / rental residential uses, totaling 127,600 FAR @ 4.5.
2. Proposal does not include adjacent properties.
3. Predevelopment WMATA payments of $100,000 per year, increasing by 10% if developer delayed more than 12 months.
4. Developer would charge remediation cost against WMATA proceeds.
5. Delivery Dec 2011 / rent commencement Jan 2012.
6. Estimated land value (to what date) $8,200,000.
7. Total initial base rent $500,000, escalated at 3.0% per year.
8. Offer of upside participation but no specifics indicated.

Recommendations / Next Steps

1. TBD

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

BSA Table 1
Florida Avenue / Shaw - Mid December 2007 Proposals

			1 2009	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	11 2018	12 2019	13 2020	14 2021	15 2022	60 2067
Sumner / District - Lease																		
Revenues																		
Option Fee			$100,000															
Predevelopment Rent			$50,000	$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			$150,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$2,617,307
WMATA Participation	10.00%	of defined capital events																
Implied Initial Land Value	$7,847,289	FY09 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,456,486	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,456,486
Cash Flow w/ residual			$150,000	$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	$48,073,772
NPV																		
Base Rent	5.73%	discount rate	$12,338,491															
With Residual	5.73%	discount rate	$14,836,328															

Noodle Tarey / 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	$50,000	$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	$261,183	$2,476,006
Total Gross Revenue			$150,000	$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	$1,012,977	$3,207,819
WMATA Participation	5.00%	of defined capital events																
Implied Initial Land Value	$0	FY09 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,456,486	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,456,486
Cash Flow w/ Residual			$150,000	$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	$1,012,977	$48,686,275
NPV																		
Base Rent	5.73%	discount rate	$10,181,978															
With Residual	5.73%	discount rate	$11,767,067															
With Base Rent Escal	9.00%	disc rate on escalation	$13,574,490	(Illustrative)														
With Base Rent Escal	5.73%	disc rate on escalation	$10,906,012	(Illustrative)														

Noodle Tarey / 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	$50,000	$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	$270,691	$2,436,201
Total Gross Revenue			$150,000	$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	$990,476	$3,156,076
WMATA Participation	5.00%	of defined capital events																
Implied Initial Land Value	$0	FY09 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,456,486	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,456,486
Cash Flow w/ Residual			$150,000	$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	$990,476	$48,614,352
NPV																		
Base Rent	5.73%	discount rate	$10,003,012															
With Residual	5.73%	discount rate	$11,559,729															
With Base Rent Escal	9.00%	disc rate on escalation	$13,337,978	(Illustrative)														
With Base Rent Escal	5.73%	disc rate on escalation	$10,713,873	(Illustrative)														

WMATA-INV 014170

metropolis
development company

January 28, 2008

Mr. Omar A. Karim
Banneker Ventures, LLC
700 12th Street NW Ste. 700
Washington, DC 20005

Dear Mr. Karim:

Metropolis Development Company ("Metropolis") welcomes the opportunity to serve as a Co-Developer with Howard University, Banneker Ventures and District Development Group to develop a mixed-use hotel, residential and retail project known as the Howard University Gateway Project on three WMATA parcels located in the Shaw/U Street District specifically on the South Side of Florida Avenue NW between 7th and 9th Streets NW. Metropolis has successfully developed WMATA parcels (LANGSTON LOFTS) at 14th and V Street and look forward to working with WMATA on this transaction.

The proposed Howard University Gateway Project provides an exciting development opportunity for our firm. Metropolis is the one of the most active residential and retail developers in the Uptown Arts Overlay with over 600,000 square feet valued at approximately $157 million delivered or under construction in the past 5 years.

Metropolis' core strengths are its ability to successfully execute complex real estate transactions in combination with unique design. The nature of constructing over Metro is familiar to Metropolis as we built successfully over Metro tunnels in our neighborhood-anchoring Langston Lofts project at 14th and V Streets; NW. Langston Lofts is an awarding winning mixed use residential/retail building that was built on top of the Metro Tunnel which included two air shafts. Throughout the Langston Project, Metropolis successfully closed an alley, removed oil contaminants and removed the cut and cover debris from the site. More importantly, Metropolis working closely with WMATA's an engineer successfully navigated its construction around the Metro Tunnels and is therefore extremely experienced with WMATA's requirements to protect its underground tunnel and its "zones of influence".

FOIA CONFIDENTIAL TREATMENT REQUESTED

Metropolis Development Company is a full service mixed use real-estate development company focused on residential and retail projects in the Uptown Arts Overly market area.

Metropolis is a District Certified LSDBE and therefore fully committed to involving LSDBE participants and the community as major components of our project.

One of our objectives is to ensure, where possible, that District residents and District based LSDBEs and employees have an opportunity to benefit from our projects. Metropolis will continue to work closely and cooperatively with the District of Columbia Department of Employment Services and the Office of Local Business Development to maximize the participation, employment and contracting opportunities for District residents and businesses which surround its development.

In all of its mixed use development projects, Metropolis has demonstrated that it is imperative that the surrounding community of residents, churches, business and civic associations be considered as "partners" in the development process and must be integrated into all aspects of the process from planning/design to completion.

As a result of its previous mix-use developments in the area Metropolis has formed excellent relations with the members of the ANC in which the WMATA parcels are located. ANC's 1 and 2A as well as the Cardozo Shaw Neighborhood Association were all instrumental in the success of our development of Langston Lofts and our development of the new Duron site at 14th and Clifton. We sought and received their support for these developments which also required Historical Preservation Review Board and Board of Zoning Adjustments Approvals.

Metropolis has a demonstrated history of successful development and looks forward to working with your team on the Howard Gateway Project.

Sincerely,

Merrick T. Malone, Principal and Executive Vice President
Metropolis Development Company LLC
1327 14th Street NW, Ste. 200
Washington, DC 20005
(202) 588-1438

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014172

Metropolis Development Projects:

- Langston Lofts, a 101,647-square foot, 80-unit condominium at the southeast corner of 14th and V Streets, NW, with *Busboys and Poets*, a restaurant and bar/coffee house/bookstore/live performance venue on the ground floor.

Winner of a 2006 Merit Award from Residential Architect magazine.

Winner of a 2005 District of Columbia American Institute of Architects Award For Excellence.

Finalist along with Busboys and Poets in the Best Community Impact category of the Washington Business Journal's Best Real Estate Deals contest for 2005.

Langston Lofts
1390 V Street NW
Washington, DC

Metropolis Development Company, Developer

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014173

- Lofts 14, a 144,614 square foot, 83-unit condominium development at 14th and Church Streets, NW, with international retailer *Mitchell Gold* on the ground floor.

  Winner of the Delta Associates 2005 Mid-Atlantic Condominium of the Year.

  Winner of the Delta Associates 2003 Best Adaptive Reuse Condominium Project in the Washington Area.

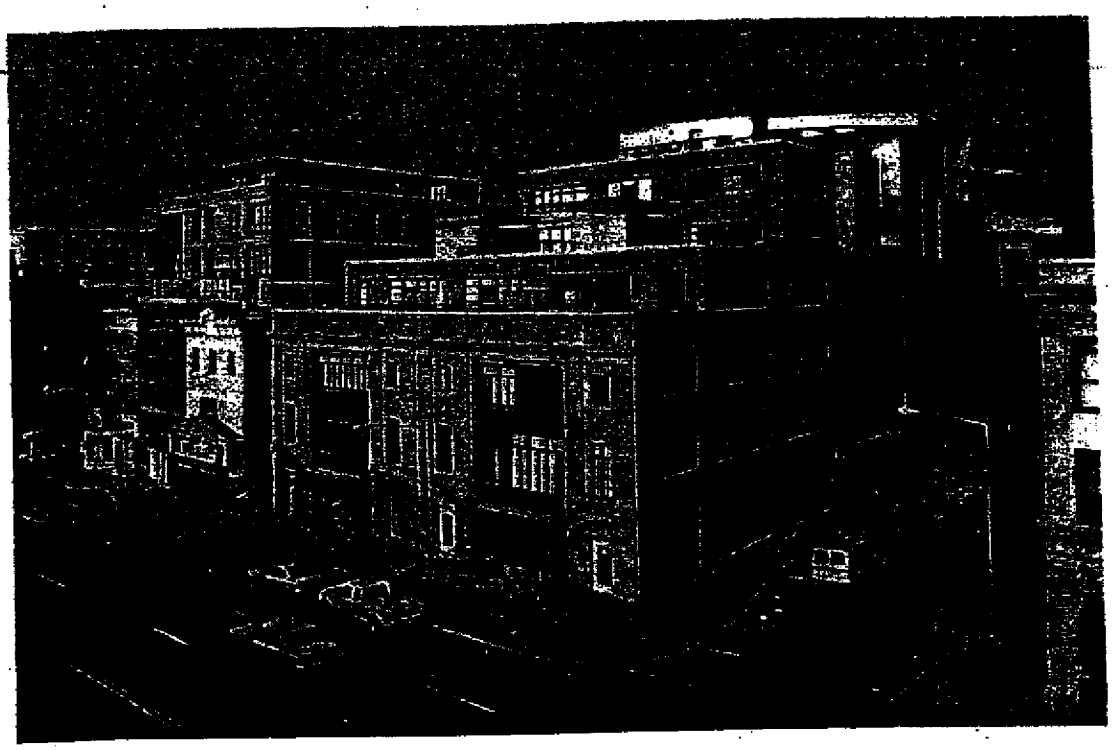
Lofts 14
1401 Church Street NW
Washington DC

Metropolis Development Company, Developer

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014174

- 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

- 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.

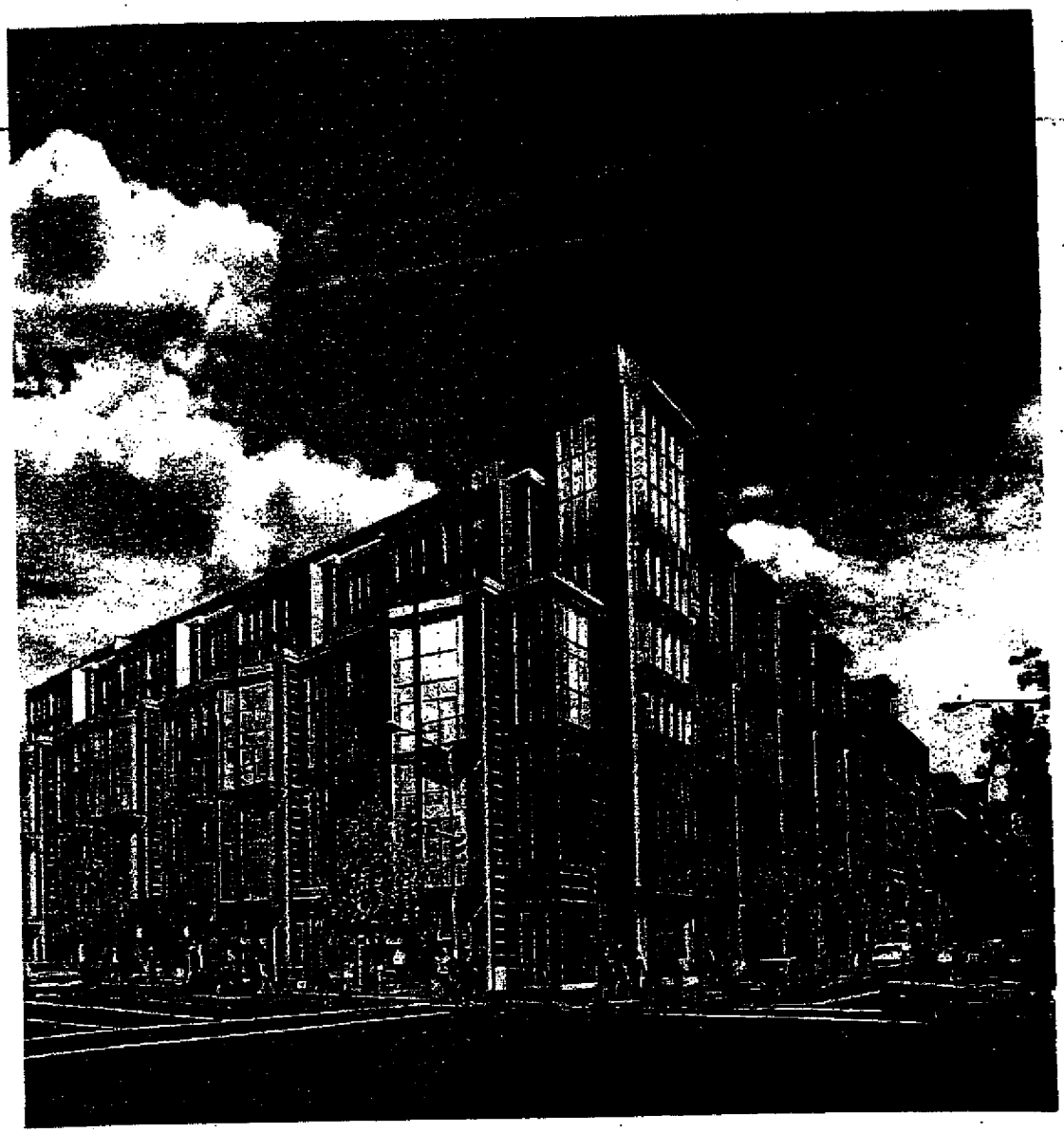
Winner of the Delta Associates 2004 Best Adaptive Reuse Condominium Project in the Washington Area.

Cooper Lewis Condominium
1403 P Street, NW
Washington, DC 20005

Metropolis Development Company, Developer

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014176

- The Metropole, a 227,237 SF, 90-unit mixed-use condominium development at 15th and P Streets, NW, with 33,500 SF of retail and 71 public parking spaces. Currently under construction.



The Metropole
Company, Developer
1515 15th Street, NW
Washington, DC 20005

Metropolis Development

FOIA CONFIDENTIAL TREATMENT REQUESTED

metropolis
development company

Key Principals

Scott Pannick, Principal and President, formed Metropolis in 1998 with the goal of revitalizing the new housing market in the District of Columbia. As of today Metropolis has 310 condominiums under development with more than 62,000 square feet of retail space. Before Metropolis, Scott was Executive Vice President, Director and Branch Manager of Julien J. Studley, Inc. in Washington, D.C. At Studley, Scott performed consulting, advisory work and fee development for institutional and corporate headquarters buildings in the District for 25 years. Scott's projects, which total seven million square feet, include Postal Square (1.2 million square feet), the Department of Transportation headquarters (1.35 million square feet), the American Red Cross headquarters (475,000 square feet) and the American College of Obstetricians and Gynecologists headquarters (50,000 square feet). Scott has an M.B.A. from Harvard Business School.

Merrick Malone, Principal and Executive Vice President, joined Metropolis in 1999 and brought with him a wealth of experience having worked both in public and private economic development as developer, consultant and high level public official in Washington and Detroit. Prior to joining Metropolis, Merrick was President of URBANCITYFOODS, a minority-owned restaurant development company which acquired and developed multiple restaurants in Baltimore, Washington, Detroit and Chicago. Prior to URBANCITYFOODS, Merrick was the Deputy Mayor of Economic Development and the Director of Housing and Community Development for the District of Columbia. In that position, Merrick led the District of Columbia to the successful completion of the MCI Sports Arena and assisted with the development of the $30 Million Black Entertainment Television (BET) Corporate Offices and Studio. During his tenure as Washington's Chief Economic Official, Merrick initiated and fostered public/private partnerships that financed the construction and renovation of over 4,500 residential units, four new childcare centers including the Mazique Parent Child Center; two major neighborhood retail centers, the Nehemiah neighborhood retail center and the Good Hope Marketplace and the restoration of the historic Lincoln Theatre at U Street. Merrick has a law degree from Georgetown University and is a real estate and transactional attorney.

Alex Shewchuk, Chief Financial Officer, has worked on four Metropolis projects, covering tax and financial reporting, budgeting, insurance, condominium document preparation, settlements, bookkeeping and transactions oversight. Alex attended The Wharton School, where he earned an M.B.A. and a Master's in International Relations. He has lived in Brazil, Japan, England, Spain, and Taiwan. He holds a B.A. in Economics from Yale University. He has also worked in management consulting with A.T. Kearney, and in systems programming with Morgan Stanley.

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metropolis
development company

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014179

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.

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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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014181

M E M O R A N D U M

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Sites - Tentative Developer Selection

DATE: January 29, 2008

FROM: Rosalyn Doggett

THRU: Joel R. Washington

TO: Nat Bottigheimer

WMATA received 3 proposals for its Shaw-Howard/Florida Avenue joint development sites: Parcel 1, 3,800 sf on Florida Avenue at 9th St, NW; Parcel 2, 8,600 sf on Florida Avenue between 8th and 9th streets, NW, and Parcel 3, 16,500 sf on Florida Avenue between 7th and 8th streets. In accordance with the Source Selection Plan for the Shaw-Howard/Florida Avenue Joint Development Sites, an Evaluation Team composed of Rosalyn Doggett, Chair, John Magarelli and Marc Biondi met a number of times to rate proposals from each of three teams. Two meetings were held before interviews with the teams, and two were held after interviews and additional due diligence. The development teams are led by:

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

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The net present values of the offers over a sixty-year lease period are:

Banneker	$14 million
Moddie Turay	$11.8 million
~~Lekritz Adler~~	~~$ 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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014183

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 viability, 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014184

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

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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 014186

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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 014187

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.

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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).

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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%

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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%

FOIA CONFIDENTIAL TREATMENT REQUESTED

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014192

The Company intends to negotiate a commercially reasonable GMAX contract with Tompkins, Inc. to serve as general contractor for the Project. If the Company is not able to reach terms with Tompkins, the Company will select another general contractor for the Project. The Company intends to enter into a guaranteed maximum price contract to build the Project.

Except as noted above, the fees will be paid out on a pro-rata basis over the construction period. The Members may cause, subject to lender and/or third party equity investor approval, to waive some or all of their fees to fund their respective shares of the equity investment.

Residential Management and Sales

The Members will work collectively to select the residential property manager. Banneker will serve as asset manager and receive an asset management fee of 1% of the gross revenue paid monthly. The asset manager shall meet regularly with the property manager and provide regular reports and distributions of cash flow and refinancing proceeds (if any) to the Members at intervals that the Members agree upon.

If the Members decide to sell the Project, Banneker will serve as co-sales agent for the Project and earn a fee of 1.0% of the gross sales price in addition to a reasonable fee to the sales and/or purchase agents, such fee to be paid at closing.

Accounting

The Company shall hire an accountant who shall keep accurate books and records of the Company's activities. Members shall have access to the Company's books and records on request.

Documents

All long form documents associated with the Operating Agreement of the Company shall be satisfactory to the Members.

This Outline of the Company's Operating Agreement is preliminary and does not include all of the terms and conditions of a full operating agreement, and has been prepared to facilitate discussions among the Members regarding the proposed Project.

SIGNATURE PAGES BELOW

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014193

AGREED TO BY THE PARTIES BELOW:

BANNEKER VENTURES, LLC

By: _____
Name: Omar Kallam
Title: Principal

DISTRICT DEVELOPMENT GROUP, INC.

By: _____
Name:
Title:

METROPOLIS DEVELOPMENT COMPANY, LLC

By: _____
Name: MERRICK T. MALONE
Title: Principal and Executive Vice President

FOIA CONFIDENTIAL TREATMENT REQUESTED

MEETING SIGN IN SHEET

Date: 5/2908 Purpose of meeting: Lottery Contract

Name	Affiliation	Phone	Email
Alaka Williams	W2Tech	(202) 279-1470	alakawilliams@w2tech
Warren Williams	W2Tech	(202) 210-0076	warrenwilliams@w2tech
Crystal Wright	Baker Wright W2Tech Group	(202) 829-0848	crystal@bakerwright
Jim Link	American Capitol Group	(202) 744-9661	jim@americancapitolgroup.com

JOT CW + SH

BYRON BOOTH "No big problem"
Gov Affairs Director
678-925-2992

WMATA-INV 014195

FOIA CONFIDENTIAL TREATMENT REQUESTED

3.22.07

2 Detectives Indicted on Charges of Misconduct

By Henri E. Cauvin
Washington Post Staff Writer

Two D.C. police detectives were indicted yesterday on charges that they conspired to alter witness accounts of a deadly dance-floor stabbing two years ago at Club U in Northwest Washington.

The 10-count indictment charges that Detectives Erick Brown and Milagros Morales pressured witnesses to change their stories to pin the killing on a man who, it turned out, was involved but could not have inflicted the fatal wound.

The charges are among the most serious allegations of official misconduct against D.C. police officers in recent years. The extensive probe, culminating with yesterday's indictments in U.S. District Court, has complicated the homicide investigation.

More than two years after Terrence Brown was killed, no one has been charged with murder or manslaughter, and no such charges appear imminent.

Brown, 31, a patron from Northeast Washington, was stabbed Feb. 13, 2005, during a performance of the go-go group Rare Essence. The killing led to the shuttering of Club U. Housed in the Frank D. Reeves Municipal Center at 14th and U streets NW, the club was popular but had long drawn complaints about violence in and around it.

The slaying renewed such concerns and quickly commanded the public's attention. Within weeks, the conduct of police

See DETECTIVES, *B4, Col. 3*

Detectives Urged Witnesses to Lie, Indictment Charges

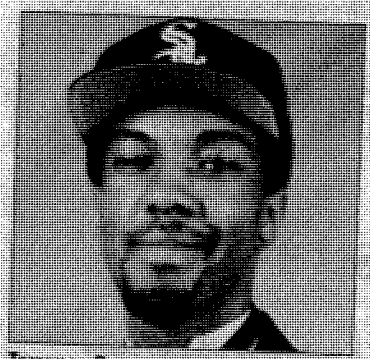
DETECTIVES, *From B1*

would come under scrutiny after it emerged that detectives Brown and Morales had been pulled off the case.

After the slaying, witnesses told investigators that they had seen a man, who turned out to be Jerome Jones, wielding a box cutter during the early morning melee that ended with Terrence Brown's death. But a forensic examination concluded that a box cutter could not have killed Brown; the finding set in motion the events that led to the indictment.

Jones was eventually charged with assault and other offenses. Earlier this year, he was convicted of simple assault, obstruction of justice and possession of prohibited weapon.

That was well short of first-degree murder — the charge detectives Brown and Morales sought against Jones when they presented a proposed arrest warrant within days of the killing to the U.S. attorney's office.



Terrence Brown was stabbed Feb. 13, 2005, at Club U in Northwest.

The prosecutor overseeing the case asked the detectives to bring in the witnesses for follow-up interviews. The news from the medical examiner that a box cutter could not have killed Brown raised more questions about the witnesses' accounts.

Erick Brown, the detective, balked at bringing in the witnesses and had to be ordered to do so by a police commander, the indictment alleges.

Before bringing each of the three witnesses in, the indictment charges, Brown and Morales told them they needed to change their statements to conform them to the forensic evidence. For example, one witness was told to say Jones had had a "knife-like" object, the indictment charges.

With the inconsistencies becoming more troubling, Brown and then Morales were taken off the case and prosecutors began looking carefully at the detectives' actions. According to the indictment, even being taken off the case didn't halt the criminal conduct. Morales, the indictment charges, called one of the witnesses twice, each time to ask what the witness would say if questioned about the changes in the witness's statement.

After the U.S. attorney's office for the District recused itself from the case, the U.S. attorney's office for the Western District of Virginia took up the investigation.

Brown and Morales are charged with conspiracy against civil rights, conspiracy to obstruct justice and providing false information. Brown, 41, is a 16-year veteran, and Morales, 42, has been on the force for 21 years. Both are on administrative leave with pay.

David Schertler, an attorney for Morales, said the allegations against the two detectives are unfounded. "We are completely confident that Detective Morales is innocent of these charges, and we are anxious to go to trial and prove her innocence," Schertler said.

Brian Heberlig, one of the attorneys for Brown, said the detective did nothing wrong.

"Erick Brown is a fine detective who did his job in this case," Heberlig said. "Mr. Brown intends to fight these charges, and we are confident that when he gets his day in court, he will be exonerated of any wrongdoing."

Staff writer Allison Klein contributed to this report.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014196

Why Club U Matters

THIS MORNING, if all goes as scheduled, the owners of Club U—a nightspot that operates in, of all places, a D.C. government office building—will go toe to toe with city officials before the Alcoholic Beverage Control Board to appeal the suspension of the club's liquor license. The dispute centers on alleged violent behavior inside and outside the club located in the Reeves Municipal Center at 14th and U streets NW. But D.C. communities situated far beyond the hearing room will also closely follow the board's proceedings. At issue is whether the city can take immediate and effective action against establishments where violent acts occur and endanger the community's well-being.

The most recent incident will sound familiar to those in other D.C. neighborhoods that are unwilling hosts to clubs where serious crimes occur. In the space of what seemed like minutes early Sunday, a Club U patron was stabbed to death, a woman was knocked unconscious inside the club and, as an emergency medical team was transporting her to an ambulance, a gunman waiting on the sidewalk fired at least 10 rounds at them, according to D.C. police inspector Diane Groomes of the 3rd District. Were this the only case of violence at the nightspot, the Alcoholic Beverage Control Board might not have Club U on its agenda today. But that, in fact, is the problem. A month ago, Police Chief Charles H. Ramsey asked the Alcoholic Beverage Regulation Administration to revoke the club's license because of a history of violent crimes committed by its patrons. The chief said, according to Post writer Eric M. Weiss, that more than a dozen serious crimes, including three homicides, have taken place within a block of the club since early 2003. At the time of the board's vote to suspend Club U's liquor license, its chairman, Charles Burger, finding that the club presented an imminent danger to public health and safety, stated, "the board has taken the lead in responding quickly and forcefully to this tragic and violent incident." That was five days ago. The question is: Will the board stick to its guns and stand up for the public, or will it do a U-turn and let Club U resume business as usual?

It would be a travesty if the board voted to allow the nightspot to pick up where it left off. Ms. Groomes told The Post that her officers are frequently sent to the club to control crowds after it closes. Those officers are pulled away from other patrol duties because Club U's patrons are out of control. The fact that this activity is taking place on government premises makes the Club U presence in the Reeves building all the more absurd.

The board is not without options. It can revoke the license, continue the suspension or impose new operating conditions. Business as usual, in our view, is not an option. Other communities are watching this, too.

2. 19. 05

FOIA CONFIDENTIAL TREATMENT REQUESTED

...and both
...pecter has honestly de-
...complicity in creating the
..., something that neither of his
...ns, Sens. Orrin G. Hatch (R-Utah)
...atrick J. Leahy (D-Vt.), even attempted.
...g), and polarized members of Co...
...and a White House that is loath to comp...
But it is encouraging to have the Judiciary Co...mittee chairman even attempting to act as a peacemaker, rather than stoking the flames. Mr. Specter stresses that it will take goodwill from all sides to begin reversing the damage; here's hoping people are listening.

2.25.05

More on Club U

TODAY, THE D.C. Alcoholic Beverage Control Board proceeds to Round Two of a public hearing on the board's summary suspension of a liquor license belonging to Club U, an allegedly violence-prone nightspot housed within the government's Reeves Municipal Center at 14th and U streets NW. Round One ended last Saturday with some observers believing that lawyers for the D.C. government had made a strong case look weak. Evidence useful to the government's side reportedly was not introduced. Complaints about inadequate D.C. government legal representation are not new. However, it would be especially unfortunate if the Club U suspension falls into that category. A number of other D.C. neighborhoods afflicted with troubled establishments are monitoring the city's handling of Club U for signs that the D.C. government can be relied upon to protect public health and safety. Round Two offers the city a chance to rebound.

Yesterday, D.C. Attorney General Robert G. Spagnoletti said that his office, which represents the Alcoholic Beverage Regulation Administration, had put on a "tight case" last Saturday, but that it will move to reopen the proceedings to allow the government to provide additional evidence in support of the board's suspension. Mr. Spagnoletti stressed that the city wants to avoid making a public spectacle of the case or compromising the criminal investigation of the recent stabbing death of a Club U patron. While the city hopes to persuade the Alcoholic Beverage Control Board to continue its suspension of Club U's license, he said, D.C. authorities also have a strong interest in bringing a murderer to justice. "It's a delicate balance," Mr. Spagnoletti declared.

The criminal investigation, we quite agree, should not be jeopardized by the board's proceedings. However, if warranted by the facts, the city should not shy away from presenting the best case possible against an establishment where violent acts occur and endanger the community. Troubled establishments should not be allowed to flourish in the city, period. The board, which wisely acted to suspend Club U's liquor license immediately after the latest violence, should also be pressed to continue standing with citizens sick and tired of bloodshed on their streets. Today's hearing will give city attorneys another chance to get it right, and the board a renewed opportunity to put public safety and health first.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014198

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PROPERTY MANAGEMENT

Carol J. Mitten
Director

July 12, 2004

Mr. Charles A. Burger, Chairman
Alcoholic Beverage Control Board
941 North Capitol Street, N.E., Suite 7200
Washington, D.C. 20002

RE: Objection to Renewal of Class C License for Levelle, Inc. (D/B/A: Coach and IV; Club U) at 2000 14th Street, N.W.

Dear Mr. Burger:

I wish to reaffirm the position that I stated in my March 29 letter to you regarding the renewal of the Class C license for the establishment operated as Club U. I **strongly object** to the renewal of the license for the numerous reasons that I previously stated.

For Alcoholic Beverage Control Board's ("the Board") benefit, I have elected to share a copy of the lease for the premises occupied by Club U. As you can see from Section 1 of the lease, the Tenant is only permitted to operate outside Normal Business Hours (7:00 am – 3:00 pm) to the extent that "...such times and for such purposes as Landlord may approve in writing in its sole and absolute discretion." Furthermore, Section 9 of the lease permits the Tenant to use the premises "solely for the operation of a first class restaurant and cafeteria."

Notwithstanding that our ability to enforce these provisions is hampered by the need to litigate the matter, the Board should clearly understand that the District of Columbia does not sanction the operation of the Club U space beyond the Normal Business Hours or for the purpose of operating a nightclub. Such permission was never granted, and Levelle Inc. has consistently and flagrantly disregarded these lease provisions.

I again urge the Board to deny the request for the renewal of the Class C license by Club U. Levelle has no legal right to use the premises for the purposes that the requested ABC license would facilitate.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014199

Inasmuch as such licenses are location-specific, the Board is bound to deny the application.

If there is further information that will assist the Board, I would be pleased to provide it. As I stated in my previous letter, I would welcome the opportunity to address the Board on this matter.

Thank you for your consideration.

Sincerely,

Carol J. Mitten

Carol J. Mitten
Director

Attachments: March 29, 2004 Letter
Lease

cc: Commissioner Darren Bowie, Chair, ANC 2B
Commissioner Deborah Thomas, Chair, ANC 1B
Councilmember Jim Graham, Ward 1
Councilmember Jack Evans, Ward 2

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014200

Club "U"

Rivero, Fernando (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Monday, December 08, 2003 9:25 AM
To: Fernando Rivero
Subject: Put on my chair

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Fernando Rivero [mailto:fjrivero@hotmail.com]
Sent: Thursday, December 04, 2003 12:33 PM
To: jim@grahamwone.com
Subject: RE: Club U update.

Charles Barksdale of OCC called me and acknowledged your call. Here the

update on Club U:

Barksdale had been waiting for a trial date for over six months. A few events may have removed the case from a trial track and caused delays: transfer to a new judge, and settlement negotiations. Now, Barksdale has
filed a new precipae requesting a new trial date. He has also received approval to file a new complaint to evict in Landlord & Tenant Court.

The case will likely go the slower civil case route because Club U is expected to ask for a jury trial. Barksdale had tried to negotiate at one
point by giving them 3 to 6 months to leave, which sometimes works, he explained, but he was not successful. The issue is that the Club U lease
only allows afterhours events with the District's permission and the government has long ago stopped granting that permission, so each such event
is a violation of the lease. Barksdale also threatened to sue each time one
such event occurs. He expects and update before Friday and will call to inform regarding a trial date. I will keep you updated.

FR

Fernando Rivero, Chief of Staff
Office of Councilmember Jim Graham
1350 Pennsylvania Ave., NW, Suite 406
Washington, DC 20004
(202) 724-8181 (202) 724-8109 fax FRivero@dccouncil.washington.dc.us

----Original Message Follows----
From: "Jim Graham" <jim@grahamwone.com>

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014201

To: "'Fernando Rivero'" <fjrivero@hotmail.com>
Subject: RE: Club U update.
Date: Thu, 4 Dec 2003 09:15:12 -0500

Please resend without all of the "carrots".

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Fernando Rivero [mailto:fjrivero@hotmail.com]
Sent: Tuesday, December 02, 2003 9:40 PM
To: jim@grahamwone.com
Subject: FW: Club U update.

Browse styles for all ages, from the latest looks to cozy weekend wear at
MSN Shopping. And check out the beauty products!
http://shopping.msn.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014202

Club U

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Property Management

Carol J. Mitten
Director

March 29, 2004

Mr. Charles A. Burger, Chairman
Alcoholic Beverage Control Board
941 North Capitol Street, N.E., Suite 7200
Washington, D.C. 20002

RE: Objection to Renewal of Class C License for Levelle, Inc. (D/B/A: Coach and IV; Club U) at 2000 14th Street, N.W.

Dear Mr. Burger:

As the Director of the Office of Property Management, I have been designated by the Mayor to oversee the management of property owned by the District of Columbia ("District"). Levelle, Inc. ("Levelle") occupies a portion of the Reeves Center, a municipal office building, located at 2000 14th Street N.W. In contravention of the terms of its now expired lease with the District, Levelle operates a nightclub known as Club U (formerly known as Coach and IV). Levelle's Class C alcoholic beverage license expires on March 31, 2004. The Reeves Center is not an appropriate location for a Class C licensed establishment and, in fact, was never authorized to operate there. Club U is a serious threat to the security to this District-owned facility. The Metropolitan Police Department ("MPD") has been called to Club U 75 times during the last four years to investigate criminal activity, including shootings, assaults, a stabbing, disorderly conduct, and robbery. During the past three years, the District government has incurred $118,903 in non-reimbursable costs to provide additional building security through our Protective Services Division ("PSD") that was directly attributable to the operation of Club U and related criminal activity.

In October 1993, the District and Levelle entered into a 10-year lease ("Lease") and the permitted hours of operation were for a breakfast and luncheon establishment. The Lease does not allow for the operation of a nightclub. Levelle's continued use of the premises as a nightclub has been a violation of the Lease for a number of years. In 1999, the District sued Levelle to recover possession of the premises based on a number of violations of the Lease, including failure to pay rent, failure to cease unauthorized after-hour operations, and damage to premises caused by Levelle and Levelle's patrons. After a failed attempt at mediation, the District requested a trial date in January 2004. The Lease expired in October 2003. Levelle currently owes the District more than $175,000 in back rent under the Lease.

FOIA CONFIDENTIAL TREATMENT REQUESTED

The Reeves Center, where Levelle is unlawfully operating Club U, is intended to be an office building with lobby level convenience shops and a daycare center. Levelle's unauthorized nightclub not only generally interferes with the peace, order, and quiet of the Reeves Center, it is a serious security threat to one of the District's most important buildings. The Reeves Center houses a number of District agencies, including the Department of Transportation, the Office of Property Management, the Department of Public Works, and the Mayor's 24-Hour Command Center. The Emergency Management Agency (EMA), in particular, is highly security sensitive.

Club U patrons enter through the lobby and must pass by the elevators to enter Club U. These elevators provide access to staff who operate the EMA Command Center. The Command Center operates 24 hours a day and coordinates information and support services for both local and regional emergencies, including terrorist threats. PSD staff must physically monitor the elevators to ensure that patrons do not enter the elevators, stairs, and escalator that lead to any of the upper floor offices. Additionally, Club U does not have bathrooms located inside the leased space. The stream of patrons seeking to use the common area bathrooms means that PSD must further monitor the lobby to prevent unauthorized access.

During the past five years, Levelle's unlawful nightclub has been the center of on-going criminal activity, including a stabbing in 2000 (see attached report). Since 2001, MPD has been called 75 times to Reeves Center during Club U's unauthorized hours of operation, and 48 of those calls resulted in written reports (see attached summary). The MPD incidents alone include two ABC violations, thirteen assaults, seven requests for assistance from District PSD staff, 21 instances of disorderly conduct, a kidnapping, a holdup with a knife, and shootings. In May 2003, Club U patrons were involved in the shooting of two brothers in the alley behind Club U. MPD is currently investigating a recent alleged sexual assault on a Club U patron that reportedly occurred inside the Reeves Center. The restaurant has also operated over its authorized capacity, in violation of the fire code (see attached incident report), and was shut down on those nights.

For the foregoing reasons, I urge the Board not to renew Levelle's Class C license. The location of the nightclub is not authorized, nor is it appropriate. If a hearing is held on this matter, I would welcome the opportunity to speak on behalf of the District. Thank you for considering my request.

Sincerely,

Carol J. Mitten

Carol J. Mitten
Director of Office of Property Management

CJM:bs

cc: Commissioner Darren Bowie, Chair, ANC 2B
Commissioner Deborah Thomas, Chair, ANC 1B
Councilmember Jim Graham, Ward 1
Councilmember Jack Evans, Ward 2

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014204

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Property Management

March 29, 2004

Mr. Charles Powell
President
Military Road School Preservation Trust
Post Office Box 56425
Washington, D.C. 20040-6425

Re: Military Road School

Dear Mr. Powell:

Thank you for bringing to the attention of the Office of Property Management your concerns regarding the physical condition of the Military Road School. We share your organization's desire to see that this structure is preserved and restored.

As you know, the property was leased to the Latin American Montessori Bilingual Public Charter School (LAMB) in June 2003 and they are responsible for the day-to-day management and maintenance of the facility, both before and after their contemplated renovation.

On March 26, 2004, the property was inspected by our Deputy Director for Operations, Peter May, as well as a staff member from the Historic Preservation Division of the Office of Planning, David Maloney. Mr. Maloney has been in the building on more than one occasion and was in a good position to judge the quality of the stewardship of the property by LAMB during their tenancy. The good news is that the building remains in fine structural condition, and there has only been minimal damage due to the water leak that you referenced in your letter.

However, evidence of a minor roof leak and gutter damage was observed during the inspection, and LAMB has been directed to either remedy the problem or provide evidence to this office that the problem has already been corrected.

You also mentioned in your letter your desire to meet with Deputy Mayor Tillery to discuss the prospective alterations of the historic structure. I suggest that such a meeting would not be productive at this time for two reasons: 1) the tenant has not submitted a proposed renovation plan for review by our office and 2) the public forum at which interested parties will be able to

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014205

place their views on the record regarding any proposed renovation will be an eventual hearing before the Historic Preservation Review Board. I encourage you to remain involved in the historic preservation review process and to make your views and concerns known to LAMB.

As a result of your letter, we intend to make inspections of all our leased school facilities to ensure that the tenants are maintaining the buildings to the standards required by the respective lease agreements.

Please do not hesitate to contact me if you have additional concerns.

Sincerely,

Carol J. Mitten

Carol J. Mitten
Director

cc: The Honorable Anthony Williams, Mayor
The Honorable Jim Graham, Councilmember Ward 1
The Honorable Adrian Fenty, Councilmember Ward 4
Congresswoman Eleanor Holmes Norton
Deputy Mayor Herbert Tillery
Commissioner Jim Jones, Chairman, ANC 4A
Ms. Lisa Burcham, D.C. State Historic Preservation Officer

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014206

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Property Management

Carol J. Mitten
Director

March 29, 2004

Mr. Charles A. Burger, Chairman
Alcoholic Beverage Control Board
941 North Capitol Street, N.E., Suite 7200
Washington, D.C. 20002

RE: Objection to Renewal of Class C License for Levelle, Inc. (D/B/A: Coach and IV; Club U) at 2000 14th Street, N.W.

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Sincerely,

Carol J. Mitten

Carol J. Mitten
Director of Office of Property Management

CJM:bs

cc: Commissioner Darren Bowie, Chair, ANC 2B
Commissioner Deborah Thomas, Chair, ANC 1B
Councilmember Jim Graham, Ward 1
Councilmember Jack Evans, Ward 2

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014208

MPD CRIMINAL COMPLAINTS
CLUB U

DATE	TIME	NATURE	CCN#	ADDRESS
02/04/01	3:51:44	ABC VIOLATION	015-469	2000 14TH ST NW
11/25/01	3:00:00	ABC VIOLATION	167-181	2000 14TH ST NW
03/18/01	4:00:08	AGGRAVATED ASSAULT	035-689	2000 14TH ST NW
12/02/01	2:33:18	AGGRAVATED ASSAULT	169-408	2000 14TH ST NW
04/28/02	2:04:59	AGGRAVATED ASSAULT	062-145	2000 14TH ST NW
06/01/02	0:41:53	AGGRAVATED ASSAULT	080-828	2000 14TH ST NW
06/23/02	3:00:20	AGGRAVATED ASSAULT	092-832	2000 14TH ST NW
08/19/01	4:17:10	ASSAULT / POLICE OFFICER	116-252	2000 14TH ST NW
01/26/02	3:00:00	ASSAULT / POLICE OFFICER	012-986	2000 14TH ST NW
05/18/02	3:00:00	ASSAULT / SIMPLE	074-721	2000 14TH ST NW
12/01/02	1:44:51	ASSAULT / SIMPLE	177-985	2000 14TH ST NW
12/27/02	2:21:28	ASSAULT / SIMPLE	190-528	2000 14TH ST NW
02/23/03	2:00:54	ASSAULT / SIMPLE	024-499	2000 14TH ST NW
07/31/03	21:04:00	ASSAULT / SIMPLE	105-896	2000 14TH ST NW
11/02/03	4:48:03	ASSAULT / SIMPLE	152-929	2000 14TH ST NW
02/23/01	21:33:43	ASSIST	NO RPT	2000 14TH ST NW
03/23/01	0:42:37	ASSIST	NO RPT	2000 14TH ST NW
01/20/02	2:32:00	ASSIST	NO RPT	2000 14TH ST NW
10/18/02	1:27:29	ASSIST	NO RPT	2000 14TH ST NW
11/10/02	19:29:28	ASSIST	NO RPT	2000 14TH ST NW
09/27/03	2:50:18	ASSIST	NO RPT	2000 14TH ST NW
03/04/04	20:38:35	ASSIST	NO RPT	2000 14TH ST NW
12/12/03	20:14:20	CAR JACKING / UNARMED	NO RPT	2000 14TH ST NW
05/18/03	0:50:05	CARRY DEADLY WEAPON	066-267	2000 14TH ST NW
02/05/04	21:30:00	DAMAGE TO PROPERTY	016-806	2000 14TH ST NW
09/08/01	22:17:56	DESTRUCTION OF PROPERTY	126-949	2000 14TH ST NW
12/23/01	2:51:20	DESTRUCTION OF PROPERTY	180-145	2000 14TH ST NW
04/05/02	0:12:04	DESTRUCTION OF PROPERTY	049-795	2000 14TH ST NW
04/13/03	2:47:35	DESTRUCTION OF PROPERTY	048-269	2000 14TH ST NW
03/06/04	23:55:08	DESTRUCTION OF PROPERTY	030-947	2000 14TH ST NW
03/15/01	19:08:11	DISORDERLY	034-550	2000 14TH ST NW
04/19/01	20:44:11	DISORDERLY	052-247	2000 14TH ST NW
05/13/01	2:35:26	DISORDERLY	NO RPT	2000 14TH ST NW
05/25/01	18:56:29	DISORDERLY	070-892	2000 14TH ST NW
06/01/01	0:41:07	DISORDERLY	NO RPT	2000 14TH ST NW
06/17/01	1:01:07	DISORDERLY	NO RPT	2000 14TH ST NW
10/06/01	20:53:33	DISORDERLY	140-402	2000 14TH ST NW
10/06/01	20:53:33	DISORDERLY	140-416	2000 14TH ST NW
10/28/01	1:31:47	DISORDERLY	151-467	2000 14TH ST NW
01/26/02	3:05:45	DISORDERLY	NO RPT	2000 14TH ST NW
05/05/02	2:07:00	DISORDERLY	NO RPT	2000 14TH ST NW
07/13/02	2:16:37	DISORDERLY	NO RPT	2000 14TH ST NW
07/18/02	22:39:48	DISORDERLY	NO RPT	2000 14TH ST NW
08/04/02	3:27:40	DISORDERLY	NO RPT	2000 14TH ST NW
09/08/02	2:51:26	DISORDERLY	NO RPT	2000 14TH ST NW
02/06/03	19:07:24	DISORDERLY	NO RPT	2000 14TH ST NW
02/06/03	21:50:56	DISORDERLY	NO RPT	2000 14TH ST NW
02/06/03	23:10:00	DISORDERLY	018-018	2000 14TH ST NW
03/06/03	22:15:39	DISORDERLY	NO RPT	2000 14TH ST NW
05/01/03	22:59:00	DISORDERLY	058-086	2000 14TH ST NW

MPD CRIMINAL COMPLAINTS
CLUB U

10/10/03	20:25:31	DISORDERLY	141-947	2000 14TH ST NW
09/27/03	2:28:45	DOMESTIC VIOLENCE INCIDENT	135-213	2000 14TH ST NW
02/10/01	3:15:00	DRIVING WHILE INTOXICATED	018-316	2000 14TH ST NW
05/22/03	23:22:44	INJURY / CITIZEN	068-782	2000 14TH ST NW
06/22/02	4:00:00	INJURY / MPD	094-697	2000 14TH ST NW
09/01/02	0:46:19	INJURY / PUBLIC SPACE	NO RPT	2000 14TH ST NW
12/01/01	23:53:10	INVESTIGATE THE TROUBLE	NO RPT	2000 14TH ST NW
02/23/02	1:30:00	KIDNAPPPING	028-150	2000 14TH ST NW
06/03/01	1:42:44	ROBBERY / HOLD UP KNIFE	075-303	2000 14TH ST NW
05/18/03	3:08:00	SHOOTING	NO RPT	2000 14TH ST NW
03/07/03	1:31:34	SOUNDS OF GUNSHOTS	NO RPT	2000 14TH ST NW
08/03/01	0:39:04	THEFT FROM AUTO	NO RPT	2000 14TH ST NW
10/12/01	0:05:00	THEFT FROM AUTO	143-028	2000 14TH ST NW
10/25/02	21:30:00	THEFT FROM AUTO	159-680	2000 14TH ST NW
03/07/03	19:23:39	THEFT ONE 250 PLUS	NO RPT	2000 14TH ST NW
03/07/03	19:46:51	THEFT ONE 250 PLUS	030-629	2000 14TH ST NW
06/07/03	20:41:29	THEFT ONE 250 PLUS	077-264	2000 14TH ST NW
01/20/02	1:50:00	THEFT STOLEN AUTO	009-977	2000 14TH ST NW
04/19/01	19:43:02	THEFT TWO LESS 250	052-231	2000 14TH ST NW
05/02/02	19:27:16	THEFT TWO LESS 250	064-837	2000 14TH ST NW
05/24/02	19:52:15	THEFT TWO LESS 250	077-042	2000 14TH ST NW
05/25/03	4:13:16	THEFT TWO LESS 250	NO RPT	2000 14TH ST NW
10/23/03	23:40:00	UNAUTHORIZED USE OF A CONTROI	148-504	2000 14TH ST NW
02/01/04	4:00:00	UNLAWFUL ENTRY	013-958	2000 14TH ST NW
08/26/01	2:34:21	WOMAN DOWN	NO RPT	2000 14TH ST NW

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

February 14, 2005

Maria Delaney, Director
Alcoholic Beverage Regulation Administration
941 North Capitol Street N.E. Suite 7200
Washington, D.C 20002

Dear Ms. Delaney:

I am strongly recommending that Club U ABC's license be permanently revoked based on yesterday's homicide and the two other homicides that can be linked to Club U. These three homicides are detailed in the attached memo from Captain C.V. Morris. This last tragic event was just one of a series that I reported in my November 10, 2004 letter to ABRA about Club U (attached). This club should be permanently shut down for the safety and security of the people who go to Club U and live nearby.

On Sunday, February 13, 2005, at approximately 0255 hours, officers from the Third District were inside the lobby level of 2000 14th St NW (Franklin D. Reeves Center) when they noticed a victim, lying on the floor, who had been stabbed. The victim later identified as Mr. Terrence Brown, thirty-one years old, was taken to the Howard University Hospital for medical treatment. Once there, life saving efforts failed. Dr. Mezahbe pronounced Mr. Brown dead at 0318 hours

The decedent was discovered inside of the Franklin D Reeves Center, lobby level, directly across from the Coach & IV nightclub (Club U). At the time he was found, many patrons were in the process of leaving the nightclub/Franklin D. Reeves Center. No eyewitnesses were identified on the crime scene.

The Metropolitan Police Department's Mobile Crime lab processed the crime scene. The lead technician is William Hyatt.

At the time of this report, there is no firm suspect or motive to the homicide. The lead investigator in this case is Detective Milagros Morales.

Sincerely,

Charles H. Ramsey
Chief of Police

P.O. Box 1606, Washington, D.C. 20013-1606

FOIA CONFIDENTIAL TREATMENT REQUESTED

5. On June 20, 2004, at 1:00 a.m., while standing at 1400 W Street, N.W., an unknown suspect stabbed an individual.

6. On November 21, 2003, Officer Terrence Shirk worked the midnight tour of duty. At approximately 0105 hours, he heard multiple gunshots in the 1400 block of U Street, N.W. Officer Shirk responded to the area and followed a burgundy Cadillac to the 2100 block of 13th Street, N.W., where he observed an armed subject bail out of the car after it crashed into a light pole. The subject ran towards the approaching scout car, aimed his weapon, and fired two rounds at the officer. The first round struck the hood of the scout car. The second round penetrated the windshield and struck the officer in the hand, lodging in the radio transmitter he was holding. The subject then fled and made good his escape. Further investigation revealed that the suspect had just left "Club U," and prior to his assault on the Third District officer, he had shot and critically wounded two other subjects.

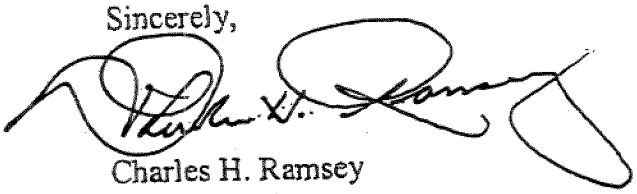
The number and severity of the criminal offenses occurring at and around "Club U" leads me to conclude that the interests of the community would be best served if the license to operate as a club and serve alcoholic beverages were revoked.

Consequently, pursuant to D.C. Code 25-827, I hereby request the Alcoholic Beverage Regulation Administration (ABRA), revoke the license to sell alcoholic beverages issued to "Club U."

I have made my determination based on the calls for police service and on the reports of criminal activity occurring on site and around the location, and on the recommendation of Commander Larry D. McCoy, Third District.

I trust that the Metropolitan Police Department has provided the Administration with sufficient information to make an appropriate evaluation and decision. Should you need additional information regarding this matter, please contact Commander McCoy on (202) 673-6820.

Sincerely,



Charles H. Ramsey
Chief of Police

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

NOV 10 '04

NOV 10 2004

Maria Delaney, Director
Alcoholic, Beverage Regulation Administration
941 North Capitol Street, N.E., Suite 7200
Washington, D.C. 20002

Dear Ms. Delaney:

This is in reference to "Club U", an establishment located at 2100 14th Street, N.W. The area surrounding "Club U" has been the focal point of several crimes. Since June 2003, there have been twelve (12) serious crimes reported at or within one block of this nightclub.

There were three (3) robberies involving guns and two (2) robberies using force and violence. Three assaults with dangerous weapons involving knives and four (4) additional assaults with dangerous weapons other than knives, including two (2) Assaults on Police Officers. There was a homicide on September 17, 2004, that was the most violent offense in this series of incidents, and all have occurred while the nightclub was open and operating. The below listed events were directly related to, or occurred in front of "Club U" during their hours of operation, beginning with the most recent incident:

1. On October 17, 2004, at 1:30 a.m., Third District officers responded to assist security officers at "Club U." When police officers arrived on the scene, the suspect was loud and disorderly with the security officers. The suspect then attacked the responding officer by repeatedly striking the officer in the face and body. The suspect was subdued and placed under arrest. Once under arrest and placed in the transport vehicle, the suspect kicked the rear window out of the police vehicle.

2. On September 17, 2004, at the corner of 14th & U Streets, N.W., (Corner of "Club U"), a patron of the club was stabbed. The victim was transported to Washington Hospital Center (Medstar) in critical condition. On September 22, 2004, the victim succumbed to his injuries.

3. On August 1, 2004, at 3:15 a.m., six (6) people were standing in front of 2100 14th Street, N.W., when two suspects robbed them at gunpoint.

4. On August 1, 2004, at 2:30 a.m., a suspect approached an individual standing in front of 2100 14th Street, N.W., and stabbed him in the left side of his body and fled the scene.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Metropolitan Police Department
Special Services Command
Office of the Superintendent of Detectives

February 14, 2005

MEMORANDUM:

TO: Assistant Chief 2/14/05
Special Services Command

SUBJECT: Preliminary Report Concerning Homicide of Mr. Terrence Brown
HO-05-47, CCN 05-018-957

On Sunday, February 1, 2005, at approximately 0255 hours, officers from the Third District were inside the lobby level of 2000 14th St NW (Franklin D. Reeves Center) when they noticed a victim, lying on the floor, who had been stabbed. The victim later identified as Mr. Terrence Brown, thirty-one years old, was taken to the Howard University Hospital for medical treatment. Once there, life saving efforts failed. Dr. Mezahbe pronounced Mr. Brown dead at 0318 hours

The decedent was discovered inside of the Franklin D Reeves Center, lobby level, directly across from the Coach & IV nightclub (Club U). At the time he was found, many patrons were in the process of leaving the nightclub/Franklin D. Reeves Center. No eyewitnesses were identified on the crime scene.

The Metropolitan Police Department's Mobile Crime lab processed the crime scene. The lead technician is William Hyatt.

At the time of this report, there is no firm suspect or motive to the homicide. The lead investigator in this case is Detective Milagros Morales.

The decedent was identified as:

Name: Brown, Terrence
Address: 813 46th St NE

Race/Sex/ DOB B/M/ 3/20/73
Case #: HO-05-047

The decedent's next of kin his has not been notified at the time of this report.

Motive is unknown

No Known witness

FOIA CONFIDENTIAL TREATMENT REQUESTED

Around the time of the homicide there was a domestic incident, which took place outside of Club U. The incident was allegedly occurred between a couple (boy friend and girlfriend). The male punched the female knocking her to the ground and then fled the scene. As the medics were attending to her injuries they were startled by the sounds of gunshots coming from an unknown direction. One of the medics observed a white BMW traveling away from the 1400 block of U Street at a high rate of speed; the medic believed the gunshots emanated from the vehicle. The white BMW traveled on 14th Street and struck another vehicle while fleeing the scene. This incident is under investigation by the Office of the Superintendent of Detectives Third District. (See Attached reports).

There are two homicide cases that can be linked to Club U and they are as follows:

HO#: H003-123
CCN: 03-034699
DECEDENT: STATON, RANDY ELIJAH
DATE: MARCH 16, 2003
LEAD DETECTIVE: DETECTIVE ANTHONY PATTERSON

ON MARCH 16, 2003, AT APPROXIMATELY 0315 HRS. OFFICER PAUL JOHNSON AND OTHER MEMBERS OF THE THIRD DISTRICT WERE IN THE 1400 BLOCK OF U STREET, NORTHWEST, WHEN THEY HEARD GUNSHOTS COMING FROM THE INTERSECTION OF 15TH AND U STREET, NORTHWEST.

OFFICER JOHNSON RAN TO THAT LOCATION AND FOUND THE COMPLAINANT, 26 YEAR OLD RANDY ELIJAH STATON ON THE GROUND, SUFFERING FROM A GUNSHOT WOUND TO HIS CHEST AND LEFT HAND. MEDIC #1 RESPONDED TO THE SCENE AND TANSPORTED THE VICTIM/COMPLAINANT TO HOWARD UNIVERSITY HOSPITAL WHERE HE WAS PRONOUNCED DEAD AT 0424 HRS. BY DR. JOHNSON, HOSPITAL STAFF.

THE PRELIMINARY INVESTIGATION REVEALED THE DECEDENT AND SEVERAL OF HIS FRIENDS HAD BEEN IN CLUB U, A CLUB LOCATED INSIDE THE REEVE'S CENTER (14TH & U STREET, NORTHWEST), WHEN HE BECAME INVOLVED IN A VERBAL ALTERCATION WITH UNKNOWN SUBJECTS. WHILE WALKING TO THEIR VEHICLE, AFTER LEAVING THE CLUB, GUNSHOTS ERUPTED; SOMEONE IN THE DECEDENT'S PARTY EXCHANGED SHOTS WITH ONE OF THE UKNOWN SUBJECTS. AT THIS POINT, THE DECEDENT SUSTAINED HIS INJURIES.

HO#: HO04-324
CCN: 129-019
Decedent: Bullock, Terry

Date of Homicide: Sept. 17, 2004
Date Prepared: Jan. 5, 2005
Lead Detective: Detective D. K. Partman

Case Synopsis:
On Friday, September 17, 2004, the decedent was driven to Howard Hospital with a stab wound to the neck area. Members of the hospital staff treated the decedent, but he succumbed to his injuries and was pronounced by Dr. Moore at 2120 hours.

A friend, identified only as a witness for this report, who also drove the decedent to "Club U", which is located inside the Reeves Center at 14th and W Street NW, drove the decedent to the hospital.

The witness reported that he and the decedent exited the club and was on 14th street talking to some girls when the decedent turned to him and stated he had been stabbed. The witness observed the decedent bleeding from the neck and immediately put him in the car and drove him to Howard Hospital.

The witness reported he didn't see what happened to the decedent, nor did he recall any problem inside the club.

The witness has known the decedent for years, he drove the decedent to the club and after the stabbing he drove the decedent to the hospital and waited for the police. The witness gave a statement, which was consistent with what he told the first officer who spoke to him.

Michael Anzallo
Commander

Local 201

Spencer J. 2018

Metropolitan Police Department

Incident-Based Event Report

Washington, D.C.

PART I - CLASSIFICATION OF EVENT

TYPE OF REPORT	2 DATE AND TIME OF EVENT										3 DATE OF REPORT			4 TIME OF REPORT		5 DISTRICT	6 SECTOR	7 BEAT	8 COMPLAINT NUMBER
	Start Date			Start Time		End Date			End Time										
	Month	Day	Year	Hour	Minute	Month	Day	Year	Hour	Minute	Month	Day	Year	Hour	Minute				
Offense / Incident	Feb	13	05	02	55						Feb	13	05	03	10	3		305	18952

FILL IN THE OVALS COMPLETELY
Right Mark
Wrong Marks

EVENT LOCATION ADDRESS			10 REPORT RECEIVED BY	11 IS RADIO RUN LOCATION AND EVENT LOCATION THE SAME?	12 PROPERTY TYPE
1200 14th St. NW.	Rear of / In front of / Along side of / Inside of	NW Corner / NE Corner / SW Corner / SE Corner	TRU / Walk-in / On-scene / Radio run	Yes / No	Public / Private

13 EVENT NO. 1	14 EVENT NO. 2	15 EVENT NO. 3
Homicide	ABC Violation	

FORCED ENTRY	17 POINT OF ENTRY	18 a. Method Used	b. Tools Used	19 WEATHER CONDITIONS
Yes / No		Stab	Unknown	Clear / Cloudy / Rain / Snow / Other / Not applicable / Unknown

SUSPECTED HATE CRIME? Ethnic / Sexual Orientation / Religious / Other

21 SECURITY SYSTEM (Mark all that apply)
Alarm/Audio / Alarm/Silent / Camera / Dog / Dead bolt / Unlocked / Exterior lights / Interior lights / Fence / Guard / Neighborhood watch / Other / Not applicable / Unknown

LOCATION TYPE (Mark only one)
Bus/Train terminal / Bank/Savings & loan / Bar/Nightclub / Church/Synagogue/Temple / College/University / Commercial office building / Construction site / Convenience store / Department/Discount store / Government building / Doctor's office/Hospital / Drug store / Federal/Government bldg. / Field/Woods / Grocery/Supermarket / Hotel/Motel/Etc. / Jail/Prison / Lake/Waterway / Liquor store / Park area / Parking lot/Parking garage / Public housing project / Public/Private school / Rental storage facility / Residence/Home / Restaurant / Service station / Sidewalk / Specialty store / Street/Highway/Road / Tavern/Night club / Other / Not applicable / Unknown

23 DESIGNATED AREAS (Mark all that apply)
Victim's vehicle / Suspect's vehicle / Taxi-cab / Bus / Train/Metro/Amtrak/Etc. / Hallway / Elevator / Stairwell / Basement/Laundry room / Apartment/Condo unit / Single family dwelling / Hotel/Motel room / College/University dorm / Classroom / Office room / Vacant building/room / Customer area / Storage area / In public housing / W/in 1 block of public housing / W/in 1,000 ft. of school / Other Night club / Not applicable / Unknown

PART II - VICTIM INFORMATION

24 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1: Brown, Terrence

25 RELATED TO EVENT NO(S).

VICTIM TYPE: Individual / Business / Financial inst. / Government / Religious org. / Society/Public / Police officer / Other

DATE OF BIRTH: Unknown / NA — Day 20, Year 73

28 AGE RANGE: 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

29 SEX: Male / Female / Unknown

30 HOME PHONE: (202) 396-0195

31 BUSINESS PHONE: ( )

32 RACE/ETHNICITY (Mark all that apply): American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

HOME ADDRESS: DC Resident / Non-DC Resident / Unknown — 813 46 Street NE

BUSINESS ADDRESS/SCHOOL: Unknown

OCCUPATION: Unknown

36 IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

38 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1:

39 RELATED TO EVENT NO(S).

40 VICTIM TYPE: Individual / Business / Financial inst. / Government / Religious org. / Society/Public / Police officer / Other

41 DATE OF BIRTH: Unknown / NA

42 AGE RANGE: 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

43 SEX: Male / Female / Unknown

44 HOME PHONE: ( )

45 BUSINESS PHONE: ( )

46 RACE/ETHNICITY (Mark all that apply): American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

47 HOME ADDRESS: DC Resident / Non-DC Resident / Unknown

48 BUSINESS ADDRESS/SCHOOL

49 OCCUPATION

50 IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

51 ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

STATUS (Mark one): Open / Unfounded / Closed / Suspended / Closed by arrest, attach PD-252

53 REVIEWER

54 DISTRIBUTION

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014217

PART V - MISSING PERSONS

PROBABLE CAUSE OF ABSENCE AND DESTINATION

65 COMPLAINT NUMBER: 018957

IF MISSING PERSON HAS RUN AWAY BEFORE, GIVE DATE AND WHERE LOCATED:

67 CLASSIFICATION: ◯ Critical ◯ Non-critical

68 CLASSIFIED BY:

PHYSICAL/MENTAL CONDITION (i.e., diabetic)

70 DESCRIBE ARTICLES OF JEWELRY WORN AND IDENTIFICATION CARRIED

71 NAME OF PARENT/GUARDIAN

ADDRESS OF PARENT/GUARDIAN

73 IF JUVENILE, ENTER MOTHER'S MAIDEN NAME

74 MISSING PERSON SECTION NOTIFIED (Name)

NARRATIVE Describe event and action taken. If additional narrative space is needed, use PD Form 251-A.

em Number Continued

75/ Complainant one and Suspect one got into an argument in the lobby area in front of the Night Club located inside (The Frank D. Reeves Center) 2000 14th Street N.W.

C-1 and S-1 had a physical altercation where S-1 produced a sharp instrument and cut C-1 repeatedly.

C-1 fell into a unconscious state.

C-1 was transported to Howard Hospital by the D.C. Fire Board.

C-1 was pronounced Dead at 0318 Hrs on February 13, 2005 by Dr. Mezahbe.

Units on the Scene:

Ofc Kersey unit #3033

Watch Commander: Lt. Christian unit 300

Sgt. Keirn unit 380

Ofc Edwards unit 3043

76 EVIDENCE TECHNICIAN/CSES #: R Adenderson #9204

77 NAME OF INVESTIGATOR NOTIFIED: Morales D1103

78 TELETYPE NOTIFIED (Name)

NOTIFICATION ALSO REQUIRED WHENEVER MISSING PERSON LOCATED

79 TELETYPE #

80 REPORTING OFFICER'S SIGNATURE: [signature] ELEMENT: 3D

BADGE NUMBER: 2 8 1 8 — Other

81 OTHER POLICE AGENCY (Indicate if report prepared by officer other than MPD): ◯ USCP ◯ USSS ◯ METRO TRANSIT ◯ OTHER

82 SECOND OFFICER'S NAME: Paul O[illegible] ELEMENT: 3D

BADGE NUMBER: 1 8 5 0 — Other

83 SIGNATURE OF SUPERVISOR: A/Sgt. [signature] ELEMENT: OSD

BADGE NUMBER: 0 1 2 6 — Other

FOIA CONFIDENTIAL TREATMENT REQUESTED

STATION 4D GRIFFIN, K. J.

PD 10 Rev. 7/86 Prescribing Directive G.O 401.3

TRAFFIC ACCIDENT REPORT

Metropolitan Police Department, Washington, D. C.

1. DATE OF ACCIDENT	2. TIME (USE MILITARY)	3. DAY OF WEEK	4. DATE OF THIS REPORT	5. TYPE OF ACCIDENT (CHECK ALL THAT APPLY, EXCEPT FOR PROPERTY DAMAGE)	6. COMPLAINT NUMBER
2-13-05	0730	SUN	2-13-05	01 ☐ FATALITY 02 ☐ INJURY 03 ☑ PROP. DAMAGE ONLY 04 ☑ HIT AND RUN 05 ☐ PEDESTRIAN 06 ☐ D.C. PROPERTY 07 ☐ NON-COLLISION	05-947

7. ACCIDENT OCCURRED ON (STREET, DIRECTION, DISTANCE FROM MILE POST, RAMP)	8. DISTRICT	9. R A	10. NO. VEHICLES INVOL.	11. NO. INJURED PERSONS	12. NO. OF OCCUPANTS (INCLUDING DRIVER)
WEST ON V ST NW	3D		2	UNK	Veh. 1 UNK 2 1 3 4

13. ENTER THE NO. OF FEET, IN WHATEVER DIRECTION, FROM THE NEAREST INTER. OR BLOCK. ON FREEWAYS, ENTER THE NO. OF FEET FROM THE NEAREST MILE-POST OR PEPCO POLE NO., INDICATE IF ACCIDENT OCCURRED ON EXIT RAMP, ACCESS RAMP OR BRIDGE. CIRCLE THE CITY QUADRANT.

10 FEET N S (E) W. 14TH ST NW — NW SW NE SE

14. IS THIS A CONSTRUCTION ZONE ☐ YES ☑ NO

15. ON STREET 01 ☐ AT INTERSECTION 02 ☑ WITHIN 100' OF INTER. 03 ☐ NOT AT INTERSECTION

16. OFF STREET 01 ☐ PUBLIC SPACE 02 ☐ PRIVATE PROPERTY

17. REPORT TAKEN ON SCENE? ☐ YES ☑ NO

18. PHOTOS TAKEN? ☐ YES ☑ NO IF YES, NUMBER

STRIKING OBJECT

1. Driver / Pedestrian / Fixed Object ☐☐☐

19. NAME OF DRIVER/PEDESTRIAN (LAST, FIRST, MIDDLE) 19A. TYPE OF PROP. (FIXED OBJECT) AND DESCRIBE DAMAGE IN NARRATIVE — 20. SEX ☐ 01 M ☐ 02 F — 21. BIRTHDATE

22. ADDRESS (STREET, ROOM, APT. NO., CITY AND STATE IF OUTSIDE D.C.)

23. HOME PHONE — 24. PERMIT NUMBER AND STATE — 25. BUS. PHONE

OWNER

26. MODEL: 7 SERIES — 27. MAKE: BMW — 28. YEAR: UNK — 29. BODY: UNK — 31. COLOR: WH — 32. TAG NO., STATE/YEAR: UNK — 33. VEH. ID NO. (VIN): UNK

34. NAME OF OWNER (VEH./PROP.), (LAST, FIRST, MIDDLE), IF DRIVER ENTER "DRIVER" — 35. PHONE NO.

36. ADDRESS (STREET, ROOM, APT. NO., CITY AND STATE IF OUTSIDE D.C.) — 37. OWNER NOTIFIED? UNK ☐ YES ☐ NO

2. Driver / Pedestrian / Fixed Object ☑☐☐

19. NAME OF DRIVER/PEDESTRIAN (LAST, FIRST, MIDDLE) 19A. TYPE OF PROP. (FIXED OBJECT) AND DESCRIBE DAMAGE IN NARRATIVE: CARNEAL, JEFFREY — 20. SEX ☑ 01 M ☐ 02 F — 21. BIRTHDATE: 2-18-58

22. ADDRESS (STREET, ROOM, APT. NO., CITY AND STATE IF OUTSIDE D.C.): 7011 R ST NW

23. HOME PHONE: 202 332-0330 — 24. PERMIT NUMBER AND STATE: 132878 DC — 25. BUS. PHONE: 202 216-0600

OWNER

26. MODEL: 528E — 27. MAKE: BMW — 28. YEAR: 96 — 29. BODY: 4 — 30. COLOR: ORG. — 31. TAG NO., STATE/YEAR: AE3200/DC — 32. VEH. ID NO. (VIN): WBADK7330X G435990

33. NAME OF OWNER (VEH./PROP.), (LAST, FIRST, MIDDLE), IF DRIVER ENTER "DRIVER": DRIVER — 34. PHONE NO.

36. ADDRESS (STREET, ROOM, APT. NO., CITY AND STATE IF OUTSIDE D.C.) — 37. OWNER NOTIFIED? ☑ YES ☐ NO

3. Driver / Pedestrian / Fixed Object ☐☐☐

19. NAME OF DRIVER/PEDESTRIAN (LAST, FIRST, MIDDLE) 19A. TYPE OF PROP. (FIXED OBJECT) AND DESCRIBE DAMAGE IN NARRATIVE — 20. SEX ☐ 01 M ☐ 02 F — 21. BIRTHDATE

22. ADDRESS (STREET, ROOM, APT. NO., CITY AND STATE IF OUTSIDE D.C.)

23. HOME PHONE — 24. PERMIT NUMBER AND STATE — 25. BUS. PHONE

OWNER

26. MODEL — 27. MAKE — 28. YEAR — 29. BODY — 30. COLOR — 31. TAG NO., STATE/YEAR — 32. VEH. ID NO. (VIN)

33. NAME OF OWNER (VEH./PROP.), (LAST, FIRST, MIDDLE), IF DRIVER ENTER "DRIVER" — 34. PHONE NO.

35. ADDRESS (STREET, ROOM, APT. NO., CITY AND STATE IF OUTSIDE D.C.) — 36. OWNER NOTIFIED? ☐ YES ☐ NO

4. Driver / Pedestrian / Fixed Object ☐☐☐

19. NAME OF DRIVER/PEDESTRIAN (LAST, FIRST, MIDDLE) 19A. TYPE OF PROP. (FIXED OBJECT) AND DESCRIBE DAMAGE IN NARRATIVE — 20. SEX ☐ 01 M ☐ 02 F — 21. BIRTHDATE

22. ADDRESS (STREET, ROOM, APT. NO., CITY AND STATE IF OUTSIDE D.C.)

23. HOME PHONE — 24. PERMIT NUMBER AND STATE — 25. BUS. PHONE

OWNER

26. MODEL — 27. MAKE — 28. YEAR — 29. BODY — 30. COLOR — 31. TAG NO., STATE/YEAR — 32. VEH. ID NO. (VIN)

33. NAME OF OWNER (VEH./PROP.), (LAST, FIRST, MIDDLE), IF DRIVER ENTER "DRIVER" — 34. PHONE NO.

35. ADDRESS (STREET, ROOM, APT. NO., CITY AND STATE IF OUTSIDE D.C.) — 36. OWNER NOTIFIED? ☐ YES ☐ NO

Non-Involved Witnesses

37. NAME / ADDRESS / PHONE NUMBER: N/A

CODES

38. SEAT LOCATION CODE (01 02 03 / 04 05 06)
07 STATION WAGON REAR
08 MOTORCYCLE/MOPED PASS.
09 OCCUPANT - BUS
10 PEDESTRIAN
11 BICYCLE RIDER
12 OTHER: SKATEBOARD, TRICYCLE, ETC.

39. INJURY CODE
00 UNKNOWN
01 FATAL
02 DISABLING
03 NON-DISABLING
04 NONE
05 COMPLAINT OF PAIN BUT NO VISIBLE INJURY

40. SEAT BELT/BAG CODE
00 USE UNKNOWN
01 NOT INSTALLED
02 NOT FASTENED
03 FASTENED
04 AIR BAG INSTALL.
05 BELT/BAG FAILED
06 AIR BAG DEPLOYED
07 CHILD RESTRAINT

41. EJECTION CODE (THROWN FROM VEH.)
00 UNKNOWN
01 NO
02 PARTIAL
03 TOTAL

PERSONS INVOLVED

42. NAME/ADDRESS/PHONE NO. (INCLUDE ALL OPERATORS, PASSENGERS AND PEDESTRIANS INVOLVED EVEN IF NOT INJURED)	AGE	SEX	PASS. IN VEH. NO.	CODE 39.	CODE 39.	BELT 40.	BAG 40.	CODE 41.	EMPLOYED BY D.C. GOVT.?	TRANSPORTED TO HOSPITAL?
UNK	UNK		1	01	00	00	00	01	☐ YES ☐ NO UNK.	☐ YES ☐ NO UNK
DRIVER-2	46	M	2	01	04	03	02	01	☐ YES ☑ NO	☐ YES ☑ NO
									☐ YES ☐ NO	☐ YES ☐ NO
									☐ YES ☐ NO	☐ YES ☐ NO
									☐ YES ☐ NO	☐ YES ☐ NO
									☐ YES ☐ NO	☐ YES ☐ NO
									☐ YES ☐ NO	☐ YES ☐ NO

WMATA-INV 014219

FOIA CONFIDENTIAL TREATMENT REQUESTED

Page 1 of 1 Pages

Complaint No. 018947

Police Action	80. Dr./Ped.	Arrest/NOI Number	Charge (Report must support the charge.)	BA/SUPERIOR COURT - HEARING DATE	DPW 40-1 Issued?	What Traffic Signs Present?
	No.					
	No.					

81. TYPE OF COLLISION
00 UNKNOWN; 01 RIGHT ANGLE; 02 LEFT TURN HIT VEH.; 03 RIGHT TURN HIT VEH.; 04 REAR END; 05 (5) SIDE SWIPED; 06 HEAD ON; 07 PARKED VEHICLE; 08 FIXED OBJECT; 09 RAN OFF ROADWAY; 10 LEFT TURN HIT PED.; 11 RIGHT TURN HIT PED.; 12 STRAIGHT HIT PED.; 13 BACKING HIT MOVING VEH.; 14 BACKING HIT PARKED VEH.; 15 BACKING HIT STOPPED VEH.; 16 BACKING HIT PEDESTRIAN; 17 NON-COLLISION ACCIDENT; 99 OTHER

82. ROAD SURFACE
01 CONCRETE; 02 (2) ASPHALT; 03 BRICK; 04 GRAVEL; 05 DIRT; 99 OTHER

83. ROAD TYPE
01 (1) STRAIGHT; 02 CURVE; 03 LEVEL; 04 GRADE; 05 CREST; 06 UNDERPASS; 07 RAMP; 08 BRIDGE; 99 OTHER

84. PEDESTRIAN ACTION
00 UNKNOWN; 01 WITH SIGNAL IN CROSSWALK; 02 AGAINST SIGNAL IN CROSSWALK; 03 IN CROSSWALK - NO SIGNAL; 04 FROM BETWEEN PARKED CARS; 05 NOT IN CROSSWALK; 06 IN UNMARKED CROSSWALK; 99 OTHER

85. TRAFFIC CONTROLS
00 UNKNOWN; 01 FLASHING; 02 YIELD; 03 STOP SIGN; 04 SIGNAL; 05 (5) NONE; 06 OFFICER; 07 TURN RESTRICTED; 99 OTHER

86. ROAD CONDITION
00 UNKNOWN; 01 REPAIRING; 02 (2) DRY; 03 WET; 04 ICE/SNOW

87. STREET LIGHTING
00 UNKNOWN; 01 DEFECTIVE; 02 NONE; 03 (3) STREET LIGHTS ON; 04 STREET LIGHTS OFF

88. LIGHT CONDITION
00 UNKNOWN; 01 DAWN/DUSK; 02 (2) DARK; 03 DAYLIGHT

89. TRAFFIC CONDITION
00 UNKNOWN; 01 HEAVY; 02 (2) MEDIUM; 03 LIGHT; 99 OTHER

90. WEATHER
00 UNKNOWN; 01 FOG/MIST; 02 (2) CLEAR; 03 RAIN; 04 SNOW; 05 SLEET

91. PEDESTRIAN CLOTHING
01 UNKNOWN; 02 WEARING DARK CLOTHING; 03 WEARING LIGHT CLOTHING

92. DRIVER/PEDESTRIAN CONDITION (1 2 3 4)
00 (1) UNKNOWN; 01 FATIGUED; 02 ILL; 03 PHYSICAL DEFECT; 04 (2) APPARENTLY ASLEEP; 05 (3) APPARENTLY NORMAL; 99 OTHER

93. CONTRIBUTING CIRCUMSTANCES - DARKEN THE PRIMARY FACTOR FOR ALL VEHICLES AND "X" ALL SECONDARY FACTORS (1 2 3 4)
01 (1) SPEED; 02 DEFECTIVE BRAKES; 03 FOLLOWING TOO CLOSE; 04 AUTO RIGHT-OF-WAY; 05 PED. RIGHT-OF-WAY; 06 IMPROPER TURN; 07 YIELD SIGN; 08 STOP/GO LIGHT; 09 FLASHING LIGHT; 10 DIRECTIONAL LIGHT; 11 STOP SIGN; 12 ALCOHOL INFLUENCE; 13 IMPROPER PASSING; 14 WRONG WAY-ONE WAY ST.; 15 WRONG SIDE OF STREET; 16 IMPROPER STARTING; 17 OTHER DEFECTS; 18 PEDESTRIAN VIOLATION; 19 NO VIOLATION; 20 (20) DRIVER INATTENTION; 21 CHANGING LANES W/O CAUT.; 22 FAIL TO SET PARKING BRAKE; 23 OPEN DOOR TO TRAFFIC; 24 DRUG INFLUENCE; 25 IMPROPER BACKING; 26 DEFECTIVE LIGHTS; 27 PEDESTRIAN DRUNK; 28 ROAD DEFECTS; 29 DRIVER VISION OBSTRUCTED; 30 RIGHT TURN ON RED; 99 OTHER

94. VEHICLE TYPE (1 2 3 4)
00 UNKNOWN; 01 (1) (2) PASSENGER AUTO; 02 TAXI CAB; 03 BUS; 04 MOTORCYCLE; 05 TRUCK/TRACTOR; NO. OF TRAILERS; NO. OF WHEELS; 06 BICYCLE; 07 POLICE PATROL WAGON; 08 POLICE MOTORCYCLE; 09 POLICE SCOOTER; 10 POLICE SCOUT CAR - ONE MAN; 11 POLICE SCOUT CAR - TWO MAN; 12 POLICE CRUISER - MARKED; 13 POLICE CRUISER - UNMARKED; 14 POLICE-OTHER; 15 FIRE ENGINE; 16 AMBULANCE; 17 PEDESTRIAN - ON FOOT; 18 FIXED OBJECT; 19 NON-COLLISION; 20 MOPED; 99 OTHER (EXPLAIN IN NARRATIVE, INCLUDES SKATEBOARDS, TRICYCLES, PLAY VEHICLES, ETC.)

95. SOBRIETY (1 2 3 4)
01 (2) HAD NOT BEEN DRINKING; HAD BEEN DRINKING AND: 02 OBVIOUSLY DRUNK; 03 ABILITY IMPAIRED; 04 NOT IMPAIRED; 05 IMPAIRMENT UNKN.; 99 OTHER

96. BLOOD ALCOHOL CONTENT
Dr./Ped. 1 _____ Dr./Ped. 3 _____
Dr./Ped. 2 _____ Dr./Ped. 4 _____

97. DRIVER ACTIONS (1 2 3 4)
00 UNKNOWN; 01 BACKING; 02 (2) TURNING RIGHT; 03 TURNING LEFT; 04 STOPPED/STANDING-TRAFFIC LANE; 05 PARKED; 06 ENTERING/LEAVING PARKED POSITION; 07 MAKING "U" TURN; 08 MERGING; 09 RAN OFF ROAD; 10 CHANGING LANES; 11 (11) GOING STRAIGHT; 12 OVERTAKING; 13 SLOWING/STOPPING; 14 AVOIDING; 99 OTHER

Darken the appropriate block in each category.

Continuation Sheet of report for additional space. If statements are taken, use PD 118 (Def./Suspect Statement), or PD 119 (Compl./Witness Statement). If accident occurred in a construction zone, describe type of construction.

98. NARRATIVE: Give a concise statement, in your own words, of the facts that are not covered in this report, or to clarify any items that are not satisfactorily explained. Use

DRIVER-2 REPORTS HE WAS GOING WEST IN THE 1400BLK. OF U ST NW WHEN VEHICLE 1- ALSO GOING WEST SIDESWIPED VEHICLE-2. VEHICLE-1 WAS LAST SEEN GOING NORTH IN THE 2000 BLK OF 15TH ST NW WITHOUT THE DRIVER IDENTIFYING HIM/HERSELF. NO LOOKOUT. UNK. IF VEHICLE-1 SUSTAINED ANY DAMAGE. DRIVER-2 ALSO REPORTS VEHICLE-1 HAD OLD DAMAGE TO THE RIGHT SIDE DOORS. VEHICLE-1 WAS TRAVELING AT A HIGH RATE OF SPEED. SEE PD 252 FOR ADDITIONAL INFORMATION.

BADGE NO. _____ UNIT _____ 71. REVIEWER _____ 72. DISTRIBUTION _____

WMATA-INV 014220
FOIA CONFIDENTIAL TREATMENT REQUESTED

INJURED TO HOSPITAL

43. Name of Injured Person	Where Taken (Hospital)	By Whom	Status	TEB Notified (Name)	Teletype Notified (Name)	Relative Notified (Name)
N/A			01 ☐ Admitted 02 ☐ Released			
			01 ☐ Admitted 02 ☐ Released			
			01 ☐ Admitted 02 ☐ Released			
			01 ☐ Admitted 02 ☐ Released			
			01 ☐ Admitted 02 ☐ Released			
			01 ☐ Admitted 02 ☐ Released			
			01 ☐ Admitted 02 ☐ Released			

VEHICLE NO. 1

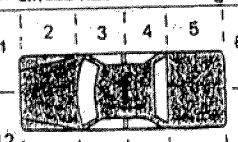
44. DIRECTION OF TRAVEL AND STREET (MUST BE SAME AS IN NARRATIVE/DIAGRAM): WB 1400 BLK U ST NW

46. VEHICLE WAS: 01 ☐ LEFT ON SCENE 02 ☐ TOWED BY 03 ☒ DRIVEN AWAY BY

NAME: UNK 0-1

47. LOCATION TOWED TO

45. CIRCLE ALL NUMBERS WHERE THERE IS DAMAGE



13 Hood
14 Roof
15 Trunk
16 Undercarriage
17 Overturned
18 Other *(Explain in Narrative)* UNK

48. SKID MARKS

TO IMPACT 0 AFTER IMPACT 0

VEHICLE NO. 2

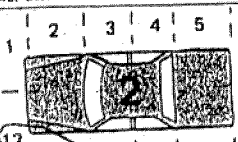
44. DIRECTION OF TRAVEL AND STREET (MUST BE SAME AS IN NARRATIVE/DIAGRAM): WB 1400 BLK U ST NW

46. VEHICLE WAS: 01 ☐ LEFT ON SCENE 02 ☐ TOWED BY 03 ☒ DRIVEN AWAY BY

NAME: DRIVER

47. LOCATION TOWED TO

45. CIRCLE ALL NUMBERS WHERE THERE IS DAMAGE



13 Hood
14 Roof
15 Trunk
16 Undercarriage
17 Overturned
18 Other *(Explain in Narrative)*

48. SKID MARKS

TO IMPACT 0 AFTER IMPACT 0

VEHICLE NO. 3

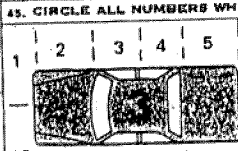
44. DIRECTION OF TRAVEL AND STREET (MUST BE SAME AS IN NARRATIVE/DIAGRAM)

46. VEHICLE WAS: 01 ☐ LEFT ON SCENE 02 ☐ TOWED BY 03 ☐ DRIVEN AWAY BY

NAME:

47. LOCATION TOWED TO

45. CIRCLE ALL NUMBERS WHERE THERE IS DAMAGE



13 Hood
14 Roof
15 Trunk
16 Undercarriage
17 Overturned
18 Other *(Explain in Narrative)*

48. SKID MARKS

TO IMPACT _____ AFTER IMPACT _____

VEHICLE NO. 4

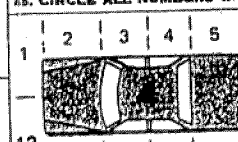
44. DIRECTION OF TRAVEL AND STREET (MUST BE SAME AS IN NARRATIVE/DIAGRAM)

46. VEHICLE WAS: 01 ☐ LEFT ON SCENE 02 ☐ TOWED BY 03 ☐ DRIVEN AWAY BY

NAME:

47. LOCATION TOWED TO

45. CIRCLE ALL NUMBERS WHERE THERE IS DAMAGE

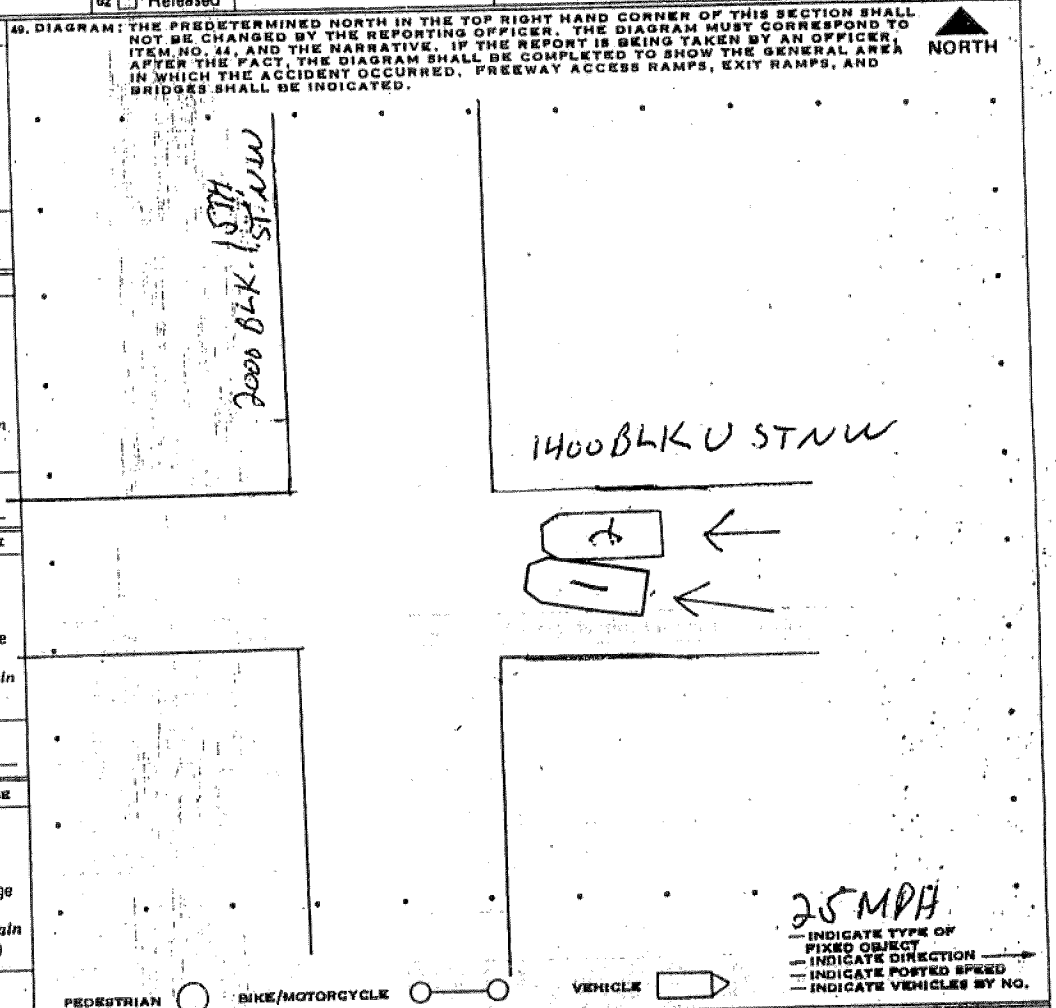


13 Hood
14 Roof
15 Trunk
16 Undercarriage
17 Overturned
18 Other *(Explain in Narrative)*

48. SKID MARKS

TO IMPACT _____ AFTER IMPACT _____

49. DIAGRAM: THE PREDETERMINED NORTH IN THE TOP RIGHT HAND CORNER OF THIS SECTION SHALL NOT BE CHANGED BY THE REPORTING OFFICER. THE DIAGRAM MUST CORRESPOND TO ITEM NO. 44, AND THE NARRATIVE. IF THE REPORT IS BEING TAKEN BY AN OFFICER AFTER THE FACT, THE DIAGRAM SHALL BE COMPLETED TO SHOW THE GENERAL AREA IN WHICH THE ACCIDENT OCCURRED. FREEWAY ACCESS RAMPS, EXIT RAMPS, AND BRIDGES SHALL BE INDICATED.



NOTE: This report is used for statistical analysis of vehicular accidents and the prevention thereof. The data given represents the opinion and conclusions of the reporting officer based on his/her judgement after considering all of the facts disclosed through his/her investigation of this accident.

Complaint No. 018-947

86-0047

WMATA-INV 014221

FOIA CONFIDENTIAL TREATMENT REQUESTED

Feb-14-08 12:08pm From-Violent Crimes Branch

LOG #209

Metropolitan Police Department

Incident-Based Event Report

Washington, D.C.

PART I - CLASSIFICATION OF EVENT

1 TYPE OF REPORT: ○ Offense ◉ Incident

FILL IN THE OVALS COMPLETELY — Right Mark ● — Wrong Marks ⊘ ⊗ ⊘

2 DATE AND TIME OF EVENT

	Start Date			Start Time		End Date			End Time		3 DATE OF REPORT			4 TIME OF REPORT		5 DISTRICT	6 SECTOR	7 BEAT	8 COMPLAINT NUMBER
	Month	Day	Year	Hour	Minute	Month	Day	Year	Hour	Minute	Month	Day	Year	Hour	Minute				
	Feb	13	05	02	49						Feb	13	05	06	15	3	O	305	07981

9 EVENT LOCATION ADDRESS: 2002 14TH ST NW — ○ Rear of ○ In front of ○ Along side of ◉ Inside of — ○ NW Corner ○ NE Corner ○ SW Corner ○ SE Corner

10 REPORT RECEIVED BY: ○ TRU ○ Walk-in ○ On-scene ◉ Radio run

11 IS RADIO RUN LOCATION AND EVENT LOCATION THE SAME? ○ Yes ◉ No

12 PROPERTY TYPE ○ Public ○ Private

13 EVENT NO. 1: INJURED PERSON TO HOSP.

14 EVENT NO. 2

15 EVENT NO. 3

16 FORCED ENTRY: ○ Yes ◉ No

17 POINT OF ENTRY: N/A

18 a. Method Used: UNK — b. Tools Used: UNK

19 WEATHER CONDITIONS: ○ Clear ○ Cloudy ○ Rain ○ Snow ○ Other ◉ Not applicable ○ Unknown

20 SUSPECTED HATE CRIME? ◉ None ○ Racial ○ Ethnic ○ Religious ○ Sexual Orientation ○ Other

21 SECURITY SYSTEM (Mark all that apply): ○ Alarm/Audio ○ Alarm/Silent ○ Camera ○ Dog ○ Dead bolt ○ Unlocked ○ Exterior lights ○ Interior lights ○ Fence ○ Guards ○ Neighborhood watch ○ Other ◉ Not applicable ○ Unknown

22 LOCATION TYPE (Mark only one):
○ Air/Bus/Train terminal ○ Alley ○ Bank/Savings & loan ○ Bus stop ○ Church/Synagogue/Temple ○ College/University ○ Commercial/office building ○ Construction site ○ Convenience store ○ Department/Discount store ○ D.C. government building ○ Doctors office/Hospital ○ Drug store ○ Federal/Government bldg ○ Field/Woods ○ Grocery/Supermarket ○ Hotel/Motel/Etc. ○ Jail/Prison ○ Lake/Waterway ○ Liquor store ○ Park-area ○ Parking lot/Parking garage ○ Public housing project ○ Public/Private school ○ Rental storage facility ○ Residence/Home ○ Restaurant ○ Service station ○ Sidewalk ○ Specialty store ○ Street/Highway/Road ◉ Tavern/Night club ○ Other ○ Not applicable ○ Unknown

23 DESIGNATED AREAS (Mark all that apply):
○ Victim's vehicle ○ Suspect's vehicle ○ Taxi-cab ○ Bus ○ Train/Metro/Amtrak/Etc ○ Hallway ○ Elevator ○ Stairwell ○ Basement/Laundry room ○ Apartment/Condominium ○ Single family dwelling ○ Hotel/Motel room ○ College/University dorm ○ Classroom ○ Office room ○ Vacant building/room ○ Customer area ○ Storage area ○ In public housing ○ Within 1 block of public housing ○ Within 1,000 ft of school ○ Other ○ Not applicable ○ Unknown

PART II - VICTIM INFORMATION

24 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1: JUANITA LAWRENCE

25 RELATED TO EVENT NO(S).

26 VICTIM TYPE: ◉ Individual ○ Business ○ Financial inst. ○ Government ○ Religious org. ○ Society/Public ○ Police officer ○ Other

27 DATE OF BIRTH: ○ Unknown ○ NA — Month: Jan; Day: 14; Year: 76

28 AGE RANGE: ○ 0-1 yr. ○ 2-12 yrs. ○ 13-17 yrs. ◉ 18-65 yrs. ○ Over 65

29 SEX: ○ Male ◉ Female ○ Unknown

30 HOME PHONE: (UNK

31 BUSINESS PHONE: (UNK

32 RACE/ETHNICITY (Mark all that apply): ○ American Indian/Alaskan Native ○ Asian/Pacific Islander ◉ Black ○ Chinese ○ Latino/Hispanic ○ Jamaican ○ Japanese ○ Korean ○ Vietnamese ○ White ○ Other ○ Unknown/Refused

33 HOME ADDRESS ◉ DC Resident ○ Non-DC Resident ○ Unknown: 2715 SHIPLEY TER. NW.

34 BUSINESS ADDRESS/SCHOOL: UNK

35 OCCUPATION: UNK

36 IS EVENT RELATED TO OCCUPATION? ○ Yes ◉ No ○ Unknown

37 ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1: UNK

38 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1

39 RELATED TO EVENT NO(S).

40 VICTIM TYPE: ○ Individual ○ Business ○ Financial inst. ○ Government ○ Religious org. ○ Society/Public ○ Police officer ○ Other

41 DATE OF BIRTH: ○ Unknown ○ NA

42 AGE RANGE: ○ 0-1 yr. ○ 2-12 yrs. ○ 13-17 yrs. ○ 18-65 yrs. ○ Over 65

43 SEX: ○ Male ○ Female ○ Unknown

44 HOME PHONE: ( )

45 BUSINESS PHONE: ( )

46 RACE/ETHNICITY (Mark all that apply): ○ American Indian/Alaskan Native ○ Asian/Pacific Islander ○ Black ○ Chinese ○ Latino/Hispanic ○ Jamaican ○ Japanese ○ Korean ○ Vietnamese ○ White ○ Other ○ Unknown/Refused

47 HOME ADDRESS ○ DC Resident ○ Non-DC Resident ○ Unknown

48 BUSINESS ADDRESS/SCHOOL

49 OCCUPATION

50 IS EVENT RELATED TO OCCUPATION? ○ Yes ○ No ○ Unknown

51 ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO.

52 STATUS: ○ Open ◉ Closed ○ Closed by arrest

53 REVIEWER:

54 DISTRIBUTION

FOIA CONFIDENTIAL TREATMENT REQUESTED

55 IS VICTIM #1 THE REPORTING PERSON? IF NO, ENTER THE NAME, ADDRESS AND PHONE NUMBER OF THE REPORTING PERSON. ○ Yes ● No
Name: CONWAY, J.
Address: 1620 V ST NW
Phone-Area Code: 202 673 [illegible]

56 DID THE REPORTED EVENT OCCUR AS A RESULT OF AN INTRA-FAMILY MATTER? ○ Yes ● No

56A WAS PD FORM 378A ISSUED? ○ Yes ● No

57 IS CPO/TPO OUTSTANDING? ○ Yes ● No ○ Unknown
IF YES, ENTER CPO/TPO #:

58 INJURIES Use the following codes to describe injuries. (Mark all that apply)
N = None Visible
M = Apparent Minor Injury
B = Apparent Broken Bones
O = Other Major Injury
I = Possible Internal Injury
G = Gunshot
L = Severe Laceration
T = Loss of Teeth
U = Unconscious

INJURED	NUMBER	INJURY CODE	DESCRIBE INJURY	WHERE TAKEN	BY WHOM	DCFD AMB.	DCFD AMB #	STATUS
● Victim ○ Suspect	● 2 3 4 5 / 6 7 8 9	N ● B O I / G L T U	HEAD/NECK	HOWARD U. HOSP.	MEDIC 4	● Yes ○ No	4	○ Admitted ○ Released
○ Victim ○ Suspect	1 2 3 4 5 / 6 7 8 9	N M B O I / G L T U				○ Yes ○ No		○ Admitted ○ Released
○ Victim ○ Suspect	1 2 3 4 5 / 6 7 8 9	N M B O I / G L T U				○ Yes ○ No		○ Admitted ○ Released
○ Victim ○ Suspect	1 2 3 4 5 / 6 7 8 9	N M B O I / G L T U				○ Yes ○ No		○ Admitted ○ Released

PART III - PROPERTY

59 Codes: S = Stolen, E = Evidence, R = Recovered, F = Found, V = Unlawfully entered vehicle from which items were stolen, D = Suspected drug type, L = Lost, P = Suspected proceeds of crime, O = Other

a. Property Book & Page No. b. Location of Property Book

Code	Description of Item(s)	Serial Number/ Operation ID No.	Model No.	Color	Size	Quantity	Comp. Value	Age	MPDC Value
	N/A								
							TOTAL VALUE		

60 VEHICLE INFORMATION Vehicle operated/used by: ○ Victim ○ Suspect ○ Victim's vehicle taken by suspect

Code	Year	Make	Model	Color	Body	Tag No./State/Year	VIN
						N/A	

PART IV - SUSPECT/MISSING PERSON INFORMATION (Use narrative if additional space is needed.)

61 #1 ○ Suspect ○ Missing
a. Race: ○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other
b. Sex: ○ Male ○ Unknown ○ Female
c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair
h. Complexion | i. Scars | j. Mustache | k. Facial Hair | l. Hat: N/A | m. Coat/Jacket | n. Pants | o. Blouse/Shirt | p. Perpetrator Suspected of Using: ○ Alcohol ○ Drug ○ Computer ○ N/A
q. Weapons Used in Offense (Mark all that apply)
Firearm: ○ Handgun ○ Shotgun ○ Other firearm ○ Revolver ○ Semi-automatic ○ Rifle ○ Automatic
Other: ○ Cutting instrument ○ Hands/Feet/Teeth ○ Other (specify) ○ Blunt object ○ None ○ Motor vehicle ○ Unknown
Color | Make | Model | Caliber

62 #2 ○ Suspect ○ Missing
a. Race: ○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other
b. Sex: ○ Male ○ Unknown ○ Female
c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair
h. Complexion | i. Scars | j. Mustache | k. Facial Hair | l. Hat | m. Coat/Jacket | n. Pants | o. Blouse/Shirt | p. Perpetrator Suspected of Using: ○ Alcohol ○ Drug ○ Computer ○ N/A
q. Weapons Used in Offense (Mark all that apply)
Firearm: ○ Handgun ○ Shotgun ○ Other firearm ○ Revolver ○ Semi-automatic ○ Rifle ○ Automatic
Other: ○ Cutting instrument ○ Hands/Feet/Teeth ○ Other (specify) ○ Blunt object ○ None ○ Motor vehicle ○ Unknown
Color | Make | Model | Caliber

63 #3 ○ Suspect ○ Missing
a. Race: ○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other
b. Sex: ○ Male ○ Unknown ○ Female
c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair
h. Complexion | i. Scars | j. Mustache | k. Facial Hair | l. Hat | m. Coat/Jacket | n. Pants | o. Blouse/Shirt | p. Perpetrator Suspected of Using: ○ Alcohol ○ Drug ○ Computer ○ N/A
q. Weapons Used in Offense (Mark all that apply)
Firearm: ○ Handgun ○ Shotgun ○ Other firearm ○ Revolver ○ Semi-automatic ○ Rifle ○ Automatic
Other: ○ Cutting instrument ○ Hands/Feet/Teeth ○ Other (specify) ○ Blunt object ○ None ○ Motor vehicle ○ Unknown
Color | Make | Model | Caliber

Information Processing Section AIFAFT

PART V - MISSING PERSONS

64 PROBABLE CAUSE OF ABSENCE AND DESTINATION

65 COMPLAINT NUMBER: 0189F

66 IF MISSING PERSON HAS RUN AWAY BEFORE, GIVE DATE AND WHERE LOCATED: N/A

67 CLASSIFICATION: Critical / Non-critical

68 CLASSIFIED BY:

69 PHYSICAL/MENTAL CONDITION (i.e., diabetic)

70 DESCRIBE ARTICLES OF JEWELRY WORN AND IDENTIFICATION CARRIED

71 NAME OF PARENT/GUARDIAN

72 ADDRESS OF PARENT/GUARDIAN

73 IF JUVENILE, ENTER MOTHER'S MAIDEN NAME

74 MISSING PERSON SECTION NOTIFIED (Name)

75 NARRATIVE Describe event and action taken. If additional narrative space is needed use PD Form 251-A

Item Number Continued

R-1 RESPONDED TO HOWARD UNIVERSITY HOSPITAL FOR AN ASSAULT REPORT C-1 WAS UNCOOPERATIVE HOWEVER R-1 WAS ABLE TO OBTAIN LIMITED INFORMATION FROM THE HOSPITAL STAFF

C-1 WAS INSIDE [illegible] AT 2[illegible] MEDIC #11 WAS FLAGGED DOWN BY AN UNKNOWN INDIVIDUAL STATING C-1 WAS INJURED

MEDIC #11 TRANSPORTED C-1 TO HOWARD UNIVERSITY HOSPITAL C-1 STATED TO MEDIC #11 THAT C-1 DID NOT KNOW HOW SHE INCURRED HER INJURIES

C-1 HAS MINOR LACERATIONS TO HER NECK AND FACE AREA AND COMPLAINT OF NECK AND BACK PAIN

76 EVIDENCE TECHNICIAN/CSES #

77 NAME OF INVESTIGATOR NOTIFIED: D22 EPIS

78 TELETYPE NOTIFIED (Name)

NOTIFICATION ALSO REQUIRED WHENEVER MISSING PERSON LOCATED

79 TELETYPE

80 REPORTING OFFICER'S SIGNATURE: [signature] ELEMENT: 30

BADGE NUMBER

81 OTHER POLICE AGENCY (Indicate if report prepared by officer other than MPD): USCP / USSS / METRO TRANSIT / OTHER

82 SECOND OFFICER'S NAME ELEMENT

BADGE NUMBER

83 SIGNATURE OF SUPERVISOR: [signature] ELEMENT: 3

BADGE NUMBER

CONWAY

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014224

Metropolitan Police Department

Incident-Based Event Report

Washington, D.C.

PART I - CLASSIFICATION OF EVENT

TYPE OF REPORT: Offense / Incident

FILL IN THE OVALS COMPLETELY. Right Mark. Wrong Marks.

2 DATE AND TIME OF EVENT

Start Date Month	Day	Year	Start Time Hour	Minute	End Date Month	Day	Year	End Time Hour	Minute
Oct	17	04	01	30					

3 DATE OF REPORT

Month	Day	Year
Oct	17	04

4 TIME OF REPORT

Hour	Minute
02	30

5 DISTRICT: 1

6 SECTOR: J

7 BEAT: 304

8 COMPLAINT NUMBER: 14321 18

EVENT LOCATION ADDRESS: 1000 14th ST NW

Rear of / In front of / Along side of / Inside of — NW Corner / NE Corner / SW Corner / SE Corner

10 REPORT RECEIVED BY: TRU / Walk-in / On-scene / Radio run

11 IS RADIO RUN LOCATION AND EVENT LOCATION THE SAME? Yes / No (N/A)

12 PROPERTY TYPE: Public / Private

EVENT NO. 1: Assault on Police Officer

14 EVENT NO. 2: Disorderly conduct loud & boister

15 EVENT NO. 3: Destruction of property

16 FORCED ENTRY: Yes / No

17 POINT OF ENTRY: N/A

18 a. Method Used: N/A

b. Tools Used: N/A

19 WEATHER CONDITIONS: Clear / Cloudy / Rain / Snow / Other / Not applicable / Unknown

SUSPECTED HATE CRIME? None / Ethnic / Religious / Sexual Orientation / Other

21 SECURITY SYSTEM (Mark all that apply): Alarm/Audio / Alarm/Silent / Camera / Dog / Dead bolt / Unlocked / Exterior lights / Interior lights / Fence / Guard / Neighborhood watch / Other / Not applicable / Unknown

LOCATION TYPE (Mark only one): Air/Bus/Train terminal; Bank/Savings & loan; Bus stop; Church/Synagogue/Temple; College/University; Commercial office building; Construction site; Convenience store; Department/Discount store; D.C. government building; Doctor's office/Hospital; Drug store; Federal/Government bldg.; Field/Woods; Grocery/Supermarket; Hotel/Motel/Etc.; Jail/Prison; Lake/Waterway; Liquor store; Park area; Parking lot/Parking garage; Public housing project; Public/Private school; Rental storage facility; Residence/Home; Restaurant; Service station; Sidewalk; Specialty store; Street/Highway/Road; Tavern/Night club; Other; Not applicable; Unknown

23 DESIGNATED AREAS (Mark all that apply): Victim's vehicle; Suspect's vehicle; Taxi-cab; Bus; Train/Metro/Amtrak/Etc.; Hallway; Elevator; Stairwell; Basement/Laundry room; Apartment/Condo unit; Single family dwelling; Hotel/Motel room; College/University dorm; Classroom; Office room; Vacant building/room; Customer area; Storage area; In public housing; W/in 1 block of public housing; W/in 1,000 ft. of school; Other; Not applicable; Unknown

PART II - VICTIM INFORMATION

NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1: G. Moye, Anthony

25 RELATED TO EVENT NO(S).: 2

VICTIM TYPE: Individual / Business / Financial inst. / Government / Religious org. / Society/Public / Police officer / Other

DATE OF BIRTH: Unknown / NA

28 AGE RANGE: 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

29 SEX: Male / Female / Unknown

30 HOME PHONE: ( )

31 BUSINESS PHONE: ( )

32 RACE/ETHNICITY (Mark all that apply): American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

HOME ADDRESS: DC Resident / Non-DC Resident / Unknown

BUSINESS ADDRESS/SCHOOL:

OCCUPATION: Police Officer

36 IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1:

38 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1: DC Government

39 RELATED TO EVENT NO(S).: 3

40 VICTIM TYPE: Individual / Business / Financial inst. / Government / Religious org. / Society/Public / Police officer / Other

41 DATE OF BIRTH: Unknown / NA (N/A)

42 AGE RANGE: 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

43 SEX: Male / Female / Unknown

44 HOME PHONE: N/A

45 BUSINESS PHONE: ( )

46 RACE/ETHNICITY (Mark all that apply): American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

47 HOME ADDRESS: DC Resident / Non-DC Resident / Unknown — N/A

48 BUSINESS ADDRESS/SCHOOL:

49 OCCUPATION: N/A

50 IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

51 ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1:

STATUS: Open / Closed / Closed by arrest, attach PD-252

53 REVIEWER:

54 DISTRIBUTION:

FOIA CONFIDENTIAL TREATMENT REQUESTED

REPORTING PERSON? IF NO, ENTER THE NAME, ADDRESS AND PHONE NUMBER OF THE REPORTING PERSON.

Name: OFC Hall, Sean Phone-Area Code: 2-576-6245

Address: 6001 Georgia Ave NW

○ Yes ● No

DID THE REPORTED EVENT OCCUR AS A RESULT OF AN INTRA-FAMILY MATTER? ○ Yes ● No

56A WAS PD FORM 378A ISSUED? ○ Yes ● No

57 IS CPO/TPO OUTSTANDING? ○ Yes ● No ○ Unknown IF YES, ENTER CPO/TPO #:

INJURIES Use the following codes to describe injuries. (Mark all that apply)

N = None Visible; M = Apparent Minor Injury; B = Apparent Broken Bones; O = Other Major Injury; I = Possible Internal Injury; G = Gunshot; L = Severe Laceration; T = Loss of Teeth; U = Unconscious

INJURED	NUMBER	INJURY CODE	DESCRIBE INJURY	WHERE TAKEN	BY WHOM	DCFD AMB.	DCFD AMB. #	STATUS
Victim	① ② ③ ④ ⑤	N M B O I	N/A			○ Yes ○ No		○ Admitted ○ Released
Suspect	⑥ ⑦ ⑧ ⑨	G L T U						
Victim	① ● ③ ④ ⑤	N ● B O I	scratch on middle finger	none	N/A	○ Yes ● No	N/A	○ Admitted ○ Released
Suspect	⑥ ⑦ ⑧ ⑨	G L T U						
Victim	① ② ③ ④ ⑤	N M B O I				○ Yes ○ No		○ Admitted ○ Released
Suspect	⑥ ⑦ ⑧ ⑨	G L T U						
Victim	① ② ③ ④ ⑤	N M B O I				○ Yes ○ No		○ Admitted ○ Released
Suspect	⑥ ⑦ ⑧ ⑨	G L T U						

PART III - PROPERTY

Codes: S = Stolen; E = Evidence; R = Recovered; F = Found; I = Impounded; V = Vehicle from which theft occurred; D = Alleged drug type; L = Lost; P = Suspected proceeds of crime; O = Other

a. Property Book & Page No. b. Location of Property Book

Code	Description of Item(s)	Serial Number/ Operation ID No.	Model No.	Color	Size	Quantity	Comp. Value	Age	MPDC Value
O	Right rear window			clear		1	$300.00	4	$300
								TOTAL	$300.00

VEHICLE INFORMATION

Vehicle operated/used by: ● Victim ○ Suspect ○ Victim's vehicle taken by suspect

Code	Year	Make	Model	Color	Body	Tag No./State/Year	VIN
E	00	Ford	conv	white	4D	GT2791/DC04	2FAFP71W2YX104655

PART IV - SUSPECT/MISSING PERSON INFORMATION (Use narrative if additional space is needed.)

61 #1 ● Suspect ○ Missing

a. Race: ○ Asian ○ White ○ Unknown ● Black ○ Latino/Hispanic ○ Other

b. Sex: ○ Male ○ Unknown ● Female

c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
25	5'07	160	Brn	Blk

h. Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
Med		N	O	N	E	none	Gray	mlc ● Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: ○ Handgun ○ Shotgun ○ Other firearm ○ Revolver ○ Semi-automatic ○ Rifle ○ Automatic

Other: ○ Cutting instrument ○ Hands/Feet/Teeth ○ Other (specify) ○ Blunt object ○ None ○ Motor vehicle ○ Unknown

Color	Make	Model	Caliber

62 #2 ○ Suspect ○ Missing

a. Race: ○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other

b. Sex: ○ Male ○ Unknown ○ Female

c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair

h. Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
								○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: ○ Handgun ○ Shotgun ○ Other firearm ○ Revolver ○ Semi-automatic ○ Rifle ○ Automatic

Other: ○ Cutting instrument ○ Hands/Feet/Teeth ○ Other (specify) ○ Blunt object ○ None ○ Motor vehicle ○ Unknown

Color	Make	Model	Caliber

63 #3 ○ Suspect ○ Missing

a. Race: ○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other

b. Sex: ○ Male ○ Unknown ○ Female

c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair

h. Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
								○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: ○ Handgun ○ Shotgun ○ Other firearm ○ Revolver ○ Semi-automatic ○ Rifle ○ Automatic

Other: ○ Cutting instrument ○ Hands/Feet/Teeth ○ Other (specify) ○ Blunt object ○ None ○ Motor vehicle ○ Unknown

Color	Make	Model	Caliber

*Value of vehicles to be entered by Information Processing section

CCN 143-21

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014226

...NG PERSONS

...BABLE CAUSE OF ABSENCE AND DESTINATION

65 COMPLAINT NUMBER: 14321[illegible]

...ISSING PERSON HAS RUN AWAY BEFORE, GIVE DATE AND WHERE LOCATED: N/A

67 CLASSIFICATION: ○ Critical ○ Non-critical

68 CLASSIFIED BY:

PHYSICAL/MENTAL CONDITION (i.e., diabetic)

70 DESCRIBE ARTICLES OF JEWELRY WORN AND IDENTIFICATION CARRIED

71 NAME OF PARENT/GUARDIAN

ADDRESS OF PARENT/GUARDIAN

73 IF JUVENILE, ENTER MOTHER'S MAIDEN NAME

74 MISSING PERSON SECTION NOTIFIED (Name)

...NARRATIVE Describe event and action taken. If additional narrative space is needed, use PD Form 251-A.

...lumber ...inued

On the listed date, at the listed time and location C-1 reported that he observed S-1 being loud and boister with ...reported that he observed S-1 being loud and boister with the club's security. C-1 advised S-1 to leave the location and S-1 refused. At which time S-1 started punching C-1 at about the face and body S-1 was placed under arrest by C-1 and W-1 for assault on the police officer and disorderly loud and boister.

When S-1 was put inside the transport vehicle, she started yelling, cursing at C-1. At which time S-1 kicked out the back window of the vehicle.

S-1 was transported to 3D for processing by wagon #32

C-1 Substain a scratch on right middle finger

EVIDENCE TECHNICIAN/CSES #

77 NAME OF INVESTIGATOR NOTIFIED

78 TELETYPE NOTIFIED (Name)

NOTIFICATION ALSO REQUIRED WHENEVER MISSING PERSON LOCATED

79 TELETYPE #

REPORTING OFFICER'S SIGNATURE: Sam Hill ELEMENT: 440

BADGE NUMBER: 5[illegible]

81 OTHER POLICE AGENCY (Indicate if report prepared by officer other than MPD) ○ USCP ○ USSS ○ METRO TRANSIT ○ OTHER

82 SECOND OFFICER'S NAME ELEMENT

BADGE NUMBER

83 SIGNATURE OF SUPERVISOR: Moye, A. ELEMENT: 20

BADGE NUMBER: 5[illegible]

HILL S

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014227

Johnson P.D. Washington, D.C. Y2261 Johnson P.D. Washington, D.C.

ropolitan Police
partment

Incident-Based Event Report

SSIFICATION OF EVENT

2 DATE AND TIME OF EVENT

Start Date Month	Day	Year	Start Time Hour	Minute	End Date Month	Day	Year	End Time Hour	Minute
Jan	17	04	00	30					

3 DATE OF REPORT Month: Jan; Day: 17; Year: 04

4 TIME OF REPORT Hour: 03; Minute: 00

5 DISTRICT 1

6 SECTOR

7 BEAT 305

8 COMPLAINT NUMBER 1290179

EVENT LOCATION ADDRESS 14th ST. N.W.

Rear of / In front of / Along side of / Inside of

NW Corner / NE Corner / SW Corner / SE Corner

10 REPORT RECEIVED BY TRU / Walk-in / On-scene / Radio run

11 IS RADIO RUN LOCATION AND EVENT LOCATION THE SAME? Yes / No

12 PROPERTY TYPE Public / Private

ston D.C.

EVENT NO. 1 I.K. (Unknown object)

14 EVENT NO. 2

15 EVENT NO. 3

ENTRY **17 POINT OF ENTRY** NONE

16 a. Method Used NONE

b. Tools Used NONE

19 WEATHER CONDITIONS Clear / Cloudy / Rain / Snow / Other / Not applicable / Unknown

USPECTED HATE CRIME? Ethnic / Religious / Sexual Orientation / Other

21 SECURITY SYSTEM (Mark all that apply) Alarm/Audio / Alarm/Silent / Camera / Dog / Dead bolt / Unlocked / Exterior lights / Interior lights / Fence / Guard / Neighborhood watch / Other / Not applicable / Unknown

ON TYPE (Mark only one)
train terminal
vings & loan
Synagogue/Temple
University
rcial office building
ction site
ience store
ment/Discount store
vernment building
Doctor's office/Hospital
Drug store
Federal/Government bldg.
Field/Woods
Grocery/Supermarket
Hotel/Motel/Etc.
Jail/Prison
Lake/Waterway
Liquor store
Park area
Parking lot/Parking garage
Public housing project
Public/Private school
Rental storage facility
Residence/Home
Restaurant
Service station
Sidewalk
Specialty store
Street/Highway/Road
Tavern/Night club
Other
Not applicable
Unknown

23 DESIGNATED AREAS (Mark all that apply)
Victim's vehicle / Suspect's vehicle / Taxi-cab / Bus / Train/Metro/Amtrak/Etc. / Hallway / Elevator / Stairwell / Basement/Laundry room
Apartment/Condo unit / Single family dwelling / Hotel/Motel room / College/University dorm / Classroom / Office room / Vacant building/room / Customer area / Storage area
In public housing / W/in 1 block of public housing / W/in 1,000 ft. of school / Other / Not applicable / Unknown

- VICTIM INFORMATION

OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1 ullock Terry Ladonica

25 RELATED TO EVENT NO(S).

VICTIM TYPE
ividual / siness / Financial inst. / Government / Religious org. / Society/Public / Police officer / Other

OF BIRTH wn / NA / ay / Year 67

28 AGE RANGE 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

29 SEX Male / Female / Un-known

30 HOME PHONE ( ) UNKNOWN

31 BUSINESS PHONE ( ) UNKNOWN

32 RACE/ETHNICITY (Mark all that apply)
American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

ME ADDRESS DC Resident / Non-DC Resident / Unknown
UNKNOWN

BUSINESS ADDRESS/SCHOOL
UNKNOWN

OCCUPATION
UNKNOWN

35 IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1
NONE

38 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1

39 RELATED TO EVENT NO(S).

40 VICTIM TYPE Individual / Business / Financial inst. / Government / Religious org. / Society/Public / Police officer / Other

41 DATE OF BIRTH Unknown / NA; Month / Day / Year

42 AGE RANGE 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

43 SEX Male / Female / Un-known

44 HOME PHONE ( )

45 BUSINESS PHONE ( )

46 RACE/ETHNICITY (Mark all that apply)
American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

47 HOME ADDRESS DC Resident / Non-DC Resident / Unknown

48 BUSINESS ADDRESS/SCHOOL

49 OCCUPATION

50 IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

51 ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

Closed by arrest, **53 REVIEWER** **54 DISTRIBUTION**

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014228

IS VICTIM # ONE REPORTING PERSON? IF NO, ENTER THE NAME, ADDRESS AND PHONE NUMBER OF THE REPORTING PERSON. ○ Yes ● No

Name: W-1 (see 252) Phone-Area Code: See 252

Address: See 252

55 DID THE REPORTED EVENT OCCUR AS A RESULT OF AN INTRA-FAMILY MATTER? ○ Yes ● No

55A WAS PD FORM 378A ISSUED? ○ Yes ● No

57 IS CPO/TPO OUTSTANDING? ○ Yes ● No ○ Unknown IF YES, ENTER CPO/TPO #:

58 INJURIES Use the following codes to describe injuries. (Mark all that apply)

N = None Visible; M = Apparent Minor Injury; B = Apparent Broken Bones; O = Other Major Injury; I = Possible Internal Injury; G = Gunshot; L = Severe Laceration; T = Loss of Teeth; U = Unconscious

INJURED	NUMBER	INJURY CODE	DESCRIBE INJURY	WHERE TAKEN	BY WHOM	DCFD AMB.	DCFD AMB. #	STATUS
● Victim	● 1 2 3 4 5	N M B ● I	Puncture wound left side of neck.	Howard Hosp	W-1	○ Yes ● No	NONE	● Admitted ○ Released
○ Suspect	6 7 8 9	G L T U						
○ Victim	1 2 3 4 5	N M B O I				○ Yes ○ No		○ Admitted ○ Released
○ Suspect	6 7 8 9	G L T U						
○ Victim	1 2 3 4 5	N M B O I				○ Yes ○ No		○ Admitted ○ Released
○ Suspect	6 7 8 9	G L T U						
○ Victim	1 2 3 4 5	N M B O I				○ Yes ○ No		○ Admitted ○ Released
○ Suspect	6 7 8 9	G L T U						

PART III - PROPERTY

59 Codes: S = Stolen; E = Evidence; R = Recovered; F = Found; I = Impounded; V = Vehicle from which theft occurred; D = Alleged drug type; L = Lost; P = Suspected proceeds of crime; O = Other

a. Property Book & Page No.: — NONE —

b. Location of Property Book: — NONE —

Code	Description of Item(s)	Serial Number/ Operation ID No.	Model No.	Color	Size	Quantity	Comp. Value	Age	MPDC Value
		NONE							

TOTAL

60 VEHICLE INFORMATION Vehicle operated/used by: ○ Victim ○ Suspect ○ Victim's vehicle taken by suspect

Code	Year	Make	Model	Color	Body	Tag No./State/Year	VIN
						NONE	

PART IV - SUSPECT/MISSING PERSON INFORMATION (Use narrative if additional space is needed.)

61 #1 ● Suspect ○ Missing

a. Race: ○ Asian ○ White ● Unknown ○ Black ○ Latino/Hispanic ○ Other

b. Sex: ● Male ○ Unknown ○ Female

c. Exact Age or Range: UNKNOWN

d. Height | e. Weight | f. Eyes | g. Hair

h. Complexion | i. Scars | j. Mustache | k. Facial Hair: UNKNOWN | l. Hat | m. Coat/Jacket | n. Pants | o. Blouse/Shirt

p. Perpetrator Suspected of Using: ○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: ○ Handgun ○ Shotgun ○ Other firearm ○ Revolver ○ Semi-automatic ○ Rifle ○ Automatic

Other: ○ Cutting instrument ○ Hands/Feet/Teeth ○ Other (specify) ○ Blunt object ○ None ○ Motor vehicle ● Unknown

Color | Make | Model | Caliber

62 #2 ○ Suspect ○ Missing

a. Race: ○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other

b. Sex: ○ Male ○ Unknown ○ Female

c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair

h. Complexion | i. Scars | j. Mustache | k. Facial Hair | l. Hat: NONE | m. Coat/Jacket | n. Pants | o. Blouse/Shirt

p. Perpetrator Suspected of Using: ○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: ○ Handgun ○ Shotgun ○ Other firearm ○ Revolver ○ Semi-automatic ○ Rifle ○ Automatic

Other: ○ Cutting instrument ○ Hands/Feet/Teeth ○ Other (specify) ○ Blunt object ○ None ○ Motor vehicle ○ Unknown

Color | Make | Model | Caliber

63 #3 ○ Suspect ○ Missing

a. Race: ○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other

b. Sex: ○ Male ○ Unknown ○ Female

c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair

Complexion | i. Scars | j. Mustache | k. Facial Hair | l. Hat: NONE | m. Coat/Jacket | n. Pants | o. Blouse/Shirt

p. Perpetrator Suspected of Using: ○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: ○ Handgun ○ Shotgun ○ Other firearm ○ Revolver ○ Semi-automatic ○ Rifle ○ Automatic

Other: ○ Cutting instrument ○ Hands/Feet/Teeth ○ Other (specify) ○ Blunt object ○ None ○ Motor vehicle ○ Unknown

Color | Make | Model | Caliber

*Value of vehicles to be entered by Information Processing section

CCN 129019

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014229

MISSING PERSONS

BABLE CAUSE OF ABSENCE AND DESTINATION

65 COMPLAINT NUMBER: 129019

SSING PERSON HAS RUN AWAY BEFORE, GIVE DATE AND WHERE LOCATED: NONE

67 CLASSIFICATION: ◯ Critical ◯ Non-critical

68 CLASSIFIED BY:

PHYSICAL/MENTAL CONDITION (i.e., diabetic)

70 DESCRIBE ARTICLES OF JEWELRY WORN AND IDENTIFICATION CARRIED

71 NAME OF PARENT/GUARDIAN

ADDRESS OF PARENT/GUARDIAN

73 IF JUVENILE, ENTER MOTHER'S MAIDEN NAME

74 MISSING PERSON SECTION NOTIFIED (Name)

ARRATIVE Describe event and action taken. If additional narrative space is needed, use PD Form 251-A.

umber nued

W-1 reports that on the listed date and location C-1 was stabbed in the neck with an unknown object.
W-1 transported C-1 to Howard Hospital. C-1 was treated by Dr. Daniels.
C-1 was admitted.

NOTIFICATION ALSO REQUIRED WHENEVER MISSING PERSON LOCATED

79 TELETYPE #

6 EVIDENCE TECHNICIAN/CSES #: Mobile Crime Griffin

77 NAME OF INVESTIGATOR NOTIFIED: Det. Partman VCB

78 TELETYPE NOTIFIED (Name): Scott 418

80 REPORTING OFFICER'S SIGNATURE: Paul O. Dolan — ELEMENT: 3D

BADGE NUMBER

81 OTHER POLICE AGENCY (Indicate if report prepared by officer other than MPD): ◯ USCP ◯ USSS ◯ METRO TRANSIT ◯ OTHER

82 SECOND OFFICER'S NAME: [signature] — ELEMENT: VCB

BADGE NUMBER

83 SIGNATURE OF SUPERVISOR: Sgt. [signature] — ELEMENT: 3D

BADGE NUMBER

FOIA CONFIDENTIAL TREATMENT REQUESTED

(Additional Victims or Suspects)

85 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1 — **85** RELATED TO EVENT NO(S). ① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩

VICTIM TYPE: ◯ Individual ◯ Business ◯ Financial inst. ◯ Government ◯ Religious org. ◯ Society/Public ◯ Police officer ◯ Other

DATE OF BIRTH ◯ Unknown ◯ NA

	Day	Year
Jan		
Feb		
Mar	0 0	0 0
Apr	1 1	1 1
May	2 2	2 2
Jun	3 3	3 3
Jul	4 4	4
Aug	5 5	5
Sep	6 6	6
Oct	7 7	7
Nov	8 8	8
Dec	9 9	9

88 AGE RANGE: ◯ 0-1 yr. ◯ 2-12 yrs. ◯ 13-17 yrs. ◯ 18-65 yrs. ◯ Over 65

89 SEX: ◯ Male ◯ Female ◯ Unknown

90 HOME PHONE ( )

91 BUSINESS PHONE ( )

92 RACE/ETHNICITY (Mark all that apply): ◯ American Indian/Alaskan Native ◯ Asian/Pacific Islander ◯ Black ◯ Chinese ◯ Latino/Hispanic ◯ Jamaican ◯ Japanese ◯ Korean ◯ Vietnamese ◯ White ◯ Other ◯ Unknown/Refused

HOME ADDRESS ◯ DC Resident ◯ Non-DC Resident ◯ Unknown

BUSINESS ADDRESS/SCHOOL

OCCUPATION

96 IS EVENT RELATED TO OCCUPATION? ◯ Yes ◯ No ◯ Unknown

ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

98 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1 — **99** RELATED TO EVENT NO(S). ① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩

100 VICTIM TYPE: ◯ Individual ◯ Business ◯ Financial inst. ◯ Government ◯ Religious org. ◯ Society/Public ◯ Police officer ◯ Other

101 DATE OF BIRTH ◯ Unknown ◯ NA

Month	Day	Year
Jan		
Feb		
Mar	0 0	0 0
Apr	1 1	1 1
May	2 2	2 2
Jun	3 3	3 3
Jul	4 4	4 4
Aug	5 5	5 5
Sep	6 6	6 6
Oct	7 7	7 7
Nov	8 8	8 8
Dec	9 9	9 9

102 AGE RANGE: ◯ 0-1 yr. ◯ 2-12 yrs. ◯ 13-17 yrs. ◯ 18-65 yrs. ◯ Over 65

103 SEX: ◯ Male ◯ Female ◯ Unknown

104 HOME PHONE ( )

105 BUSINESS PHONE ( )

106 RACE/ETHNICITY (Mark all that apply): ◯ American Indian/Alaskan Native ◯ Asian/Pacific Islander ◯ Black ◯ Chinese ◯ Latino/Hispanic ◯ Jamaican ◯ Japanese ◯ Korean ◯ Vietnamese ◯ White ◯ Other ◯ Unknown/Refused

107 HOME ADDRESS ◯ DC Resident ◯ Non-DC Resident ◯ Unknown

108 BUSINESS ADDRESS/SCHOOL

109 OCCUPATION

110 IS EVENT RELATED TO OCCUPATION? ◯ Yes ◯ No ◯ Unknown

111 ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

#1 ◯ Suspect ◯ Missing

a. Race: ◯ Asian ◯ White ◯ Unknown ◯ Black ◯ Latino/Hispanic ◯ Other

b. Sex: ◯ Male ◯ Unknown ◯ Female

c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair

plexion | i. Scars | j. Mustache | k. Facial Hair | l. Hat | m. Coat/Jacket | n. Pants | o. Blouse/Shirt

p. Perpetrator Suspected of Using: ◯ Alcohol ◯ Drugs ◯ Computer ◯ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: ndgun ◯ Shotgun ◯ Other volver ◯ Semi-automatic firearm le ◯ Automatic

Other: ◯ Cutting instrument ◯ Hands/Feet/Teeth ◯ Other (specify) ◯ Blunt object ◯ None ◯ Motor vehicle ◯ Unknown

Color | Make | Model | Caliber

#2 ◯ Suspect ◯ Missing

a. Race: ◯ Asian ◯ White ◯ Unknown ◯ Black ◯ Latino/Hispanic ◯ Other

b. Sex: ◯ Male ◯ Unknown ◯ Female

c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair

plexion | i. Scars | j. Mustache | k. Facial Hair | l. Hat | m. Coat/Jacket | n. Pants | o. Blouse/Shirt

p. Perpetrator Suspected of Using: ◯ Alcohol ◯ Drugs ◯ Computer ◯ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: ndgun ◯ Shotgun ◯ Other volver ◯ Semi-automatic firearm e ◯ Automatic

Other: ◯ Cutting instrument ◯ Hands/Feet/Teeth ◯ Other (specify) ◯ Blunt object ◯ None ◯ Motor vehicle ◯ Unknown

Color | Make | Model | Caliber

#3 ◯ Suspect ◯ Missing

a. Race: ◯ Asian ◯ White ◯ Unknown ◯ Black ◯ Latino/Hispanic ◯ Other

b. Sex: ◯ Male ◯ Unknown ◯ Female

c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair

lexion | i. Scars | j. Mustache | k. Facial Hair | l. Hat | m. Coat/Jacket | n. Pants | o. Blouse/Shirt

p. Perpetrator Suspected of Using: ◯ Alcohol ◯ Drugs ◯ Computer ◯ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: dgun ◯ Shotgun ◯ Other olver ◯ Semi-automatic firearm ◯ Automatic

Other: ◯ Cutting instrument ◯ Hands/Feet/Teeth ◯ Other (specify) ◯ Blunt object ◯ None ◯ Motor vehicle ◯ Unknown

Color | Make | Model | Caliber

[redacted] [redacted] CCN 129 019

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014231

Washington, D.C.

Incident-Based Event Report

Washington, D.C. Metropolitan Police Department

CLASSIFICATION OF EVENT

2 DATE AND TIME OF EVENT

Start Date	Start Time	End Date	End Time
Month: Aug	Day: 09	Year: 04	Hour: 03	Minute: 15	Month: Aug	Day: 09	Year: 04	Hour: 03	Minute: 17

3 DATE OF REPORT: Month: Aug | Day: 09 | Year: 04

4 TIME OF REPORT: Hour: 03 | Minute: 25

5 DISTRICT: 1

6 SECTOR:

7 BEAT: 305

8 COMPLAINT NUMBER: 11028604

EVENT LOCATION ADDRESS: block of 14th ST NW

Rear of / In front of / Along side of / Inside of

NW Corner / NE Corner / SW Corner / SE Corner

10 REPORT RECEIVED BY: TRU / Walk-in / On-scene / Radio run

11 IS RADIO RUN LOCATION AND EVENT LOCATION THE SAME? Yes / No

12 PROPERTY TYPE: Public / Private

EVENT NO. 1: 0310

Hold Up Gun

14 EVENT NO. 2:

15 EVENT NO. 3:

ENTRY

17 POINT OF ENTRY: NA

18 a. Method Used: NA

b. Tools Used: NA

19 WEATHER CONDITIONS: Clear / Cloudy / Rain / Snow / Other / Not applicable / Unknown

SUSPECTED HATE CRIME? Ethnic / Religious / Sexual Orientation / Other

21 SECURITY SYSTEM (Mark all that apply): Alarm/Audio / Alarm/Silent / Camera / Dog / Dead bolt / Unlocked / Exterior lights / Interior lights / Fence / Guard / Neighborhood watch / Other / Not applicable / Unknown

IN TYPE (Mark only one):
ain terminal
rings & loan
ynagogue/Temple
University
cial office building
tion site
ence store
ment/Discount store
ernment building
Doctor's office/Hospital
Drug store
Federal/Government bldg.
Field/Woods
Grocery/Supermarket
Hotel/Motel/Etc.
Jail/Prison
Lake/Waterway
Liquor store
Park area
Parking lot/Parking garage
Public housing project
Public/Private school
Rental storage facility
Residence/Home
Restaurant
Service station
Sidewalk
Specialty store
Street/Highway/Road
Tavern/Night club
Other
Not applicable
Unknown

23 DESIGNATED AREAS (Mark all that apply):
Victim's vehicle / Suspect's vehicle / Taxi-cab / Bus / Train/Metro/Amtrak/Etc. / Hallway / Elevator / Stairwell / Basement/Laundry room
Apartment/Condo unit / Single family dwelling / Hotel/Motel room / College/University dorm / Classroom / Office room / Vacant building/room / Customer area / Storage area
In public housing / W/in 1 block of public housing / W/in 1,000 ft. of school / Other / Not applicable / Unknown

VICTIM INFORMATION

OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1: BENA, THOMAS

25 RELATED TO EVENT NO(S).

VICTIM TYPE: Individual / Financial inst. / Religious org. / Police officer / Business / Government / Society/Public / Other

OF BIRTH: Unknown / NA — Month: Jan | Day: 18 | Year: 71

28 AGE RANGE: 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

29 SEX: Male / Female / Unknown

30 HOME PHONE: (703) 370 2111

31 BUSINESS PHONE: ( ) NONE

32 RACE/ETHNICITY (Mark all that apply): American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

OME ADDRESS: DC Resident / Non-DC Resident / Unknown

3 Yoakum Pkwy #617
Alexandria, VA

BUSINESS ADDRESS/SCHOOL: NONE

OCCUPATION: Musician

36 IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1: Cell 202 258 3249

STATUS: Open / Closed / Suspended / Closed by arrest, attach PD-252

53 REVIEWER:

-VICTIM/MISSING PERSON INFORMATION

38 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1: HUSSIN, BEHAEM

39 RELATED TO EVENT NO(S).

40 VICTIM TYPE: Individual / Business / Financial inst. / Government / Religious org. / Society/Public / Police officer / Other

41 DATE OF BIRTH: Unknown / NA — Month: Aug | Day: 19 | Year: 74

42 AGE RANGE: 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

43 SEX: Male / Female / Unknown

44 HOME PHONE: (703) 566 0831

45 BUSINESS PHONE: ( ) NONE

46 RACE/ETHNICITY (Mark all that apply): American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

47 HOME ADDRESS: DC Resident / Non-DC Resident / Unknown

5510 North Morgan ST # 204
Alexandria, VA

48 BUSINESS ADDRESS/SCHOOL: NONE

49 OCCUPATION: Musician

50 IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

51 ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1: Cell 571 338 7942

54 DISTRIBUTION

Printed in U.S.A.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014232

VICTIM #1 THE REPORTING PERSON? IF NO, ENTER THE NAME, ADDRESS AND PHONE NUMBER OF THE REPORTING PERSON. (●) Yes ( ) No

Name: _____ Phone-Area Code: _____

Address: _____

55 DID THE REPORTED EVENT OCCUR AS A RESULT OF AN INTRA-FAMILY MATTER?	56A WAS PD FORM 378A ISSUED?	57 IS CPO/TPO OUTSTANDING?	IF YES, ENTER CPO/TPO #:
( ) Yes (●) No	( ) Yes (●) No	( ) Yes (●) No ( ) Unknown	

INJURIES Use the following codes to describe injuries. (Mark all that apply)
N = None Visible; M = Apparent Minor Injury; B = Apparent Broken Bones; O = Other Major Injury; I = Possible Internal Injury; G = Gunshot; L = Severe Laceration; T = Loss of Teeth; U = Unconscious

INJURED	NUMBER	INJURY CODE	DESCRIBE INJURY	WHERE TAKEN	BY WHOM	DCFD AMB.	DCFD AMB. #	STATUS
( ) Victim ( ) Suspect	(1)(2)(3)(4)(5) (6)(7)(8)(9)	(N)(M)(B)(O)(I) (G)(L)(T)(U)	N/A			( ) Yes ( ) No		( ) Admitted ( ) Released
( ) Victim ( ) Suspect	(1)(2)(3)(4)(5) (6)(7)(8)(9)	(N)(M)(B)(O)(I) (G)(L)(T)(U)				( ) Yes ( ) No		( ) Admitted ( ) Released
( ) Victim ( ) Suspect	(1)(2)(3)(4)(5) (6)(7)(8)(9)	(N)(M)(B)(O)(I) (G)(L)(T)(U)				( ) Yes ( ) No		( ) Admitted ( ) Released
( ) Victim ( ) Suspect	(1)(2)(3)(4)(5) (6)(7)(8)(9)	(N)(M)(B)(O)(I) (G)(L)(T)(U)				( ) Yes ( ) No		( ) Admitted ( ) Released

PART III - PROPERTY

59 Codes: S = Stolen; E = Evidence; R = Recovered; F = Found; I = Impounded; V = Vehicle from which theft occurred; D = Alleged drug type; L = Lost; P = Suspected proceeds of crime; O = Other

a. Property Book & Page No.: _____ b. Location of Property Book: _____

Code	Description of Item(s)	Serial Number/ Operation ID No.	Model No.	Color	Size	Quantity	Comp. Value	Age	MPDC Value
S	C1 WALLET					1	$10	NEW	$5
S	C1 US Currency						$700		$700
S	C1 NOKIA Cell phone			BLK		1	$199	1 YR	$50
S	C2 US Currency						$60		$60
S	C2 NOKIA Cell phone			BROWN		1	$100		$50
								TOTAL VALUE	$1870

60 VEHICLE INFORMATION Vehicle operated/used by: ( ) Victim ( ) Suspect ( ) Victim's vehicle taken by suspect

Code	Year	Make	Model	Color	Body	Tag No./State/Year	VIN

PART IV - SUSPECT/MISSING PERSON INFORMATION (Use narrative if additional space is needed.)

61

#1	a. Race	b. Sex	c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
(●) Suspect ( ) Missing	( ) Asian ( ) White ( ) Unknown (●) Black ( ) Latino/Hispanic ( ) Other	(●) Male ( ) Unknown ( ) Female	20'S	5'8	160	BROWN	SHORT

h. Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
MED				BANDANA BLACK			BLACK	( ) Alcohol ( ) Drugs ( ) Computer ( ) N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm	Other	Color	Make	Model	Caliber
( ) Handgun ( ) Shotgun ( ) Other firearm ( ) Revolver (●) Semi-automatic ( ) Rifle ( ) Automatic	( ) Cutting instrument ( ) Hands/Feet/Teeth ( ) Other (specify) ( ) Blunt object ( ) None ( ) Motor vehicle ( ) Unknown	BLACK			

62

#2	a. Race	b. Sex	c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
(●) Suspect ( ) Missing	( ) Asian ( ) White ( ) Unknown (●) Black ( ) Latino/Hispanic ( ) Other	(●) Male ( ) Unknown ( ) Female	20'S	5'8	150	BROWN	SHORT

h. Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
MED							GRAY	( ) Alcohol ( ) Drugs ( ) Computer ( ) N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm	Other	Color	Make	Model	Caliber
( ) Handgun ( ) Shotgun ( ) Other firearm ( ) Revolver ( ) Semi-automatic ( ) Rifle ( ) Automatic	( ) Cutting instrument ( ) Hands/Feet/Teeth ( ) Other (specify) ( ) Blunt object ( ) None ( ) Motor vehicle ( ) Unknown				

63

#3	a. Race	b. Sex	c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
( ) Suspect ( ) Missing	( ) Asian ( ) White ( ) Unknown ( ) Black ( ) Latino/Hispanic ( ) Other	( ) Male ( ) Unknown ( ) Female					

h. Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
								( ) Alcohol ( ) Drugs ( ) Computer ( ) N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm	Other	Color	Make	Model	Caliber
( ) Handgun ( ) Shotgun ( ) Other firearm ( ) Revolver ( ) Semi-automatic ( ) Rifle ( ) Automatic	( ) Cutting instrument ( ) Hands/Feet/Teeth ( ) Other (specify) ( ) Blunt object ( ) None ( ) Motor vehicle ( ) Unknown				

*Value of vehicles to be entered by Information Processing section

CCN 110-286

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014233

MISSING PERSONS

ABLE CAUSE OF ABSENCE AND DESTINATION

65 COMPLAINT NUMBER: 110286

SSING PERSON HAS RUN AWAY BEFORE, GIVE DATE AND WHERE LOCATED:

67 CLASSIFICATION: ◯ Critical ◯ Non-critical

68 CLASSIFIED BY:

PHYSICAL/MENTAL CONDITION (i.e., diabetic)

70 DESCRIBE ARTICLES OF JEWELRY WORN AND IDENTIFICATION CARRIED

71 NAME OF PARENT/GUARDIAN

ADDRESS OF PARENT/GUARDIAN

73 IF JUVENILE, ENTER MOTHER'S MAIDEN NAME

74 MISSING PERSON SECTION NOTIFIED (Name)

NARRATIVE Describe event and action taken. If additional narrative space is needed, use PD Form 251-A.

umber inued

C1 through C6 Reports they were standing on the sidewalk talking. S1 and S2 approached them. S1 displayed a black and stated give us the money and cell phones. C1 through C6 complied and gave them the listed property. S1 and S2 then ran northbound in the 2100 block of 14th ST NW with all of the property.

76 EVIDENCE TECHNICIAN/CSES #

77 NAME OF INVESTIGATOR NOTIFIED: 3D 11

78 TELETYPE NOTIFIED (Name)

NOTIFICATION ALSO REQUIRED WHENEVER MISSING PERSON LOCATED

79 TELETYPE #

80 REPORTING OFFICER'S SIGNATURE: M.E. Kersey

ELEMENT: 3D

BADGE NUMBER

81 OTHER POLICE AGENCY (Indicate if report prepared by officer other than MPD)

◯ USCP
◯ USSS
◯ METRO TRANSIT
◯ OTHER

82 SECOND OFFICER'S NAME

ELEMENT

BADGE NUMBER

83 SIGNATURE OF SUPERVISOR

ELEMENT: 3D

BADGE NUMBER

FOIA CONFIDENTIAL TREATMENT REQUESTED

VI - ADDITIONAL INFORMATION (Use PD Form 251-C for additional victims or suspects.)

NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1: ZIRMA, EMEBET

85 RELATED TO EVENT NO(S).: 1

VICTIM TYPE: (•) Individual ( ) Financial inst. ( ) Religious org. ( ) Police officer ( ) Business ( ) Government ( ) Society/Public ( ) Other

DATE OF BIRTH: ( ) Unknown ( ) NA — Month: 12 Day: 7 Year: 73

88 AGE RANGE: ( ) 0-1 yr. ( ) 2-12 yrs. ( ) 13-17 yrs. (•) 18-65 yrs. ( ) Over 65

89 SEX: ( ) Male (•) Female ( ) Unknown

90 HOME PHONE: (703) 566 0831

91 BUSINESS PHONE: ( ) NONE

92 RACE/ETHNICITY (Mark all that apply): ( ) American Indian/Alaskan Native ( ) Asian/Pacific Islander (•) Black ( ) Chinese ( ) Latino/Hispanic ( ) Jamaican ( ) Japanese ( ) Korean ( ) Vietnamese ( ) White ( ) Other ( ) Unknown/Refused

HOME ADDRESS: ( ) DC Resident (•) Non-DC Resident ( ) Unknown
5510 North Morgan St #24
Alexandria VA

BUSINESS ADDRESS/SCHOOL: None

OCCUPATION: Unemployed

96 IS EVENT RELATED TO OCCUPATION? ( ) Yes (•) No ( ) Unknown

ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1:

98 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1: NEKEATIBEB, Gherawork

99 RELATED TO EVENT NO(S).: 1

100 VICTIM TYPE: (•) Individual ( ) Financial inst. ( ) Religious org. ( ) Police officer ( ) Business ( ) Government ( ) Society/Public ( ) Other

101 DATE OF BIRTH: ( ) Unknown ( ) NA — Month: Aug Day: 21 Year: 68

102 AGE RANGE: ( ) 0-1 yr. ( ) 2-12 yrs. ( ) 13-17 yrs. (•) 18-65 yrs. ( ) Over 65

103 SEX: (•) Male ( ) Female ( ) Unknown

104 HOME PHONE: (703) 413 0443

105 BUSINESS PHONE: ( ) NONE

106 RACE/ETHNICITY (Mark all that apply): ( ) American Indian/Alaskan Native ( ) Asian/Pacific Islander (•) Black ( ) Chinese ( ) Latino/Hispanic ( ) Jamaican ( ) Japanese ( ) Korean ( ) Vietnamese ( ) White ( ) Other ( ) Unknown/Refused

107 HOME ADDRESS: ( ) DC Resident (•) Non-DC Resident ( ) Unknown
401 12ST #708
Arlington VA

108 BUSINESS ADDRESS/SCHOOL: None

109 OCCUPATION: Self Employed

110 IS EVENT RELATED TO OCCUPATION? ( ) Yes (•) No ( ) Unknown

111 ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1: Cell 202 257 9875

#1 Suspect / Missing

a. Race: ( ) Asian ( ) White ( ) Unknown ( ) Black ( ) Latino/Hispanic ( ) Other
b. Sex: ( ) Male ( ) Unknown ( ) Female
c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair

plexion | i. Scars | j. Mustache | k. Facial Hair | l. Hat | m. Coat/Jacket | n. Pants | o. Blouse/Shirt

p. Perpetrator Suspected of Using: ( ) Alcohol ( ) Drugs ( ) Computer ( ) N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: dgun ( ) Shotgun ( ) Other; volver ( ) Semi-automatic firearm; e ( ) Automatic
Other: ( ) Cutting instrument ( ) Hands/Feet/Teeth ( ) Other (specify) ( ) Blunt object ( ) None ( ) Motor vehicle ( ) Unknown
Color | Make | Model | Caliber

#2 Suspect / Missing

a. Race: ( ) Asian ( ) White ( ) Unknown ( ) Black ( ) Latino/Hispanic ( ) Other
b. Sex: ( ) Male ( ) Unknown ( ) Female
c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair

plexion | i. Scars | j. Mustache | k. Facial Hair | l. Hat | m. Coat/Jacket | n. Pants | o. Blouse/Shirt

p. Perpetrator Suspected of Using: ( ) Alcohol ( ) Drugs ( ) Computer ( ) N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: dgun ( ) Shotgun ( ) Other; volver ( ) Semi-automatic firearm; e ( ) Automatic
Other: ( ) Cutting instrument ( ) Hands/Feet/Teeth ( ) Other (specify) ( ) Blunt object ( ) None ( ) Motor vehicle ( ) Unknown
Color | Make | Model | Caliber

#3 Suspect / Missing

a. Race: ( ) Asian ( ) White ( ) Unknown ( ) Black ( ) Latino/Hispanic ( ) Other
b. Sex: ( ) Male ( ) Unknown ( ) Female
c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair

plexion | i. Scars | j. Mustache | k. Facial Hair | l. Hat | m. Coat/Jacket | n. Pants | o. Blouse/Shirt

p. Perpetrator Suspected of Using: ( ) Alcohol ( ) Drugs ( ) Computer ( ) N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: dgun ( ) Shotgun ( ) Other; volver ( ) Semi-automatic firearm; e ( ) Automatic
Other: ( ) Cutting instrument ( ) Hands/Feet/Teeth ( ) Other (specify) ( ) Blunt object ( ) None ( ) Motor vehicle ( ) Unknown
Color | Make | Model | Caliber

CCN 110-286

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014235

Log# 75457 Green, 437

Washington, D.C.

etropolitan Police
epartment

Incident-Based Event Report

CLASSIFICATION OF EVENT

DATE AND TIME OF EVENT	Start Date	Start Time	End Date	End Time	DATE OF REPORT	TIME OF REPORT	DISTRICT	SECTOR	BEAT	COMPLAINT NUMBER
Month / Day / Year	01 04	Hour 02 Minute 30	01 04	Hour 02 Minute 35	01 04	Hour 03 Minute 30			305	106332

EVENT LOCATION ADDRESS: 00 14th St. N.W. Washington, DC

Rear of / In front of / Along side of / Inside of / NW Corner / NE Corner / SW Corner / SE Corner

REPORT RECEIVED BY: TRU / Walk-in / On-scene / Radio run

IS RADIO RUN LOCATION AND EVENT LOCATION THE SAME? Yes / No

PROPERTY TYPE: Public / Private

EVENT NO. 1: OW Knife 0411

EVENT NO. 2: N/A

EVENT NO. 3: N/A

CED ENTRY: Yes / No

POINT OF ENTRY: N/A

a. Method Used: Stabbed

b. Tools Used: Knife

WEATHER CONDITIONS: Clear / Cloudy / Rain / Snow / Other / Not applicable / Unknown

SUSPECTED HATE CRIME? Ethnic / Sexual Orientation / Religious / Other

SECURITY SYSTEM (Mark all that apply): Alarm/Audio / Alarm/Silent / Camera / Dog / Dead bolt / Unlocked / Exterior lights / Interior lights / Fence / Guard / Neighborhood watch / Other / Not applicable / Unknown

CATION TYPE (Mark only one): Bus/Train terminal / y / k/Savings & loan / s stop / urch/Synagogue/Temple / llege/University / mmercial office building / onstruction site / onvenience store / epartment/Discount store / .C. government building / Doctor's office/Hospital / Drug store / Federal/Government bldg. / Field/Woods / Grocery/Supermarket / Hotel/Motel/Etc. / Jail/Prison / Lake/Waterway / Liquor store / Park area / Parking lot/Parking garage / Public housing project / Public/Private school / Rental storage facility / Residence/Home / Restaurant / Service station / Sidewalk / Specialty store / Street/Highway/Road / Tavern/Night club / Other / Not applicable / Unknown

DESIGNATED AREAS (Mark all that apply): Victim's vehicle / Suspect's vehicle / Taxi-cab / Bus / Train/Metro/Amtrak/Etc. / Hallway / Elevator / Stairwell / Basement/Laundry room / Apartment/Condo unit / Single family dwelling / Hotel/Motel room / College/University dorm / Classroom / Office room / Vacant building/room / Customer area / Storage area / In public housing / W/in 1 block of public housing / W/in 1,000 ft. of school / Other / Not applicable / Unknown

ART I - VICTIM INFORMATION

NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1: onton, Linton Kirl

RELATED TO EVENT NO(S).

VICTIM TYPE: Individual / Business / Financial inst. / Government / Religious org. / Society/Public / Police officer / Other

DATE OF BIRTH: Unknown / NA — Month / Day 05 / Year 70

AGE RANGE: 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

SEX: Male / Female / Unknown

HOME PHONE: (202) 726-2403

BUSINESS PHONE: (202) 215-6544

RACE/ETHNICITY (Mark all that apply): American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

HOME ADDRESS: 7206 Alaska Ave. N.W. Washington, D.C. — DC Resident / Non-DC Resident / Unknown

BUSINESS ADDRESS/SCHOOL: N/A

OCCUPATION: N/A

IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1

RELATED TO EVENT NO(S).

VICTIM TYPE: Individual / Business / Financial inst. / Government / Religious org. / Society/Public / Police officer / Other

DATE OF BIRTH: Unknown / NA — Month / Day / Year

AGE RANGE: 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

SEX: Male / Female / Unknown

HOME PHONE: ( )

BUSINESS PHONE: ( )

RACE/ETHNICITY (Mark all that apply): American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

HOME ADDRESS — DC Resident / Non-DC Resident / Unknown

BUSINESS ADDRESS/SCHOOL

OCCUPATION

IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

REVIEWER

DISTRIBUTION

ENTER THE NAME, ADDRESS AND PHONE NUMBER OF THE REPORTING PERSON. ● Yes ○ No

Name: _____ Phone-Area Code: _____

Address: _____

56 DID THE REPORTED EVENT OCCUR AS A RESULT OF AN INTRA-FAMILY MATTER? ○ Yes ● No

56A WAS PD FORM 378A ISSUED? ○ Yes ● No

57 IS CPO/TPO OUTSTANDING? ○ Yes ● No ○ Unknown IF YES, ENTER CPO/TPO #: _____

58 INJURIES Use the following codes to describe injuries. (Mark all that apply)

N = None Visible; M = Apparent Minor Injury; B = Apparent Broken Bones; O = Other Major Injury; I = Possible Internal Injury; G = Gunshot; L = Severe Laceration; T = Loss of Teeth; U = Unconscious

INJURED	NUMBER	INJURY CODE	DESCRIBE INJURY	WHERE TAKEN	BY WHOM	DCFD AMB.	DCFD AMB. #	STATUS
● Victim ○ Suspect	● 2 3 4 5 6 7 8 9	N ● E O I G L T U	Small puncture left side	G.W Hosp	Ambulance	● Yes ○ No	8	● Admitted ○ Released
○ Victim ○ Suspect	1 2 3 4 5 6 7 8 9	N M E O I G L T U				○ Yes ○ No		○ Admitted ○ Released
○ Victim ○ Suspect	1 2 3 4 5 6 7 8 9	N M E O I G L T U				○ Yes ○ No		○ Admitted ○ Released
○ Victim ○ Suspect	1 2 3 4 5 6 7 8 9	N M E O I G L T U				○ Yes ○ No		○ Admitted ○ Released

PART III: PROPERTY

59 Codes: S = Stolen; E = Evidence; R = Recovered; F = Found; I = Impounded; V = Vehicle from which theft occurred; D = Alleged drug type; L = Lost; P = Suspected proceeds of crime; O = Other

a. Property Book & Page No. | b. Location of Property Book

Code	Description of Item(s)	Serial Number/ Operation ID No.	Model No.	Color	Size	Quantity	Comp. Value	Age	MPDC Value
	N/A								

TOTAL VALUE

60 VEHICLE INFORMATION Vehicle operated/used by: ○ Victim ○ Suspect ○ Victim's vehicle taken by suspect

Code	Year	Make	Model	Color	Body	Tag No./State/Year	VIN
						N/A	

PART IV: SUSPECT/MISSING PERSON INFORMATION (Use narrative if additional space is needed.)

61

#1 ● Suspect ○ Missing

a. Race: ○ Asian ○ White ○ Unknown ● Black ○ Latino/Hispanic ○ Other

b. Sex: ● Male ○ Unknown ○ Female

c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
			UNKNOWN	

h. Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
	UNKNOWN							○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: ○ Handgun ○ Shotgun ○ Other firearm ○ Revolver ○ Semi-automatic ○ Rifle ○ Automatic

Other: ○ Cutting instrument ○ Hands/Feet/Teeth ○ Other (specify) ○ Blunt object ○ None ○ Motor vehicle ○ Unknown

Color	Make	Model	Caliber

#2 ○ Suspect ○ Missing

a. Race: ○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other

b. Sex: ○ Male ○ Unknown ○ Female

c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair

Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
								○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: ○ Handgun ○ Shotgun ○ Other firearm ○ Revolver ○ Semi-automatic ○ Rifle ○ Automatic

Other: ○ Cutting instrument ○ Hands/Feet/Teeth ○ Other (specify) ○ Blunt object ○ None ○ Motor vehicle ○ Unknown

Color	Make	Model	Caliber

#3 ○ Suspect ○ Missing

a. Race: ○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other

b. Sex: ○ Male ○ Unknown ○ Female

c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair

Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
								○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: ○ Handgun ○ Shotgun ○ Other firearm ○ Revolver ○ Semi-automatic ○ Rifle ○ Automatic

Other: ○ Cutting instrument ○ Hands/Feet/Teeth ○ Other (specify) ○ Blunt object ○ None ○ Motor vehicle ○ Unknown

Color	Make	Model	Caliber

Value of vehicles to be entered by Information Processing section

CCN 106232

FOIA CONFIDENTIAL TREATMENT REQUESTED

MISSING PERSONS

PROBABLE CAUSE OF ABSENCE AND DESTINATION

65 COMPLAIN NUMBER: 10633

IF MISSING PERSON HAS RUN AWAY BEFORE, GIVE DATE AND WHERE LOCATED:

67 CLASSIFICATION: ○ Critical ○ Non-critical

68 CLASSIFIED BY:

PHYSICAL/MENTAL CONDITION (i.e., diabetic)

70 DESCRIBE ARTICLES OF JEWELRY WORN AND IDENTIFICATION CARRIED

71 NAME OF PARENT/GUARDIAN

ADDRESS OF PARENT/GUARDIAN

73 IF JUVENILE, ENTER MOTHER'S MAIDEN NAME

74 MISSING PERSON SECTION NOTIFIED (Name

NARRATIVE Describe event and action taken. If additional narrative space is needed, use PD Form 251-A.

n Number
ontinued

CI reports on the listed date and at the listed time while he was chilling unknown suspect began to fight him for no reason.

CI recieved a minor puncture wound on his left side. CI was treated on the scene by ambulance 8 and transported to G.W. Hospital

CI reported he never actually saw a knife, but it felt like one.

CI was unable to give a look out of the suspect except for the suspect had a swollen eye.

3D51 responded to the scene

Crime Scene Search 9241 Branson also responded to the scene.

SOCC also notified, Bennitz informed.

76 EVIDENCE TECHNICIAN/CSES #: Branson 9241

77 NAME OF INVESTIGATOR NOTIFIED: 3D51

78 TELETYPE NOTIFIED (Name)

NOTIFICATION ALSO REQUIRED WHENEVER MISSING PERSON LOCATED

79 TELETYPE

80 REPORTING OFFICER'S SIGNATURE

ELEMENT: 3D

BADGE NUMBER

81 OTHER POLICE AGENCY (Indicate if report prepared by officer other than MPD)
○ USCP ○ USSS ○ METRO TRANSIT ○ OTHER

82 SECOND OFFICER'S NAME

ELEMENT

BADGE NUMBER

83 SIGNATURE OF SUPERVISOR

ELEME 3D

BADGE NUMBER

FOIA CONFIDENTIAL TREATMENT REQUESTED

PART VI - ADDITIONAL INFORMATION (Use PD Form 251C for additional victims or suspects.)

NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1 | **85 RELATED TO EVENT NO(S).** ① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩

VICTIM TYPE
Individual ◯ Financial inst. ◯ Religious org. ◯ Police officer ◯ Business ◯ Government ◯ Society/Public ◯ Other

DATE OF BIRTH Unknown ◯ NA | **86 AGE RANGE** | **89 SEX** | **90 HOME PHONE**

Month	Day	Year
Jan		
Feb		
Mar	0 0	0 5
Apr	1 1	1 1
May	2 2	2 2
Jun	3 3	3 3
Jul		4 4
Aug	5 5	5 5
Sep	6 6	6 6
Oct	7 7	7 7
Nov	8 8	8 8
Dec	9 9	9 9

◯ 0-1 yr. ◯ 2-12 yrs. ◯ 13-17 yrs. ◯ 18-65 yrs. ◯ Over 65

◯ Male ◯ Female ◯ Unknown

91 BUSINESS PHONE ( )

92 RACE/ETHNICITY (Mark all that apply)
◯ American Indian/Alaskan Native ◯ Asian/Pacific Islander ◯ Black ◯ Chinese ◯ Latino/Hispanic ◯ Jamaican ◯ Japanese ◯ Korean ◯ Vietnamese ◯ White ◯ Other ◯ Unknown/Refused

HOME ADDRESS ◯ DC Resident ◯ Non-DC Resident ◯ Unknown

BUSINESS ADDRESS/SCHOOL

OCCUPATION | **96 IS EVENT RELATED TO OCCUPATION?** ◯ Yes ◯ No ◯ Unknown

ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

98 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1 | **99 RELATED TO EVENT NO(S).** ① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩

100 VICTIM TYPE
Individual ◯ Financial inst. ◯ Religious org. ◯ Police officer ◯ Business ◯ Government ◯ Society/Public ◯ Other

101 DATE OF BIRTH Unknown ◯ NA | **102 AGE RANGE** | **103 SEX** | **104 HOME PHONE**

Month	Day	Year
Jan		
Feb		
Mar	0 0	0 0
Apr	1 1	1 1
May	2 2	2 2
Jun	3 3	3 3
Jul		4 4
Aug	5 5	5 5
Sep	6 6	6 6
Oct	7 7	7 7
Nov	8 8	8 8
Dec	9 9	9 9

◯ 0-1 yr. ◯ 2-12 yrs. ◯ 13-17 yrs. ◯ 18-65 yrs. ◯ Over 65

◯ Male ◯ Female ◯ Unknown

105 BUSINESS PHONE ( )

106 RACE/ETHNICITY (Mark all that apply)
◯ American Indian/Alaskan Native ◯ Asian/Pacific Islander ◯ Black ◯ Chinese ◯ Latino/Hispanic ◯ Jamaican ◯ Japanese ◯ Korean ◯ Vietnamese ◯ White ◯ Other ◯ Unknown/Refused

107 HOME ADDRESS ◯ DC Resident ◯ Non-DC Resident ◯ Unknown

108 BUSINESS ADDRESS/SCHOOL

109 OCCUPATION | **110 IS EVENT RELATED TO OCCUPATION?** ◯ Yes ◯ No ◯ Unknown

111 ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

#1 ◯ Suspect ◯ Missing

a. Race	b. Sex	c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
◯ Asian ◯ White ◯ Unknown ◯ Black ◯ Latino/Hispanic ◯ Other	◯ Male ◯ Unknown ◯ Female					

Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
								◯ Alcohol ◯ Drugs ◯ Computer ◯ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm	Other	Color	Make	Model	Caliber
◯ Handgun ◯ Shotgun ◯ Other firearm ◯ Revolver ◯ Semi-automatic ◯ Rifle ◯ Automatic	◯ Cutting instrument ◯ Hands/Feet/Teeth ◯ Other (specify) ◯ Blunt object ◯ None ◯ Motor vehicle ◯ Unknown				

#2 ◯ Suspect ◯ Missing

a. Race	b. Sex	c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
◯ Asian ◯ White ◯ Unknown ◯ Black ◯ Latino/Hispanic ◯ Other	◯ Male ◯ Unknown ◯ Female					

Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
								◯ Alcohol ◯ Drugs ◯ Computer ◯ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm	Other	Color	Make	Model	Caliber
◯ Handgun ◯ Shotgun ◯ Other firearm ◯ Revolver ◯ Semi-automatic ◯ Rifle ◯ Automatic	◯ Cutting instrument ◯ Hands/Feet/Teeth ◯ Other (specify) ◯ Blunt object ◯ None ◯ Motor vehicle ◯ Unknown				

#3 ◯ Suspect ◯ Missing

a. Race	b. Sex	c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
◯ Asian ◯ White ◯ Unknown ◯ Black ◯ Latino/Hispanic ◯ Other	◯ Male ◯ Unknown ◯ Female					

Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
								◯ Alcohol ◯ Drugs ◯ Computer ◯ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm	Other	Color	Make	Model	Caliber
◯ Handgun ◯ Shotgun ◯ Other firearm ◯ Revolver ◯ Semi-automatic ◯ Rifle ◯ Automatic	◯ Cutting instrument ◯ Hands/Feet/Teeth ◯ Other (specify) ◯ Blunt object ◯ None ◯ Motor vehicle ◯ Unknown				

6975 Brown, I

Washington, D.C.

Incident-Based Event Report

...opolitan Police
...rtment

...SIFICATION OF EVENT

2 DATE AND TIME OF EVENT

Start Date Month	Day	Year	Start Time Hour	Minute	End Date Month	Day	Year	End Time Hour	Minute
	20	04	01	00					

3 DATE OF REPORT

Month	Day	Year
	20	04

4 TIME OF REPORT

Hour	Minute
02	11

5 DISTRICT **6 SECTOR** **7 BEAT** **8 COMPLAINT NUMBER**

305 084375

EVENT LOCATION ADDRESS
10 W St. N.W
Washington, D.C

Rear of / In front of / Along side of / Inside of / NW Corner / NE Corner / SW Corner / SE Corner

10 REPORT RECEIVED BY TRU / Walk-in / On-scene / Radio run

11 IS RADIO RUN LOCATION AND EVENT LOCATION THE SAME? Yes / No

12 PROPERTY TYPE Public / Private

EVENT NO. 1 Unknown
W (cutting instrument)

14 EVENT NO. 2 0411

15 EVENT NO. 3

...ENTRY N/A

17 POINT OF ENTRY Unk

18 a. Method Used Assault

b. Tools Used Unk

19 WEATHER CONDITIONS Clear / Cloudy / Rain / Snow / Other / Not applicable / Unknown

...USPECTED HATE CRIME? Ethnic / Religious / Sexual Orientation / Other

21 SECURITY SYSTEM (Mark all that apply) Alarm/Audio / Alarm/Silent / Camera / Dog / Dead bolt / Unlocked / Exterior lights / Interior lights / Fence / Guard / Neighborhood watch / Other / Not applicable / Unknown

...ON TYPE (Mark only one)
...rain terminal
...vings & loan
...Synagogue/Temple
...University
...rcial office building
...ction site
...ience store
...nent/Discount store
...vernment building
Doctor's office/Hospital / Drug store / Federal/Government bldg. / Field/Woods / Grocery/Supermarket / Hotel/Motel/Etc. / Jail/Prison / Lake/Waterway / Liquor store / Park area / Parking lot/Parking garage / Public housing project / Public/Private school / Rental storage facility / Residence/Home / Restaurant / Service station / Sidewalk / Specialty store / Street/Highway/Road / Tavern/Night club / Other / Not applicable / Unknown

23 DESIGNATED AREAS (Mark all that apply) Victim's vehicle / Suspect's vehicle / Taxi-cab / Bus / Train/Metro/Amtrak/Etc. / Hallway / Elevator / Stairwell / Basement/Laundry room / Apartment/Condo unit / Single family dwelling / Hotel/Motel room / College/University dorm / Classroom / Office room / Vacant building/room / Customer area / Storage area / In public housing / W/in 1 block of public housing / W/in 1,000 ft. of school / Other / Not applicable / Unknown

...- VICTIM INFORMATION

...OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1
Holloway, Sermaine

25 RELATED TO EVENT NO(S).

VICTIM TYPE ...dividual / ...usiness / Financial inst. / Government / Religious org. / Society/Public / Police officer / Other

...E OF BIRTH ...own / NA

Day	Year
10	81

28 AGE RANGE 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

29 SEX Male / Female / Unknown

30 HOME PHONE ( ) Unk

31 BUSINESS PHONE ( ) Unk

32 RACE/ETHNICITY (Mark all that apply) American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

...OME ADDRESS DC Resident / Non-DC Resident / Unknown
5104 Drape Pl. S.E.
Washington, D.C

BUSINESS ADDRESS/SCHOOL Unk

OCCUPATION Unk

36 IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

38 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1

39 RELATED TO EVENT NO(S).

40 VICTIM TYPE Individual / Business / Financial inst. / Government / Religious org. / Society/Public / Police officer / Other

41 DATE OF BIRTH Unknown / NA

Month	Day	Year

42 AGE RANGE 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

43 SEX Male / Female / Unknown

44 HOME PHONE ( )

45 BUSINESS PHONE ( )

46 RACE/ETHNICITY (Mark all that apply) American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

47 HOME ADDRESS DC Resident / Non-DC Resident / Unknown

48 BUSINESS ADDRESS/SCHOOL

49 OCCUPATION

50 IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

51 ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

... Closed / Closed by arrest,

53 REVIEWER WC

54 DISTRIBUTION

FOIA CONFIDENTIAL TREATMENT REQUESTED

ENTER THE NAME, ADDRESS AND PHONE NUMBER OF THE REPORTING PERSON. ● Yes ○ No

Name: _____ Phone-Area Code: _____

Address: _____

5 DID THE REPORTED EVENT OCCUR AS A RESULT OF AN INTRA-FAMILY MATTER? ○ Yes ● No

56A WAS PD FORM 378A ISSUED? ○ Yes ● No

57 IS CPO/TPO OUTSTANDING? ○ Yes ○ No ○ Unknown IF YES, ENTER CPO/TPO #: N/A

58 INJURIES Use the following codes to describe injuries. (Mark all that apply)

N = None Visible, M = Apparent Minor Injury, B = Apparent Broken Bones, O = Other Major Injury, I = Possible Internal Injury, G = Gunshot, L = Severe Laceration, T = Loss of Teeth, U = Unconscious

INJURED	NUMBER	INJURY CODE	DESCRIBE INJURY	WHERE TAKEN	BY WHOM	DCFD AMB.	DCFD AMB. #	STATUS
● Victim	● 2 3 4 5	N M B O I	stab wound above right hip	Howard Univ Hospital	Ambl.	● Yes ○ No	#9	○ Admitted ● Released
○ Suspect	6 7 8 9	G ● T U						
○ Victim	1 2 3 4 5	N M B O I				○ Yes ○ No		○ Admitted ○ Released
○ Suspect	6 7 8 9	G L T U						
○ Victim	1 2 3 4 5	N M B O I				○ Yes ○ No		○ Admitted ○ Released
○ Suspect	6 7 8 9	G L T U						
○ Victim	1 2 3 4 5	N M B O I				○ Yes ○ No		○ Admitted ○ Released
○ Suspect	6 7 8 9	G L T U						

PART III - PROPERTY

59 Codes: S = Stolen, E = Evidence, R = Recovered, F = Found, I = Impounded, V = Vehicle from which theft occurred, D = Alleged drug type, L = Lost, P = Suspected proceeds of crime, O = Other

a. Property Book & Page No.

b. Location of Property Book

Code	Description of Item(s)	Serial Number/ Operation ID No.	Model No.	Color	Size	Quantity	Comp. Value	Age	MPDC Value
	N/A								
							TOTAL VALUE		

60 VEHICLE INFORMATION Vehicle operated/used by: ○ Victim ○ Suspect ○ Victim's vehicle taken by suspect

Code	Year	Make	Model	Color	Body	Tag No./State/Year	VIN
					N/A		

PART IV - SUSPECT/MISSING PERSON INFORMATION (Use narrative if additional space is needed.)

#1 ● Suspect ○ Missing

a. Race	b. Sex	c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
○ Asian ○ White ○ Unknown ● Black ○ Latino/Hispanic ○ Other	● Male ○ Unknown ○ Female		UNKNOWN			

Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
			UNKNOWN					○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm			Other			Color	Make	Model	Caliber
○ Handgun ○ Revolver ○ Rifle	○ Shotgun ○ Semi-automatic ○ Automatic	○ Other firearm	○ Cutting instrument ○ Blunt object ○ Motor vehicle	○ Hands/Feet/Teeth ○ None ○ Unknown	○ Other (specify)				

#2 ○ Suspect ○ Missing

a. Race	b. Sex	c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other	○ Male ○ Unknown ○ Female					

Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
								○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm			Other			Color	Make	Model	Caliber
○ Handgun ○ Revolver ○ Rifle	○ Shotgun ○ Semi-automatic ○ Automatic	○ Other firearm	○ Cutting instrument ○ Blunt object ○ Motor vehicle	○ Hands/Feet/Teeth ○ None ○ Unknown	○ Other (specify)				

#3 ○ Suspect ○ Missing

a. Race	b. Sex	c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other	○ Male ○ Unknown ○ Female					

Complexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
								○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm			Other			Color	Make	Model	Caliber
○ Handgun ○ Revolver ○ Rifle	○ Shotgun ○ Semi-automatic ○ Automatic	○ Other firearm	○ Cutting instrument ○ Blunt object ○ Motor vehicle	○ Hands/Feet/Teeth ○ None ○ Unknown	○ Other (specify)				

*Value of vehicles to be entered by Information Processing section

CCN 084375

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014241

MISSING PERSONS

ABLE CAUSE OF ABSENCE AND DESTINATION

N/A

65 COMPLAINT NUMBER: 084375

SING PERSON HAS RUN AWAY BEFORE, GIVE DATE AND WHERE LOCATED:

67 CLASSIFICATION: ○ Critical ○ Non-critical

68 CLASSIFIED BY:

PHYSICAL/MENTAL CONDITION (i.e., diabetic)

70 DESCRIBE ARTICLES OF JEWELRY WORN AND IDENTIFICATION CARRIED

71 NAME OF PARENT/GUARDIAN

ADDRESS OF PARENT/GUARDIAN

73 IF JUVENILE, ENTER MOTHER'S MAIDEN NAME

74 MISSING PERSON SECTION NOTIFIED (Name)

ARRATIVE Describe event and action taken. If additional narrative space is needed, use PD Form 251-A.

mber
ued

C-1 reports on the listed date and time that he was assaulted and stabbed by an unknown Suspect in front of the listed location.

C-1 was being uncooperative with MPD members and would not give a look out for the suspect(s).

76 EVIDENCE TECHNICIAN/CSES #: 9233

77 NAME OF INVESTIGATOR NOTIFIED: Magee 31

78 TELETYPE NOTIFIED (Name)

NOTIFICATION ALSO REQUIRED WHENEVER MISSING PERSON LOCATED

79 TELETYPE #

80 REPORTING OFFICER'S SIGNATURE: Brown I — ELEMENT: 31 — BADGE NUMBER: 3978

81 OTHER POLICE AGENCY (Indicate if report prepared by officer other than MPD): ○ USCP ○ USSS ○ METRO TRANSIT ○ OTHER

82 SECOND OFFICER'S NAME — ELEMENT — BADGE NUMBER

83 SIGNATURE OF SUPERVISOR — ELEMENT: 31 — BADGE NUMBER: 3

GC

FOIA CONFIDENTIAL TREATMENT REQUESTED

ME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1 | 85 RELATED TO EVENT NO(S).

VICTIM TYPE
Individual ◯ Financial inst. ◯ Religious org. ◯ Police officer
Business ◯ Government ◯ Society/Public ◯ Other

TE OF BIRTH known ◯ NA | 88 AGE RANGE | 89 SEX | 90 HOME PHONE
Day | Year
0-1 yr. ◯ Male
2-12 yrs. ◯ Female
13-17 yrs. ◯ Un-known
18-65 yrs. ◯ Over 65
91 BUSINESS PHONE

92 RACE/ETHNICITY (Mark all that apply)
American Indian/Alaskan Native ◯ Japanese
Asian/Pacific Islander ◯ Korean
Black ◯ Vietnamese
Chinese ◯ White
Latino/Hispanic ◯ Other
Jamaican ◯ Unknown/Refused

OME ADDRESS ◯ DC Resident ◯ Non-DC Resident ◯ Unknown

BUSINESS ADDRESS/SCHOOL

OCCUPATION | 96 IS EVENT RELATED TO OCCUPATION? Yes No Unknown

ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

98 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1 | 99 RELATED TO EVENT NO(S).

100 VICTIM TYPE
Individual ◯ Financial inst. ◯ Religious org. ◯ Police officer
Business ◯ Government ◯ Society/Public ◯ Other

101 DATE OF BIRTH ◯ Unknown ◯ NA | 102 AGE RANGE | 103 SEX | 104 HOME PHONE
Month | Day | Year
0-1 yr. ◯ Male
2-12 yrs. ◯ Female
13-17 yrs. ◯ Un-known
18-65 yrs. ◯ Over 65
105 BUSINESS PHONE

106 RACE/ETHNICITY (Mark all that apply)
American Indian/Alaskan Native ◯ Japanese
Asian/Pacific Islander ◯ Korean
Black ◯ Vietnamese
Chinese ◯ White
Latino/Hispanic ◯ Other
Jamaican ◯ Unknown/Refused

107 HOME ADDRESS ◯ DC Resident ◯ Non-DC Resident ◯ Unknown

108 BUSINESS ADDRESS/SCHOOL

109 OCCUPATION | 110 IS EVENT RELATED TO OCCUPATION? ◯ Yes ◯ No ◯ Unknown

111 ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

#1 Suspect / Missing

a. Race	b. Sex	c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
Asian ◯ White ◯ Unknown ◯ Black ◯ Latino/Hispanic ◯ Other	Male ◯ Unknown ◯ Female					

plexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
								◯ Alcohol ◯ Drugs ◯ Computer ◯ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm	Other	Color	Make	Model	Caliber
ndgun ◯ Shotgun ◯ Other volver ◯ Semi-automatic firearm e ◯ Automatic	◯ Cutting instrument ◯ Hands/Feet/Teeth ◯ Other (specify) ◯ Blunt object ◯ None ◯ Motor vehicle ◯ Unknown				

#2 Suspect / Missing

a. Race	b. Sex	c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
Asian ◯ White ◯ Unknown ◯ Black ◯ Latino/Hispanic ◯ Other	Male ◯ Unknown ◯ Female					

plexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
								◯ Alcohol ◯ Drugs ◯ Computer ◯ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm	Other	Color	Make	Model	Caliber
ndgun ◯ Shotgun ◯ Other volver ◯ Semi-automatic firearm e ◯ Automatic	◯ Cutting instrument ◯ Hands/Feet/Teeth ◯ Other (specify) ◯ Blunt object ◯ None ◯ Motor vehicle ◯ Unknown				

#3 Suspect / Missing

a. Race	b. Sex	c. Exact Age or Range	d. Height	e. Weight	f. Eyes	g. Hair
Asian ◯ White ◯ Unknown ◯ Black ◯ Latino/Hispanic ◯ Other	Male ◯ Unknown ◯ Female					

plexion	i. Scars	j. Mustache	k. Facial Hair	l. Hat	m. Coat/Jacket	n. Pants	o. Blouse/Shirt	p. Perpetrator Suspected of Using
								◯ Alcohol ◯ Drugs ◯ Computer ◯ N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm	Other	Color	Make	Model	Caliber
ndgun ◯ Shotgun ◯ Other volver ◯ Semi-automatic firearm e ◯ Automatic	◯ Cutting instrument ◯ Hands/Feet/Teeth ◯ Other (specify) ◯ Blunt object ◯ None ◯ Motor vehicle ◯ Unknown				

CCN 084375

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014243

Metropolitan Police Department

Incident-Based Event Report

Washington, D.C.

CLASSIFICATION OF EVENT

2 DATE AND TIME OF EVENT

Start Date	Start Time	End Date	End Time
Month: Jan	Hour: 01	Month:	Hour:
Day: 21	Minute: 05	Day:	Minute:
Year: 03		Year:	

3 DATE OF REPORT: Month: Jan; Day: 21; Year: 03

4 TIME OF REPORT: Hour: 03; Minute: 24

5 DISTRICT: 1

6 SECTOR:

7 BEAT: 306

8 COMPLAINT NUMBER: 16212

EVENT LOCATION ADDRESS: 0 Block Paloma Way N.E. Washington, D.C. 20019

Rear of / In front of / Along side of / Inside of

NW Corner / NE Corner / SW Corner / SE Corner

10 REPORT RECEIVED BY: TRU / Walk-in / On-scene / Radio run

11 IS RADIO RUN LOCATION AND EVENT LOCATION THE SAME? Yes / No N/A

12 PROPERTY TYPE: Public / Private

EVENT NO. 1: WTK

EVENT NO. 2: 14 APO While Armed

EVENT NO. 3: 15 Destruction of D.C. Govt Property

ED ENTRY: Yes / No

17 POINT OF ENTRY: Unk

18 a. Method Used: Assault

b. Tools Used: Hand Gun

19 WEATHER CONDITIONS: Clear / Cloudy / Rain / Snow / Other / Not applicable / Unknown

SUSPECTED HATE CRIME? Ethnic / Religious / Sexual Orientation / Other

21 SECURITY SYSTEM (Mark all that apply): Alarm/Audio / Alarm/Silent / Camera / Dog / Dead bolt / Unlocked / Exterior lights / Interior lights / Fence / Guard / Neighborhood watch / Other / Not applicable / Unknown

TION TYPE (Mark only one): s/Train terminal / Savings & loan / lop / h/Synagogue/Temple / ge/University / nercial office building / truction site / enience store / rtment/Discount store / government building / Doctor's office/Hospital / Drug store / Federal/Government bldg. / Field/Woods / Grocery/Supermarket / Hotel/Motel/Etc. / Jail/Prison / Lake/Waterway / Liquor store / Park area / Parking lot/Parking garage / Public housing project / Public/Private school / Rental storage facility / Residence/Home / Restaurant / Service station / Sidewalk / Specialty store / Street/Highway/Road / Tavern/Night club / Other / Not applicable / Unknown

23 DESIGNATED AREAS (Mark all that apply): Victim's vehicle / Suspect's vehicle / Taxi-cab / Bus / Train/Metro/Amtrak/Etc. / Hallway / Elevator / Stairwell / Basement/Laundry room / Apartment/Condo unit / Single family dwelling / Hotel/Motel room / College/University dorm / Classroom / Office room / Vacant building/room / Customer area / Storage area / In public housing / W/in 1 block of public housing / W/in 1,000 ft. of school / Other / Not applicable / Unknown

II - VICTIM INFORMATION

E OF COMPLAINANT/VICTIM/MISSING PERSON NO. 1: Lewster II, Manuel

25 RELATED TO EVENT NO(S).

VICTIM TYPE: ndividual / Business / Financial inst. / Government / Religious org. / Society/Public / Police officer / Other

E OF BIRTH: nown / NA; Day: 15; Year: 80

28 AGE RANGE: 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

29 SEX: Male / Female / Unknown

30 HOME PHONE: ( ) Unk

31 BUSINESS PHONE: ( ) Unk

32 RACE/ETHNICITY (Mark all that apply): American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

OME ADDRESS: DC Resident / Non-DC Resident / Unknown

5707 Keppler Rd. Temple Hills, MD

BUSINESS ADDRESS/SCHOOL: Unk

OCCUPATION: Unk

36 IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 1

38 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 2: Thompson, Donald

39 RELATED TO EVENT NO(S).

40 VICTIM TYPE: Individual / Business / Financial inst. / Government / Religious org. / Society/Public / Police officer / Other

41 DATE OF BIRTH: Unknown / NA; Day: 20; Year: 83

42 AGE RANGE: 0-1 yr. / 2-12 yrs. / 13-17 yrs. / 18-65 yrs. / Over 65

43 SEX: Male / Female / Unknown

44 HOME PHONE: ( ) Unk

45 BUSINESS PHONE: ( ) Unk

46 RACE/ETHNICITY (Mark all that apply): American Indian/Alaskan Native / Asian/Pacific Islander / Black / Chinese / Latino/Hispanic / Jamaican / Japanese / Korean / Vietnamese / White / Other / Unknown/Refused

47 HOME ADDRESS: 8568 Dean Dr. #103 — DC Resident / Non-DC Resident / Unknown

48 BUSINESS ADDRESS/SCHOOL: Unk

49 OCCUPATION: Unk

50 IS EVENT RELATED TO OCCUPATION? Yes / No / Unknown

51 ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 2

TATUS: Open / Closed / Closed by arrest

53 REVIEWER

54 DISTRIBUTION

FOIA CONFIDENTIAL TREATMENT REQUESTED

JURIES Use the following codes to describe injuries. (Mark all that apply)

N = None Visible
M = Apparent Minor Injury
B = Apparent Broken Bones
I = Possible Internal Injury
G = Gunshot
T = Loss of Tooth
U = Unconscious

RED	NUMBER	INJURY CODE	DESCRIBE INJURY	WHERE TAKEN	BY WHOM	DCFD AMB.	DCFD AMB. #	STATUS
im / pect	(2) 3 4 5 / 6 7 8 9	N M B O I / (L) T U	Severe G Gunshot wounds to Body	HEDSTAR	DCFD	(Yes) No	MRS #11	(Admitted) Released
im / pect	1 (3) 4 5 / 6 7 8 9	N M B O I / (L) T U	" " "	Medstar		Yes / No	MED 11	Admitted / Released
lim / pect	1 2 (4) 5 / 6 7 8 9	N M B O I / (L) T U	Gunshot wound to right hand	G/W		Yes / No		Admitted / Released
lim / pect	1 2 3 4 5 / 6 7 8 9	N M B O I / G L T U				Yes / No		Admitted / Released

ART III - PROPERTY

Codes: S = Stolen; E = Evidence; R = Recovered; F = Found; I = Impounded; V = Vehicle from which theft occurred; D = Alleged drug type; L = Lost; P = Suspected proceeds of crime; O = Other

a. Property Book & Page No.: 1118/370

b. Location of Property Book: 3561 V St. N.E. MOBILE CRIME

e	Description of Item(s)	Serial Number/ Operation ID No.	Model No.	Color	Size	Quantity	Comp. Value	Age	MPDC Value
)	Scratch on windshield on 3091								
								TOTAL VALUE	

VEHICLE INFORMATION

Vehicle operated/used by: Victim (Suspect) Victim's vehicle taken by suspect

de	Year	Make	Model	Color	Body	Tag No./State/Year	VIN
-	95	Cadillac	Eldorado	Burg	4D	BU8150/DC/04	1G6KF52Y7SU200055

ART IV - SUSPECT/MISSING PERSON INFORMATION (Use narrative if additional space is needed.)

#1 (Suspect / Missing)

a. Race: Asian, White, Unknown, Black, Latino/Hispanic, Other

b. Sex: (Male), Unknown, Female

c. Exact Age or Range:

d. Height:

e. Weight:

f. Eyes: UNK

g. Hair:

mplexion:

i. Scars:

j. Mustache:

k. Facial Hair:

l. Hat: Redskins CAP

m. Coat/Jacket: BLK leather

n. Pants: Blue Jeans

o. Blouse/Shirt:

p. Perpetrator Suspected of Using: Alcohol, Drugs, Computer, N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: andgun, Shotgun, Other; evolver, Semi-automatic, firearm; ifle, Automatic

Other: Cutting instrument, Hands/Feet/Teeth, Other (specify); Blunt object, None; Motor vehicle, Unknown

Color:

Make: UNKNOWN

Model:

Caliber:

#2 (Suspect / Missing)

a. Race: Asian, White, Unknown, Black, Latino/Hispanic, Other

b. Sex: Male, Unknown, Female

c. Exact Age or Range:

d. Height:

e. Weight:

f. Eyes:

g. Hair:

mplexion:

i. Scars:

j. Mustache:

k. Facial Hair:

l. Hat:

m. Coat/Jacket:

n. Pants:

o. Blouse/Shirt:

p. Perpetrator Suspected of Using: Alcohol, Drugs, Computer, N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: landgun, Shotgun, Other; levolver, Semi-automatic, firearm; ifle, Automatic

Other: Cutting instrument, Hands/Feet/Teeth, Other (specify); Blunt object, None; Motor vehicle, Unknown

Color:

Make:

Model:

Caliber:

#3 (Suspect / Missing)

a. Race: Asian, White, Unknown, Black, Latino/Hispanic, Other

b. Sex: Male, Unknown, Female

c. Exact Age or Range:

d. Height:

e. Weight:

f. Eyes:

g. Hair:

mplexion:

i. Scars:

j. Mustache:

k. Facial Hair:

l. Hat:

m. Coat/Jacket:

n. Pants:

o. Blouse/Shirt:

p. Perpetrator Suspected of Using: Alcohol, Drugs, Computer, N/A

q. Weapons Used in Offense (Mark all that apply)

Firearm: landgun, Shotgun, Other; levolver, Semi-automatic, firearm; ifle, Automatic

Other: Cutting instrument, Hands/Feet/Teeth, Other (specify); Blunt object, None; Motor vehicle, Unknown

Color:

Make:

Model:

Caliber:

Value of vehicles to be entered by Information Processing section

CCN 162121

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014245

NG PERSON HAS RUN AWAY BEFORE. GIVE DATE AND WHERE LOCATED:

Critical / Non-critical

PHYSICAL/MENTAL CONDITION (i.e., diabetic)	70 DESCRIBE ARTICLES OF JEWELRY WORN AND IDENTIFICATION CARRIED	71 NAME OF PARENT/GUARDIAN
ADDRESS OF PARENT/GUARDIAN	73 IF JUVENILE, ENTER MOTHER'S MAIDEN NAME	74 MISSING PERSON SECTION NOTIFIED (Name)

NARRATIVE Describe event and action taken. If additional narrative space is needed, use PD Form 251-A.

W-1 reports for C-1 and C-2, on the listed date and time S-1 was engaged in a verbal altercation with C-1 and C-2. W-1 observed S-1 produce a handgun and then shot C-1 and C-2 several times. W-1 states S-1 then left the scene in the listed vehicle, last seen traveling Eastbound on U St. N.W.

S-1 was then observed by C-3 who saw S-1 speed through a red light at the intersection of 14th and U St. N.W. C-3 attempted to stop S-1 and gave a vehicular chase. S-1 crashed the listed vehicle at 13th and U St. N.W. jumped out and fled on foot Northbound. C-3 continued the chase when S-1 turned around and fired a gunshot that took effect to C-3's right hand.

C-1 and C-2 were transported MEDSTAR. The listed vehicle was taken for evidence. C-3 was transported to George Washington Hospital and later released.

EVIDENCE TECHNICIAN/CSES #	77 NAME OF INVESTIGATOR NOTIFIED	78 TELETYPE NOTIFIED (Name)	NOTIFICATION ALSO REQUIRED WHENEVER MISSING PERSON LOCATED	79 TELETYPE #
Griffeas	Pamela Monte			

REPORTING OFFICER'S SIGNATURE	ELEMENT	81 OTHER POLICE AGENCY (Indicate if report prepared by officer other than MPD)	82 SECOND OFFICER'S NAME	ELEMENT	83 SIGNATURE OF SUPERVISOR	ELEMENT
Brown, I	31	○ USCP ○ USSS ○ METRO TRANSIT ○ OTHER	Smith, R	30	Edward Tewinkwa	VCB
BADGE NUMBER 3298 2858	Other		BADGE NUMBER 4697	Other	BADGE NUMBER 0556	Other

PAGE 3

OF COMPLAINANT/VICTIM/MISSING PERSON NO. 3 | 95 RELATED TO EVENT NO(S).

Kirk, Terrance

VICTIM TYPE: ○ Individual ○ Financial inst. ○ Religious org. ● Police officer ○ Business ○ Government ○ Society/Public ○ Other

OF BIRTH ○ NA | 98 AGE RANGE: ○ 0-1 yr. ○ 2-12 yrs. ○ 13-17 yrs. ● 18-65 yrs. ○ Over 65 | 99 SEX: ● Male ○ Female ○ Unknown | 90 HOME PHONE: ( ) On File

91 BUSINESS PHONE: (202)673-6815

92 RACE/ETHNICITY (Mark all that apply): ○ American Indian/Alaskan Native ○ Asian/Pacific Islander ● Black ○ Chinese ○ Latino/Hispanic ○ Jamaican ○ Japanese ○ Korean ○ Vietnamese ○ White ○ Other ○ Unknown/Refused

E ADDRESS ○ DC Resident ○ Non-DC Resident ○ Unknown

On File

BUSINESS ADDRESS/SCHOOL

1620 V St. N.W.
Washington, D.C.

OCCUPATION: Police Officer | 96 IS EVENT RELATED TO OCCUPATION? ● Yes ○ No ○ Unknown

DDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 3

98 NAME OF COMPLAINANT/VICTIM/MISSING PERSON NO. 4 | 99 RELATED TO EVENT NO(S).

100 VICTIM TYPE: ○ Individual ○ Financial inst. ○ Religious org. ○ Police officer ○ Business ○ Government ○ Society/Public ○ Other

101 DATE OF BIRTH ○ Unknown ○ NA (Month / Day / Year) | 102 AGE RANGE: ○ 0-1 yr. ○ 2-12 yrs. ○ 13-17 yrs. ○ 18-65 yrs. ○ Over 65 | 103 SEX: ○ Male ○ Female ○ Unknown | 104 HOME PHONE: ( )

105 BUSINESS PHONE: ( )

106 RACE/ETHNICITY (Mark all that apply): ○ American Indian/Alaskan Native ○ Asian/Pacific Islander ○ Black ○ Chinese ○ Latino/Hispanic ○ Jamaican ○ Japanese ○ Korean ○ Vietnamese ○ White ○ Other ○ Unknown/Refused

107 HOME ADDRESS ○ DC Resident ○ Non-DC Resident ○ Unknown

108 BUSINESS ADDRESS/SCHOOL

109 OCCUPATION | 110 IS EVENT RELATED TO OCCUPATION? ○ Yes ○ No ○ Unknown

111 ADDITIONAL MEANS TO CONTACT COMPLAINANT/VICTIM NO. 4

---

spect / ssing / ion

a. Race: ○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other | b. Sex: ○ Male ○ Unknown ○ Female | c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair

i. Scars | j. Mustache | k. Facial Hair | l. Hat | m. Coat/Jacket | n. Pants | o. Blouse/Shirt | p. Perpetrator Suspected of Using: ○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

un / ver — Firearm: ○ Shotgun ○ Semi-automatic ○ Automatic ○ Other firearm | Other: ○ Cutting instrument ○ Blunt object ○ Motor vehicle ○ Hands/Feet/Teeth ○ None ○ Unknown ○ Other (specify) | Color | Make | Model | Caliber

spect / ssing / ion

a. Race: ○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other | b. Sex: ○ Male ○ Unknown ○ Female | c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair

i. Scars | j. Mustache | k. Facial Hair | l. Hat | m. Coat/Jacket | n. Pants | o. Blouse/Shirt | p. Perpetrator Suspected of Using: ○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

un / ver — Firearm: ○ Shotgun ○ Semi-automatic ○ Automatic ○ Other firearm | Other: ○ Cutting instrument ○ Blunt object ○ Motor vehicle ○ Hands/Feet/Teeth ○ None ○ Unknown ○ Other (specify) | Color | Make | Model | Caliber

spect / ssing / ion

a. Race: ○ Asian ○ White ○ Unknown ○ Black ○ Latino/Hispanic ○ Other | b. Sex: ○ Male ○ Unknown ○ Female | c. Exact Age or Range | d. Height | e. Weight | f. Eyes | g. Hair

i. Scars | j. Mustache | k. Facial Hair | l. Hat | m. Coat/Jacket | n. Pants | o. Blouse/Shirt | p. Perpetrator Suspected of Using: ○ Alcohol ○ Drugs ○ Computer ○ N/A

q. Weapons Used in Offense (Mark all that apply)

un / ver — Firearm: ○ Shotgun ○ Semi-automatic ○ Automatic ○ Other firearm | Other: ○ Cutting instrument ○ Blunt object ○ Motor vehicle ○ Hands/Feet/Teeth ○ None ○ Unknown ○ Other (specify) | Color | Make | Model | Caliber

Withheld Pursuant to Legislative Immunity

FOIA CONFIDENTIAL TREATMENT REQUESTED

Withheld Pursuant to Legislative Immunity

FOIA CONFIDENTIAL TREATMENT REQUESTED

Withheld Pursuant to Legislative Immunity

FOIA CONFIDENTIAL TREATMENT REQUESTED

Withheld Pursuant to Legislative Immunity

FOIA CONFIDENTIAL TREATMENT REQUESTED

Briggs, Emanuel (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Monday, February 14, 2005 11:30 PM
To: Emanuel Briggs
Subject: put on my chair

Dear Chairperson Berger & Members of the ABC Board:

I am writing in regard to Club U, located in the DC Government Reeves Center at 2000 14th St NW. This establishment has been plaguing the U Street community for years.

The fatal stabbing and shooting attempts early yesterday morning send yet another horrifying message that Club U is a danger to District residents. Clearly, in the stark light of this fatal occurrence and the dozens of other instances of violence at Club U during recent years, the club has demonstrated unequivocally and consistently that it cannot be adequately managed.

The Alcoholic Beverage Control Board should act immediately and decisively to revoke Club U's liquor license. In this case, merely suspending its license, which is the equivalent to a slap on the wrist, is grossly insufficient. Chief Ramsey has written letters in the past asking that this establishment's liquor license be revoked. Now is surely the time to do so.

Hopefully, it will not take another shameful tragedy on the premises to correct this known situation. While any actions taken at this point are later than we had hoped, it is not too late to finally take the immediate steps necessary to revoke the liquor license at Club U. This community problem deserves our attention now. I urge your immediate and decisive action.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Edward D. Reiskin

Deputy Mayor for Public Safety & Justice

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014252

Briggs, Emanuel (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Wednesday, February 23, 2005 6:31 AM
To: Emanuel Briggs
Subject: FW: Club U

BOLDEN

Put on chair

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Tuesday, April 13, 2004 10:11 AM
To: 'Dwight James King-Leatham'
Subject: RE: Club U

I reviewed the lease several years ago. It is striking in that they are described as a restaurant operating in the breakfast and lunch hours only! It is certainly licensed as restaurant and it falls far short of any food requirement (45% of gross). I am meeting with Bolden et al. I asked them to bring the lease. DC gov has no obligating to find them a new space. I am disappointed to hear that Bolden has stated that this about race. That is very sad as well as inaccurate. Bests Jim

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Dwight James King-Leatham [mailto:dwiking@toad.net]
Sent: Monday, April 12, 2004 10:19 AM
To: Jim Graham
Subject: Re: Club U

Thank you.
Of course Bolden goes on to say, as he did before, that it's strictly because of the clientele and operators' race that is behind the effort to oust them. He disputed the facts set forth in Mitten's letter and said it amounts to slander. He also said he really enjoyed the beaches at St. Lucia. The point he strongly makes is that the city signed the lease to the Reeves location during the term of mayor kelly (sp?), so it's not an argument that the government didn't agree to it's location there. He also said the lease contemplates nighttime activities under the lease. I haven't read the lease and am not sure that would be productive. My editor asked how Bolden could be so ... bold ... as to demand the District find the club a new site, in effect asking why the club can expect that. My own thought is that they can if they have a grip on the District, legally. Comment? Dwight
----- Original Message -----
From: "Jim Graham" <jim@grahamwone.com>
To: "'Dwight James King-Leatham'" <dwiking@toad.net>

FOIA CONFIDENTIAL TREATMENT REQUESTED

Sent: Monday, April 12, 2004 9:08 AM
Subject: RE: Club U

> I would do my best to locate them elsewhere. They know my offer on
> this. Of course we would not want a repeat of the current problems.
> Bests Jim
>
> I typically answer emails before 9 AM on weekdays. If you email me
> after that, it is likely that you will hear from me the next weekday.
> If there is a need to communicate prior to that, you may wish to call
> me.
>
> Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406,
> Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).
>
>
> -----Original Message-----
> From: Dwight James King-Leatham [mailto:dwiking@toad.net]
> Sent: Friday, April 09, 2004 9:35 PM
> To: Jim Graham
> Subject: Fw: Club U
>
>
> Finally, to correct address
> ----- Original Message -----
> From: "Mitten, Carol (OPM)" <Carol.Mitten@dc.gov>
> To: <dwiking@toad.net>; "Mitten, Carol (OPM)" <Carol.Mitten@dc.gov>
> Cc: <jim@grahamone.com>
> Sent: Friday, April 09, 2004 7:35 PM
> Subject: RE: Club U
>
>
> > Dwight:
> >
> > Inasmuch as we are still in litigation with Club U, I can't comment.
> >
> > Carol
> >
> > -----Original Message-----
> > From: dwiking@toad.net [mailto:dwiking@toad.net]
> > Sent: Friday, April 09, 2004 4:48 PM
> > To: carol.mitten@dc.gov
> > Cc: jim@grahamone.com
> > Subject: Club U
> >
> >
> > I just spoke with A. Scott Bolden about your letter to Burger and
> Graham's,
> > the
> > latter of which he hadn't seen. He said the statements contained
> > were
> wrong,
> >
> > etc., but ended by saying he's more than interested in speaking to
> > you
> about
> >
> > relocating the club. The obvious question is, why doesn't he do that
> > himself? Of course if he's correct in saying he has two five-year
> > options that the club has exercised extending the lease, then the
> > District may in fact have
> to
> do
> > something to compensate for those rights, however contested they
> > are.
> >

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014254

> > So what do you have to say about the District's interest in finding
> > a new place for the club? Would it be on government property? Dwight

> > King-Leatham 202 244 7223, 301 564 6167
> > _____
> > This mail sent using ToadMail -- Web based e-mail @ ToadNet
> >
>
>
>

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014255

Coach & IV 2000 14th Street NW Suite 10 Washington DC 20009
Tel: (202) 328-8859 **Fax: (202) 986-1255**

RECEIVED
2005 MAY 18 PM 1:12
COUNCILMEMBER GRAHAM

Club U

June 24, 2005

The Honorable Anthony S. Williams
Mayor
Office of the Mayor
Government of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20002

Dear Honorable Mayor Anthony S. Williams:

My name is Warren C. Williams, Jr. for the past thirteen years I have been the General Manager of LeVelle Inc., which trades as the Coach & IV Restaurant and referred to by some patrons as Club U, located at 14th and U Street NW, in the Reeves Municipal Center.

The purpose of this letter is to appeal to your sense of fairness and justice, in hopes that a settlement of all of the matters between LeVelle Inc., and the District of Columbia can occur and avoid further economic hardship to our family business.

Many would say that the journey of the Coach & IV a long with the hopes and dreams of my entire family ended on the night of February 13, 2005 with the unfortunate death of Terrence Brown, a patron of our establishment. It remains an incident that has, and forever will, change our lives both personally and professionally.

Mayor Williams, so often one can be defined by one moment or single occurrence; however, you can not characterize circumstances without understanding where the journey began. I am a third generation Washingtonian with deep roots in the District. In 1922 my grandfather arrived in the District of Columbia on the back of a train, as a stowaway, looking to make a new start. Shortly after his arrival he opened a pool hall in the block of 7th and T Streets. As the business flourished for several years, my father worked for him, and when I reached the appropriate age, I worked for him as well. While my grandfather continued to operate businesses across the city, as well as, acquire various real estate properties, my dad opened a liquor store and I did everything from sweeping the floors, stocking shelves and cashiering. Over the years, as an inner city business, my family has endured many struggles from the riots, city revitalization, and I even witnessed my father being shot during a robbery attempt, but yet our passion has remained consistent, we have always continued to remain in the District, and give back to the community.

In 1988 my father's liquor store was forced to close due to the construction of the Green Line of the Metro, and for a period of time my father pursued other professional opportunities. When the construction was completed, the liquor store reopened and we leased the property back to a tenant. Missing entrepreneurship, as well as the desire to

work in the district my father and his partner purchased Ed Murphy's Supper Club in 1992, and named it the Coach & IV, to pursue his dream of operating a lounge and restaurant for residents of the District. Although we did not receive formal training of restaurant operations each member of our family fell into their respective roles. Even as a full-scholarship student on the Basketball Team at Drexel University, in Philadelphia, PA., I managed to commute home on the weekends, assists in management and maintain my heavy course load just to ensure that my fathers' dream became a reality.

Upon graduation, despite numerous job offers from major accounting firms, I chose to make a full-time commitment to our family business. We worked hard for countless hours to grow our business. Through promotion, marketing and dedication, in addition to the growth of the U Street market, we adjusted our business plan to meet the needs of our clientele to remain successful, and contend with constantly changing economic forces.

As the terms of our lease with the District government were originally for 10 years, plus two five year extensions, a mutually agreed upon settlement with the District of Columbia only allows us to operate to December 2006 when our doors will be closed. Please know that we agreed to this settlement because we grew tired of fighting with the District government officials. My dad is 70 years old and is long overdue for a leisurely way of life; however, due to the fact that a large majority of his life savings has been spent on litigation and costs associated with the settlement, we need to see our business through until our lease ends. It would be impossible for us to maintain our business through that period without our license to serve alcoholic beverages. We are seeking the opportunity to implement our enhanced corrective security action plan, work with the Metropolitan Police Department on reimbursable detail, and continue to give back to our community. In particular, we have shared our corrective plan with Commander McCoy of the Third District and he has informed us that our revised security plan is one that the Police Department can support.

From the beginning, Mayor Williams, we have and will continue to support you and the city that we love. My mother still has the bow tie that you gave her during your visit to our restaurant during your first campaign. Our family remains strong advocates for your initiatives in, and around the metropolitan area. We believe in you, and in our establishment. We are a family owned business in which my mother, aunts and cousins are all employed. We take this, and everything that we do seriously. As Father's Day passed I was very introspective, as I know that my father takes great pride in our business and would want nothing less, as I hope the same for him, than to have the Coach & IV to open its doors again, and thrive in our community. The incident of February 13, is most unfortunate and has changed our lives in countless ways. It is our hope however that it not be the closing chapter, given the circumstances and our sustained history of service to the community we all love. My family and I are confident that if given the opportunity that we can, and will operate our business safely with the passion and dedication that it is built upon.

As you are aware, my family and I are represented by Attorney David Wilmot in connection with this matter. And it is our view that despite his vigorous and effective

defense of our case, we may fall victims to political considerations. Through his defense Mr. Wilmot has demonstrated that the individuals responsible for most of the charges by the government are in fact repeat criminal offenders; several of whom were never charged by the government for their prior criminal activity. Further, we have learned that a number of the individuals involved in incidents for which our business has had its license suspended were never charges by the government or have had the charges against them dropped. It just seems unfair to my family and me that the criminals go free and we as a hardworking family lose our license and our livelihood. We need your help and therefore appeal to your sense of justice and fairness.

Mr. Mayor it is our hope that you look beyond political considerations, consider the record that clearly does not support revocation of our license and grant us the opportunity to operate with our license to the conclusion of our lease; a period of eighteen months. We believe that after you have had the opportunity to examine all the facts and circumstances in this matter you will conclude that this matter should be settled to permit us to operate with our license in cooperation with the police department.

We recognize that you are extremely busy running our city but would welcome the opportunity to meet with you to further explain our situation and answer any questions.

Thank you for your time and consideration.

Sincerely,

Warren C. Williams, Jr.

Cc: Robert Bobb, City Administrator
Jim Graham, City Council

Briggs, Emanuel (COUNCIL) PROPERTY settlement

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Jennings, Jeffrey (COUNCIL) [mailto:jjennings@dccouncil.us] **On Behalf Of** Graham, Jim (COUNCIL)
Sent: Wednesday, February 16, 2005 12:38 PM
To: 'jim@grahamwone.com'
Subject: FW: Levelle Inc./Club U

$100,000 - Back rent
$2916.00 - @ mos

-----Original Message-----
From: Hughes, Traci (OAG)
Sent: Wednesday, February 16, 2005 9:52 AM
To: 'jim_p_walsh@yahoo.com'
Cc: Graham, Jim (COUNCIL)
Subject: Levelle Inc./Club U

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

3 nights per wk - "events"

Can you do more than this agreement

ATTORNEY GENERAL

February 16, 2005

Attached is a press release issued in December regarding the Office of the Attorney General's settlement with Levelle, Inc. I have also attached a copy of the settlement agreement.

Levelle, Inc. has abided by the terms of the settlement agreement and paid $100,000.00 to the District and monthly rent due for the months of January and February of this year. The settlement agreement and the terms therein pertain ONLY to the lease of Store No. 10 at the Reeves Municipal Center currently held by Levelle, Inc.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014259

Yesterday, The Office of the Attorney General submitted to ABRA the Notice of Summary Suspension, and it has been properly served on the attorney representing Levelle, Inc. The Summary Suspension prohibiting Levelle, Inc. from serving alcohol will remain in effect until after ABRA conducts a hearing, at which time it will either decide to revoke Levelle's liquor license or to extend the suspension and require the Office of Attorney General to submit a Notice to Show Cause stating why Levelle's license should be indefinitely revoked.

Upon receipt of the Notice of Summary Suspension Levelle, Inc. has 72 hours to request a hearing from ABRA. ABRA will have 48 hours after receipt of such request to conduct a hearing.

Traci L. Hughes
Public Affairs Officer
Office of the Attorney General
for the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Suite 409
Washington, D.C. 20004
Phone: (202) 724-5319
Mobile: (202) 294-2358
Fax: (202) 724-6590

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014260

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement") is entered into by and among the parties ("Parties"): (i) the District of Columbia and its legal representatives, agents, attorneys, successors, and assigns (collectively "the District"); and (ii) Levelle, Inc. D/B/A Coach & IV t/a Club U; and its legal representatives, agents, attorneys, successors, and assigns (collectively "the Tenant").

WITNESSETH:

WHEREAS, the District and the Tenant entered into a lease dated October 21, 1993 ("Lease"), pursuant to which the District leased Tenant Store Number 10 at the Reeves Center located within 2000 14th Street, N.W., Washington, DC 20009 ("the Leased Premises");

WHEREAS, parties to the Superior Court of the District of Columbia cases styled *Levelle, Inc. v. the District of Columbia* (Civil Action No. 3459-99 and L&T No. 037056-99) desire to enter into a mutual settlement and release;

WHEREAS, the Tenant and the District desire to fully and finally settle the Tenant's Claims and the District's Claims.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, it is hereby agreed as follows:

1. The Tenant may be open business days (Monday-Friday) from 7 am until 3 pm and up to three nights per week after 5 pm for events. Levelle has use of Store No. 10 and infrequent use of the patio.

2. The Leased Premises shall be closed when the Emergency Command Center located on the 7th Floor of the Reeves Center is activated and requested by the Director of the Emergency Command Center.

3. The Tenant shall vacate the Leased Premises by January 2, 2007 ("Termination Date") with a fifteen (15) day grace period for move out. During this grace period, Levelle shall not operate.

4. The Tenant shall pay the District One Hundred Thousand Dollars ($100,000) ("Settlement Payment") in the form of a cashier's check made payable to the D.C. Treasurer within thirty (30) days of the execution of this agreement. Payment shall be sent to: District of Columbia, Office of the Attorney General, 441 4th Street, NW, Suite 450 N, Washington, DC 20001, ATTN: Civil Enforcement Section.

5. The Office of Property of Management will withdraw its protest with the Alcohol Control Board in the *Matter of Levelle, Inc. t/a The Coach and Four Holder of a Retailer's License*

"CR" at premises 2000 14th Street, N.W., Washington, DC 20009, Case Number 28078-04/073P.

6. Starting January 1, 2005, the Tenant shall pay Two Thousand Nine Hundred Sixteen Dollars ($2,916) ("Rent") in rent each month until the Termination Date, which totals Sixty-Nine Thousand Nine Hundred Eighty Four Dollars ($69, 984). Payment each month shall be via cashier's check mailed to: District of Columbia, Office of Property Management, 441 4th Street, NW, Suite 1100-South, Washington, D.C. 20001, Attn: Chief Property Management Officer, and shall be postmarked by the 5th day of the month it is due.

7. The District may build an exterior entrance to and bathroom facilities for the Leased Premises. If the District constructs the exterior entrance and bathroom facilities, this entrance shall be the only entrance and exit from the Leased Premises after 5 pm. Tenant shall be solely responsible for controlling the Tenant's patrons' use of the interior doors from the Leased Premises to the Reeves Center, should the exterior entrance be constructed. The interior doors can be used as emergency exit after 5 pm. The District of Columbia and Levelle, Inc. dba Coach and IV (Club U) shall cooperate to schedule the construction, if any, of the exterior entrance and bathroom facilities at hours that least interfere with Levelle's business operations.

8. The District may install outdoor lighting.

9. The Tenant shall continue to provide security for its after hours events. Security means a minimum of two (2) security officers, use of the magnetometer as appropriate, and 100% ID check as appropriate.

10. All funds in the Court Registry belong to and shall be distributed to the District of Columbia.

11. The Tenant's patrons shall have non-exclusive access to the Reeves Center parking garage at those times and dates as it is available to the general public. The District shall not have an obligation to provide parking to the Tenant's patrons.

12. All terms of the Lease shall remain in effect except those terms that have been modified by this Agreement.

13. If Tenant shall fail to timely make any rent payment or breaches any term of this Agreement or the Lease, the District shall be entitled to a judgment for possession upon five (5) days notice to the Tenant, so long as a Court of competent jurisdiction finds that the tenant failed to timely make any rent payment or breached any term of this Agreement or the Lease.

14. On the Termination Date, the District shall be entitled to the immediate entry of a judgment of possession and the issuance of writ of restitution, after complying with provision three (3) of this agreement. If Tenant shall fail to timely make the Settlement Payment, the District

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014262

shall be entitled to the immediate entry of a judgment of possession and the issuance of writ of restitution.

15. Upon complete execution by all parties and signatories to this Agreement, the parties shall file a Joint Praecipe of Dismissal with prejudice of all claims by and between the Parties in the Superior Court under Civil Action No. 3459-99 and L&T No. 037056-99.

16. Upon execution of the settlement agreement and receipt of payment required under this Agreement and Release, the District and the Tenant mutually agree to release and forever discharge the District, on the one hand, and the Tenant, on the other hand, from any and all agreements, actions, cases, causes of action, claims, compromises, controversies, costs, damages, debts, demands, disputes, expenses, judgments, liabilities, payments, promises, and suits of any nature whatsoever, relating to, arising under, or in connection with the District's claims or the Tenant's claims in the above-referenced consolidated lawsuit, that they, or each of them individually, may have or may claim to have against each other which existed as of the effective date of the Settlement Agreement, except for such claims as may arise in the future relating to the enforcement of this Settlement Agreement and Release. The claims being released by the District and the Tenant include, but are not limited to, any claims for compensatory or punitive damages, attorneys' fees, court costs, or other expenses incurred by the District and Tenant, respectively, in connection with the District's and Tenant's claims.

17. This Agreement and Release does not constitute an admission by the Tenant or by the District of any liability or wrongful action or violation of any statute, regulation, or common law right.

18. This Agreement and Release shall be binding upon and inure to the benefit of the District, the Tenant, and any of their respective legal representatives, agents, attorneys, successors, and assigns.

19. This Agreement and Release, along with the lease, as modified by this agreement, sets forth the entire agreement between the District, and the Tenant, and supersedes any and all prior agreements or understandings between the District and the Tenant on the subject matter hereof.

20. This Agreement and Release shall be governed by the laws of the District of Columbia.

21. Each party to this Agreement and Release expressly represents and warrants that it has full legal authority to enter into and perform this Agreement and Release and that the persons executing this Agreement and Release on behalf of each such party have been properly authorized and empowered to enter into this Agreement and Release.

22. Each party expressly represents and warrants that it has read this Agreement and Release, has been given the opportunity to confer with legal counsel concerning its contents, and

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014263

agrees to be bound by its terms. The parties understand and agree that this Agreement and Release will not be construed against any party as the drafter.

23. This Agreement and Release may be executed by the parties in counterparts, which taken together shall constitute one written agreement by and between the parties. The date upon which the last party executes this Agreement and Release shall be the effective date of this agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the parties, by and through their duly authorized representatives, have executed this SETTLEMENT AGREEMENT AND MUTUAL RELEASE on the dates appearing before their respective signatures.

LEVELLE, INC:

Date: 12-16-04 By: Warren C. Williams Sr
WARREN C. WILLIAMS, Sr.

Date: 12/16/04 By:
WARREN C. WILLIAMS, Jr.

Date: 12/16/04 By: Paul D Gwynn
PAUL D. GWYNN

THE DISTRICT OF COLUMBIA

OFFICE OF PROPERTY MANAGEMENT

Date: 12/16/04 By: Carol J. Mitten
CAROL J. MITTEN
Director

OFFICE OF THE ATTORNEY GENERAL

Date: 12/16/04 By: Robert J. Spagnoletti
ROBERT J. SPAGNOLETTI
Attorney General for the District of Columbia

Date: 12/16/04 By: David M. Rubenstein
DAVID M. RUBENSTEIN
Deputy Attorney General
Public Safety Division

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014264

Date: 12/16/04

By: Brenda Walls
BRENDA WALLS
Section Chief
Civil Enforcement Section

FOIA CONFIDENTIAL TREATMENT REQUESTED

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

PRESS RELEASE

FOR IMMEDIATE RELEASE
December 23, 2004

For Information Contact:
Traci Hughes at (202) 727-3400

THE DISTRICT SETTLES LANDLORD TENANT DISPUTE WITH A POPULAR D.C. NIGHTCLUB

Washington, D.C. - Robert J. Spagnoletti, Attorney General for the District of Columbia, announced today the settlement of a five-year landlord tenant dispute with Levelle, Inc., which operates a lunch cafeteria and Club U at the Reeves Municipal Center, 2000 14th Street, N.W. The District filed a complaint against Levelle for possession of the rental property (Store No. 10) for breaching the terms of its Lease Agreement with the District.

The settlement agreement executed by the District and Levelle establishes requirements for the security Levelle must provide for its Club U activities at the Reeves Municipal Center. Additionally, under the terms of the settlement, Levelle agreed to pay the District One Hundred Thousand Dollars ($100,000) by January 15, 2005, and monthly rent of Two Thousand Nine Hundred Sixteen Dollars ($2,916) until it vacates the property within 24 months. In turn, the District's Office of Property Management (OPM) has agreed to withdraw its suit against Levelle and will not contest Levelle's application for a liquor license.

In announcing this settlement, Mr. Spagnoletti expressed his thanks to Carol Mitten, Director of OPM, for her hard word in bringing this case to a resolution.

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FOIA CONFIDENTIAL TREATMENT REQUESTED

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
OFFICE OF THE GENERAL COUNSEL
941 North Capitol Street, NE, Suite 7200 Washington, DC 20002
Telephone: 202-442-4423 Facsimile: 202-442-9563

DATE: 11/29/05

TO: Councilmember Graham.

TELEPHONE NUMBER:

FACSIMILE NUMBER: 724-8109

FROM: Fred Moosally

TELEPHONE NUMBER: (202) 442-4355

FACSIMILE NUMBER:

RE: Club U Decision

NUMBER OF PAGES: 13

COMMENTS:

Councilmember Graham,

Please look at paragraph numbers 151, 154 and 155. These three paragraphs relate to the Feb. 13, 2005 [redacted] incident involving Terrence Brown.

This facsimile transmission contains information which may be confidential or privileged. The information is intended solely for the recipient and use by any other party is not authorized. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this facsimile transmission in error, please immediately notify the Alcoholic Beverage Regulation Administration, Office of the General Counsel by telephone at 202-442-4423 or return the document via first class mail to 941 North Capitol Street, NE, Suite 7200, Washington, DC 20002. Thank you.

THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	
Levelle, Inc. t/a The Coach & IV Restaurant Holder of a Retailer's License Class "CR" at premises 2000 14th Street, N.W. Washington, D.C.	Case No. 28078-05/012C Order No. 2005-76
Respondent	

BEFORE: Charles A. Burger, Chairperson
Vera M. Abbott, Member
Audrey E. Thompson, Member
Judy A. Moy, Member
Peter B. Feather, Member
Albert G. Lauber, Member[1]
Eartha Isaac, Member

ALSO PRESENT: David Wilmot, Esquire, and Andrea Bagwell, Esquire, on behalf of the Respondent

David Rubenstein, Deputy Attorney General, D.C., Walter Adams, Assistant Attorney General, D.C., David Lastra, Assistant Attorney General, D.C., Elizabeth Wingo, Assistant Attorney General, D.C., and Dena Douglas-Patterson, Deputy Assistant Attorney General, D.C., on behalf of the District of Columbia

Fred P. Moosally, III, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On February 15, 2005, the Alcoholic Beverage Control Board ("Board"), pursuant to D.C. Official Code §§ 25-826 and 25-827(a) (2001), ordered the suspension of the Retailer's License Class "CR" held by Levelle, Inc., t/a The Coach IV Restaurant ("Respondent"). The suspension was based upon an investigation conducted by

[1] ABC Board member Albert G. Lauber did not participate in all of the proceedings. As a result, Mr. Lauber did not vote on this matter.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Alcoholic Beverage Regulation Administration ("ABRA") Investigator Juliana N. Tengen as the result of two (2) PD-251 incident reports received from the Fourth District of the Metropolitan Police Department ("MPD") pursuant to D.C. Official Code § 25-804(b) (2001). Additionally, the Board's suspension of the Respondent's license was based upon the written requests of Chief of Police Charles Ramsey, MPD, dated November 10, 2004 and February 14, 2005, pursuant to D.C. Official Code § 25-827(a) (2001), which included a determination made by Chief Ramsey that there is a correlation between the increased incidents of crime within one thousand feet (1,000ft.) of the establishment and the operation of the establishment. The grounds for the suspension were set forth in the Notice of Summary Suspension, dated February 15, 2005, which was served on the Respondent.

On Friday, February 18, 2005, the Respondent requested a summary suspension hearing pursuant to D.C. Official Code § 25-826(c) (2001). The Board held summary suspension hearings on February 19, 2005, February 25, 2005 and March 2, 2005. On March 4, 2005, the Board issued from the bench, on the record and through a formal articulation of the decision and vote, its 5-0 decision to keep the Respondent's license in a summary suspension status. Additionally, the Board scheduled a show cause hearing for April 13, 2005, pursuant to D.C. Official Code § 25-447(c) (2001) and Title 23 of the District of Columbia Municipal Regulations ("DCMR") § 1604 (2004), to revoke the Respondent's license based upon the evidence presented at the summary suspension hearings. The case came before the Board for show cause proceedings on April 13, 2005 and May 10, 2005. The Board held the show cause hearings to revoke the Respondent's license based upon the four (4) charges set forth in the March 14, 2005 Notice to Show Cause, as described below. At the conclusion of the May 10, 2005 show cause hearing, the Board took its decision in this matter under advisement.

The Board considered in making its decision the evidence addressed at the hearings, the testimony of the witnesses, the arguments of counsel, the exhibits admitted in the hearings, and the documents comprising the Board's official file in making the following:

FINDINGS OF FACT

1. The establishment is principally owned by Paul Gwynn, Warren Williams, Sr., and Warren Williams, Jr. (ABRA Licensing File No. 20699; Tr. 4/13/05 at 7.) The establishment holds a Retailer's Class "CR" License and is located at 2000 14th Street, N.W. (ABRA Licensing File No. 20699.)

2. The Board held summary suspension hearings on February 19, 2005, February 25, 2005, and March 2, 2005. (See Show Cause File No. 28078-05/012C.) On March 4, 2005, the Board issued from the bench, on the record and through a formal articulation of the decision and vote, its 5-0 decision to keep the Respondent's license in a summary suspension status and to schedule a show cause hearing, pursuant to D.C. Official Code § 25-447(c) (2001) and 23 DCMR § 1604 (2004), to revoke the Respondent's license based upon the evidence presented at the summary suspension hearings. (See Show Cause File No. 28078-05/012C.) The case came before the Board for show cause hearings on April

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014269

time that the establishment had ever had an incident like that in the atrium of the Reeves Center and that there had never been an incident like that inside of the establishment. (Summary Suspension Hearing Tr. 3/02/05 at 1425.) He stated that over the course of the thirteen (13) years that the Respondent has been in business, the establishment has experienced assaults; however, he characterized the evening of February 13, 2005 as strange because it was unusual for the establishment to experience more than one incident in a single night. (Summary Suspension Hearing Tr. 3/02/05 at 1425-1427, 1443, 1478.)

147. Mr. Williams, Jr., believes that the Respondent provides adequate security to accommodate the number of patrons that attend the establishment based on his professional experience and based on talking with neighborhood leaders, MPD officers, Mr. Parker, and Mr. Pittman. (Summary Suspension Hearing Tr. 3/02/05 at 1427.) He testified that it was the Respondent's idea to employ the use of magnetometers. (Summary Suspension Hearing Tr. 3/02/05 at 1428.) Mr. Williams, Jr., stated that the Respondent is constantly trying to improve upon the security of the establishment. (Summary Suspension Hearing Tr. 3/02/05 at 1428, 1467.)

148. Mr. Williams, Jr., stated that the Respondent is very remorseful about the death of Terrence Brown. (Tr. 5/10/05 at 617.) Mr. Williams, Jr., indicated that the Respondent is willing to do whatever it takes from a security standpoint to make the business viable and fulfill the life dreams of his father and Mr. Gwynn. (Tr. 5/10/05 at 617.)

CONCLUSIONS OF LAW

149. The Board has the authority to suspend or revoke the license of a licensee who violates any provision(s) of Title 25 of the D.C. Official Code pursuant to D.C. Official Code § 25-823(1) (2001). Additionally, the Board has the authority to suspend or revoke the license of a licensee who allows the licensed establishment to be used for any unlawful or disorderly purpose pursuant to D.C. Official Code § 25-823(2) (2001). In the present case, the Board finds that the Respondent's violations of both D.C. Official Code §§ 25-823(2) and 25-827 (2001), as described below, warrant the revocation of the Respondent's Class "CR" Retailer's License. The Board did not find the Respondent to be in violation of D.C. Official Code § 25-781(a)(2) (2001), which prohibits the sale or delivery of an alcoholic beverage to a person who was or appeared to be intoxicated, as set forth in Charge III. Additionally, the Board notes in finding the Respondent not guilty of Charge III, that Charge IV, allowing the consumption of an alcoholic beverage by a person who was or appeared to be intoxicated, in violation of D.C. Official Code § 25-781(b)(2) (2001), is a lesser charge based upon the same specification and incident contained in Charge III. Thus, the Board is dismissing Charge IV.

150. With regard to Charge I, the Board must determine whether the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose as set forth in D.C. Official Code § 25-823(2) (2001). The Board notes that within Charge I are a total of seven (7) specifications (A, B, C, D, E, G, H, and I), each of which must be

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014270

evaluated by the Board.[4] In this case, the Board finds based upon Specifications A, B, C, D, and H of Charge I that the Respondent did allow the licensed establishment to be used for a disorderly purpose on both June 19, 2003 and February 13, 2005, in violation of D.C. Official Code § 25-823(2) (2001). This was a factor in the Board's decision to revoke the Respondent's license. The Board notes that the testimony presented by OAG on Specifications E, G, and I of Charge I was not sufficient to establish that the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose with regard to these incidents.

151. The Board heard substantive testimony regarding several incidents -- which are set forth in Specifications A, B, C, and D of Charge I -- that occurred on the morning of Sunday, February 13, 2005, which established that the Respondent lost control over the operation of its establishment and allowed the licensed establishment to be used for a disorderly purpose. The start of the disorderly activity at the licensed establishment on February 13, 2005 began with the incident contained in Specification D of Charge I involving Mr. Brown. With respect to Specification D, the testimony of Mr. Joppy substantiated that Mr. Brown was involved in a physical altercation with another patron that began inside of the establishment near the coat check area and resulted in Mr. Brown subsequently being stabbed either inside of the establishment or in the lobby area in front of the establishment. The testimony of Mr. Joppy also revealed that he carried Mr. Brown out of the establishment and left him in the lobby of the Reeves Center. After putting Mr. Brown down near the Industrial Bank, Mr. Brown grabbed his leg and informed Mr. Joppy that he had been stabbed, at which time Mr. Joppy noticed that there was blood on Mr. Brown's leg and on his own staff uniform shirt. The substantial amount of disorderly activity occurring at the licensed establishment and in front of the licensed establishment on February 13, 2005 was evidenced by Mr. Joppy's testimony that he was unable to provide assistance to Mr. Brown because his focus was diverted as two (2) other criminal incidents, a fight between two (2) male patrons (Specification C of Charge I) and the assault on Ms. Lawrence (Specification A of Charge I), were occurring almost simultaneously and Mr. Joppy's presence was needed to assist with the fight between the two (2) male patrons. This additional disorderly activity on February 13, 2005 was both unfortunate and significant as the testimony of Mr. Joppy revealed that once he went back to Mr. Brown, about five (5) or ten (10) minutes later, Mr. Brown was lying on the ground in the lobby of the Reeves Center, passing in and out of consciousness, with a large amount of blood on his torso area as the result of a stab wound.

152. The disorder that encompassed the Respondent's establishment on February 13, 2005 also included the incident contained in Specification A of Charge I. With respect to Specification A, the testimony of Detective Hewick and Firefighter Muyleart revealed that this incident commenced inside of the Respondent's establishment, on the dance

[4] Specification F contained in Charges I and II of the March 14, 2005 Notice to Show Cause were withdrawn by the OAG based upon the Board's March 4, 2005 decision in the Respondent's summary suspension hearing, in which the Board found that there was no correlation between the September 17, 2004 incident and the operation of the Respondent's establishment.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014271

floor, after the injured party, Ms. Lawrence, attempted to intervene in a fight between her friend Bernice and Bernice's boyfriend Stacy, who was physically choking Bernice for dancing with another man. The testimony of Deputy Payne revealed that the incident then moved outside of the establishment, to the hallway of the Reeves Center where Ms. Lawrence was knocked unconscious by Stacy, approximately three feet (3ft.) away from where Mr. Brown lay bleeding on the floor. The testimony of Deputy Payne and Mr. Parker did establish that the Respondent's security personnel reacted after the assault and escorted Stacy out of the building. However, the testimony of Mr. Parker also raised concerns for the Board as he indicated that the establishment did not call MPD or turn Stacy over to MPD. The Board found that efforts by the establishment to notify or involve MPD with regard to Specification A could have possibly prevented the occurrence of Specification B of Charge I.

153. The disorderly activity on February 13, 2005 surrounding the incident involving Ms. Lawrence, who was knocked unconscious by Stacy, continued with a separate incident contained in Specification B of Charge I. With regard to Specification B, the testimony of Firefighter Muyleart revealed that minutes after the assault on Ms. Lawrence, Firefighter Muyleart heard gunshots fired at his ambulance while treating Ms. Lawrence for her injuries. Specifically, the testimony of Firefighter Muyleart revealed that as soon as Ms. Lawrence and Bernice got into the ambulance, two (2) shots were fired at a close distance behind the ambulance, after which Bernice informed him that it was Stacy -- whom the establishment had ejected without making MPD aware of the assault -- who was shooting at them. While the testimony of Commander McCoy and Detective Hewick confirmed that no shell casings were recovered, the Board gives weight to Commander McCoy's professional assessment that the shell casings would not have been recovered if the shooter used a revolver or the shots were fired from the inside of a car.

154. With respect to Specification C, the Board found that the disorderly activity that occurred on February 13, 2005 also included a large commotion and a physical altercation between two (2) male patrons in the lobby of the Reeves Center, both of which transpired at the same time that Mr. Brown lay bleeding in close proximity. Specifically, the testimony of Mr. Joppy revealed that he had to leave Mr. Brown, who had been stabbed and was bleeding, to assist other members of the establishment's security personnel with a fight that occurred between two (2) male patrons approximately three feet (3ft.) away from and almost simultaneously to the assault of Ms. Lawrence in the lobby area. The testimony of Officer Ford established (1) that the two (2) patrons were fighting in the lobby around the time that the establishment was closing because he observed patrons exiting the establishment and (2) that one of the individuals involved in the fight was subsequently detained and arrested. The testimony of Deputy Payne also established that a commotion occurred within the same time frame as the assault on Ms. Lawrence, as he first observed the Respondent's security personnel attending to an unconscious Ms. Lawrence and then noticed what appeared to be the pushing of patrons by other security personnel as they exited the establishment, followed shortly thereafter by the frantic running of patrons.

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155. Based upon the above, the Board finds that the incidents contained in Specifications A through D of Charge I demonstrate that the Respondent allowed the licensed establishment to be used for a disorderly purpose on February 13, 2005, in violation of D.C. Official Code § 25-823(2) (2001). In making this decision, it is worth noting that based upon the testimony of Deputy Payne, Mr. Joppy, and Chief Wilson, the Board found that the Respondent lost control over the operation of the licensed establishment and was unable to provide a safe environment for its patrons. The Board found the incidents contained in Specifications A through D of Charge I to reveal that there was not adequate staffing or supervision at the Respondent's establishment to prevent the disorder that ensued as patrons were frantically departing the establishment on the morning of February 13, 2005. For example, Mr. Joppy was unable to provide assistance to Mr. Brown who had been stabbed because his presence was needed to break up a fight between two (2) male patrons. Furthermore, the inability of the establishment to provide a safe environment was supported by the testimony of Chief Wilson who indicated that the Respondent's establishment poses an unreasonable risk to the safety of its patrons and the employees that work in the Reeves Center because of the rash of recent incidents and the fact that the Respondent is incapable of adequately and safely moving patrons in and out of the establishment. Finally, the Board has concerns with the establishment's practice of ejecting patrons involved in criminal activity, including assaults, without notifying or involving MPD.

156. With regard to Specification E, the testimony of Ms. Martin and Mr. Pittman revealed that on Sunday, October 17, 2004, Ms. Martin was escorted out of the Respondent's establishment after getting into a physical altercation with another female patron inside of the establishment. The testimony of Mr. Pittman and Sergeant Moye revealed that a member of the establishment's security staff flagged down Sergeant Moye after Ms. Martin refused to leave the premises and was yelling and cursing outside. The Board notes that in this particular instance Sergeant Moye commended the establishment's security staff member for handling the situation in a professional manner and not engaging Ms. Martin in her screaming antics. Additionally, Sergeant Moye stated that the establishment's security personnel acted appropriately in requesting assistance from MPD. As a result, the Board did not find the incident contained in Specification E of Charge I to establish that the Respondent allowed the licensed establishment to be used in an unlawful or disorderly purpose.

157. With respect to Specification G of Charge I, the testimony of Detective Montague revealed that on Friday, November 21, 2003, the assailant, Mr. Edward Williams, the assailant's brother, Mr. Marcus Williams, and three (3) other male individuals, including Mr. Brewster and Mr. Thompson, attended the Respondent's establishment in celebration of Mr. Thompson's birthday. The testimony of Detective Montague and Detective Hewick revealed that while inside of the establishment, Mr. Edward and Marcus Williams were involved in a verbal altercation with a female patron, which resulted in Mr. Edward and Marcus Williams leaving the establishment. The testimony of Detective Montague also confirmed that shortly thereafter, the entire group reconvened in the 1400 block of Paloma Way, N.W., and that Mr. Edward Williams and Mr. Thompson got into an argument that resulted in Mr. Edward Williams shooting Mr. Thompson and Mr.

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Brewster at approximately 1:05 a.m. and fleeing from the scene in his car. Officer Shirk's testimony revealed that soon after chasing Mr. Edward Williams up U Street, N.W., Mr. Edward Williams' car crashed, after which Mr. Edward Williams fled from the car and shot Officer Shirk, striking him in the finger. In this instance, despite the serious and tragic events contained in Specification G of Charge I, the testimony did not establish that the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose. Specifically, the testimony of Detective Montague indicated that the shooting was not the direct result of the confrontation that occurred inside of the establishment. Additionally, the Board notes that it was not presented with any evidence to establish: (1) that the verbal confrontation that occurred inside of the establishment rose to the level of being considered disorderly, or (2) whether or not Mr. Edward and Marcus Williams were thrown out of the Respondent's establishment or whether they left the establishment on their own accord. As a result, the Board did not find the incident contained in Specification G of Charge I to demonstrate that the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose.

158. With respect to Specification H of Charge I, the testimony of Detective Hewick and Mr. Pittman revealed to the Board that on Thursday, June 19, 2003, a verbal altercation between female patrons escalated into a physical altercation inside of the Respondent's establishment between Ms. Dudley and Ms. Reece, which resulted in the establishment's security personnel eventually breaking up the fight and escorting both females and their friends out of the establishment through opposite doors. In this instance, the Board finds based upon the testimony of Officer Green and Detective Hewick that the Respondent did allow the licensed establishment to be used for a disorderly purpose. Specifically, in addition to allowing the verbal altercation to escalate into a physical altercation inside of the licensed establishment, the testimony of Detective Hewick revealed that the establishment did not call MPD or initially involve MPD regarding this incident. The Respondent's handling of this incident proved to be ineffective as Detective Hewick's and Officer Green's testimony revealed that once outside a fight again ensued as Ms. Reece ran toward Ms. Dudley, who was waiting outside of the establishment with her friend, and picked up a bottle and smashed the bottle on Ms. Dudley's face. The testimony of Officer Green revealed that he and his partner were flagged down outside during the fight by the Respondent's security while traveling eastbound in the 1400 block of U Street, N.W., and that Officer Green and his partner assisted the Respondent's security personnel in breaking up the fight, and then arrested Ms. Reece and her friend Ms. Wideman for assault. It is worth noting that the testimony of Officer Green revealed that a crowd of about fifty (50) or sixty (60) people formed around the fight. Based upon the above, the Board finds the incident contained in Specification H of Charge I to demonstrate that the Respondent allowed the establishment to be used for a disorderly purpose on June 19, 2003, in violation of D.C. Official Code § 25-823(2) (2001).

159. With respect to Specification I of Charge I, the testimony of Detective Patterson revealed that on Sunday, March 16, 2003, a verbal altercation occurred inside of the Respondent's establishment between Mr. Staton and the assailant, who was also a patron

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of the establishment. The testimony of Detective Patterson and Detective Hewick revealed that some period of time after the Respondent's establishment closed, Mr. Staton and his friend -- who had been thrown out of the establishment just before closing for smoking marijuana -- were walking back to their car when they encountered three (3) individuals. The testimony of Detective Patterson and Officer Johnson revealed that the two (2) parties exchanged gunfire, resulting in Mr. Staton's death. In this instance, the Board did not find the testimony presented to establish that the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose. Specifically, the Board notes that it was not presented with any evidence to establish that the verbal altercation that occurred inside of the establishment rose to the level of being considered disorderly. Just as important, the testimony of Detective Patterson and Detective Hewick established that the shooting took place some period of time after the licensed establishment had closed. As a result, the Board did not find the incident contained in Specification I of Charge I to demonstrate that the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose.

160. With regard to Charge II, the Board must determine whether the Respondent's Class "CR" Retailer's License warrants revocation based upon two (2) written requests from Chief of Police Charles Ramsey, dated November 10, 2004 and February 14, 2005, to revoke the establishment's license. The Chief of Police's written requests to revoke the Respondent's license are based upon his determination that the operation of the licensed establishment correlates with an increase of incidents of crime within one thousand feet (1,000ft.) of the establishment, pursuant to D.C. Official Code § 25-827 (2001). The incidents of crime brought by CAG are contained in Specifications A, B, C, D, E, G, H, and I of Charge II.

161. In this case, the Board finds based upon the testimony and evidence presented at the hearings, that the Chief of Police has established to the Board's satisfaction that there is a correlation between the operation of the establishment and increased incidents of crime within one thousand feet (1,000ft.) of the establishment that warrant revoking the Respondent's Class "CR" Retailer's License. First, the testimony revealed that the Respondent lost control over the operation of its establishment on Sunday, February 13, 2005, and as a result, several criminal incidents occurred, including the homicide of Mr. Brown, which is detailed as a basis for requesting revocation in Chief Ramsey's February 14, 2005 letter. Specifically, the testimony of Mr. Joppy revealed that the stabbing of Mr. Brown, as set forth in Specification D of Charge II, initially started as a fight inside of the establishment with Mr. Brown subsequently stabbed either inside of the establishment or in the lobby area in front of the establishment. The Respondent's loss of control over the operation of its establishment was further evidenced by Mr. Joppy's testimony that he was unable to provide assistance to Mr. Brown as two (2) other criminal incidents, a fight between two (2) male patrons (Specification C of Charge II) and the assault on Ms. Lawrence (Specification A of Charge II), were occurring almost simultaneously and Mr. Joppy's presence was needed to assist with the fight between two (2) male patrons. The testimony of Firefighter Muyleart also established that the gunshots fired at Ms. Lawrence's ambulance also stemmed from the operation of the establishment on February 13, 2005 (Specification B of Charge II).

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162. Second, the testimony of Sergeant Moye, Officer Hill, and Ms. Martin established that the October 17, 2004 criminal incident (Specification E of Charge II) contained in Chief Ramsey's November 10, 2004 written request was related to the operation of the establishment. Specifically, on October 17, 2004, the Respondent was unable to get Ms. Martin, who was involved in a physical altercation inside of the establishment, to leave the area of the establishment -- after getting ejected -- without MPD assistance. The testimony of Officer Hill established that after being arrested by MPD for disorderly conduct, Ms. Martin destroyed MPD property by kicking out the squad car window and was also subsequently charged with destroying government property and assaulting an MPD officer as Ms. Martin hit Sergeant Moye in the face and kicked him. Third, the testimony of Officer Murga, Inspector Groomes, Detective Montague, and Detective Hewick, established that all the parties involved in the November 21, 2003 criminal incident (Specification G of Charge II) contained in Chief Ramsey's November 10, 2004 written request were all patrons of the establishment and had been drinking alcoholic beverages heavily inside of the establishment while celebrating Mr. Thompson's birthday. One of the patrons, Mr. Edward Williams, was involved in a verbal altercation inside of the establishment, then left the establishment, and was subsequently involved in an altercation with his friends and ultimately the shooting that took place. While the testimony of Detective Montague revealed that the shooting was not the direct result of the confrontation that occurred inside of the establishment; Detective Montague's testimony did establish a correlation between the operation of the establishment and this incident of crime as she indicated that Mr. Edward Williams' consumption of alcoholic beverages at the licensed establishment played a role in the shooting, which occurred within one thousand feet (1,000ft.) of the licensed establishment.

163. In addition to the incidents contained in Chief Ramsey's letter, the Board finds that the testimony of Officer Green and Detective Hewick established that the June 19, 2003 criminal incident contained in Specification H of Charge II, is related to the operation of the establishment. Specifically, with respect to Specification H of Charge I, the testimony of Detective Hewick and Mr. Pittman revealed to the Board that on Thursday, June 19, 2003, a verbal altercation between female patrons escalated into a physical altercation inside of the Respondent's establishment between Ms. Dudley and Ms. Reece, which resulted in the establishment's security personnel eventually breaking up the fight and escorting both females and their friends out of the establishment through opposite doors. The incident later started up again outside of the establishment as a fight ensued after Ms. Reece ran toward Ms. Dudley, who was waiting outside of the establishment with her friend, picked up a bottle and smashed the bottle on Ms. Dudley's face. The testimony of Officer Green revealed that he and his partner were flagged down outside during the fight by the Respondent's security while traveling eastbound in the 1400 block of U Street, N.W., and that Officer Green and his partner assisted the Respondent's security personnel in breaking up the fight, and then arrested Ms. Reece and her friend Ms. Wideman for assault. It is worth noting that the testimony of Officer Green revealed that a crowd of about fifty (50) or sixty (60) people formed around the fight. Based upon the above, the Board finds the testimony regarding the June 19, 2003 incident contained in Specification H of Charge I to establish that it is an incident of

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crime that is related to the operation of the establishment. The Board did not find the March 16, 2003 incident contained in Specification I of Charge II to be related to the operation of the establishment as the testimony of Detective Patterson and Detective Hewick indicated that the shooting took place some time after the licensed establishment had closed.

164. Based upon the Board's findings with regard to Specifications A, B, C, D, E, G, and H, the Board agrees with the Chief of Police's recommendation that the correlation between the operation of the establishment and incidents of crime within one thousand feet (1000ft.) warrant the revocation of the Respondent's Class "CR" Retailer's License. In finding merit in the Chief of Police's request, it is worth noting that the testimony of Commander McCoy and Inspector Groomes established that each of the above incidents in Charge II occurred within one thousand feet (1,000 ft) of the licensed establishment. Furthermore, the testimony of Commander McCoy revealed that additional MPD manpower is allocated to the Respondent's location because of all of the violent disturbances that occur and the need to disburse the establishment's crowds.

165. In deciding whether to revoke the Respondent's Class "CR" Retailer's License, the Board also took into account the proposals contained in the Respondent's Security Plan 2005, as described by Mr. Williams, Jr., which include plans to: 1) obtain a reimbursable detail of up to ten (10) MPD officers and two (2) special police officers to patrol the atrium of the Reeves Center and to protect the establishment's patrons and the community within one thousand feet (1,000ft.); and, 2) hire private consultants, such as MPD, to train the establishment's security personnel in the areas of crowd control and dealing with intoxicated patrons. However, despite these plans, the Board does not feel confident that a newly revised security plan will prevent the Respondent's establishment from being the catalyst of future violent incidents. Specifically, the testimony of Mr. Joppy raised concerns for the Board as it revealed that the establishment's management never reviewed the Respondent's prior security plan, Security Plan 2003, or written procedures with Mr. Joppy. Additionally, the testimony revealed that the Respondent's security personnel did not follow existing procedures that were supposed to be in place at the establishment. Specifically, the testimony of Officer Agee revealed that a female patron at the establishment on February 13, 2005 was not checked by security personnel despite the fact that the magnetometer went off. The testimony of Lydell Brown also indicated that the establishment does not consistently follow its procedure of requiring patrons to empty their pockets and patting patrons down from their collars to their ankles as was indicated by the Respondent's personnel. Finally, the testimony of Commander McCoy, Inspector Groomes, and Mr. Parker revealed that even with the presence of MPD in the vicinity of the Reeves Center on nights when the establishment was open and operating, the frequency of violent incidents involving the Respondent's patrons did not diminish.

166. With regard to Charge III, the Board must determine whether the Respondent delivered an alcoholic beverage to a person who was or appeared to be intoxicated as prohibited by D.C. Official Code § 25-781(a)(2) (2001). In this instance, the testimony of Sergeant Moye and Officer Hill indicated that on the evening of October 17, 2004,

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while arresting Ms. Martin, -- a patron of the Respondent's establishment who refused to leave the premises after being escorted out of the establishment -- the MPD officers both smelled alcohol on Ms. Martin's breath. However, the Board found credible the testimony of Ms. Martin that she had consumed only one alcoholic beverage containing vodka inside of the Respondent's establishment and that she had not consumed any other alcoholic beverages the entire evening. Additionally, Ms. Martin's testimony revealed that she complained of alcohol poisoning to the MPD officers because she did not want to remain in the prison cell and she believed that complaining of alcohol poisoning was a way she could have the bruises she obtained during her altercation with the MPD officers attended to at a hospital. Furthermore, the testimony of Sergeant Moye indicated that he could not be certain whether or not Ms. Martin was intoxicated because he did not perform a field sobriety test on her. Based upon the testimony above, the Board does not find the Respondent sold or delivered an alcoholic beverage to a person who was or appeared to be intoxicated, in violation of D.C. Official Code § 25-781(a)(2) (2001).

167. Based upon the above, the Board finds that the Respondent's violations of (1) D.C. Official Code § 25-823(2) (2001), as set forth in Specifications A, B, C, D, and H of Charge I, and (2) D.C. Official Code § 25-827 (2001), as set forth in Specifications A, B, C, D, E, G, and H of Charge II, warrant the revocation of the Respondent's Class "CR" Retailer's License.

ORDER

THEREFORE, it is hereby **ORDERED** on this 29th day of June 2005, that the Retailer's License Class "CR", issued to Levelle, Inc., t/a The Coach and IV Restaurant, be and is hereby **REVOKED**.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014278

Levelle, Inc.
t/a The Coach and IV Restaurant
June 29, 2005

District of Columbia
Alcoholic Beverage Control Board

Charles A. Burger, Chairperson

Vera M. Abbott, Member

Judy A. Moy, Member

Audrey E. Thompson, Member

Peter B. Feather, Member

— not voting —
Albert G. Lauber, Member

Eartha Isaac, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014279

FILE Club U

Logan, Myra (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Friday, May 18, 2007 9:05 AM
To: ward_one@lyris.dc.gov
Subject: Club U Revocation Upheld by DC Court of Appeals!

Dear Friends:

For those of you who remember the ongoing violence at Club U in (of all places!) the Reeves Center, with all the weekend gunshots, assaults, and deaths in the area of 14th and U, the DC Court of Appeals yesterday affirmed the revocation of that license...Once and for all, Club U is forever closed.

This ends a lengthy revocation process which consumed many hours of effort in 2005. And for many of us, myself included, it is a vindication of efforts lasting over several years to get this place shut down and the license revoked.

A most definite congratulations for a job well done goes to the ABC Board, Chuck Burger, Chairman, and ABRA Director, Maria Delaney and, of course, the Office of the DC Attorney General.

The revocation of the Club U license signaled a change in ABC approach to these matters that continues to this day. The widespread support of the community--despite efforts to suggest otherwise, including the racist posters against me on U Street--was steadfast, including the ANC and its vigilant ANC member, Phil Spalding. Old timers and new comers alike banded together to end this violence.

So this chapter is closed.

Bests, Councilmember Jim Graham

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

Chairman, Committee on Public Works and the Environment (including alcohol regulation). Main Committee Number: 202-724-

FOIA CONFIDENTIAL TREATMENT REQUESTED

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8195. 1350 Pa. Ave., NW, #116, Washington, DC 20004.

Voting member, Board of Directors, WMATA/Metro.

Website: www.grahamwone.com

5/18/2007

Club U

Logan, Myra (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Friday, May 18, 2007 9:06 AM
To: Logan, Myra (COUNCIL)
Subject: FW: Victory in Levelle v DC (Club U)

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

Chairman, Committee on Public Works and the Environment (including alcohol regulation). Main Committee Number: 202-724-8195. 1350 Pa. Ave., NW, #116, Washington, DC 20004.

Voting member, Board of Directors, WMATA/Metro.

Website: www.grahamwone.com

-----Original Message-----
From: Delaney, Maria (ABRA) [mailto:maria.delaney@dc.gov]
Sent: Thursday, May 17, 2007 4:13 PM
To: Jim Graham
Cc: Hernandez, Steven (COUNCIL)
Subject: FW: Victory in Levelle v DC (Club U)

Jim:

FYI, I thought you might be interested in the Club U opinion issued by the D.C. Court of Appeals today. The Court upheld the ABC Board's decision to revoke Club U's ABC license.

Maria M. Delaney
Director
Government of the District of Columbia
Alcoholic Beverage Regulation Administration
941 North Capitol Street, N. E., Suite 7200
Washington, D.C. 20002

Phone: (202) 442-4423
FAX: (202) 727-4052

Email: maria.delaney@dc.gov

5/18/2007

Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 05-AA-765

LEVELLE, INC., PETITIONER,

V.

DISTRICT OF COLUMBIA ALCOHOLIC
BEVERAGE CONTROL BOARD, RESPONDENT.

Petition for Review of a Decision of the
District of Columbia Alcoholic Beverage Control Board
(No. 28078-05/012C)

(Argued January 30, 2007 Decided May 17, 2007)

David W. Wilmot, with whom *Andrea M. Bagwell* was on the brief, for petitioner.

James C. McKay, Jr., Senior Assistant Attorney General, with whom *Robert J. Spagnoletti*, Attorney General for the District of Columbia at the time the brief was filed, and *Todd S. Kim*, Solicitor General, were on the brief, for respondent.

Before KRAMER and FISHER, *Associate Judges*, and BELSON, *Senior Judge*.

BELSON, *Senior Judge*: This appeal challenges the revocation of a liquor license held by petitioner, Levelle, Inc., for an establishment located within a District of Columbia government-owned building in Northwest, Washington, D.C. Petitioner contends that the findings underlying the decision of the District of Columbia Alcoholic Beverage Control Board to revoke the license were not supported by substantial evidence and that the District should have been precluded from relying on evidence of events that took place prior to entry of an agreement between Levelle and the District of Columbia settling a landlord-tenant suit

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concerning the premises. We disagree and therefore affirm.

I.

Petitioner Levelle, Inc. is a District of Columbia corporation that operated the Coach IV Restaurant, a.k.a. "Club U," within the Frank Reeves Municipal Center at 2000 14th Street, N.W. (hereinafter "the establishment" or "the club"). Prior to February 15, 2005, when its license was summarily suspended, petitioner held a Class "C/R" Retailer's License for the establishment that authorized petitioner to serve spirits, wine, and beer. *See* D.C. Code § 25-113 (b)(3)(A)(i) (2001). After investigating the relationship between the operation of petitioner's establishment and numerous incidents of crime in and around the establishment, the District of Columbia Alcoholic Beverage Control Board ("the Board") revoked petitioner's license on June 29, 2005.

Statutory Background

Pursuant to D.C. Code § 25-801 (2001), the Board has the authority to enforce the provisions of the "Alcoholic Beverage Regulation" title with respect to licensees. "The Board may suspend or revoke the license of any licensee during the license period if: (1) The licensee violates any of the provisions of this title, the regulations promulgated under this

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title, or any other laws of the District; [or] (2) The licensee allows the licensed establishment to be used for any unlawful or disorderly purpose . . . ." D.C. Code § 25-823 (2001). Under D.C. Code § 25-827 (a) (2001), "[t]he Chief of Police may request the suspension or revocation of a license if the Chief of Police determines that there is a correlation between increased incidents of crime within 1,000 feet of the establishment and the operation of the establishment. The determination shall be based on objective criteria, including incident reports, arrests, and reported crime, occurring within the preceding 18 months and within 1,000 feet of the establishment."

Before the Board may revoke or suspend a license, a licensee has a right to be heard pursuant to D.C. Code § 25-821 (2001), unless, as in this case, the summary revocation or suspension provisions of D.C. Code § 25-826 (2001) are invoked for situations in which "the operations of a licensee present an imminent danger to the health and safety of the public" or in which a patron assaults a police officer or other government official within 1,000 feet of the establishment.

Factual Background

In 1999, the District of Columbia Office of Property Management sued petitioner, and petitioner countersued, both alleging breach of the lease contract for the space occupied by

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petitioner's establishment.[1] On December 16, 2004, petitioner and representatives of the District of Columbia executed a Settlement Agreement and Mutual Release ("Settlement Agreement" or "Agreement") to dispose of their respective claims. Under this Agreement, which expressed a "desire to fully and finally settle the Tenant's claims and the District's claims," petitioner was permitted to operate the establishment on weekdays from 7:00 a.m. until 3:00 p.m. and three evenings per week after 5:00 p.m. until a termination date of January 2, 2007.[2] Petitioner agreed to pay a one-time $100,000 "Settlement Payment"; pay a monthly rent of $2,916; and provide security for its evening events including "a minimum of two (2) security officers, use of the magnetometer as appropriate, and 100% ID-check as appropriate." The District of Columbia, in exchange, agreed that "[t]he Office of Property Management will withdraw its protest with the Alcohol Control Board." The parties also executed a release from future actions relating to or arising from the claims in the lawsuit.[3]

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[1] The record on appeal does not contain any of the pleadings or orders from this previous litigation.

[2] Because the revocation of a liquor license carries collateral consequences for the holder of that license, *see* D.C. Code § 25-821 (c) (2001), this case still presents a live controversy despite the expiration of the establishment's lease. *Cf. Thorn v. Walker*, 912 A.2d 1192, 1195 (D.C. 2006).

[3] The release provided:

> Upon execution of the settlement agreement and receipt of payment required under this Agreement and Release, the District and the Tenant mutually agree to release and forever discharge the District, on one hand, and the Tenant, on the other hand, from any and all agreements, actions, cases, causes of action,

(continued...)

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While the landlord/tenant dispute was being litigated, and continuing after the execution of the Settlement Agreement, the establishment and the surrounding neighborhood experienced numerous incidents of violent crime. In particular, the club became a "focal point" for late-night problems on the weekends, according to the Chief of Police; it appears that the combination of large numbers of young people,[4] excited by alcohol, and the club's "go-go" atmosphere, created a volatile mix that the club's security was inadequate to control.

For example, on June 19, 2003, several female patrons were involved in a verbal altercation inside the club and were escorted outside, where one patron struck another patron in the head with a broken bottle, causing severe lacerations. Metropolitan Police Officers

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[3](...continued)

> claims, compromises, controversies, costs, damages, debts, demands, disputes, expenses, judgments, liabilities, payments, promises, and suits of any nature whatsoever, relating to, arising under, or in connection with the District's claims or the Tenant's claims in the above-referenced consolidated lawsuit, that they, or each of them individually, may have or may claim to have against each other which existed as of the effective date of the Settlement Agreement, [December 16, 2004,] except for such claims as may arise in the future relating to the enforcement of this Settlement Agreement and Release. The claims being released by the District and the Tenant include, but are not limited to, any claims for compensatory or punitive damages, attorneys' fees, court costs, or other expenses incurred by the District and Tenant, respectively, in connection with the District's and Tenant's claims.

[4] The establishment's standing-room occupancy limit was four hundred eighty-eight persons.

were flagged down to assist with the fight and crowd control, and two arrests were made for assault. This incident was later investigated by the Board as Specification H to Charges I and II in the Notice to Show Cause issued to the establishment.[5] In other incidents, a male patron who left the club shot a person within 1,000 feet of the club on November 21, 2003, and a female patron assaulted a police officer after being ejected from the club on October 17, 2004; these incidents were later investigated by the Board as Specifications G and E, respectively, to Charge II in the Notice to Show Cause.

On November 10, 2004, the Chief of the Metropolitan Police Department ("MPD"), Charles Ramsey, sent the Board a letter pursuant to D.C. Code § 25-827 (a) (2001) recommending the revocation of the club's alcohol license.[6] The letter stated that "[t]he area

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[5] As discussed below, Charge I of the Notice to Show Cause, dated March 14, 2005, alleged that petitioner had permitted the licensed establishment to be used for an unlawful or disorderly purpose in violation of D.C. Code § 25-823. Charge II alleged that the licensed establishment was the subject of a request for revocation of its license by the Chief of the Metropolitan Police Department, pursuant to D.C. Code § 25-827, based on a determination that there was a correlation between increased incidents of crime within 1,000 feet of the establishment and the operation of the establishment.

[6] D.C. Code § 25-827 (a) provides:

> The Chief of Police may request the suspension or revocation of a license if the Chief of Police determines that there is a correlation between increased incidents of crime within 1,000 feet of the establishment and the operation of the establishment. The determination shall be based on objective criteria, including incident reports, arrests, and reported crime, occurring within the preceding 18 months and within 1,000 feet

(continued...)

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surrounding 'Club U' has been the focal point of several crimes" and detailed six events that "were directly related to, or occurred in front of 'Club U' during their hours of operation." The Chief stated that "[t]he number and severity of the criminal offenses occurring at and around 'Club U' leads me to conclude that the interests of the community would be best served if the license . . . were revoked." The Board took no immediate action to suspend or revoke petitioner's license.

On February 13, 2005, a series of incidents occurred at or around the establishment that were later investigated by the Board under several different specifications used to support Charges I and II of the Notice to Show Cause. In the incident at issue in Specification A of both charges, a male patron choked his girlfriend and punched a second female patron who tried to intervene, knocking her unconscious. The male patron was escorted out of the establishment, but the police were not notified. Ambulance personnel treated one victim at the scene and transported another victim to a hospital. According to Specification B of both charges, the male patron involved in Specification A returned to the scene and fired gunshots at the ambulance crew that was treating one of the assault victims referred to in Specification A. According to Specification C of both charges, on the same day a physical altercation broke out in the Reeves Center lobby between two male patrons as the establishment was closing, and the scene became chaotic as a large number of patrons

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(...continued)
of the establishment.

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tried to exit the establishment. Finally, according to Specification D of both charges, a patron who was being ejected from the club by security personnel was fatally stabbed inside either the club or the Reeves Center lobby, and the security officer assisting the bleeding patron had to step away to assist with the incident described in Specification C.

On February 14, 2005, following the incidents of the night before, the Chief of Police sent another letter to the Board pursuant to D.C. Code § 25-827 recommending the revocation of the club's license. In this letter, the Chief stated: "I am strongly recommending that Club U ABC's [sic] license be permanently revoked based on yesterday's homicide and the two other homicides that can be linked to Club U. . . . This club should be permanently shut down for the safety and security of the people who go to Club U and live nearby."

On February 15, 2005, the Board invoked its summary procedures pursuant to D.C. Code § 25-826 to suspend petitioner's license. The Board held hearings on the suspension and on March 14, 2005, issued a notice to show cause why petitioner's license should not be revoked. The notice to show cause included multiple charges directed at the petitioner, each supported by several specifications that detailed individual incidents. Charge I alleged that petitioner had allowed the licensed establishment to be used for an unlawful or disorderly purpose, in violation of D.C. Code § 25-823 (2). Charge II alleged that the licensed

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establishment was the subject of a request for revocation of its license by the Chief of the Metropolitan Police Department, pursuant to D.C. Code § 25-827, based on a determination that there was a correlation between increased incidents of crime within 1,000 feet of the establishment and the operation of the establishment. Charge III alleged that petitioner had served an alcoholic beverage at the licensed establishment to a person who was or appeared to be intoxicated, in violation of D.C. Code § 25-781 (a)(2). Finally, Charge IV alleged that petitioner had allowed the consumption of an alcoholic beverage at the licensed establishment by a person who was or appeared to be intoxicated, in violation of D.C. Code § 25-781 (b)(2).

After additional hearings on the revocation of petitioner's license, the Board issued, on June 29, 2005, its Findings of Fact, Conclusions of Law, and Order in which the Board concluded that Charges III and IV had not been proven, but found that Charges I and II were sustained by the evidence. Based on this determination, the Board concluded that revocation of petitioner's license was warranted.

II.

In this appeal, petitioner challenges the findings and conclusions of the Board, contending that they were not supported by substantial evidence and that the Board erred in

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considering incidents that occurred prior to the execution of the Settlement Agreement. We conclude that the Board's findings were supported by substantial evidence and that the Board did not err in considering pre-agreement incidents, and we therefore affirm the decision of the Board to revoke petitioner's Class "C/R" Retailer's License.

This court reviews with deference the factual findings of the Board, reversing only if the findings are not based on substantial evidence in the record as a whole. *See* D.C. Code § 2-510 (a)(3)(E) (2001); *Tiger Wyk Ltd. v. District of Columbia Alcoholic Beverage Control Bd.*, 825 A.2d 303, 307 (D.C. 2003). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Tiger Wyk Ltd.*, 825 A.2d at 307 (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). We review the legal conclusions of an agency de novo. *Harris v. District of Columbia Office of Worker's Comp.*, 660 A.2d 404, 407 (D.C. 1995). This court will accord considerable weight to an agency's construction of the statutes and regulations that it administers where the meaning of the language is not clear on its face; however, "the judiciary is the final authority on issues of statutory construction." *Id.*

Based on our review of the record, we conclude that there was substantial evidence to support the Board's conclusion with regard to Charge I of the notice to show cause: that petitioner had permitted the licensed establishment to be used for an unlawful or disorderly

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purpose in violation of D.C. Code § 25-823. This charge was supported by Specification H, arising from an incident on June 19, 2003, and Specifications A, B, C, and D, arising from separate incidents on February 13, 2005.

With regard to Specification H, the incident in which one patron assaulted another with the broken bottle, the Board heard the testimony of two police officers who investigated the incident, Officer Green and Detective Hewick. The Board concluded that the incident was the result of the security staff's ineffective handling of a relatively-minor altercation and the club's ill-advised practice of ejecting the participants of an altercation without notifying the police.

With regard to Specifications A, B, C, and D, the Board heard testimony from Stevland Joppy, a member of the club's security staff; Kerry A. Payne, Deputy Operations Chief of the District of Columbia Emergency Management Agency, which is located on the 8th floor of the Reeves Center; and Gerald M. Wilson, Chief of the District of Columbia Protective Services Division, which provides security for certain parts of the Reeves Center. This testimony provided substantial support for the Board's findings that (a) a male patron choked one female patron and struck another; (b) the same male patron shot at the personnel of an ambulance who were treating a female patron; (c) there was a physical altercation between two male patrons and a large commotion among patrons trying to exit the club; and

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(d) a male patron was fatally stabbed at or near the club entrance. This testimony also provided substantial support for the findings that there was "inadequate staffing or supervision at [the] establishment to prevent the disorder that ensued;" that petitioner was incapable of adequately and safely moving patrons in and out of the establishment; and that petitioner followed an unwise practice of ejecting from the establishment patrons who were involved in criminal activity, including assaults, without notifying the police.

Petitioner contends that it cannot be held responsible for the unlawful acts of third persons who figured in this case. To the contrary, an "unlawful or disorderly purpose" under D.C. Code § 25-823 can be imputed to a licensee who engages in a "method of operation" that is conducive to unlawful or disorderly conduct. *See Am-Chi Rest. v. Simonson*, 130 U.S. App. D.C. 37, 38-39, 396 F.2d 686, 687-88 (1968); *4934, Inc. v. Washington*, 375 A.2d 20, 22-23 (D.C. 1977).[7] In applying § 25-823 in the present case, it is apparent that the Board

[7] In *Am-Chi Restaurant*, the United States Court of Appeals for the District of Columbia Circuit affirmed the revocation of a license under D.C. Code § 25-118 (1967) (re-codified in 2001 at D.C. Code § 25-823), based on the establishment's use for an unlawful purpose (prostitution), where the appellant's "method of operation" – employing off-stage dancers to sit with customers at individual tables and persuade them to order additional drinks – "continued over time, harbored sufficient danger of mischievous consequences sooner or later." 130 U.S. App. D.C. at 38-39, 396 F.2d at 687-88. On the other hand, in *4934, Inc.*, this court vacated the suspension of a license under D.C. Code § 25-118 (1973), based on the establishment being used for an unlawful purpose (indecency), "in the absence of any evidence showing a continuous course of conduct" by appellant or any other "'method of operation' which encouraged the sort of performance deemed illegal by the arresting officers." 375 A.2d at 22-23. The fact that *Am-Chi* and *4934, Inc.* addressed the unlawful conduct of employees does not dispositively distinguish those cases from the instant case; (continued...)

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operated under a similar understanding of the scope of the statute – which is one that the Board is charged with administering. *See* D.C. Code § 25-801 (2001). We agree that this construction is reasonable and consistent with the language of § 25-823, and thus we defer to the Board's reading of the statute. *See Harris*, *supra*, 660 A.2d at 407.

In the present case, the Board relied only on incidents that had a demonstrable connection to the operation of the establishment; significantly, the Board made factual findings not only about what occurred, but also about how the club's regular method of operating caused or contributed to the incidents. For example, the Board concluded that various incidents were attributable to the lack of training and supervision of petitioner's security staff, the failure of petitioner to maintain a sufficient number of security personnel, the inadequacy of petitioner's security plan, petitioner's failure to fully enforce its security procedures, and petitioner's failure to properly communicate with police about incidents. These are the types of omissions that are conducive to an unlawful and disorderly environment, and were indeed found to have caused or aggravated the disorderly conduct for which the club was cited. Under the circumstances, we conclude that there was sufficient evidence for a reasonable person to conclude that the club's method of operation caused the

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(...continued)
under D.C. Code § 25-823, the focus remains on the method of operation of the *establishment* which caused or contributed to the unlawful or disorderly conduct of the third persons and from which an unlawful or disorderly purpose can be imputed to the establishment.

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licensed establishment to be used for an unlawful or disorderly purpose, and therefore we uphold the findings underlying the revocation of petitioner's license under Charge I.[8] *See Am-Chi Rest.*, *supra*, 130 U.S. App. D.C. at 38-39, 396 F.2d at 687-88.

With regard to Charge II of the notice to show cause, based on our review of the record, we are satisfied that the Board relied on substantial evidence in concluding, as had the Chief of Police, that there was "a correlation between increased incidents of crime within 1,000 feet of the establishment and the operation of the establishment." *See* D.C. Code § 25-827 (a). Charge II was supported by the same specifications, A, B, C, D, and H, that supported Charge I, along with Specification G, arising from an incident on November 21, 2003, and Specification E, arising from an incident on October 17, 2004.

As discussed above, Specifications A, B, C, D, and H of Charge I all involved incidents that occurred within 1,000 feet of the establishment and that were directly traceable to the operation of the establishment. These specifications were incorporated by reference in Charge II. In addition, the Board concluded that Charge II was supported by two other

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[8] The Board considered evidence of several additional incidents that occurred in or around the establishment, but concluded that there was an insufficient link to petitioner's method of operations to hold petitioner accountable for the incidents under Charge I. These incidents included the fatal shooting of one patron by another patron within 1,000 feet of the establishment on March 16, 2003 (Specification I); the fatal stabbing of a patron after he left the club on September 17, 2004 (Specification F); and a female patron's assault on a police officer after the patron refused to leave the club on October 17, 2004 (Specification E).

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specifications, Specifications G and E. Specification G, involving a November 21, 2003, incident in which a patron's consumption of alcohol at the club played a role in that patron's later shooting of another person within 1,000 feet of the establishment, was supported by the testimony of MPD Inspector Diane Groomes, MPD Homicide Detective Pamela Montague, Officer Frank Murga of the D.C. Protective Services Division, and private investigator (and former MPD detective) Trevor Hewick. Specification E, involving an October 17, 2004, incident in which a female patron assaulted a police officer after refusing to leave the area after being ejected from the club, was supported by the testimony of MPD Officer Sean Hill, MPD Sergeant Anthony Moye, club security officer Stevland Joppy, and Latisha Martin, the patron who committed the assault.

After reviewing these incidents, the Board determined that there was a "correlation between the operation of the establishment and incidents of crime within one thousand feet" and noted that, as a result, the Metropolitan Police Department had been forced to allocate additional manpower to petitioner's location. We are satisfied that the Board's findings with regard to Charge II were based on substantial evidence, and thus the revocation of petitioner's license was not in error.[9]

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[9] In its reply brief, petitioner contends that D.C. Code § 25-827 (a), which deals with the correlation between the operation of an establishment and increased incidents of crime within one thousand feet thereof, authorizes the Chief of Police to request the suspension or revocation of a license but does not provide an independent basis for the suspension or revocation. Although this contention arguably may have merit, we need not consider it on (continued...)

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III.

Finally, we address petitioner's argument that the 2004 Settlement Agreement precluded the Board from considering events that occurred prior to the execution of the Settlement Agreement. The Board concluded that the Settlement Agreement "did not immunize the Respondent from the charges contained in the March 14, 2005 Notice to Show Cause because the claims raised in the civil lawsuit were separate and distinct from the charges presented in the March 14, 2005 Notice to Show Cause."

Petitioner has failed to demonstrate that the Board erred when it reached this conclusion. Based on our review of the agreement, a copy of which was included in the record on appeal, the release between the parties applied only to actions and other matters "relating to, arising under, or in connection with the District's claims or the Tenant's claims in the above-referenced consolidated lawsuit." However, petitioner never presented to the Board any of the pleadings from the prior suit to create a record of the "claims" in the

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(...continued)
this appeal, as petitioner conceded at oral argument that the argument was raised for the first time in this case in the reply brief. We generally do not consider arguments on appeal that were not raised before the agency, *see Bannum, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 894 A.2d 423, 432 (D.C. 2006), nor do we allow new arguments to be made in a reply brief, *see Johnson v. District of Columbia*, 728 A.2d 70, 75 n.1 (D.C. 1999). Consequently, we decline to consider whether D.C. Code § 25-827 (a) provides an independent ground for revocation and assume for purposes of this litigation that it does provide such a ground.

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referenced lawsuit and thereby inform the Board's understanding of the Settlement Agreement. "Where a party to an administrative dispute has been given a fair opportunity to present evidence and make his contentions in administrative proceedings, with rare exceptions he will be bound by the record there made." *Williams v. Robinson*, 139 U.S. App. D.C. 204, 209, 432 F.2d 637, 642 (1970) (footnote omitted); *see also Cohen v. Rental Hous. Comm'n*, 496 A.2d 603, 605-06 (D.C. 1985) (discussing a petitioner's "duty to present this court with a record sufficient to show affirmatively that error occurred") (citation omitted); D.C. Code § 2-510 (a) (2001) ("The Court [of Appeals] shall hear and determine all appeals upon the exclusive record for decision before the Mayor or the agency."). The Board was thus in a position, as is this court, to consider only the testimony of petitioner's settlement counsel that the parties "were suing each other for breach of the lease contract." A release from such landlord-tenant claims seems far afield from the broad immunity that petitioner now claims was agreed upon.

We also are not persuaded by petitioner's argument that an intent to limit the Board's enforcement power with regard to incidents in this case may be inferred from OPM's agreement to withdraw its protest to the Board opposing the renewal of petitioner's license. On the record before this court, we have no basis to conclude that the protest even involved any of the same incidents underlying the Board's enforcement action; according to the testimony of appellant's settlement counsel, the OPM protest was filed at least "in part

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because of the breach of lease issues that were unsolved but subject to the civil lawsuit that was pending." Furthermore, not only is a protest action — which may be filed by a citizen, group, or government official pursuant to D.C. Code §§ 25-601, -602 — a separate and distinct matter from an enforcement action by the Board under D.C. Code § 25-823, but the OPM protest in this case also originated as a separate matter from the "parallel" landlord-tenant lawsuit that gave rise to the mutual release provision of the Settlement Agreement, as petitioner acknowledges in its brief.

Based on the limited record of the claims and protest that we have before us, we cannot conclude that the mutual release provision relating to the "claims" of the lawsuit even barred OPM from renewing its protest to the Board, much less barred the Board itself from undertaking future enforcement action. Thus, we are satisfied that petitioner has not demonstrated that the Board erred when it concluded that the Settlement Agreement did not bar the Board's consideration of prior events.[10] Accordingly, the revocation of petitioner's

[10] From our review of the record, we cannot discern when, if ever, petitioner raised before the agency the theory of equitable estoppel that petitioner asserts before this court. In any event, petitioner's claim of estoppel is without merit. "Estopping a municipality from enforcing the law must be, at best, the rare exception, not the rule." *Rafferty v. District of Columbia Zoning Comm'n*, 583 A.2d 169, 175 (D.C. 1990). Because the Settlement Agreement applied only to matters arising from the "claims" in the previous lawsuit, the District took no "affirmative act" to imply a grant of full immunity to the petitioner, and petitioner's reliance on an interpretation of the agreement that was broader than the agreement itself was not "justifiable and reasonable." *See id.* Furthermore, petitioner has not alleged "expensive and permanent improvements" made in "good faith" reliance on its perceived immunity; the $100,000 settlement for breach of the lease, the $2,916 monthly rent (continued...)

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Class "C/R" Retailer's License is affirmed.

So ordered.

(...continued)
payments, and the hiring of twenty-five security personnel all related to past debts or present operating expenses, not permanent investments in the future. *Cf. id.* (discussing petitioner's building of an addition to a house). Petitioner thus has not demonstrated that equitable estoppel is available or appropriate in this situation.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014301

Club U

Briggs, Emanuel (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Friday, July 01, 2005 10:26 AM
To: 'Alan'; 3DSubstation@yahoogroups.com
Subject: club violence

Thanks. This is not about any group or any music. Its about homicide. Bests Jim

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

Chairman, Committee on Consumer and Regulatory Affairs. Main Committee Number: 202-724-8198. 1350 Pa. Ave., NW, #112, Washington, DC 20004.

Website: www.grahamwone.com

-----Original Message-----
From: Alan [mailto:akbdc99@verizon.net]
Sent: Friday, July 01, 2005 10:11 AM
To: Jim Graham; 3DSubstation@yahoogroups.com
Subject: [3DSubstation]

Councilmember Graham:

I personally want to thank you for all the hard work you have been doing in this neighborhood, and along U street. I was very disapointed to see a newsreport on Channel 7 questioning your motives. Like all things political, if you can't rebut the issue people that feel threatened attack the person that is out front addressing the issue.

Any club should be warned if you can't keep your parton's orderly and law abiding you will loose you ability to do buisiness, I personally don't want you in my neighborhood, to me you are not a good neighbor. If your a club or bar and you do keep thing orderly I will support you, you are just one of the reason's I was attracted to this area, I personally feel this is what makes you a good neighbor I look forward to more restruarants and clubs openingup! To me this is what also makes a strong neighborhood and City!

I personally saught out this area when I moved to DC a little over 2 years ago when I was looking for a home to buy. I love the diversisty, Black, Latino, White Gay or Striaght, this is what attracked me to this area, all of us living together make for a strong city and nieghborhood.

Sir, Keep up the good work! You have my continued support and appreciation for everything you are doing to keep us safe and clean.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014302

Alan Bruce
3565 6th St. NW

Briggs, Emanuel (COUNCIL)

Club U

From: Jim Graham [jim@grahamwone.com]
Sent: Friday, July 01, 2005 10:25 AM
To: ustreetnews@yahoogroups.com; 'Adams Morgan'
Subject: Consistnecy in Alcholo Enforcfement

Dear Friends:

Since the stabbing (it was originally reported as a shooting) on 18th Street early Sunday morning, I have repeatedly inquired into the details, especially with an eye toward any involvement any business. It is important that response and application of the law be consistent. In the past I have been very aggressive in cases where a bar has not been a responsible manager of its premises, whatever the location. There have been places closed on 18th Street and on U Street and elsewhere.

Here is what I have been told, not once but several times, by MPD:

1/it is a stabbing - not a shooting - medical records reveal deep puncture wound

2/ he is out of the hospital - not critical

3/ domestic related - not club related at all -- his girlfriend's ex boy friend did it and warrant will be issued

4/ other than the location of the stabbing (in front of Felix) no club or bar is identified with either the victim or the assailant.

Please pass this along to others.

Happy Fourth, Councilmember Jim Graham

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

Chairman, Committee on Consumer and Regulatory Affairs. Main Committee Number: 202-724-8198. 1350 Pa. Ave., NW, #112, Washington, DC 20004.

Website: www.grahamwone.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014304

161. In this case, the Board finds based upon the testimony and evidence presented at the hearings, that the Chief of Police has established to the Board's satisfaction that there is a correlation between the operation of the establishment and increased incidents of crime within one thousand feet (1,000ft.) of the establishment that warrant revoking the Respondent's Class "CR" Retailer's License. First, the testimony revealed that the Respondent lost control over the operation of its establishment on Sunday, February 13, 2005, and as a result, several criminal incidents occurred, including the homicide of Mr. Brown, which is detailed as a basis for requesting revocation in Chief Ramsey's February 14, 2005 letter. Specifically, the testimony of Mr. Joppy revealed that the stabbing of Mr. Brown, as set forth in Specification D of Charge II, initially started as a fight inside of the establishment with Mr. Brown subsequently stabbed either inside of the establishment or in the lobby area in front of the establishment. The Respondent's loss of control over the operation of its establishment was further evidenced by Mr. Joppy's testimony that he was unable to provide assistance to Mr. Brown as two (2) other criminal incidents, a fight between two (2) male patrons (Specification C of Charge II) and the assault on Ms. Lawrence (Specification A of Charge II), were occurring almost simultaneously and Mr. Joppy's presence was needed to assist with the fight between two (2) male patrons. The testimony of Firefighter Muyleart also established that the gunshots fired at Ms. Lawrence's ambulance also stemmed from the operation of the establishment on February 13, 2005 (Specification B of Charge II).

162. Second, the testimony of Sergeant Moye, Officer Hill, and Ms. Martin established that the October 17, 2004 criminal incident (Specification E of Charge II) contained in Chief Ramsey's November 10, 2004 written request was related to the operation of the establishment. Specifically, on October 17, 2004, the Respondent was unable to get Ms. Martin, who was involved in a physical altercation inside of the establishment, to leave the area of the establishment -- after getting ejected -- without MPD assistance. The testimony of Officer Hill established that after being arrested by MPD for disorderly conduct, Ms. Martin destroyed MPD property by kicking out the squad car window and was also subsequently charged with destroying government property and assaulting an MPD officer as Ms. Martin hit Sergeant Moye in the face and kicked him. Third, the testimony of Officer Murga, Inspector Groomes, Detective Montague, and Detective Hewick, established that all the parties involved in the November 21, 2003 criminal incident (Specification G of Charge II) contained in Chief Ramsey's November 10, 2004 written request were all patrons of the establishment and had been drinking alcoholic beverages heavily inside of the establishment while celebrating Mr. Thompson's birthday. One of the patrons, Mr. Edward Williams, was involved in a verbal altercation inside of the establishment, then left the establishment, and was subsequently involved in an altercation with his friends and ultimately the shooting that took place. While the testimony of Detective Montague revealed that the shooting was not the direct result of the confrontation that occurred inside of the establishment; Detective Montague's testimony did establish a correlation between the operation of the establishment and this incident of crime as she indicated that Mr. Edward Williams' consumption of alcoholic beverages at the licensed establishment played a role in the shooting, which occurred within one thousand feet (1,000ft.) of the licensed establishment.

163. In addition to the incidents contained in Chief Ramsey's letter, the Board finds that the testimony of Officer Green and Detective Hewick established that the June 19, 2003 criminal incident contained in Specification H of Charge II, is related to the operation of the establishment. Specifically, with respect to Specification H of Charge I, the testimony of Detective Hewick and Mr. Pittman revealed to the Board that on Thursday, June 19, 2003, a verbal altercation between female patrons escalated into a physical altercation inside of the Respondent's establishment between Ms. Dudley and Ms. Reece, which resulted in the establishment's security personnel eventually breaking up the fight and escorting both females and their friends out of the establishment through opposite doors. The incident later started up again outside of the establishment as a fight ensued after Ms. Reece ran toward Ms. Dudley, who was waiting outside of the establishment with her friend, picked up a bottle and smashed the bottle on Ms. Dudley's face. The testimony of Officer Green revealed that he and his partner were flagged down outside during the fight by the Respondent's security while traveling eastbound in the 1400 block of U Street, N.W., and that Officer Green and his partner assisted the Respondent's security personnel in breaking up the fight, and then arrested Ms. Reece and her friend Ms. Wideman for assault. It is worth noting that the testimony of Officer Green revealed that a crowd of about fifty (50) or sixty (60) people formed around the fight. Based upon the above, the Board finds the testimony regarding the June 19, 2003 incident contained in Specification H of Charge I to establish that it is an incident of crime that is related to the operation of the establishment. The Board did not find the March 16, 2003 incident contained in Specification I of Charge II to be related to the operation of the establishment as the testimony of Detective Patterson and Detective Hewick indicated that the shooting took place some time after the licensed establishment had closed.

164. Based upon the Board's findings with regard to Specifications A, B, C, D, E, G, and H, the Board agrees with the Chief of Police's recommendation that the correlation between the operation of the establishment and incidents of crime within one thousand feet (1000ft.) warrant the revocation of the Respondent's Class "CR" Retailer's License. In finding merit in the Chief of Police's request, it is worth noting that the testimony of Commander McCoy and Inspector Groomes established that each of the above incidents in Charge II occurred within one thousand feet (1,000 ft) of the licensed establishment. Furthermore, the testimony of Commander McCoy revealed that additional MPD manpower is allocated to the Respondent's location because of all of the violent disturbances that occur and the need to disburse the establishment's crowds.

165. In deciding whether to revoke the Respondent's Class "CR" Retailer's License, the Board also took into account the proposals contained in the Respondent's Security Plan 2005, as described by Mr. Williams, Jr., which include plans to: 1) obtain a reimbursable detail of up to ten (10) MPD officers and two (2) special police officers to patrol the atrium of the Reeves Center and to protect the establishment's patrons and the community within one thousand feet (1,000ft.); and, 2) hire private consultants, such as MPD, to train the establishment's security personnel in the areas of crowd control and dealing with intoxicated patrons. However, despite these plans, the Board does not feel confident that a newly revised security plan will prevent the Respondent's establishment

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014306

from being the catalyst of future violent incidents. Specifically, the testimony of Mr. Joppy raised concerns for the Board as it revealed that the establishment's management never reviewed the Respondent's prior security plan, Security Plan 2003, or written procedures with Mr. Joppy. Additionally, the testimony revealed that the Respondent's security personnel did not follow existing procedures that were supposed to be in place at the establishment. Specifically, the testimony of Officer Agee revealed that a female patron at the establishment on February 13, 2005 was not checked by security personnel despite the fact that the magnetometer went off. The testimony of Lydell Brown also indicated that the establishment does not consistently follow its procedure of requiring patrons to empty their pockets and patting patrons down from their collars to their ankles as was indicated by the Respondent's personnel. Finally, the testimony of Commander McCoy, Inspector Groomes, and Mr. Parker revealed that even with the presence of MPD in the vicinity of the Reeves Center on nights when the establishment was open and operating, the frequency of violent incidents involving the Respondent's patrons did not diminish.

166. With regard to Charge III, the Board must determine whether the Respondent delivered an alcoholic beverage to a person who was or appeared to be intoxicated as prohibited by D.C. Official Code § 25-781(a)(2) (2001). In this instance, the testimony of Sergeant Moye and Officer Hill indicated that on the evening of October 17, 2004, while arresting Ms. Martin, -- a patron of the Respondent's establishment who refused to leave the premises after being escorted out of the establishment -- the MPD officers both smelled alcohol on Ms. Martin's breath. However, the Board found credible the testimony of Ms. Martin that she had consumed only one alcoholic beverage containing vodka inside of the Respondent's establishment and that she had not consumed any other alcoholic beverages the entire evening. Additionally, Ms. Martin's testimony revealed that she complained of alcohol poisoning to the MPD officers because she did not want to remain in the prison cell and she believed that complaining of alcohol poisoning was a way she could have the bruises she obtained during her altercation with the MPD officers attended to at a hospital. Furthermore, the testimony of Sergeant Moye indicated that he could not be certain whether or not Ms. Martin was intoxicated because he did not perform a field sobriety test on her. Based upon the testimony above, the Board does not find the Respondent sold or delivered an alcoholic beverage to a person who was or appeared to be intoxicated, in violation of D.C. Official Code § 25-781(a)(2) (2001).

167. Based upon the above, the Board finds that the Respondent's violations of (1) D.C. Official Code § 25-823(2) (2001), as set forth in Specifications A, B, C, D, and H of Charge I, and (2) D.C. Official Code § 25-827 (2001), as set forth in Specifications A, B, C, D, E, G, and H of Charge II, warrant the revocation of the Respondent's Class "CR" Retailer's License.

ORDER

THEREFORE, it is hereby **ORDERED** on this 29th day of June 2005, that the Retailer's License Class "CR", issued to Levelle, Inc., t/a The Coach and IV Restaurant, be and is hereby **REVOKED**.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014307

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Alcoholic Beverage Regulation Administration

June 29, 2005

Good Afternoon,

Today, the Alcoholic Beverage Control Board is announcing its decision regarding the status of the Class CR Retail alcohol license of The Coach & IV Restaurant, ALSO popularly known as Club U, at 2000 14th Street, N.W. This decision is the result of show cause proceedings held on April 13, 2005 and May 10, 2005.

On February 15, 2005 the ABC Board ordered the suspension of this license pursuant to D.C. Official Code 25-826 & 827 after a thorough investigation by ABRA, the Alcoholic Beverage Regulation Administration, and written requests for revocation from Chief Ramsey from the Metropolitan Police Department. The Board held summary suspension hearings on February 19, 2005, February 25, 2005, and March 2, 2005 before deciding on March 4, 2005 to keep the Respondent's license in a summary suspension status.

This began the process by which this Board was called upon to decide if the licensee, The Coach & IV Restaurant should continue to have the right and privilege to sell alcoholic beverages under their CR Restaurant license or whether the establishment posed an imminent danger to the public, allowed its premises to be used for a disorderly purpose, or whether its operations result in increased incidents of crime within 1,000 feet of the establishment as determined by the Chief of Police.

941 North Capitol Street, N.E., 7th Floor, Washington, D.C. 20002
Phone: (202) 442-4423 Fax: (202) 442-9563

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014308

This process has taken time. It has taken time because it is a serious matter that requires the Board to evaluate a multitude of factors, hear eyewitness testimony and ensure that all parties have been fairly heard. The parties have received all their rights and due process under the law and our regulations.

As part of our hearing process, the Board was presented with over 40 hours of live testimony from witnesses, related items of evidence and a multitude of written documents and legal motions. This has resulted in over 2,500 pages of transcripts and substantial dedication of agency time and resources. The Attorney General's Office and the legal counsel of the licensee are to be thanked for their cooperation, complete presentations and suggestions in assisting the Board in rendering our decision.

What this process is about to this Board is ensuring that a money making business or non-profit operation that sells alcoholic beverages always acts in a safe and responsible manner while diligently complying with our ABRA Regulations and District Law.

That is what the process and this Board before you is about.

In this instance, the notice to show cause contained four charges.

- With regard to Charge III, the Board is required to determine whether the Respondent delivered an alcoholic beverage to a person who was or appeared to be intoxicated as prohibited by D.C. Official Code § 25-781(a)(2) (2001). In this instance, the testimony of Sergeant Moye and Officer Hill indicated that on the evening of October 17, 2004, while arresting Ms. Martin, -- a patron of the Respondent's establishment who refused to leave the premises after being escorted out of the establishment -- the MPD officers both smelled alcohol on Ms. Martin's breath. However, the Board found credible the testimony of Ms. Martin that she had consumed only one alcoholic beverage containing vodka inside of the Respondent's establishment and that she had not consumed any other alcoholic beverages the entire evening. Additionally, the testimony of Sergeant Moye indicated that he could not be certain whether or not Ms. Martin was intoxicated because he did not perform a field sobriety test on her. Based upon the testimony, the Board does not find that the Respondent sold or delivered an alcoholic beverage to a person who

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014309

was or appeared to be intoxicated, in violation of D.C. Official Code § 25-781(a)(2) (2001). The Board also dismissed Charge 4, which was a lesser charge of the same incident contained in Charge III

- With regard to Charge I, the Board must determine whether the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose as set forth in D.C. Official Code § 25-823(2) (2001). The Board notes that within Charge I are a total of seven (7) specifications (A, B, C, D, E, G, H, and I), each individually of which must be evaluated by the Board. In this case, the Board finds based upon Specifications A, B, C, D, and H of Charge I that the Respondent did allow the licensed establishment to be used for a disorderly purpose on both June 19, 2003 and February 13, 2005, in violation of D.C. Official Code § 25-823(2) (2001). This was a factor the Board considered in rendering its decision. The Board notes that the testimony presented by OAG on Specifications E, G, and I of Charge I was not sufficient to establish that the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose with regard to these incidents.

  The Respondent's allowing the licensed establishment to be used for a disorderly purpose on February 13, 2005, in violation of D.C. Official Code § 25-823(2) (2001), is of particular concern to the Board. The testimony of Deputy Payne, Mr. Joppy, and Chief Wilson, revealed to the Board that the Respondent lost control over the operation of the licensed establishment and was unable to provide a safe environment for its patrons. The Board found the incidents contained in Specifications A through D of Charge I to reveal that there was not adequate staffing or supervision at the Respondent's establishment to prevent the disorder that ensued as patrons were frantically departing the establishment on the morning of February 13, 2005. For example, Mr. Joppy was unable to provide assistance to Mr. Brown who had been stabbed because his presence was needed to break up a fight between two (2) male patrons. Furthermore, the inability of the establishment to provide a safe environment was supported by the testimony of Chief Wilson who indicated that the Respondent's establishment poses an unreasonable risk to the safety of its patrons and the employees that work in the Reeves Center because of the rash of recent incidents and the fact that the Respondent is incapable of adequately and safely moving patrons in and out of the establishment.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014310

Finally, the Board has concerns with the establishment's practice of ejecting patrons involved in criminal activity, including assaults, without notifying or involving MPD.

In deciding whether to revoke the Respondent's Class "CR" Retailer's License, the Board also took into account the proposals contained in the Respondent's Security Plan 2005, as described by Mr. Williams, Jr., which include plans to: 1) obtain a reimbursable detail of up to ten (10) MPD officers and two (2) special police officers to patrol the atrium of the Reeves Center and to protect the establishment's patrons and the community within one thousand feet (1,000ft.); and, 2) hire private consultants, such as MPD, to train the establishment's security personnel in the areas of crowd control and dealing with intoxicated patrons. However, despite these plans, the Board does not feel confident that a newly revised security plan will prevent the Respondent's establishment from being the catalyst of future violent incidents. Specifically, the testimony of Mr. Joppy raised concerns for the Board as it revealed that the establishment's lax management never reviewed the Respondent's prior security plan, Security Plan 2003, or written procedures with Mr. Joppy. Additionally, the testimony revealed that the Respondent's security personnel lacked supervision and management did not follow existing procedures that were supposed to be in place at the establishment. Specifically, the testimony of Officer Agee revealed that a female patron at the establishment on February 13, 2005 was not checked by security personnel despite the fact that the magnetometer went off. The testimony of Lydell Brown also indicated that the establishment does not consistently follow its procedure of requiring patrons to empty their pockets and patting patrons down from their collars to their ankles as was indicated by the Respondent's personnel. Finally, the testimony of Commander McCoy, Inspector Groomes, and Mr. Parker revealed that even with the presence of MPD in the immediate vicinity of the Reeves Center on nights when the establishment was open and operating, the frequency of violent incidents involving the Respondent's patrons actually increased.

- With regard to Charge II, the Board must determine whether the Respondent's Class "CR" Retailer's License warrants revocation based upon two (2) written requests from Chief of Police Charles

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014311

Ramsey, dated November 10, 2004 and February 14, 2005, to revoke the establishment's license. The Chief of Police's written requests to revoke the Respondent's license are based upon his determination that the operation of the licensed establishment correlates with an increase of incidents of crime within one thousand feet (1,000ft.) of the establishment, pursuant to D.C. Official Code § 25-827 (2001). The incidents of crime brought by OAG are contained in Specifications A, B, C, D, E, G, H, and I of Charge II in the Notice to Show Cause.

First, the testimony revealed that the Respondent lost control over the operation of its establishment on Sunday, February 13, 2005, and as a result, several criminal incidents occurred, including the homicide of Mr. Brown, which is detailed as a basis for requesting revocation in Chief Ramsey's February 14, 2005 letter. Specifically, the testimony of Mr. Joppy revealed that the stabbing of Mr. Brown, as set forth in Specification D of Charge II, initially started as a fight inside of the establishment with Mr. Brown subsequently stabbed either inside of the establishment or in the lobby area in front of the establishment. The Respondent's loss of control over the operation of its establishment was further evidenced by Mr. Joppy's testimony that he was unable to provide assistance to a bleeding victim as two (2) other criminal incidents, a fight between two (2) male patrons (Specification C of Charge II) and the assault on Ms. Lawrence (Specification A of Charge II), were occurring almost simultaneously and Mr. Joppy's presence was needed to assist with the fight between two (2) male patrons. The testimony of Firefighter Muyleart also established that the gunshots fired at Ms. Lawrence's ambulance also stemmed from the operation of the establishment on February 13, 2005 (Specification B of Charge II). These events all occurred within minutes of each other and could easily have led to additional injuries or worse, to many more people including MPD officers.

Second, the testimony of Sergeant Moye, Officer Hill, and Ms. Martin established that the October 17, 2004 criminal incident (Specification E of Charge II) contained in Chief Ramsey's November 10, 2004 written request was related to the operation of the establishment. Specifically, on October 17, 2004, the Respondent was unable to get Ms. Martin, who was involved in a physical altercation inside of the establishment, to leave the area of the establishment -- after getting ejected -- without MPD assistance. The testimony of Officer Hill

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014312

established that after being arrested by MPD for disorderly conduct, Ms. Martin destroyed MPD property by kicking out the squad car window and was also subsequently charged with destroying government property and assaulting an MPD officer as Ms. Martin hit Sergeant Moye in the face and kicked him. Third, the testimony of Officer Murga, Inspector Groomes, Detective Montague, and Detective Hewick, established that all the parties involved in the November 21, 2003 criminal incident (Specification G of Charge II) were all patrons of the establishment and had been drinking alcoholic beverages heavily inside of the establishment celebrating Mr. Thompson's birthday. One of the patrons, Mr. Edward Williams, was involved in a verbal altercation inside of the establishment, then left the establishment, and was subsequently involved in an altercation with his friends and ultimately the shooting that took place. While the testimony of Detective Montague revealed that the shooting was not the direct result of the confrontation that occurred inside of the establishment; Detective Montague's testimony did establish a correlation between the operation of the establishment and this incident of crime as she indicated that Mr. Edward Williams' consumption of alcoholic beverages at the licensed establishment played a role in the shooting, which occurred within one thousand feet (1,000ft.) of the licensed establishment.

Based upon the Board's findings with regard to Specifications A, B, C, D, E, G, and H, as well as the Respondent's violation of D.C. Official Code Section 25-823(2), the Board agrees with the Chief of Police's recommendation that the correlation between the operation of the establishment and incidents of crime within one thousand feet (1000ft.) warrant the revocation of the Respondent's Class "CR" Retailer's License.

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February 19, 2005 Saturday
Final Edition

SECTION: Editorial; A30

LENGTH: 475 words

HEADLINE: Why Club U Matters

BODY:

THIS MORNING, if all goes as scheduled, the owners of Club U -- a nightspot that operates in, of all places, a D.C. government office building -- will go toe to toe with city officials before the Alcoholic Beverage Control Board to appeal the suspension of the club's liquor license. The dispute centers on alleged violent behavior inside and outside the club located in the Reeves Municipal Center at 14th and U streets NW. But D.C. communities situated far beyond the hearing room will also closely follow the board's proceedings. At issue is whether the city can take immediate and effective action against establishments where violent acts occur and endanger the community's well-being.

The most recent incident will sound familiar to those in other D.C. neighborhoods that are unwilling hosts to clubs where serious crimes occur. In the space of what seemed like minutes early Sunday, a Club U patron was stabbed to death, a woman was knocked unconscious inside the club and, as an emergency medical team was transporting her to an ambulance, a gunman waiting on the sidewalk fired at least 10 rounds at them, according to D.C. police inspector Diane Groomes of the 3rd District. Were this the only case of violence at the nightspot, the Alcoholic Beverage Control Board might not have Club U on its agenda today. But that, in fact, is the problem. A month ago, Police Chief Charles H. Ramsey asked the Alcoholic Beverage Regulation Administration to revoke the club's license because of a history of violent crimes committed by its patrons. The chief said, according to Post writer Eric M. Weiss, that more than a dozen serious crimes, including three homicides, have taken place within a block of the club since early 2003. At the time of the board's vote to suspend Club U's liquor license, its chairman, Charles Burger, finding that the club presented an imminent danger to public health and safety, stated, "the board has taken the lead in responding quickly and forcefully to this tragic and violent incident." That was five days ago. The question is: Will the board stick to its guns and stand up for the public, or will it do a U-turn and let Club U resume business as usual?

It would be a travesty if the board voted to allow the nightspot to pick up where it left off. Ms. Groomes told The Post that her officers are frequently sent to the club to control crowds after it closes. Those officers are pulled away from other patrol duties because Club U's patrons are out of control. The fact that this activity is taking place on government premises makes the Club U presence in the Reeves building all the more absurd.

The board is not without options. It can revoke the license, continue the suspension or impose new operating conditions. Business as usual, in our view, is not an option. Other communities are watching this, too.

LOAD-DATE: February 19, 2005

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Club U and Beyond

Post
Wednesday, June 8, 2005; A20

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DEBATE OVER the District's attempt to revoke the license of Club U, a nightspot in the heart of the U Street corridor, has taken an ugly turn. City lawyers had asked the Alcoholic Beverage Control Board to revoke the club's license because of what they charge has been a "persistent pattern" of violence and unruly behavior in the neighborhood. But club supporters, including two former advisory neighborhood commissioners, contend that race is a factor in the push to close down Club U, an African American-owned business that caters mostly to blacks.

Former advisory neighborhood commissioners Lawrence Guyot and Sinclair Skinner say that black owners -- and establishments with largely black clientele -- are being targeted for eviction because the U Street neighborhood is undergoing an economic revival, with trendy new dining and entertainment offerings and luxury apartments. The charge has been denied by council member Jim Graham (D-Ward 1), who represents the area. But the issue is clouding the resolution of Club U's fate and the larger question of safety.

The Club U question ought to be easy to resolve. Since the ABC board suspended the club's license after a stabbing incident in February, club owners have presented a security plan to protect patrons, property and the building in which the club is located, which happens to be the D.C. government-owned Reeves Municipal Center. The plan raises the age for admission to 25 and older, imposes a dress code, seeks the hiring of 10 D.C. police officers for reimbursable detail to complement its own roving security staff, and upgrades communications equipment and security screening devices. The ABC board can judge for itself whether the corrective action plan warrants reinstatement of Club U's lease agreement with the D.C. government for the 18 months remaining before it expire. But the board ought to stay within its mandate and scrupulously avoid becoming an agent for development interests.

The larger question is how the city will extend police protection to an area that once again has become a draw for late-night entertainment. The charge by David Wilmot, an attorney for the club's owners, that D.C. police have only four police cruisers -- and no foot patrols -- to cover an area stretching from Eighth and U Streets NW to Connecticut Avenue NW, if true, is stunning. Eight years ago the U Street corridor had about eight liquor-licensed establishments; today there are 32. The city ought to take a close look at the U Street corridor situation the same way it did in the case of the F Street entertainment area -- and then, in consultation with all of the stakeholders, produce a safety and security plan for the area. Closing a dangerous bar makes sense, if warranted by the ABC board. But addressing blatant security weaknesses in late-night entertainment areas -- including issues with troubling racial overtones -- is a responsibility for the mayor and civic community.

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February 25, 2005 Friday
Final Edition

SECTION: Editorial; A20

LENGTH: 401 words

HEADLINE: More on Club U

BODY:

TODAY, THE D.C. Alcoholic Beverage Control Board proceeds to Round Two of a public hearing on the board's summary suspension of a liquor license belonging to **Club U,** an allegedly violence-prone nightspot housed within the government's Reeves Municipal Center at 14th and U streets NW. Round One ended last Saturday with some observers believing that lawyers for the D.C. government had made a strong case look weak. Evidence useful to the government's side reportedly was not introduced. Complaints about inadequate D.C. government legal representation are not new. However, it would be especially unfortunate if the **Club U** suspension falls into that category. A number of other D.C. neighborhoods afflicted with troubled establishments are monitoring the city's handling of **Club U** for signs that the D.C. government can be relied upon to protect public health and safety. Round Two offers the city a chance to rebound.

Yesterday, D.C. Attorney General Robert G. Spagnoletti said that his office, which represents the Alcoholic Beverage Regulation Administration, had put on a "tight case" last Saturday, but that it will move to reopen the proceedings to allow the government to provide additional evidence in support of the board's suspension. Mr. Spagnoletti stressed that the city wants to avoid making a public spectacle of the case or compromising the criminal investigation of the recent stabbing death of a **Club U** patron. While the city hopes to persuade the Alcoholic Beverage Control Board to continue its suspension of **Club U's** license, he said, D.C. authorities also have a strong interest in bringing a murderer to justice. "It's a delicate balance," Mr. Spagnoletti declared.

The criminal investigation, we quite agree, should not be jeopardized by the board's proceedings. However, if warranted by the facts, the city should not shy away from presenting the best case possible against an establishment where violent acts occur and endanger the community. Troubled establishments should not be allowed to flourish in the city, period. The board, which wisely acted to suspend **Club U's** liquor license immediately after the latest violence, should also be pressed to continue standing with citizens sick and tired of bloodshed on their streets. Today's hearing will give city attorneys another chance to get it right, and the board a renewed opportunity to put public safety and health first.

LOAD-DATE: February 25, 2005

Briggs, Emanuel (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Wednesday, April 13, 2005 7:57 AM
To: Emanuel Briggs
Subject: FW: Club U 911 info

chair

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

Chairman, Committee on Consumer and Regulatory Affairs. Main Committee Number: 202-724-8198. 1350 Pa. Ave., NW, #112, Washington, DC 20004.

Website: www.grahamwone.com

-----Original Message-----
From: Jennings, Jeffrey (COUNCIL) [mailto:jjennings@dccouncil.us] **On Behalf Of** Graham, Jim (COUNCIL)
Sent: Wednesday, April 06, 2005 11:11 AM
To: Reiskin, Edward (EOM)
Subject: RE: Club U 911 info

Thank you, Deputy Mayor. I'll be sure to inform Mr. Graham.

Sincerely

Jeff Jennings
Councilmember Jim Graham's office
202.724.8181

-----Original Message-----
From: Reiskin, Edward (EOM)
Sent: Wednesday, April 06, 2005 10:55 AM
To: Graham, Jim (COUNCIL)
Subject: RE: Club U 911 info

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I've been advised by MPD that no one from the Club made calls to 911.

Edward D. Reiskin
Deputy Mayor for Public Safety & Justice
Government of the District of Columbia
1350 Pennsylvania Ave NW Ste 327
Washington DC 20004
tel 202/727-4036
fax 202/727-1617
edward.reiskin@dc.gov

From: Reiskin, Edward (EOM)
Sent: Wednesday, April 06, 2005 10:24 AM
To: Graham, Jim (COUNCIL)
Subject: Club U 911 info

Jim:

I wanted to get back to you on this issue. MPD has an open investigation, so they're hesitant to release info. I'm working with them to see if they can release just the info you're seeking. I'll let you know as soon as we've worked it out, hopefully today. Sorry for the delay on this.

Edward D. Reiskin
Deputy Mayor for Public Safety & Justice
Government of the District of Columbia
1350 Pennsylvania Ave NW Ste 327
Washington DC 20004
tel 202/727-4036
fax 202/727-1617
edward.reiskin@dc.gov

FOIA CONFIDENTIAL TREATMENT REQUESTED

Briggs, Emanuel (COUNCIL)

Club U

From: Jim Graham [jim@grahamwone.com]
Sent: Wednesday, April 06, 2005 8:16 AM
To: ustreetnews@yahoogroups.com
Subject: Club U, Go Go, Homicide, Violence and alcolhol

There have been a recent comment (sadly, anonymous) concerning the revocation of the Club U liquor license, as a result of a pattern of serious violence at that establishment. Most recently, as most everyone knows, an especially tragic event occurred. All of the facts are beginning to come in. We will have the full story of this murder soon. I think it will give a lot of people pause.

In the meantime...I want my position to be clear: I do not believe that this is about Go Go music. It is about serious violence and the privilege to serve alcohol. I believe that Club U Has over a period of years forfeited that privilege because of irresponsible acts.

Bests Councilmember Jim Graham

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

Chairman, Committee on Consumer and Regulatory Affairs. Main Committee Number: 202-724-8198. 1350 Pa. Ave., NW, #112, Washington, DC 20004.

Website: www.grahamwone.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014319

Jennings, Jeffrey (COUNCIL)

CLUB 4
early emails

From: Jim Graham [jim@grahamwone.com]
Sent: Friday, November 21, 2003 9:22 AM
To: WardOneDC@yahoogroups.com; 13th-14th-irving-kenyon@columbiaheights.com; NCHCA@yahoogroups.com; taskforce@columbiaheights.com; Adams Morgan; ColHts1; ColHts2; floridaavenuewatch@yahoo. com; HolmeadVillage; LeDroitPark; Mintwood; Monroe Street; Mt Pleasant; MtPForum; PSA411 ; PSA414; ThirdDistrictCAC; Ustreet
Cc: Scott Pomeroy; Kleinpd@aol.com; LMCCOY@mpdc.org; Charles Ramsey; Maria Delaney
Subject: Officer Shot

Dear Friends:

As you probably know from the media, there was an officer and two other persons wounded early this morning. I have now spoken personally to Chief Ramsey and to Commander McCoy.

First, I want to commend the police, and this officer specifically, for their solid response. I am relieved that the officer was just a few minutes ago released from the hospital and is heading home. The other two persons are, I am told, in stable condition.

The shootings occurred first in an alley south of U Street, where two persons were wounded, neither of whom appears to be innocent bystanders. There was apparently some kind of argument or feud. And then in the area of 13th and U after one of the shooters crashed his car, and then opened fired on the officer who was in his squad car at the time. The assailant then fled.

The police are investigating these shootings including the role that may have been played by Club U/Coach in Four, an ABC licensee within the Reeves Center.

I am with this email calling for ABRA to commence an investigation of any possible connection between these shootings and the Club U. This business has been operating in the Reeves Center for a number of years, going back to the early 1990s. There are various conflicts concerning this lease, which are now in legal action. I hope to able to report soon on whether there is a connection between these shootings and the Club. Commander McCoy has told me he is forwarding his investigative reports to the ABRA.

I am meeting with Chief Ramsey today, and we will have an announcement on this and other issues of violent crime in Ward One.

Bests Councilmember Jim Graham

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014320

Jennings, Jeffrey (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Thursday, December 04, 2003 9:15 AM
To: 'Scott Pomeroy'
Subject: RE: Arrest made in shooting that occurred at 14th & U

Thanks

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Scott Pomeroy [mailto:pxleyes@bellatlantic.net]
Sent: Wednesday, December 03, 2003 3:10 PM
To: Scott Pomeroy
Subject: Arrest made in shooting that occurred at 14th & U

Hello Everyone,

I just returned from the Ward 2 Core Team Meeting and I wanted to let everyone know that an arrest has been made in the shootings that occurred at 14th & U two weeks ago. The suspect is a 25 year old male that lives near 4th & K and is known to hang out at 13th & Fairmont, NW.

The conflict between the three individuals involved in the shootings originally occurred in College Park. The police have now confirmed that the individuals had attended Club U that evening. There has not yet been any evidence that there were any incidents inside Club U that evening that would have led to the shooting.

Below were the questions that we were asking of the police, so that we can avoid further incidents of violence in the community.

1. Why did the shooting occur at 14th & U?

The question is what circumstances or events brought the individuals involved in the shooting to the 14th & U Commercial District. We need to know this information to be able to formulate a plan to avoid shooting's and violent crime in the future. There have been a significant number or shootings or other violent crimes that have occurred this year in the vicinity of 14th & U as clubs are closing. Many of these incidents,

FOIA CONFIDENTIAL TREATMENT REQUESTED

as occurred on Thursday night, have occurred in relation to where a vehicle is parked, and not necessarily in relation to an incident that occurred inside one of the establishments. What is the connection and factors in this area that makes it a prime location for this level and type of violent crime to occur.

2. What immediate steps can be taken to minimize the opportunities for crime on the corridor?

   What steps are being taken to educate the public and prevent these crimes. Our goal is to avoid circumstances that allow, encourage, or facilitate crime along the corridor. Going back to vehicles, theft from and of auto's is always at the top of the list and directly relates to the above circumstances as providing an opportunity for crime. This appears to be a circumstance where constructive solutions can be created to minimize these circumstances through education, lighting and promotion of the parking at the Reeves Building. There are also solutions developed by the downtown BID to be able to hire actual police officers through an organization like the BID that would determine how the resources are applied, with funding being provide by the business community. What solutions are you able to recommend and what are the resources that are currently being deployed along 14th & U Streets?

Scott Pomeroy

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jennings, Jeffrey (COUNCIL)

From: bbruest@aol.com
Sent: Tuesday, December 16, 2003 5:55 PM
To: ustreetnews@yahoogroups.com
Subject: Re: [ustreetnews] Community Dialogue - Club U

I'm in agreement with most here. Club U, or ANY club in the Reeves building does not seem to meet the intent of the building. I would NOT support any club in the building, no matter what the clientele.

Matthew Ruest

[Non-text portions of this message have been removed]

U Street News is the email list of the Cardozo Shaw Neighborhood Association (CSNA) - to learn more about CSNA, please visit http://www.ustreet.com/csna

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http://groups.yahoo.com/group/ustreetnews/

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ustreetnews-unsubscribe@yahoogroups.com

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http://docs.yahoo.com/info/terms/

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014323

Jennings, Jeffrey (COUNCIL)

From: Craig MacIvor [cwmacivor@hotmail.com]
Sent: Tuesday, December 30, 2003 4:45 PM
To: ustreetnews@yahoogroups.com
Cc: csnapublicsafety@hotmail.com
Subject: [ustreetnews] Invitation: ANC Meeting with Club U this Saturday

Hello!

This Saturday, January 3, 2004, 10:00 AM at 1200 U st.: Meeting with ANC Commissioners and the representatives of Club U/Coach & IV. Discussion topic: Club U's presence in the Reeve's center, and continuing dialogue of Nightlife expectations in the U street corridor.

Community participation would send a strong message that more than a handful of individuals would like to be involved in the strategy sessions for Club U/ U street nightlife's future.

Hope to see you there!

Questions, let me know, or contact our ANC Commissioners Deborah Thomas or Phil Spalding

Craig MacIvor
Public Safety Committee, Chair
Cardozo Shaw Neighborhood Association
202.387.5788

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014324

Jennings, Jeffrey (COUNCIL)

From: Johnson, Kimberley (COUNCIL)
Sent: Monday, January 05, 2004 6:47 PM
To: Jennings, Jeffrey (COUNCIL)
Subject: RE: Wanna go to Go Go night at Club U this Sat. eve? ;-)

Sure. I will go. I will have taken the test, which I just scheduled for Saturday at 7am.

-----Original Message-----
From: Jennings, Jeffrey (COUNCIL)
Sent: Monday, January 05, 2004 4:32 PM
To: Johnson, Kimberley (COUNCIL)
Subject: Wanna go to Go Go night at Club U this Sat. eve? ;-)

Warren Williams (owner) and Jimmy Parker (chief of security) spoke on behalf of Club U. Mr. Williams thanked ANC1B for their previous support, and indicated that he hoped to allay some misconceptions about their status and security procedures. Mr. Parker extended an invitation to Commissioners and community members to visit Club U on the two nights a week that they are open in the evenings and inspect their security arrangements. The club operates in the evening on Thursday's and Saturday's; with the Thursday night's featuring a live jazz band and a 'happy hour' from five to eleven pm, and on Saturday nights the premier Go-Go band nights. The entertainment is directed at "native Washingtonian's". When the club empties, a staff of nine to twelve security people directs the exit and usher people to their cars. The security staff does patrol the block surrounding the Reeves Center during the evenings, and also attempts to pick up any club generated litter. They have been working with the 3D police on directing traffic as it leaves the club, and is trying to move traffic away from exiting via the 1400 block of W Street.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jennings, Jeffrey (COUNCIL)

From: Rob Halligan (ANC 2B01 Commissioner) [Rob.Halligan@DupontCircleANC.net]
Sent: Friday, February 06, 2004 9:17 AM
To: Jeff Jennings
Subject: Club U Lease

Jeff:

Last night you confirmed that, contrary to previous indications and inclinations, you no longer think Club U will move out of their space before their April ABC license renewal?

ANC 1B asked no pressing questions to the owner of U Turn after you left last night. Even though the owner clearly described his establishment as a night club and had appeared before them in the course of applying for a restaurant license. There was a shooting inside the establishment last month.

Rob
319 1313

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jennings, Jeffrey (COUNCIL)

From: Rob Halligan (ANC 2B01 Commissioner) [Rob.Halligan@DupontCircleANC.net]
Sent: Wednesday, March 03, 2004 5:06 PM
To: Maria Delaney
Cc: Al Luna; Commander McCoy; Jack Evans
Subject: Club U

Director Delaney:

In light of the most recent allegation, can you tell me that Club U is not going to be open Thursday night? If you can't, I'm going to Chief Ramsey to ask the same question.

Thank you,
Rob Halligan
202 319 1313

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jennings, Jeffrey (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Saturday, March 13, 2004 7:42 AM
To: ustreetnews@yahoogroups.com
Subject: fatal stabbing in the bar

Dear Friends:

Tragically, I must report that a man was stabbed to death in the U Street bar Between Friends. Two other persons were stabbed and hospitalized in the fight on the premises. It occurred early this morning at about 2 AM.

I have spoken to both Commander McCoy (who called me about this) and ABRA Administrator Maria Delaney.

I have called for the immediate suspension of this liquor license on grounds of public safety. I also will work to see that this license is permanently revoked and this place shut down.

This same bar is now being investigated for allegations of unlicensed nude dancing. Moreover, there was a second, recent stabbing (according to the Commander) which occurred just two weeks ago outside the established.

Clearly this bar, which opened as a women's bar, has somehow become transformed into something that we do not want in our neighborhood.

And speaking of that, the Club U is another establishment which we are working to rid ourselves of. It has no business in a government building, and I have been for sometime now pressing the Office of Property Management and the Corporation Counsel to vigorously pursue the eviction action that is now pending.

These rough bars with rough clientele are not welcome in our neighborhood. I want ABRA to take immediate action to close any bar where there is a nexus between violence and the premises.

Please stay in touch, Councilmember Jim Graham

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406,

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

3/1/2005

Jennings, Jeffrey (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Thursday, April 01, 2004 9:33 AM
To: ustreetnews@yahoogroups.com
Subject: Opposition to Club U Renewal by Office of Property Management and CM Jim Graham

31 Ltr to Burger re Club U.doc...

Club U ABC Letter.doc

Dear Friends:

I am passing along to you the letters that have been written in opposition to the renewal of the Class C License of Club U by both Carol Mitten, Director of Office of Property Management, and myself, as Ward One Councilmember. As you may know, Club U is within the Reeves Government Center building at 14th and U streets.

We are in agreement that this nightclub with its restaurant license and its promise to operate only at breakfast and lunch should not be permitted to unlawfully function full bore as a night club with all its attendant problems. And to do so, believe it or not, with taxpayer subsidy! Moreover, its lease with DC has expired and I am advised will not be renewed.

Let me know if these attachment letters do not make it onto the group.

Bests Councilmember Jim Graham

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

FOIA CONFIDENTIAL TREATMENT REQUESTED

JIM GRAHAM
COUNCILMEMBER, WARD ONE
COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

WASHINGTON DC
THE AMERICAN EXPERIENCE

1350 Pennsylvania Avenue, N.W.,
Suite 406
Washington, D.C. 20004

202-724-8181
202-724-8109 fax

jgraham@dccouncil.us
jim@grahamwone.com

Chairperson
Human Rights, Asian/P.I. & Latino Affairs & Property Management Subcommittee

Voting Member
Board of Directors, Washington Metropolitan Area Transit Authority

March 31, 2004

Mr. Charles A. Burger, Chairman
Alcoholic Beverage Control Board
941 North Capitol Street, N.E., Suite 7200
Washington, D.C. 20002

Dear Mr. Burger:

The purpose of this letter is to encourage the ABC Board to not renew the Class C license held by Levelle, Inc., which operates the business known as Club U at the Reeves Government Center. In this regard, I support the written comments made by Carol J. Mitten, Director of the Office of Property Management (OPM), in her letter on this subject to you dated March 29, 2004.

Please note that my Council duties include the oversight responsibility for the OPM.

From Director Mitten's letter, it is clear that this nightclub enterprise is not now, and never has been, authorized by the lease. By the way, the lease has expired and, I am sure, will not be renewed. Frankly, these unlawful purposes have actually been subsidized (in terms of added security and various conveniences) by D.C. taxpayers!

I conclude with this issue: the ABC Board ought not to turn a blind eye to the fact that an ABC licensee has no lease for space which it occupies in a government building. It ought to be a compelling consideration that the OPM has put the Board on notice of these unlawful and unauthorized activities. The Board expends considerable energies considering "substantial changes" in a licensed operation. What could be more "substantial" than a loss of a lease?

Thus, this Class C license should not be renewed.

Sincerely,

J. Graham

Cc: Carol J. Mitten, Director of the Office of Property Management
Commissioner Darren Bowie, Chair, ANC2B
Commissioner Deborah Thomas, Chair, ANC1B
Councilmember Jack Evans, Ward 2

JG/sh

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jennings, Jeffrey (COUNCIL)

From: Rivero, Fernando (COUNCIL)
Sent: Tuesday, September 14, 2004 1:37 PM
To: 'jim@grahamwone.com'
Subject: FW: Club U - Roll Call Hearing Reminder

FYI
FR
-----Original Message-----
From: Rob Halligan (ANC 2B01 Commissioner) [mailto:Rob.Halligan@DupontCircleANC.net]
Sent: Monday, September 13, 2004 4:03 PM
To: Rob Halligan (ANC 2B01 Commissioner)
Subject: Club U - Roll Call Hearing Reminder

I have the re-scheduled Club U Roll Call in my calendar for this Wednesday at 10:00. 941 North Capital, 7th floor. Should it not turn up on the agenda that I usually get late Tuesdays, I'll inform.

Rob Halligan
202 319 1313

-------Original Message----------

The attorney for Club U managed to get the ABC Roll Call hearing for Club U postponed. ABC staff should contact all those who sent in protest letters but I thought people would like to know that ASAP.

Rob Halligan

-------Original Message----------

ANC 2B voted to protest the renewal of the liquor license of Club U (Licensed under Coach and Four). Many citizens and citizens groups have mentioned that they may also protest the renewal. The dates and numbers someone (as a "group of five", police command, or a citizen's association) would need for a protest are below. Please inform other potential protestants. It would be great if we were joined by many other protestants.

If anyone needs info on the ABC protest process, I would be glad to help. You'd start by writing a letter to the Chair of the ABC Board by 8/3 stating that you would like to protest the license renewal application (on the basis of "peace, order, and quiet"). I could send a form letter to those who would want one. Everybody will need to show up at the Roll Call hearing on 8/18. (Bona fide citizens associations can send one representative if they have properly been authorized by their organization.)

I've spoken to the recently assigned Asst. Attorney General handling their suit for eviction of Club U. It hasn't gone anywhere since you likely last heard. It will likely go to jury trial, and that likely won't happen for another year. It's hard to tell what could come of the renewal protest. At worst, we'd hope to lessen the impact on the MPD resources and neighbors on the nights that Club U is open.

Hearing date 8/18

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Petition date 8/3

App# 28078, Lic. No. 02699

Rob Halligan
ANC 2B
202 319 1313

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jennings, Jeffrey (COUNCIL)

From: Rob Halligan (ANC 2B01 Commissioner) [Rob.Halligan@DupontCircleANC.net]
Sent: Wednesday, June 30, 2004 8:28 AM
To: 'Jim Graham'
Cc: Jeff Jennings
Subject: RE: RE: Your Thoughts on Club U

I'm protesting (as I tried to convey below). I'm encouraging numerous other entities to protest. I'm just not sure that my ANC's protest will lead a joint protest of all the groups. If say DCCA protests, they have the war chest and in-house legal talent (Bill Glew) to make for a more powerful lead. The other factor is whether the various protestants can have a common desired outcome.

As you know, the problems the Club U creates could be dealt with in far better ways than with a renewal protest. The fact that there has been no Show Cause is a great disservice of ABRA's and ABC's to our community and a complete failure by MPD. Whether 2B would get great weight, with the law pending, is iffy. Club U is only my problem because others have not done their jobs.

From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Wednesday, June 30, 2004 7:04 AM
To: Rob.Halligan@DupontCircleANC.net
Subject: RE: RE: Your Thoughts on Club U

No need to herd. Just get five persons. OPM cannot protest. You have complained (rightly so) so much about this, I thought you would want to take the next step. Please advise.

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Rob Halligan (ANC 2B01 Commissioner) [mailto:Rob.Halligan@DupontCircleANC.net]
Sent: Tuesday, June 29, 2004 6:26 PM
To: 'Jim Graham'
Subject: RE: RE: Your Thoughts on Club U

I do plan on asking my ANC to protest. Organizing the various protestants would be like herding cats. Lou Nayman is talking about doing a 14e petition. Is OPM even allowed to protest? We'll hope that we can combine the various protestants at the Roll Call hearing. If you have any info that would help, I'd love to hear it.

From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Tuesday, June 29, 2004 7:24 AM
To: Rob.Halligan@DupontCircleANC.net

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014334

Subject: RE: [SPAM] RE: Your Thoughts on Club U

Will you organize a protest?

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Rob Halligan (ANC 2B01 Commissioner) [mailto:Rob.Halligan@DupontCircleANC.net]
Sent: Tuesday, June 29, 2004 7:48 AM
To: 'Jim Graham'
Subject: [SPAM] RE: Your Thoughts on Club U

No. I wrote of likely protestants. If Guyot were smart, he'd get his ANC to protest so he could run the show rather than having other protestants as the lead. He supported your Voluntary Agreement (essentially that was similar to a VA) for Between Friends. I sure wish Deborah Thomas would show some leadership here.

From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Tuesday, June 29, 2004 6:37 AM
To: Rob.Halligan@DupontCircleANC.net
Subject: RE: Your Thoughts on Club U

DO we have a formal protest?

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Rob Halligan (ANC 2B01 Commissioner) [mailto:Rob.Halligan@DupontCircleANC.net]
Sent: Monday, June 28, 2004 7:53 PM
To: Jim Graham
Subject: Your Thoughts on Club U

CM Graham:

I pinged Jeff Jennings this morning to get some input on Club U protest strategy. Not being sure whether he was on vacation, I thought I'd ask whether you thought my people should lay low at the 1B Thursday. Looks like we've likely got a group of citizens protesting, my ANC,

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and OPM.

Rob
319 1313

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jennings, Jeffrey (COUNCIL)

From: Rob Halligan (ANC 2B01 Commissioner) [Rob.Halligan@DupontCircleANC.net]
Sent: Monday, June 28, 2004 11:06 AM
To: Jeff Jennings
Subject: Any Club U Strategy?

I hear the Club U neighbors are planning a 14e petition to attempt to prevent renewal. Any pressure been put on Deborah Thomas? Any talk of a deal with Guyot?

Rob
319 1313

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jennings, Jeffrey (COUNCIL)

From: Diane Groomes [psa309lt@hotmail.com]
Sent: Thursday, April 15, 2004 2:30 PM
To: ResponsibleHospitalityDC@yahoogroups.com
Subject: RE: [ResponsibleHospitalityDC] Any news coverage of the Club U rally?

MPDC hasnt heard about this

>From: "RobHalligan" <rob.halligan@dupontcircleanc.net>
>Reply-To: ResponsibleHospitalityDC@yahoogroups.com
>To: ResponsibleHospitalityDC@yahoogroups.com
>Subject: [ResponsibleHospitalityDC] Any news coverage of the Club U rally?
>Date: Tue, 13 Apr 2004 02:06:38 -0000
>
>
>Fred Moosally from ABC was telling me about a rally in support of
>Club U that he was inbited to. Is there any print coverage you could
>refer me to? Or does anyone want to post a summary of the event?
>
>Rob Halligan
>

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Yahoo! Groups Links

- To visit your group on the web, go to:
  http://groups.yahoo.com/group/ResponsibleHospitalityDC/
- To unsubscribe from this group, send an email to:
  ResponsibleHospitalityDC-unsubscribe@yahoogroups.com
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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014338

Jennings, Jeffrey (COUNCIL)

From: Rob Halligan (ANC 2B01 Commissioner) [Rob.Halligan@DupontCircleANC.net]
Sent: Thursday, April 01, 2004 3:15 PM
To: 'Jennings, Jeffrey (COUNCIL)'
Subject: RE: Opposition to Club U Renewal by Office of Property Management and CM Jim Graham

Yeah, Mr. Graham sent it to me. I'm going at Deborah Thomas to get try to get her to write a Vol Ag that might tide us over until OPM concludes their proceedings.

I was in visiting Fernando after sitting with Schwartz today.

-----Original Message-----
From: Jennings, Jeffrey (COUNCIL) [mailto:jjennings@dccouncil.us]
Sent: Thursday, April 01, 2004 9:42 AM
To: Rob Halligan (E-mail)
Subject: FW: Opposition to Club U Renewal by Office of Property Management and CM Jim Graham

I suspect you have seen this?

Regards
Jeff
202.724.8031 direct

-----Original Message-----
From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Thursday, April 01, 2004 9:33 AM
To: ustreetnews@yahoogroups.com
Subject: Opposition to Club U Renewal by Office of Property Management and CM Jim Graham

Dear Friends:

I am passing along to you the letters that have been written in opposition to the renewal of the Class C License of Club U by both Carol Mitten, Director of Office of Property Management, and myself, as Ward One Councilmember. As you may know, Club U is within the Reeves Government Center building at 14th and U streets.

We are in agreement that this nightclub with its restaurant license and its promise to operate only at breakfast and lunch should not be permitted to unlawfully function full bore as a night club with all its attendant problems. And to do so, believe it or not, with taxpayer subsidy! Moreover, its lease with DC has expired and I am advised will not be renewed.

Let me know if these attachment letters do not make it onto the group.

Bests Councilmember Jim Graham

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014339

Jennings, Jeffrey (COUNCIL)

From: Rob Halligan (ANC 2B01 Commissioner) [Rob.Halligan@DupontCircleANC.net]
Sent: Tuesday, March 16, 2004 11:29 AM
To: Jennings, Jeffrey (COUNCIL)
Subject: RE: Club U action?

Everyone's afraid of that "Forward" button.

-----Original Message-----
From: Jennings, Jeffrey (COUNCIL) [mailto:jjennings@dccouncil.us]
Sent: Tuesday, March 16, 2004 11:31 AM
To: 'Rob Halligan (ANC 2B01 Commissioner)'
Subject: RE: Club U action?

call me

202.724.8031

Thanks.

-----Original Message-----
From: Rob Halligan (ANC 2B01 Commissioner)
[mailto:Rob.Halligan@DupontCircleANC.net]
Sent: Tuesday, March 16, 2004 11:21 AM
To: Jeff Jennings
Subject: FW: Club U action?

Whaydaya think of this?

-----Original Message-----
From: Rob Halligan (ANC 2B01 Commissioner)
[mailto:Rob.Halligan@DupontCircleANC.net]
Sent: Tuesday, March 16, 2004 11:06 AM
To: Jim Graham
Subject: Club U action?

Councilman Graham:

I wonder, with the momentum that seems to be gathering to address the "nightlife issues" on U Street, if we were to come up with a strategy to close Club U through one of the provisions of Title 25 Chapter 8 would you be willing to push such a strategy. I'd be willing to research the provisions in the law if I knew you would bring your influence in. For instance, I've already asked Chief Ramsey to shut it down, and my voice didn't sway him.

Thank you,
Rob Halligan

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jennings, Jeffrey (COUNCIL)

From: Rob Halligan (ANC 2B01 Commissioner) [Rob.Halligan@DupontCircleANC.net]
Sent: Wednesday, March 03, 2004 5:06 PM
To: Maria Delaney
Cc: Al Luna; Commander McCoy; Jack Evans
Subject: Club U

Director Delaney:

In light of the most recent allegation, can you tell me that Club U is not going to be open Thursday night? If you can't, I'm going to Chief Ramsey to ask the same question.

Thank you,
Rob Halligan
202 319 1313

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jennings, Jeffrey (COUNCIL)

From: Rob Halligan (ANC 2B01 Commissioner) [Rob.Halligan@DupontCircleANC.net]
Sent: Tuesday, January 06, 2004 9:38 PM
To: Jennings, Jeffrey (COUNCIL)
Subject: RE: Follow Up to ANC 1B having Club U owners

I hope Graham didn't give away the too much to get the deal.

-----Original Message-----
From: Jennings, Jeffrey (COUNCIL) [mailto:jjennings@dccouncil.us]
Sent: Tuesday, January 06, 2004 12:44 PM
To: 'Rob Halligan (ANC 2B01 Commissioner)'
Subject: RE: Follow Up to ANC 1B having Club U owners

Conference call tomorrow b/t CM Graham & Harris Tweeter. It's still possible in spite of what may have been said and heard.

-----Original Message-----
From: Rob Halligan (ANC 2B01 Commissioner)
[mailto:Rob.Halligan@DupontCircleANC.net]
Sent: Monday, January 05, 2004 6:43 AM
To: Maria Delaney
Cc: Al Luna; LMcCoy@MPDC.org
Subject: Follow Up to ANC 1B having Club U owners

Director Delaney:

With the way that the ANC 1B meeting went and that your new Chief Inspector Al Luna tells us that the owners of Club U have already come in to meet with ABRA since the latest incidence of violence, I really don't see meeting at ABRA as lessening the chance of further violence attributed to Club U.

The meeting atmosphere was racially charged. 3rd District Lieutenant Neal didn't strongly point out the amount of manpower that has to be deployed at Club U's closing or indicate the number of calls for service MPD gets from the surrounding block at Club U's closing times. In the end, I don't think the Commission got the impression that the community feels Club U is a problem.

Thanks for your efforts. It was good to meet Al Luna; we're looking forward to having him ramped up. Have a good vacation.

Rob Halligan

---------Original Message----------

I've been talking to the Maria Delaney the Director of Alcohol Beverage Control (ABC) about her having the owners of Club U in to her offices for a discussion with community members and MPD. But since the Club U owners are coming to the ANC 1B meeting on Saturday the 3rd at 10am in the True Reformer building (1200 U street), she wanted to put that meeting off. Perhaps ABC's and the community's concerns can be met in that meeting. Al Luna from ABC and some MPD are expected.

A big turn out at that ANC meeting could help further the impression that

FOIA CONFIDENTIAL TREATMENT REQUESTED

the community is very concerned about the violence that had been attributed to that establishment's patrons. The owners of Club U seem to be very reasonable people.

Having MPD's concerns about the amount of manpower that they feel they have to send to Club U at closing would be very important input. For instance, if someone from MPD brought a pile of the 251 reports generated from the area around Club U at closing time, that would be powerful.

Please put this word out on newsgroups.

Rob Halligan
ANC 2B01
202 319 1313

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014343

Jennings, Jeffrey (COUNCIL)

From: Rob Halligan (ANC 2B01 Commissioner) [Rob.Halligan@DupontCircleANC.net]
Sent: Tuesday, December 30, 2003 11:29 AM
To: Rob.Halligan@DupontCircleANC.net
Subject: ANC 1B having Club U owners

I've been talking to the Maria Delaney the Director of Alcohol Beverage Control (ABC) about her having the owners of Club U in to her offices for a discussion with community members and MPD. But since the Club U owners are coming to the ANC 1B meeting on Saturday the 3rd at 10am in the True Reformer building (1200 U street), she wanted to put that meeting off. Perhaps ABC's and the community's concerns can be met in that meeting. Al Luna from ABC and some MPD are expected.

A big turn out at that ANC meeting could help further the impression that the community is very concerned about the violence that had been attributed to that establishment's patrons. The owners of Club U seem to be very reasonable people.

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Please put this word out on newsgroups.

Rob Halligan
ANC 2B01
202 319 1313

FOIA CONFIDENTIAL TREATMENT REQUESTED

Briggs, Emanuel (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Friday, March 04, 2005 9:59 PM
To: ustreetnews@yahoogroups.com
Subject: Club U Suspended Awaiting Revocation Hearing

Club U

Dear Friends: I am pleased that the ABC Board has continued the suspension of the liquor license of Club U and has scheduled a full hearing for the revocation of the license for early April. This action is justified because of the homicide that occurred either on the premises of the club, or on its doorstep. The proximity is clear, and that in combination with other events over the past several years, provides the justification.

On this Friday, in eth afternoon, in the Council chambers of 1350 Pa Ave., our committee will conduct a hearing on the emergency suspension of ABC licenses law that I have introduced.

Bests CM Jim Graham

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

Chairman, Committee on Consumer and Regulatory Affairs. Main Committee Number: 202-724-8198. 1350 Pa. Ave., NW, #112, Washington, DC 20004.

Website: www.grahamwone.com

FOIA CONFIDENTIAL TREATMENT REQUESTED

ANC1B
GOVERNMENT OF THE DISTRICT OF COLUMBIA
PO BOX 73710, WASHINGTON, DC 20056

Myla Moss, Phil Spalding, Catherine Hammonds, Deairich R. Hunter, Mike Smith, Tim Stephens,
Lori Parker, Rosemary Akinmboni, Thomas K. D. Smith, Nate Matthews, Raymond Wright

5 March 2005

Mr. Charles A. Burger, Chairman
Alcoholic Beverage Regulation Administration
7th Floor, 941 North Capitol Street NE
Washington, DC 20002

RE: License No. 20699
Levelle Inc. t/a The Coach and Four t/a Club U

Dear Chairman Burger:

At its regularly scheduled meeting on March 3, 2005 (notice of which was properly given, and at which a quorum of ten of eleven members was present) ANC1B voted (8-2) to request that that the Board revoke the CR license held by Levelle Inc. The Commission does believe that allowing continued use of this license presents a threat to the safety and well being of our constituents. Our discussion is reflected on pages six through eight of our March minutes which are available on our web site at www.anc1b.org. As the elected representatives of the residents living in close proximity to this licensee we ask that you accord great weight to our decision to request that this license be revoked.

Sincerely,

Deairich R. Hunter, Chairperson

Philip C. Spalding, Secretary

CC: Levelle Inc.
Councilmember Jim Graham
Cardozo Shaw Neighborhood Association

Briggs, Emanuel (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Friday, February 25, 2005 8:21 AM
To: 'Colby King'
Subject: Thanks...

for today's edit. It surely will help.

I do know why you did not repeat the call for revocation as opposed to continued suspension. But for those of us who have called repeatedly for that action, year after year, nothing less than that will work.

I know the ABC Board pattern in serious cases: suspension, sometimes for 2-3 weeks, followed by this condition or that condition once everything cools down. I have gone through that before on U Street, and the Penthouse on Ga. Ave is a very fine example of this (following 3 homicides in less than 8 weeks).

Like DCRA (another agency for which I now have oversight responsibility) ABC is just too cozy with its regulated industry.

I am determined to alter that balance so that the public interest is better served, not only in this case but in all cases.

Take, for example, ABC suspensions for tobacco or alcohol sale to minors...but that's another story.

Thanks again. Bests Jim

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014347

Briggs, Emanuel (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Wednesday, February 23, 2005 6:30 AM
To: Emanuel Briggs
Subject: FW: Opposition to Club U Renewal by Office of Property Management and CM Jim Graham

31 Ltr to Burger re Club U.doc...

Club U ABC Letter.doc

Put on chair

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Thursday, April 01, 2004 9:33 AM
To: 'ustreetnews@yahoogroups.com'
Subject: Opposition to Club U Renewal by Office of Property Management and CM Jim Graham

Dear Friends:

I am passing along to you the letters that have been written in opposition to the renewal of the Class C License of Club U by both Carol Mitten, Director of Office of Property Management, and myself, as Ward One Councilmember. As you may know, Club U is within the Reeves Government Center building at 14th and U streets.

We are in agreement that this nightclub with its restaurant license and its promise to operate only at breakfast and lunch should not be permitted to unlawfully function full bore as a night club with all its attendant problems. And to do so, believe it or not, with taxpayer subsidy! Moreover, its lease with DC has expired and I am advised will not be renewed.

Let me know if these attachment letters do not make it onto the group.

Bests Councilmember Jim Graham

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014348

March 31, 2004

Mr. Charles A. Burger, Chairman
Alcoholic Beverage Control Board
941 North Capitol Street, N.E., Suite 7200
Washington, D.C. 20002

Dear Mr. Burger:

The purpose of this letter is to encourage the ABC Board to not renew the Class C license held by Levelle, Inc., which operates the business known as Club U at the Reeves Government Center. In this regard, I support the written comments made by Carol J. Mitten, Director of the Office of Property Management (OPM), in her letter on this subject to you dated March 29, 2004.

Please note that my Council duties include the oversight responsibility for the OPM.

From Director Mitten's letter, it is clear that this nightclub enterprise is not now, and never has been, authorized by the lease. By the way, the lease has expired and, I am sure, will not be renewed. Frankly, these unlawful purposes have actually been subsidized (in terms of added security and various conveniences) by D.C. taxpayers!

I conclude with this issue: the ABC Board ought not to turn a blind eye to the fact that an ABC licensee has no lease for space which it occupies in a government building. It ought to be a compelling consideration that the OPM has put the Board on notice of these unlawful and unauthorized activities. The Board expends considerable energies considering "substantial changes" in a licensed operation. What could be more "substantial" than a loss of a lease?

Thus, this Class C license should not be renewed.

Sincerely,

Cc: Carol J. Mitten, Director of the Office of Property Management
Commissioner Darren Bowie, Chair, ANC2B
Commissioner Deborah Thomas, Chair, ANC1B
Councilmember Jack Evans, Ward 2

JG/sh

FOIA CONFIDENTIAL TREATMENT REQUESTED

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Property Management

Carol J. Mitten
Director

March 29, 2004

Mr. Charles A. Burger, Chairman
Alcoholic Beverage Control Board
941 North Capitol Street, N.E., Suite 7200
Washington, D.C. 20002

RE: Objection to Renewal of Class C License for Levelle, Inc. (D/B/A: Coach and IV; Club U) at 2000 14th Street, N.W.

Dear Mr. Burger:

As the Director of the Office of Property Management, I have been designated by the Mayor to oversee the management of property owned by the District of Columbia ("District"). Levelle, Inc. ("Levelle") occupies a portion of the Reeves Center, a municipal office building, located at 2000 14th Street N.W. In contravention of the terms of its now expired lease with the District, Levelle operates a nightclub known as Club U (formerly known as Coach and IV). Levelle's Class C alcoholic beverage license expires on March 31, 2004. The Reeves Center is not an appropriate location for a Class C licensed establishment and, in fact, was never authorized to operate there. Club U is a serious threat to the security to this District-owned facility. The Metropolitan Police Department ("MPD") has been called to Club U 75 times during the last four years to investigate criminal activity, including shootings, assaults, a stabbing, disorderly conduct, and robbery. During the past three years, the District government has incurred $118,903 in non-reimbursable costs to provide additional building security through our Protective Services Division ("PSD") that was directly attributable to the operation of Club U and related criminal activity.

In October 1993, the District and Levelle entered into a 10-year lease ("Lease") and the permitted hours of operation were for a breakfast and luncheon establishment. The Lease does not allow for the operation of a nightclub. Levelle's continued use of the premises as a nightclub has been a violation of the Lease for a number of years. In 1999, the District sued Levelle to recover possession of the premises based on a number of violations of the Lease, including failure to pay rent, failure to cease unauthorized after-hour operations, and damage to premises caused by Levelle and Levelle's patrons. After a failed attempt at mediation, the District requested a trial date in January 2004. The Lease expired in October 2003. Levelle currently owes the District more than $175,000 in back rent under the Lease.

FOIA CONFIDENTIAL TREATMENT REQUESTED

The Reeves Center, where Levelle is unlawfully operating Club U, is intended to be an office building with lobby level convenience shops and a daycare center. Levelle's unauthorized nightclub not only generally interferes with the peace, order, and quiet of the Reeves Center, it is a serious security threat to one of the District's most important buildings. The Reeves Center houses a number of District agencies, including the Department of Transportation, the Office of Property Management, the Department of Public Works, and the Mayor's 24-Hour Command Center. The Emergency Management Agency (EMA), in particular, is highly security sensitive.

Club U patrons enter through the lobby and must pass by the elevators to enter Club U. These elevators provide access to staff who operate the EMA Command Center. The Command Center operates 24 hours a day and coordinates information and support services for both local and regional emergencies, including terrorist threats. PSD staff must physically monitor the elevators to ensure that patrons do not enter the elevators, stairs, and escalator that lead to any of the upper floor offices. Additionally, Club U does not have bathrooms located inside the leased space. The stream of patrons seeking to use the common area bathrooms means that PSD must further monitor the lobby to prevent unauthorized access.

During the past five years, Levelle's unlawful nightclub has been the center of on-going criminal activity, including a stabbing in 2000 (see attached report). Since 2001, MPD has been called 75 times to Reeves Center during Club U's unauthorized hours of operation, and 48 of those calls resulted in written reports (see attached summary). The MPD incidents alone include two ABC violations, thirteen assaults, seven requests for assistance from District PSD staff, 21 instances of disorderly conduct, a kidnapping, a holdup with a knife, and shootings. In May 2003, Club U patrons were involved in the shooting of two brothers in the alley behind Club U. MPD is currently investigating a recent alleged sexual assault on a Club U patron that reportedly occurred inside the Reeves Center. The restaurant has also operated over its authorized capacity, in violation of the fire code (see attached incident report), and was shut down on those nights.

For the foregoing reasons, I urge the Board not to renew Levelle's Class C license. The location of the nightclub is not authorized, nor is it appropriate. If a hearing is held on this matter, I would welcome the opportunity to speak on behalf of the District. Thank you for considering my request.

Sincerely,

Carol J. Mitten
Director of Office of Property Management

cc: Commissioner Darren Bowie, Chair, ANC 2B
Commissioner Deborah Thomas, Chair, ANC 1B
Councilmember Jim Graham, Ward 1
Councilmember Jack Evans, Ward 2

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014351

Briggs, Emanuel (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Wednesday, February 23, 2005 6:33 AM
To: Emanuel Briggs
Subject: FW: Club U / The Coach and Four

Club U

Put on chair

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Wednesday, June 23, 2004 8:14 AM
To: Emanuel Briggs
Subject: FW: Club U / The Coach and Four

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Wednesday, June 23, 2004 8:14 AM
To: 'Delaney, Maria (ABRA)'
Subject: RE: Club U / The Coach and Four

Second question: What will ABRA do to confirm or deny its restaurant status? What investigation will occur in past practices in this regard? Please advise. CM Jim Graham

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call

FOIA CONFIDENTIAL TREATMENT REQUESTED

me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Delaney, Maria (ABRA) [mailto:Maria.Delaney@dc.gov]
Sent: Wednesday, June 23, 2004 8:06 AM
To: (jim@grahamwone.com)
Subject: FW: Club U / The Coach and Four

This is the information for Club U. If you have any questions please contact me at 442-4353.
-----Original Message-----
From: Byrd, Laura (ABRA)
Sent: Tuesday, June 22, 2004 8:27 PM
To: 'gerald.allan.schwinn@verizon.net'
Cc: Delaney, Maria (ABRA)
Subject: Club U / The Coach and Four

Good Evening, Mr. Schwinn:

Levelle, Inc. t/a The Coach and Four (2000 14th Street, N.W., Application no. 28078, License no. 20699) has renewed its license for 2 years.. The roll call hearing will be held on August 18, 2004. The petition deadline for filing all protests is August 3, 2004. Also, by Board Order dated March 3, 2004, the expiration date for retailer's class CR, CL, CX, CH,DR, DL, DX and DH were extended through June 30, 2004.

If I can assist you further, do not hesitate to contact me by e-mail or by phone at 442-4359.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Briggs, Emanuel (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Wednesday, February 23, 2005 6:27 AM
To: Emanuel Briggs
Subject: FW: [SPAM] RE: Rape at Club U

Put on chair

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Wednesday, March 03, 2004 10:10 AM
To: 'Johnson, Kimberley (COUNCIL)'
Subject: RE: [SPAM] RE: Rape at Club U

I scheduled it myself. Leave everything else alone. thanks

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Johnson, Kimberley (COUNCIL) [mailto:KJohnson@dccouncil.us]
Sent: Wednesday, March 03, 2004 9:49 AM
To: 'Jim Graham'
Subject: [SPAM] RE: Rape at Club U

I will put it at 3pm. So you have enough time with her and Mr. Barnes, do you still wish to meet with Carol Seifert and Fabian Barnes from the Dance Institute of Washington?

-----Original Message-----
From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Wednesday, March 03, 2004 8:23 AM
To: Johnson, Kimberley (COUNCIL)
Subject: FW: Rape at Club U

We need to schedule this today. Thanks

FOIA CONFIDENTIAL TREATMENT REQUESTED

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Kennysr@aol.com [mailto:Kennysr@aol.com]
Sent: Tuesday, March 02, 2004 10:46 PM
To: Jim@grahamwone.com
Cc: kennysr@rootfoundation.org
Subject: Rape at Club U

Jim,

I have just received information that a young woman was gang raped at Club U on Saturday night. It is my understanding that someone slipped some type of drug in her drink and she virtually remembers nothing but going to the bathroom. The bathroom is separate from the club and there is no security where the bathroom is located.

The guards at the front, says the young lady, did nothing to assist the young woman and she lay unconscious on the front table for over an hour until she was found by her girl friend.
She states that one of the guards even said to her that they hope she was not pregnant by about five guys, like it was some type of joke.

She was laid stretched out at the front of the club passed out on a table after the incident, with no one coming to her assistance. Also, there is a witness that will say what occurred.

The young woman filed a report with the police, but virtually nothing has happened and no investigation is in place.

I talked to the young lady and asked if she would mind talking with you and she says she would like to do so. Can you spare some time tomorrow.

Kenny

Kenneth E. (Kenny) Barnes, Sr., MS
CEO and Executive Director
ROOT (Reaching Out to Others Together)
and
Chapter Leader, DC Area Chapter
Parents of Murdered Children (POMCDC)
Local: (202) 431-6646
Toll Free: 1-888-390-ROOT
Fax: (301) 301 362-1930
Email: KennySr@rootfoundation.org
Website: www.rootfoundation.org

FOIA CONFIDENTIAL TREATMENT REQUESTED

Briggs, Emanuel (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Wednesday, February 23, 2005 6:27 AM
To: Emanuel Briggs
Subject: FW: Club U

Put on chair

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Thursday, March 04, 2004 8:47 AM
To: 'Delaney, Maria (ABRA)'
Subject: RE: Club U

I am rushing out. Please leave a message on the office phone to remind me.

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Delaney, Maria (ABRA) [mailto:Maria.Delaney@dc.gov]
Sent: Thursday, March 04, 2004 8:07 AM
To: 'Jim Graham'
Subject: RE: Club U

I just sent another e-mail to you that I forwarded to Comm. McCoy. Please contact me at 442-4353 because I am calling but getting the office recording only. I look forward to speaking to you. Thanks.

-----Original Message-----
From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Thursday, March 04, 2004 8:01 AM
To: 'Delaney, Maria (ABRA)'
Subject: RE: Club U

I met yesterday with police and the alleged victim concerning a sexual assault incident that allegedly occurred at Club U on Thursday night. I have the contact information for both. I am not sure where the truth lies but it merits careful investigation on an ASAP basis in my opinion. Please give me a call for that information. Bests

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #406,

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014356

Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014357

Briggs, Emanuel (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Wednesday, February 16, 2005 9:13 AM
To: 'Bobb, Robert (EOM)'
Subject: RE: Results of the meeting of ABC Board regarding Club U incident

Thanks.

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Bobb, Robert (EOM) [mailto:Robert.Bobb@dc.gov]
Sent: Tuesday, February 15, 2005 8:36 AM
To: 'Jim Graham'
Subject: RE: Results of the meeting of ABC Board regarding Club U incident

Yes
Bob

-----Original Message-----
From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Tue Feb 15 07:34:49 2005
To: 'Bobb, Robert (EOM)'
Subject: RE: Results of the meeting of ABC Board regarding Club U incident

Thanks. May I quote you as saying that? Bests

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Bobb, Robert (EOM) [mailto:Robert.Bobb@dc.gov]
Sent: Monday, February 14, 2005 11:56 PM
To: 'Jim Graham'
Subject: RE: Results of the meeting of ABC Board regarding Club U incident

I will come out for a total revocation of the license.
Bob

-----Original Message-----
From: Jim Graham [mailto:jim@grahamwone.com]
Sent: Mon Feb 14 23:30:23 2005
To: robert.bobb@dc.gov
Subject: RE: Results of the meeting of ABC Board regarding Club U incident

Will you come out for a revocation f the license, not just a suspension?

FOIA CONFIDENTIAL TREATMENT REQUESTED

Please advise.

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Jennings, Jeffrey (COUNCIL) [mailto:jjennings@dccouncil.us] On Behalf Of Graham, Jim (COUNCIL)
Sent: Monday, February 14, 2005 6:26 PM
To: 'jim@grahamwone.com'
Subject: FW: Results of the meeting of ABC Board regarding Club U incident

-----Original Message-----
From: Bobb, Robert (EOM)
Sent: Monday, February 14, 2005 5:06 PM
To: Delaney, Maria (ABRA); Graham, Jim`(COUNCIL); Reiskin, Edward (EOM); Ramsey, Charles (MPD); Spagnoletti, Robert (OAG)
Cc: Ryan, Terry (MPD); Walls, Brenda (OAG); Gang, Sharon (EOM); Mccoy, Larry (MPD)
Subject: RE: Results of the meeting of ABC Board regarding Club U incident

Thanks for keeping all of us in the "loop"!!! I believe the Board made the right decision. Hope it holds up on appeal. Bob

-----Original Message-----
From: Delaney, Maria (ABRA) [mailto:Maria.Delaney@dc.gov]
Sent: Mon Feb 14 16:18:27 2005
To: Delaney, Maria (ABRA); Graham, Jim (COUNCIL); Reiskin, Edward (EOM);
Ramsey, Charles (MPD); Spagnoletti, Robert (OAG); Bobb, Robert (EOM)
Cc: Ryan, Terry (MPD); Walls, Brenda (OAG); Gang, Sharon (EOM); Mccoy,
Larry (MPD)
Subject: Results of the meeting of ABC Board regarding Club U incident

Please be advised that the ABC Board determined after an Investigative Report conducted by ABRA, dated February 14, 2005, regarding violent incidents occurring at the establishment on February 13, 2005 that the current operations of the licensee present an imminent danger to the health and safety of the public. The Board decided to suspend the establishment's license and forward the Board's Investigative Report, dated February 14, 2005 to the Office of the Attorney General for the requisite legal drafting of a Notice of Summary Suspension to be served upon the establishment Upon receipt of the Notice of Summary Suspension, the establishment's license will be suspended and the licensee shall have 72 hours to request a hearing from the Board. The Board will have 48 hours after receipt of a timely request to hold a hearing.

Walter Adams, OAG's office was in attendance and did obtain a copy of the
report. Mr. Adams will require testimony from MPD. ABRA would like to obtain any new developments from MPD on these incidents on a timely manner. There are still some discrepancies between MPD reports and interviews. Thank you all for the information provided. As always, please contact me either on my direct line at 442-4353 or cell 329-6340.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014359

Maria

-----Original Message-----
From: Delaney, Maria (ABRA)
Sent: Monday, February 14, 2005 10:54 AM
To: Graham, Jim (COUNCIL); Reiskin, Edward (EOM); Ramsey, Charles (MPD); Spagnoletti, Robert (OAG); Bobb, Robert (EOM)
Cc: Ryan, Terry (MPD); Walls, Brenda (OAG)
Subject: Meeting of ABC Board regarding Club U incident
Importance: High

The ABC Board will be meeting in executive session at 1:30 p.m. to review the information that ABRA has received. ABRA is still trying to obtain information from MPD regarding the assault/shooting incident. The only report regarding this incident was provided by EMA. Comm. McCoy called and asked ABRA to send the EMA report to him. Comm. McCoy indicated that he will call me by noon to update me regarding the assault/shooting incident. Hopefully ABRA will be able to obtain a report from MPD regarding the assault/shooting to incorporate MPD's information in ABRA's report to the Board.

I will contact everyone once the ABC Board renders a decision.

Maria M. Delaney
Director
Government of the District of Columbia
Alcoholic Beverage Regulation Administration
941 North Capitol Street, N. E., Suite 7200
Washington, D.C. 20002

Phone: (202) 442-4423
FAX: (202) 727-9685
Email: maria.delaney@dc.gov

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014360

Briggs, Emanuel (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Monday, February 14, 2005 10:40 AM
To: 'Bobb, Robert (EOM)'; Kleinpd@aol.com; 'Ramsey, Charles (MPD)'
Cc: Charles.Burger@dc.gov; 'Evans, Jack (COUNCIL)'; 'Mitten, Carol (OPM)'; pbrehm@fcc.net; JCOUDRIET@DCCouncil.Washington.DC.US; elwynferris@hotmail.com; ramonestrada@mris.com; CaroleeRI@aol.com; Ann.M.Carroll@usdoj.gov; mikesilversteinusa@yahoo.com; JHMears@aol.com; Cinthia.Trask1@dhs.gov; janet.perkins1@verizon.net; marybrownindc@earthlink.net; paramark@mail.nih.gov; 'Williams, Anthony A. (EOM)'
Subject: RE: Murder and Shooting at Club U, The Reeves Center

Thanks. Hopefully, this very tragic and near tragic event will bring about that result. Bests CM Jim Graham

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

B.B.B

-----Original Message-----
From: Bobb, Robert (EOM) [mailto:Robert.Bobb@dc.gov]
Sent: Monday, February 14, 2005 12:31 AM
To: 'Kleinpd@aol.com'; Ramsey, Charles (MPD)
Cc: 'Charles.Burger@dc.gov'; Evans, Jack (COUNCIL); 'jim@grahamwone.com'; Mitten, Carol (OPM); 'pbrehm@fcc.net'; 'JCOUDRIET@DCCouncil.Washington.DC.US'; 'elwynferris@hotmail.com'; 'ramonestrada@mris.com'; 'CaroleeRI@aol.com'; 'Ann.M.Carroll@usdoj.gov'; 'mikesilversteinusa@yahoo.com'; 'JHMears@aol.com'; 'Cinthia.Trask1@dhs.gov'; 'janet.perkins1@verizon.net'; 'marybrownindc@earthlink.net'; 'paramark@mail.nih.gov'; Williams, Anthony A. (EOM)
Subject: RE: Murder and Shooting at Club U, The Reeves Center

K

We agree that Club You is a problem and we continue to press our strong desire for ABRA to revoke the liquor lincense. Bobb

-----Original Message-----
From: Kleinpd@aol.com [mailto:Kleinpd@aol.com]
Sent: Sun Feb 13 23:48:24 2005
To: Charles.Ramsey@DC.gov
Cc: Charles.Burger@dc.gov; jackevans@dccouncil.us; jim@grahamwone.com; Robert.Bobb@dc.gov; Carol.Mitten@dc.gov; pbrehm@fcc.net; JCOUDRIET@DCCouncil.Washington.DC.US; elwynferris@hotmail.com; ramonestrada@mris.com; CaroleeRI@aol.com; Ann.M.Carroll@usdoj.gov; mikesilversteinusa@yahoo.com; JHMears@aol.com; Cinthia.Trask1@dhs.gov; janet.perkins1@verizon.net; marybrownindc@earthlink.net; paramark@mail.nih.gov; anthony.williams@dc.gov
Subject: Murder and Shooting at Club U, The Reeves Center

Dear Chief Ramsey,

For several years, neighbors on our block have expressed concerns to our public officials about the public safety threat posed by Club U. We have also expressed our concerns about the inappropriate use of the Reeves Center for such an operation.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014361

We are writing you today, after news of another murder and shooting last night,
to urge you to use your authority, in the interest of public safety, to revoke Club U's liquor license.

With sincere appreciation,
Phyllis Klein
1400 Block T Street Residents' Association

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jim Graham

From: mark mayhew [markjmayhew@yahoo.com]
Sent: Tuesday, February 15, 2005 1:22 AM
To: Jim Graham
Subject: Oh yeah, way to go (on Club U).....

Jim,
You rock! Look, if I own a nightclub, and there is a shooting in it, screw me, shut my ass down, that day.
I can always argue later that "how in the hell did I know the idiots that come into my place had guns"....and you (DC) can buy, or not, my argument. But while we are arguing, at least noone else is gettin' shot in my place.
Mark

--- Jim Graham <jim@grahamwone.com> wrote:

> Thanks. I am not sure what to do about his. Any
> ideas? Bests Jim
>
> I typically answer emails before 9 AM on weekdays.
> If you email me after
> that, it is likely that you will hear from me the
> next weekday. If there
> is a need to communicate prior to that, you may wish
> to call me.
>
> Jim Graham, Councilmember, Ward One, 1350 Pa. Ave.,
> NW, #105,
> Washington, DC 20004. 202-724-8181; 202-724-8109
> (fax).
>
>
> -----Original Message-----
> From: mark mayhew [mailto:markjmayhew@yahoo.com]
> Sent: Saturday, February 12, 2005 1:27 PM
> To: Jim Graham
> Subject: Hi, Jim, you probably don't remember, we
> ran into each other
> once at.....
>
>
> Jim,
> I ran into you once at Ruff 'n Ready? Anyway,
> I
> am now in legal trouble, and my lawyer, (she said I
> can't say she's my lawyer?!), has advised me not to
> post anything about my case on the Columbia Heights listserve..... I
> don't understand why that is, I'm just a dumb guy
> that (used to) sell
> used bicycles for a living...but I always cherished
> "freedom of speech"
> and it's killin' me that I can't talk to anyone
> about my case.... Is
> this correct?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014363

Briggs, Emanuel (COUNCIL)

From: Jim Graham [jim@grahamwone.com]
Sent: Monday, February 14, 2005 11:30 PM
To: Emanuel Briggs
Subject: FW: Results of the meeting of ABC Board regarding Club U incident

put on my chair

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

-----Original Message-----
From: Jennings, Jeffrey (COUNCIL) [mailto:jjennings@dccouncil.us] **On Behalf Of** Graham, Jim (COUNCIL)
Sent: Monday, February 14, 2005 5:05 PM
To: 'jim@grahamwone.com'
Subject: FW: Results of the meeting of ABC Board regarding Club U incident

-----Original Message-----
From: Delaney, Maria (ABRA)
Sent: Monday, February 14, 2005 5:01 PM
To: Graham, Jim (COUNCIL); Reiskin, Edward (EOM); Ramsey, Charles (MPD); Spagnoletti, Robert (OAG); Bobb, Robert (EOM)
Cc: Ryan, Terry (MPD); Walls, Brenda (OAG); Gang, Sharon (EOM); Mccoy, Larry (MPD); Coudriet, Jeff (ABRA)
Subject: RE: Results of the meeting of ABC Board regarding Club U incident

There seems to be some confusion with the e-mail. The Board has sent the report to the OAG for their drafting of the Notice of Summary Suspension. Upon my receipt of the Notice of Summary Suspension from the OAG, I will ensure that the Board Chairman signs it and that the Notice of Summary Suspension is served upon the establishment. The establishment is then suspended from serving alcoholic beverages only. The licensee shall have 72 hours to request a hearing from the Board from the time of service. The Board will have 48 hours after receipt of a timely request to hold a hearing. If I can clarify this process further please contact me.

> -----Original Message-----
> **From:** Delaney, Maria (ABRA)
> **Sent:** Monday, February 14, 2005 4:18 PM
> **To:** Delaney, Maria (ABRA); Graham, Jim (COUNCIL); Reiskin, Edward (EOM); Ramsey, Charles (MPD); Spagnoletti, Robert (OAG); Bobb, Robert (EOM)
> **Cc:** Ryan, Terry (MPD); Walls, Brenda (OAG); Gang, Sharon (EOM); Mccoy, Larry (MPD)
> **Subject:** Results of the meeting of ABC Board regarding Club U incident
> **Importance:** High
>
> Please be advised that the ABC Board determined after an Investigative Report conducted by ABRA, dated February 14, 2005, regarding violent incidents occurring at the establishment on February 13, 2005 that the current operations of the licensee present an imminent danger to the health and safety of the public. The Board decided to suspend the establishment's license and forward the Board's Investigative

FOIA CONFIDENTIAL TREATMENT REQUESTED

Report, dated February 14, 2005 to the Office of the Attorney General for the requisite legal drafting of a Notice of Summary Suspension to be served upon the establishment Upon receipt of the Notice of Summary Suspension, the establishment's license will be suspended and the licensee shall have 72 hours to request a hearing from the Board. The Board will have 48 hours after receipt of a timely request to hold a hearing.

Walter Adams, OAG's office was in attendance and did obtain a copy of the report. Mr. Adams will require testimony from MPD. ABRA would like to obtain any new developments from MPD on these incidents on a timely manner. There are still some discrepancies between MPD reports and interviews. Thank you all for the information provided. As always, please contact me either on my direct line at 442-4353 or cell 329-6340.

Maria

-----Original Message-----
From: Delaney, Maria (ABRA)
Sent: Monday, February 14, 2005 10:54 AM
To: Graham, Jim (COUNCIL); Reiskin, Edward (EOM); Ramsey, Charles (MPD); Spagnoletti, Robert (OAG); Bobb, Robert (EOM)
Cc: Ryan, Terry (MPD); Walls, Brenda (OAG)
Subject: Meeting of ABC Board regarding Club U incident
Importance: High

The ABC Board will be meeting in executive session at 1:30 p.m. to review the information that ABRA has received. ABRA is still trying to obtain information from MPD regarding the assault/shooting incident. The only report regarding this incident was provided by EMA. Comm. McCoy called and asked ABRA to send the EMA report to him. Comm. McCoy indicated that he will call me by noon to update me regarding the assault/shooting incident. Hopefully ABRA will be able to obtain a report from MPD regarding the assault/shooting to incorporate MPD's information in ABRA's report to the Board.

I will contact everyone once the ABC Board renders a decision.

Maria M. Delaney
Director
Government of the District of Columbia
Alcoholic Beverage Regulation Administration
941 North Capitol Street, N. E., Suite 7200
Washington, D.C. 20002

Phone: (202) 442-4423
FAX: (202) 727-9685
Email: maria.delaney@dc.gov

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014365

Communications Related to Independent Investigation of Certain Decisions to Develop WMATA-owned property located on the 700 and 800 blocks of Florida Avenue, NW, Washington, DC

Prepared by Banneker Ventures
July 15, 2012

Submitted to:

Bradley J. Bondi
Cadwalader, Wickersham & Taft LLP
700 Sixth Street, NW
Washington, DC 20001
(202) 862-2314

Binder 1 of 2

Bylaws of the Washington Metropolitan Area Transit Authority Board of Directors

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014367

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014368

Washington Metropolitan Area Transit Authority
Board of Directors

BYLAWS

Article I - MISSION

The WMATA Board of Directors, all Directors and their alternates (hereinafter "Board" or "Board Members"), furthers the mission of the Washington Metropolitan Area Transit Authority (WMATA) to operate and maintain a safe, reliable and effective transit system that enhances mobility, improves the quality of life, and stimulates economic development in the Washington metropolitan area.

Article II - BOARD RESPONSIBILITIES

The Board governs through policies and exercises oversight over policy compliance and results. Active healthy debate is encouraged; once a decision is made, the Board speaks with one voice. The Board ensures regular reporting to the public related to Board and Authority priorities and targets.

The Board is primarily responsible for policy, financial direction, oversight and WMATA's relationships with its customers, jurisdictional partners and signatories.[1] *See* Article IV.

Board Members place the public interest of the Authority and the people of the region foremost while ensuring that the Authority provides safe, reliable customer-friendly transit services across the entire Washington DC metropolitan region. The key Board responsibilities are to:

A. Ensure a Safe & Reliable System

1. Develop Board policies and encourage Authority practices that ensure safety, transparency, accountability, customer service, regular communication practices and prudent financial decision-making.

[1] "Signatories" is a Compact term meaning the State of Maryland, the Commonwealth of Virginia and the District of Columbia. Compact § 1(d). By "jurisdictions," "jurisdictional partners" and similar terms, these Bylaws mean the jurisdictions encompassed by the Transit Zone as defined in Compact § 3: "the District of Columbia, the cities of Alexandria, Falls Church and Fairfax and the counties of Arlington, Fairfax and Loudoun and political subdivisions of the Commonwealth of Virginia located within those counties, and the counties of Montgomery and Prince George's in the State of Maryland and political subdivisions of the State of Maryland located in said counties," and any jurisdictions that may be added by enlarging the Transit Zone per Compact § 83.

FOIA CONFIDENTIAL TREATMENT REQUESTED

2. Following public hearings, adopt rules and regulations for the safe, convenient, and orderly use of the transit facilities owned, controlled, or operated by the Authority, including the payment and the manner of the payment of fares or fees, the protection of the transit facilities, the control of traffic and parking upon the transit facilities, and the safety and protection of the riding public.

B. Exercise Fiduciary Responsibility

1. Promote and support adequate resources to ensure a state of good repair for the Adopted Regional System and the overall fiscal health of WMATA.
2. Provide opportunities for customer and stakeholder input.
3. Assure transparency in reports on priorities and targets.
4. Maintain clear lines of communication between the Board, the General Manager and Chief Executive Officer (CEO), the public and all stakeholders, and oversee WMATA's relationships with local, state and federal governments.
5. Develop state and federal legislative strategies and coordinated transit advocacy programs.

C. Engage in Strategic Regional Leadership

1. Create and adopt a budget, the fare structure, service levels, and a business plan, which shall be regularly updated.
2. Develop and monitor long-term Board strategic priorities and targets linked to performance measures, with consideration of stakeholder input and organizational assessments, and include them in an annual report to customers and stakeholders.
3. Provide for a structured budget process developed in consultation with jurisdictional funding partners, including key milestones in the process for coordination and input.
4. Adopt and review key performance and service standards to provide policy guidance regarding the quantity and quality of service.
5. Convene, as needed from time to time, a meeting with regional leaders to discuss transportation matters of regional significance.

D. Oversee Planning, Operations and Customer Service

1. Determine Authority policy and provide oversight for the funding, operation and expansion of safe, reliable, and effective transit service within the Transit Zone.
2. Regulate the use of facilities owned or controlled by the Authority, the service to be rendered and the fares and charges to be made therefor.
3. Hold public hearings and conduct investigations relating to any matter affecting transportation in the Zone with which the Authority is concerned

FOIA CONFIDENTIAL TREATMENT REQUESTED

and, in connection therewith, subpoena witnesses, papers, records and documents; or delegate such authority to any officer.

4. Hold public hearings prior to raising any fare or rate or implementing a major service reduction.
5. Develop and adopt, and from time to time review and revise, a mass transit plan.
6. Prepare and adopt a plan for financing the construction, acquisition, and operation of facilities specified in a mass transit plan.
7. Annually adopt a capital budget, including all capital projects the Board proposes to undertake or continue during the budget period, containing a statement of the estimated costs of each project and the method of financing thereof.
8. Upon such terms and conditions as it may deem appropriate, enlarge the Transit Zone to embrace any additional area when advised by the Northern Virginia Transportation Commission or the Washington Suburban Transit Commission that the geographical area embraced therein has been enlarged.

E. Exercise Individual Responsibility as a Member of the Board

1. Act in a manner that enhances and promotes WMATA's mission.
2. Regularly attend and participate in Board and Committee meetings and Authority activities that build knowledge, awareness and support for WMATA, including personal use of WMATA bus, rail or MetroAccess services.
3. Execute and adhere to the Code of Ethics for Members of the WMATA Board of Directors.
4. Help build good working relationships among Board Members.
5. Facilitate stakeholder input and feedback in ways that assure all Board Members have access to the same information.
6. Participate in open healthy debate on issues; after a decision is made, speak with one voice.
7. Avoid individually directing or supervising the CEO or any WMATA employee or Contractor.

F. Evaluate CEO, Board Secretary, General Counsel and Inspector General

1. Appoint, remove, determine the compensation and specify the duties and functions of the CEO, Board Secretary, General Counsel and Inspector General.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014371

Article III - BOARD OFFICERS

As established by Compact § 7, the Board annually elects a Chair and Vice-Chair.[2] The Board may also elect a Second Vice-Chair. The election is held at the January Board meeting each year. These Officers shall be elected without regard to jurisdiction of residence or representation.

The Chair is first among equals and is dedicated to facilitating the work of the Board and encouraging the creation of common ground and consensus that moves the Board's work forward in a manner that promotes and enhances WMATA's overall mission. The Chair is accountable to the Board, and:

A. Facilitates Work of Board

1. Leads the development of Board policies and encourages Authority practices that ensure transparency, accountability, customer service, regular communication practices and prudent financial decision-making.
2. Chairs all Board meetings, sets the Board meeting schedule (including Executive Sessions and any Special or Emergency meetings, *see* Articles X, VIII.C and XI, respectively); works with the General Manager and Chief Executive Officer (CEO) on agenda development for Board meetings, including waiving Committee review of particular items jointly with the applicable Committee Chair.
3. Appoints Board Committee chairs and members, any special or ad hoc committees that may be needed, and resolves any questions of Committee jurisdiction over issues. *See* Article XII.A.
4. Maintains communication with Board Committee chairs and members to ensure awareness and understanding of important issues.
5. Builds strong relationships among Board Members.
6. Facilitates annual self-evaluation of the Board and its Committees.
7. Limits use of the "jurisdictional veto" by facilitating the resolution of disputes between Board Members representing different signatories. *See* Article VIII.H.
8. Initiates the hiring process for the CEO, Board Secretary, General Counsel and Inspector General.
9. Initiates the annual performance review of the CEO, Board Secretary, General Counsel and Inspector General.

[2] Compact § 7 provides, in pertinent part, "The Board shall provide for its own organization and procedure. It shall organize annually by the election of a Chairman and Vice-Chairman from among its members."

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014372

B. Establishes Strong Board and CEO Relationship

1. Serves as a liaison between the CEO and the Board to help build a strong partnership with the Board.
2. Works with the CEO in developing CEO performance measurements for review and agreement by the full Board.

C. Fosters Board Communication with External Stakeholders

1. Represents the Board as the primary spokesperson to the media, customers and external stakeholders (on behalf of the Board not the Authority).
2. Acts in a manner that enhances and promotes WMATA's mission.
3. Exercises leadership by moving the Board toward consensus.
4. Ensures regular reporting of the Board and the Authority's priorities and targets.

In the absence or inability of the Chair to serve, the Vice-Chair shall have all of the powers and shall perform all of the duties of the Chair in an acting capacity. The same applies to the Second Vice-Chair in the absence or inability of the Chair and Vice-Chair to serve.

Article IV - BOARD-CEO RELATIONSHIP

The Board and General Manager and Chief Executive Officer (CEO) are guided by mutual respect and confidence in each other's role. The Board has confidence that the CEO shall build and manage a high-performing organization. The CEO has confidence that the Board shall focus its efforts and attention on policy matters. The Board is primarily responsible for policy, financial direction, oversight and WMATA's relationships with its customers, jurisdictional partners and signatories. No Board Member individually shall direct or supervise the CEO or any WMATA employee or contractor. The CEO is primarily responsible and delegated the authority for the overall administration and operations of WMATA, subject to policy direction and oversight from the Board, in order to achieve the Authority's mission to operate a safe, reliable and effective transit system that enhances mobility, improves the quality of life, and stimulates economic development in the Washington metropolitan area. The CEO may establish appropriate public and stakeholder involvement processes that allow for early and proactive engagement to inform Board policymaking.

Article V - BOARD COMMUNICATION WITH CEO AND OTHER OFFICERS

All requests to staff by Board Members are directed to the General Manager and Chief Executive Officer (CEO), General Counsel, Inspector General or Board Secretary.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014373

Copies of requests shall be provided to the Board Secretary who shall inform all Board Members of the requests. All responses to Board Member requests are distributed to all Board Members, as are pertinent inquiries from jurisdictions and the corresponding responses.

Any request for a study that contemplates a change in the Adopted Regional System or other Board-approved plan or which affects more than one signatory, is referred to the Board for discussion and appropriate action before any staff resources are authorized by the CEO.

Article VI - JURISDICTIONAL COORDINATING COMMITTEE

The Jurisdictional Coordinating Committee (JCC) was established by the Board to facilitate the exchange of information and viewpoints between jurisdictional and WMATA staff on all substantive issues coming before the Board, and to improve the quality of information for Board decisions. Issues will be presented to the JCC sufficiently prior to any required Board action to ensure time for staff review, analysis and discussion. The agenda for meetings is established by WMATA staff in coordination with the annually elected Chair of the JCC. JCC meetings are open to participating jurisdictional and WMATA staff and invitees. Board Members are provided copies of the agenda and meeting summaries.

Article VII - COMMUNICATION WITH PUBLIC

The Board is committed to the broadest possible communication with customers, jurisdictional partners, signatories, the federal government, stakeholders, funding partners, transportation agencies, Board-established advisory bodies, other transportation service providers, and oversight agencies including the Tri-State Oversight Committee, and will provide regular opportunities to receive and respond to comments. Board and Committee meetings (other than executive sessions) will be publicly broadcast to the extent feasible.

Article VIII - BOARD MEETINGS

A. Schedule

The Board normally meets on the fourth Thursday of each month at a time specified by the Chair.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014374

B. Quorum

A quorum requires the presence of four voting Board Members, including one from each signatory. In the absence of a principal Board Member, the alternate for that Member shall be considered to be a voting Member except that either alternate from the District of Columbia is considered to be a voting Member if either Principal Director from the District of Columbia is absent.

C. Special Meetings

The Board may vote to hold, or the Board Chair may call, a special meeting of the Board. Except in emergencies, 48 hours advance notification is required to hold a special meeting.

D. Public Notice

Notifications for the public concerning Board and Board Committee Meetings shall be posted on the WMATA Internet site ("WMATA website").

E. Public Comment

The Board shall provide an opportunity for members of the community to provide comments during its monthly Board meetings. From time to time the Chair may invite jurisdictional staff members; consultants; members of the Accessibility Advisory Committee, Riders' Advisory Council, or Tri-State Oversight Committee; or other parties to make a presentation or comment on a particular issue.

F. Actions

The actions of the Board shall be expressed by motion or resolution. The authority of the Board of Directors is vested in the collective body and not in its individual Members. Accordingly, the Board, in establishing or providing any policies, orders, guidance, or instructions to the CEO, General Counsel, Inspector General or Board Secretary, shall act as a body.

G. Voting

If a Principal Director is absent, his or her alternate Director may vote, except that either alternate from the District of Columbia may vote if either Principal Director from the District of Columbia is absent. No action of the Board shall be effective unless a quorum is present and a majority of the voting Board Members vote affirmatively, which majority shall include at least one principal or eligible alternate from each signatory, provided, however, that a plan of financing may be adopted or a mass transit plan adopted, altered, revised or amended by the unanimous vote of the voting Board Members from two signatories.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014375

H. Limiting Jurisdictional Vetoes

The Compact voting requirements establish what is commonly referred to as the "jurisdictional veto," because, for other than a plan of financing or a mass transit plan, one signatory can block the proposed action of the Board. Board Members are responsive to their jurisdictional concerns, yet also have responsibilities to WMATA and the region as a whole. All Board Members will provide advance notice of the intent to invoke a jurisdictional veto, and will attempt to resolve disputes over proposed actions prior to invoking a jurisdictional veto. The Chair shall facilitate the resolution of disputes that may lead to a jurisdictional veto.

Article IX - AGENDA, MINUTES AND PARLIAMENTARY AUTHORITY

A. Agenda Development and Distribution

The final Board agenda and the supporting documents for the Board meetings shall be published in advance, except where unavoidable circumstances prevent advance publication or where the subject of the documents requires discussion in executive (closed) session, as provided in Article X.

B. Record of Board and Committee Meetings

There shall be a recording of every Board and Committee meeting, except for executive (closed) sessions pursuant to Article X, to be available for public review at the Office of the Board Secretary and on the WMATA website.

The written records of Board meetings shall be prepared by the Secretary, approved by the Board and made available to the public.

C. Parliamentary Authority

Except where inconsistent with the provisions of the Compact or these Bylaws, *Robert's Rules of Order Newly Revised,* as may be revised from time to time, shall be the Parliamentary authority at all meetings of the Board and of Board Committees.

Article X - EXECUTIVE (CLOSED) SESSIONS

A. Matters Appropriate for Executive Session

The Board, and Committees as provided in this Article and in the Board's Procedures, may meet in executive session only to discuss critical, sensitive matters,

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014376

and confidential or proprietary matters, the untimely disclosure of which may be detrimental to the Authority. Such topics include, but are not limited to, the following:

1. Budgetary matters that may affect legal positions, Authority contracts, or sensitive relationships with local jurisdictions or the federal government.

2. Litigation, investigations and other legal matters requiring the provision of legal advice or consultation with counsel and staff members.

3. Personnel or labor issues including discussions of labor contracts and labor negotiations, consideration or interviews of candidates for employment, and the assignment, appointment, promotion, performance, demotion, or resignation of individuals.

4. Contractual or other matters involving confidential or proprietary concerns, or the investment of public funds where discussion in public would adversely affect the financial interests of the Authority.

5. Audit matters and investigations to include, for example, audits of IT security matters and investigations to be referred for further criminal investigation or prosecution.

6. Safety and security matters when premature release would compromise public safety.

7. Disposition of Authority property or acquisition of real property for Authority purposes where discussion in public would adversely affect the Authority's negotiating or bargaining position.

B. Procedures for Executive Session

An executive session of the Board shall be regularly scheduled, subject to cancellation by the Chair should there be no need for such a session. The agenda for each session shall be made available to the public prior to the meeting and shall include the title of each topic to be discussed, reasonably identified without violating confidentiality. Executive sessions may also be authorized by a public action of the Board in which the purposes of the session are reasonably identified. If the Board is not in session, the Chair may convene an executive session, which shall be announced immediately. Committees shall only meet in executive session, when authorized by the Board's vote in a meeting consistent with Compact § 8(a),[3] or as provided in the Procedures.

[3] Compact § 8 (a) provides, in pertinent part, "[N]o action by the Board shall be effective unless a majority of the Board present and voting, which majority shall include at least one Director or alternate

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014377

The Board will not take formal action in executive session. Actions resulting from discussion in executive session must be taken at an open meeting of the Board. At the conclusion of each executive session, the Board or Committee shall reconvene in an open meeting to certify by an affirmative vote that only those matters identified prior to convening the executive session and only matters authorized by this Article were heard, considered or discussed in the preceding executive session.

Minutes of executive sessions will not be kept. Attendance at executive sessions of the Board is limited to Board Members, the CEO, the Board Secretary, the General Counsel, and other staff and persons deemed by the CEO and the Board to be necessary for the discussion.

Article XI - EMERGENCY SESSIONS OF THE BOARD

The Board and any Committee may meet by telephonic, video or other electronic communication means in either open or executive session with or without a quorum when the Chair (or Vice Chair, if the Chair is unavailable) determines that there is an immediate need to provide Board Members with information regarding significant events that require their immediate notification and/or advice, or when Board action or Committee consideration is critically required on an issue that could not reasonably have been foreseen, and that cannot wait until the next meeting, provided:

1. The purpose of the emergency session is to address the emergency situation.

2. Public notice of the emergency session is given using the best available method given the nature of the emergency situation.

3. Procedures governing voting in an emergency Board session are as provided in Compact § 8(a).

4. Actions taken at an emergency Board session may take effect upon approval, but must be ratified at the next available open Board meeting.

5. To the extent feasible in the circumstances of the emergency situation, the proceedings of an emergency session will be broadcast to the public, and recorded for later posting on the WMATA website.

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from each Signatory, concur therein; provided, however, that a plan of financing may be adopted or a mass transit plan adopted, altered, revised or amended by the unanimous vote of the Directors representing any two Signatories."

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Article XII - COMMITTEES

A. Committee Structure

Board Committees are as follows:

1. Safety and Security Committee
2. Finance and Administration Committee
3. Audits and Investigations Committee
4. Customer Service and Operations Committee
5. Planning, Program Development and Real Estate Committee
6. Governance Committee

Committees will consist of a minimum of four members up to committees-of-the-whole, as provided in the Procedures. Any question of Committee jurisdiction over an issue is resolved by the Board Chair.

B. Committee Chairs and Membership

1. Committee Chairs

Committee Chairs are responsible for scheduling Committee meetings and setting agendas. Occasionally, an item that would normally be reviewed and forwarded to the Board of Directors by the appropriate Committee may be presented directly to the Board, with the concurrence of the Board Chair and the relevant Committee Chair.

The Board Chair may establish special or ad hoc committees as needed, with Board concurrence. Any Committee Chair may establish a special, ad hoc or subcommittee consistent with the Committee's responsibilities.

From time to time the Committee Chairs may invite jurisdictional staff members; consultants; members of the Accessibility Advisory Committee, Riders' Advisory Council, or Tri-State Oversight Committee or other parties to make a presentation or comment on a particular issue.

2. Committee Membership and Meetings

Any Board Member may attend and participate in Committee meetings. Only Committee members can vote in Committee. A majority of any Committee's membership constitutes a quorum provided it includes at least one member from each signatory and a federal member. Committee actions are recommendations to the Board of Directors, to be placed on a Board agenda for consideration and action.

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Committees may meet in executive session only as provided in Article X and in the Board Procedures.

C. Board Committee Responsibilities

The **SAFETY AND SECURITY COMMITTEE** provides continual oversight to assure that all facilities, equipment, and operations of the transit system are safe and secure for passengers, employees, and the public affected by Metro services, and recommends for Board adoption Authority safety and security policy direction as well as safety and security goals for the CEO and for the Authority. In doing so the Committee reviews the WMATA System Safety Program Plan for consistency with safety goals, receives and responds to periodic reports and communications from the Tri-State Oversight Committee (TOC), which is recognized by WMATA and designated by the Commonwealth of Virginia, the State of Maryland and the District of Columbia as the state safety oversight agency for WMATA's rail fixed guideway system, and works with the TOC, the Federal Transit Administration and the National Transportation Safety Board, as appropriate, to review the status of Authority safety and to assure that all safety recommendations from any internal or external safety review or investigation are handled expeditiously and effectively. The Committee receives regular reports from the Chief Safety Officer and Chief of Police on the status of safety and security, on any significant accidents or incidents, on safety and security metrics, and on the responsiveness of the Authority to any safety findings, both internal and external, including the status of corrective action plans. The Committee assures that both employees and the public have accessible channels for reporting safety and security concerns, that such reports are taken seriously, evaluated, and acted upon as appropriate, and that persons reporting such information are protected from reprisals.

The **FINANCE AND ADMINISTRATION COMMITTEE** monitors the financial integrity and viability of the Authority and its programs and services. The Committee develops budget preparation guidance, recommends capital and operating budget approval to the Board, monitors capital and operating budget implementation and management, and recommends proposed budgetary changes to the Board. The Committee recommends policies and programs for setting fares and fees and creating fare structures, oversees operation and development of fare media and fare collection mechanisms, and explores enhanced and expanded techniques for generating revenue. The development of guidance for administrative matters, including procurement/contracting issues and programs; human resources, compensation and benefits issues; civil rights programs; insurance coverages; and WMATA's business systems implementation also fall within the purview of this Committee.

The **AUDITS AND INVESTIGATIONS COMMITTEE** provides oversight of the quality and integrity of the Authority's internal controls, compliance systems and accounting, auditing, financial reporting processes, and investigation processes. The Committee receives and reviews significant audit and investigative findings and corrective actions; establishes criteria and mechanisms for forwarding those findings to

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the Board; reviews the reports of the external (financial statement) auditor; receives and reviews the recommendation of the Inspector General on the selection of the external auditor and recommends appropriate action to the Board. The Committee provides policy direction and guidance to the Inspector General. The Committee will meet no less than annually to review the annual audited financial statements of the Authority.

The **CUSTOMER SERVICE AND OPERATIONS COMMITTEE** shall ensure that WMATA operational activities and programs are designed to provide reliable, effective and clean transit service, responsive to customer needs. The Committee oversees transit system performance and service standards; the quality of operations programs and procedures; technology initiatives; and customer service, communication and outreach activities, including public and media relations.

The **PLANNING, PROGRAM DEVELOPMENT AND REAL ESTATE COMMITTEE** is responsible for capital program planning and oversight; regional corridor development and system expansion planning; coordination of regional planning issues through the Transportation Planning Board and other state, local and subregional agencies; regional transit service planning and coordination with other transportation service providers; project development; and transit access planning. The Committee is also responsible for coordinating the community development and smart growth aspects of the Authority's system and service development, and overseeing the Joint Development Program, including the Transit Infrastructure Investment Fund (TIIF) and other Real Estate matters. The Committee specifically reviews and recommends to the Board actions on Real Estate acquisitions and Real Estate dispositions in accordance with Chapter 1 of WMATA's Procurement Procedures Manual, adopted by the Board of Directors pursuant to Resolution 2011-30, as may be revised from time to time.

The **GOVERNANCE COMMITTEE** is responsible for maintaining all Board governing documents—Strategic Plan, Bylaws, Procedures and Code of Ethics—in order to improve effective policymaking, oversight, communications and outcomes. The Committee shall develop revisions and enhancements to these documents using a process of open discussions with stakeholders and other interested parties, ensuring any recommended actions are consistent with Compact requirements. The Committee shall implement an orientation program to assist all Board Members in understanding the transit system and their individual and Board roles and responsibilities, while building cohesion among the Members. The Committee is also responsible for nominating candidates for Board Chair, Vice-Chair and, if applicable, Second Vice-Chair. The Committee shall ensure the timely and regular completion of Board self-evaluation, and shall also oversee the hiring process and annual performance review of the CEO, Board Secretary, General Counsel and Inspector General.

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Article XIII - PUBLIC HEARINGS

As required by Compact sections 15 and 62, the Board authorizes the conduct of public hearings to adopt a mass transit plan, to raise any fare or rate, and for major service reductions. The Board may also authorize public hearings and meetings on other matters as it deems appropriate. The hearings will be advertised to the general public, and staff will coordinate with local officials and other interested parties in order to ensure adequate notice.

Article XIV - BOARD-ESTABLISHED ADVISORY BODIES

A. Accessibility Advisory Committee[4]

The Accessibility Advisory Committee (AAC) was established to provide recommendations on accessibility related items. The AAC actively seeks input from a broad range of seniors and persons with disabilities and organizations with an expressed interest in public transportation for seniors and persons with disabilities on operational issues that affect the accessibility of Metrorail, Metrobus and MetroAccess services; promote WMATA responsiveness to riders who are seniors and persons with disabilities; advise the WMATA Board on ways to resolve such issues in order to improve these services; and promote WMATA responsiveness to riders who are seniors and persons with disabilities.

For matters coming before the Board that are of significant interest to seniors and persons with disabilities, the Board shall, to the extent reasonably possible, provide time for AAC consideration or evaluation before the Board takes action. The AAC, acting as a body, may make requests for information from WMATA staff through the Department of Access Services (or successor). The Board recognizes the value of the AAC having access to WMATA information and encourages WMATA staff to assist the AAC by providing such information, unless to do so would impose an undue burden, or the information involves a matter that would be considered by the Board in executive session or otherwise be exempt from disclosure under the Public Access to Records Policy.

The AAC periodically makes reports and recommendations to the Board, based on public input, so that WMATA can effectively address the diverse concerns of seniors and persons with disabilities who use WMATA services.

[4] The Accessibility Advisory Committee (AAC) was created in 1979. The ACC Bylaws were adopted on February 21, 2011, through Resolution 2011-09.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014382

B. Riders' Advisory Council[5]

The Riders' Advisory Council (RAC) was established to actively seek input from a broad range of riders on operational and budgetary issues that affect Metrorail, Metrobus and MetroAccess riders and organizations with an expressed interest in public transit; advise the Board on ways to resolve such issues in order to improve Metrorail, Metrobus and MetroAccess; promote WMATA responsiveness to riders; and recommend possible solutions to the Board and staff, based on public input, so that WMATA can effectively address the diverse concerns of the riding public.

For matters coming before the Board that are of significant rider interest, the Board shall, to the extent reasonably possible, provide time for RAC consideration or evaluation before the Board takes action. The RAC, acting as a body, may make requests for information from WMATA staff through the Office of the Board Secretary. The Board recognizes the value of the RAC having access to WMATA information and encourages WMATA staff to assist the RAC by providing such information, unless to do so would impose an undue burden, or the information involves a matter that would be considered by the Board in executive session or otherwise be exempt from disclosure under the Public Access to Records Policy.

The RAC provides monthly reports to the Board concerning its activities and recommendations, and may send additional reports or recommendations.

Article XV - CODE OF ETHICS FOR MEMBERS OF THE BOARD

The Board will maintain and periodically update a code of ethics for its Members. The Code of Ethics for Members of the WMATA Board of Directors, adopted by the Board of Directors is attached to and is incorporated by reference into these Bylaws.

Article XVI - BYLAW AMENDMENTS

A majority vote of the Board, consistent with Compact § 8(a), in a meeting for which advance notice has been given as a regularly-scheduled agenda item, can amend these Bylaws. The Board's intent is that these Bylaws remain as stable as possible to further the Board's mission and promote good working relationships with the CEO, the public and all other stakeholders. The Board shall also adopt, maintain and periodically update procedures to address more detailed and flexible matters of governance.

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[5] The Riders' Advisory Council (RAC) was created by the Board through Resolution 2005-44, which also adopted the RAC Bylaws. The RAC Bylaws were revised on January 28, 2010, through Resolution 2010-01.

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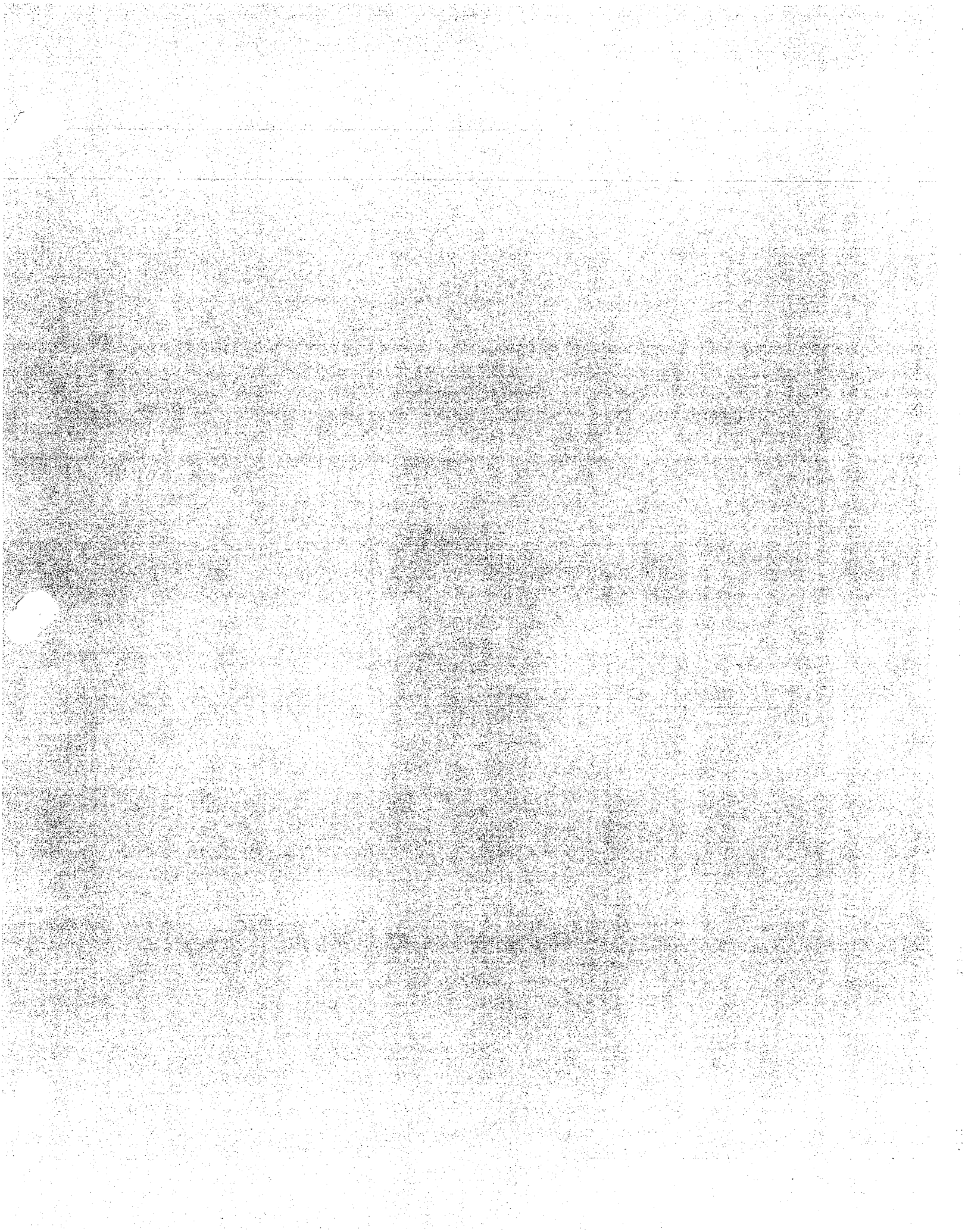


Omar Karim

From: Larry Clark <Larry@dkdevelopment.com>
Sent: Thursday, October 25, 2007 11:26 AM
To: Omar A. Karim
Cc: Chris Donatelli
Subject: RE: 8th and Florida Avenue/WMATA Project - Outstanding Items

I'm getting a check to Green Door now. I know we discussed this, but 30% of her $9496 contract is $2,848.80. Where does $3323 on the Excel or $4,796 on the e-mail below come from?

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, October 10, 2007 8:53 AM
To: 'Josh Kern'; phinisjones@comcast.net; Chris Donatelli; Larry Clark
Cc: 'Warren Williams'; okarim@bannekerventures.com
Subject: 8th and Florida Avenue/WMATA Project - Outstanding Items
Importance: High

All:

Congratulations to the entire group for getting the WMATA submission in on time on Friday. The books look great and everyone should be getting a couple of copies delivered to your offices today. There are a couple of outstanding items that we need to resolve, including:

1. Bills (back-up documents are attached)
   a. District Development Group - Please remit payment to Torti Gallas & Partners in the amount of $8,688.60
   b. Donatelli Development - Please remit payment to Torti Gallas & Partners in the amount of $8,828.92 and to Green Door Advisors in the amount of $4,796.00

   Since someone from our offices will be delivering the books to you today, can you give him (Peter Carr) the checks and we will hand deliver them to Torti Gallas and Green Door Advisors today. Thanks.

2. MOU – Chris, please execute the attached MOU and fax back to me at 202-558-5157.

3. Letter of Withdrawal – Chris/Larry, as we discussed, please send us a copy of the letter of withdrawal that you sent WMATA.

4. Follow-up meeting – If your schedules permit, lets meet early next week (Tuesday or Wednesday) to strategize about what we need to do next. If there are any additional letters of support that we need to get from organizations, lets discuss at this meeting. Josh was able to secure an exclusive letter of support from the LeDroit Park Civic Association for our Team!!! Congratulations Josh.

Again, great job on the submission!

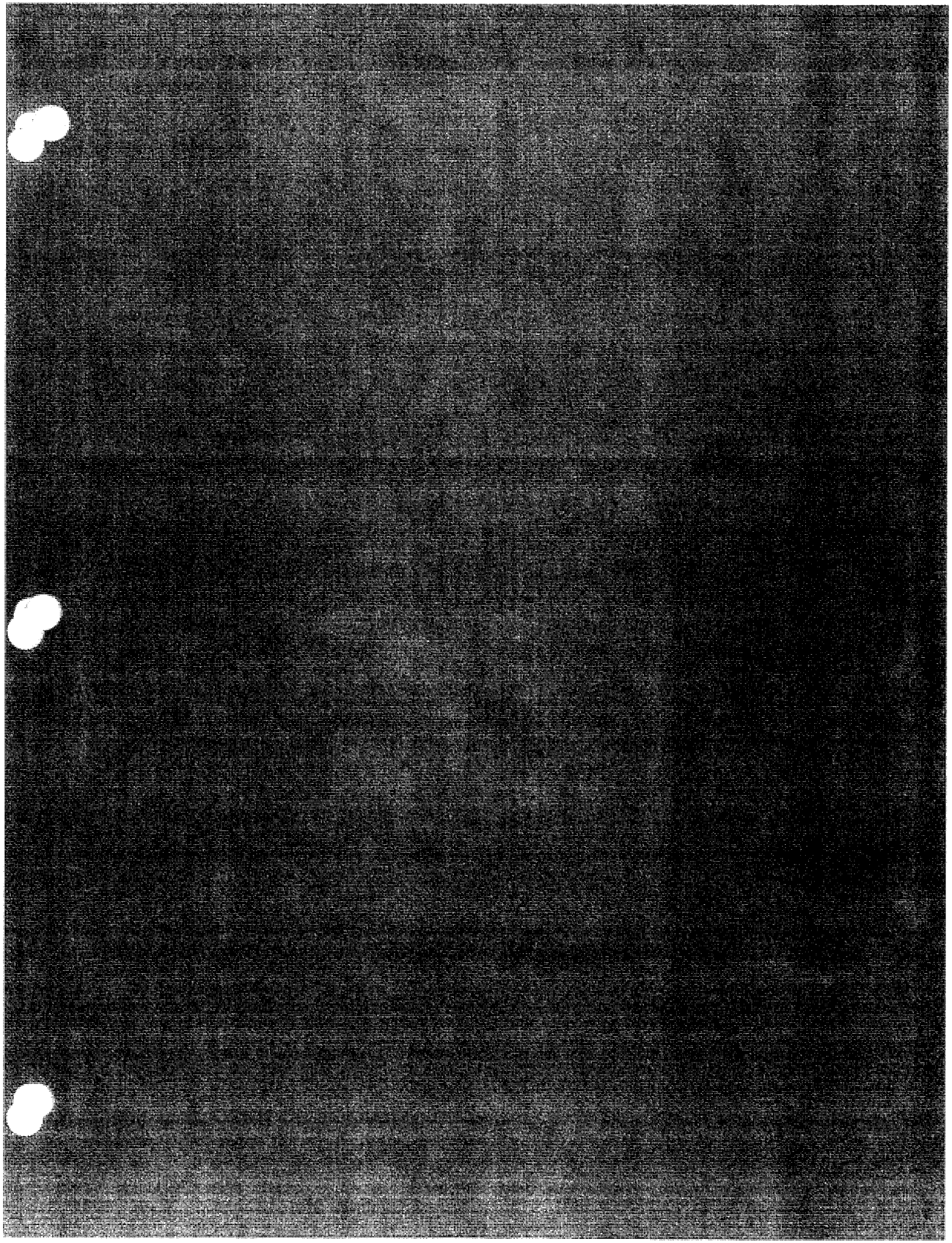
Omar

Omar A. Karim
ınneker Ventures, LLC
'00 12th Street, NW, Suite 700

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Chris Donatelli <Chris@dkdevelopment.com>
Sent: Monday, November 12, 2007 11:56 AM
To: Joshua Kern; phinisjones@comcast.net; okarim@bannekerventures.com
Subject: RE: Prep for Meeting

both afternoons work for me too - just let me know...

From: Joshua Kern [mailto:joshuakern@districtdevelopmentgroup.com]
Sent: Saturday, November 10, 2007 8:44 PM
To: Chris Donatelli; phinisjones@comcast.net; okarim@bannekerventures.com
Subject: Prep for Meeting

Folks:

Can we meet on Tuesday or Wednesday of this week to prepare for our meeting with Councilmember Graham on Thursday at 3 PM?

I am available in the afternoon on both days. Please let me know.

Yours,
Josh

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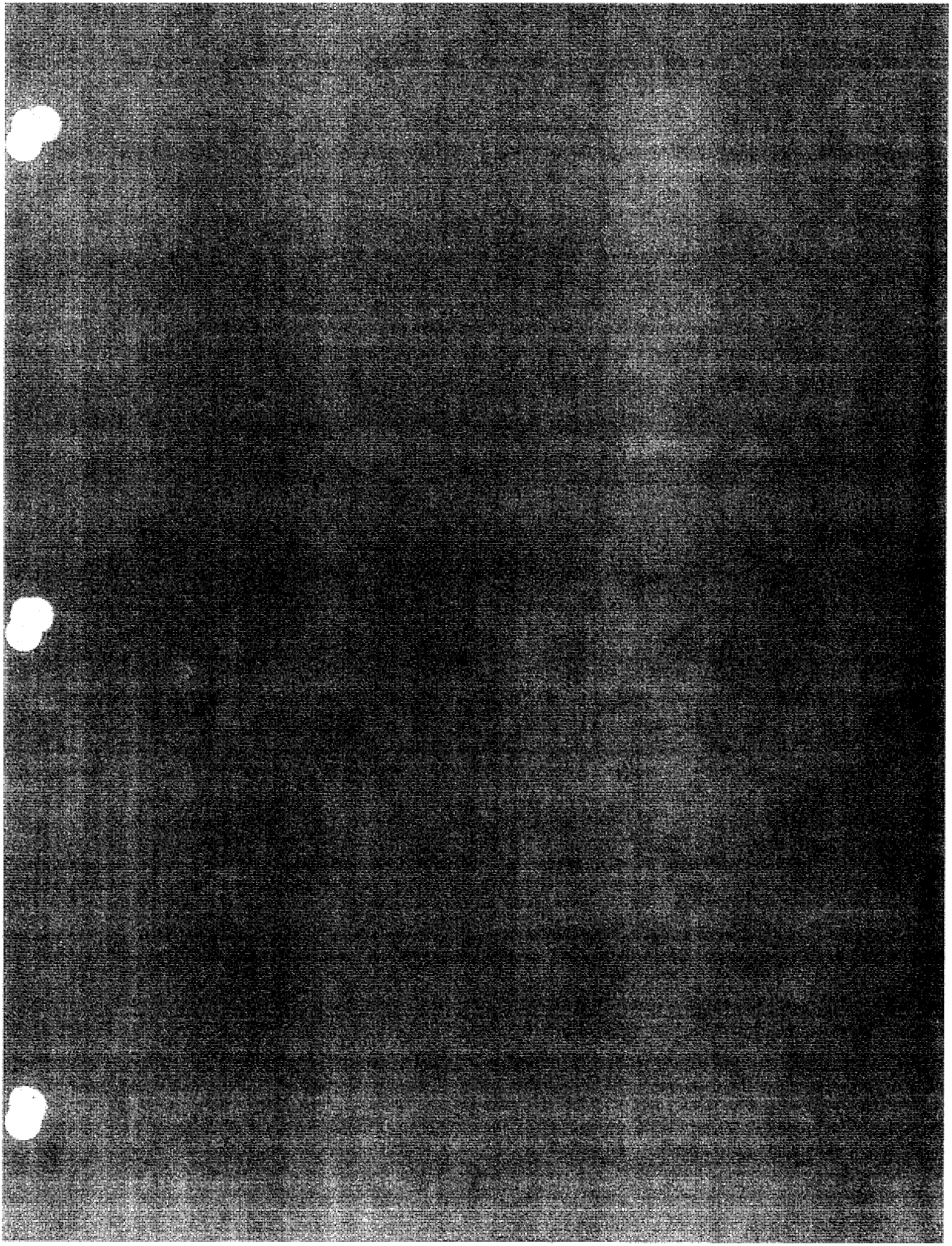

Omar Karim

From: Chris Donatelli <Chris@dkdevelopment.com>
Sent: Wednesday, November 14, 2007 12:07 PM
To: Joshua Kern; okarim@bannekerventures.com; phinisjones@comcast.net
Subject: RE: Follow-up

Graham just canceled – I will get a new date – your summary sounds right.

From: Joshua Kern [mailto:joshuakern@districtdevelopmentgroup.com]
Sent: Wednesday, November 14, 2007 9:56 AM
To: Chris Donatelli; okarim@bannekerventures.com; phinisjones@comcast.net
Subject: Follow-up

Team:

Thank you for taking the time to meet yesterday.

Following is my understanding of what we decided. Please let me know if I am mistaken (often the case).

- We will bring our architect to the meeting with Councilmember Graham. Omar will coordinate with TG.
- Omar, Chris, Phinis, and Josh will attend meeting.
- Chris will take the lead, but we will present as a team.
- We will bring all relevant materials and reference them as appropriate.
- Meeting will be framed as wanting to update Graham on our plans. We will not explicitly ask for his support.

Look forward to seeing you tomorrow. Let's try to arrive a few minutes early, if possible.

Yours,
Josh

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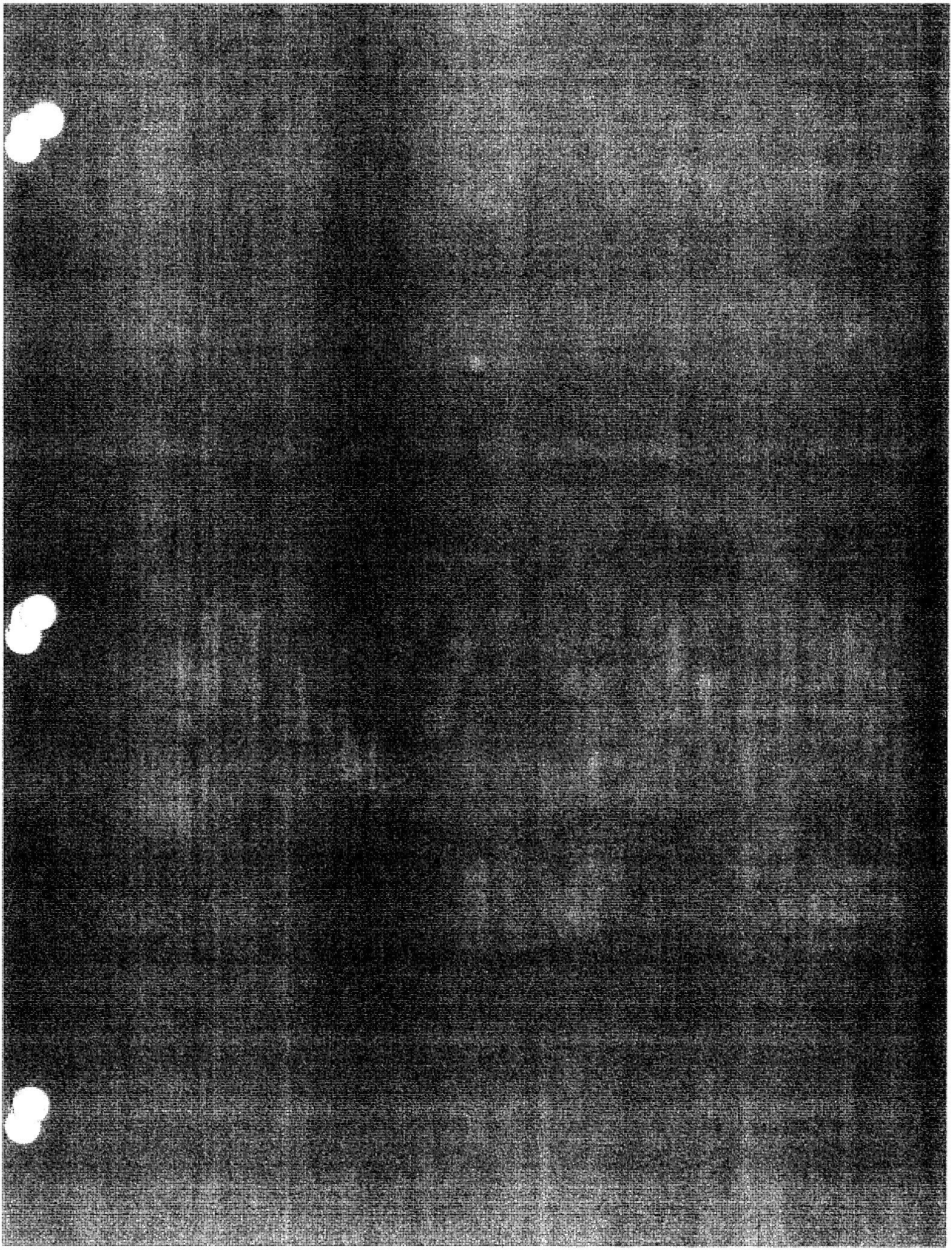


Omar Karim

From:	Chris Donatelli <cdonatelli@dkdevelopment.com>
Sent:	Tuesday, December 04, 2007 7:23 AM
To:	Omar Karim; Warren C. Williams; Joshua Kern; Phinis Jones; Sharon Huang; Chris Donatelli; Larry Clark
Subject:	Re: Jazz - Updated handout for mtg with OP

I apologize that I will not be able to make the mtg this morning but Larry will be there.
Sent from my BlackBerry® wireless device

-----Original Message-----
From: "Omar A. Karim" <okarim@bannekerventures.com>

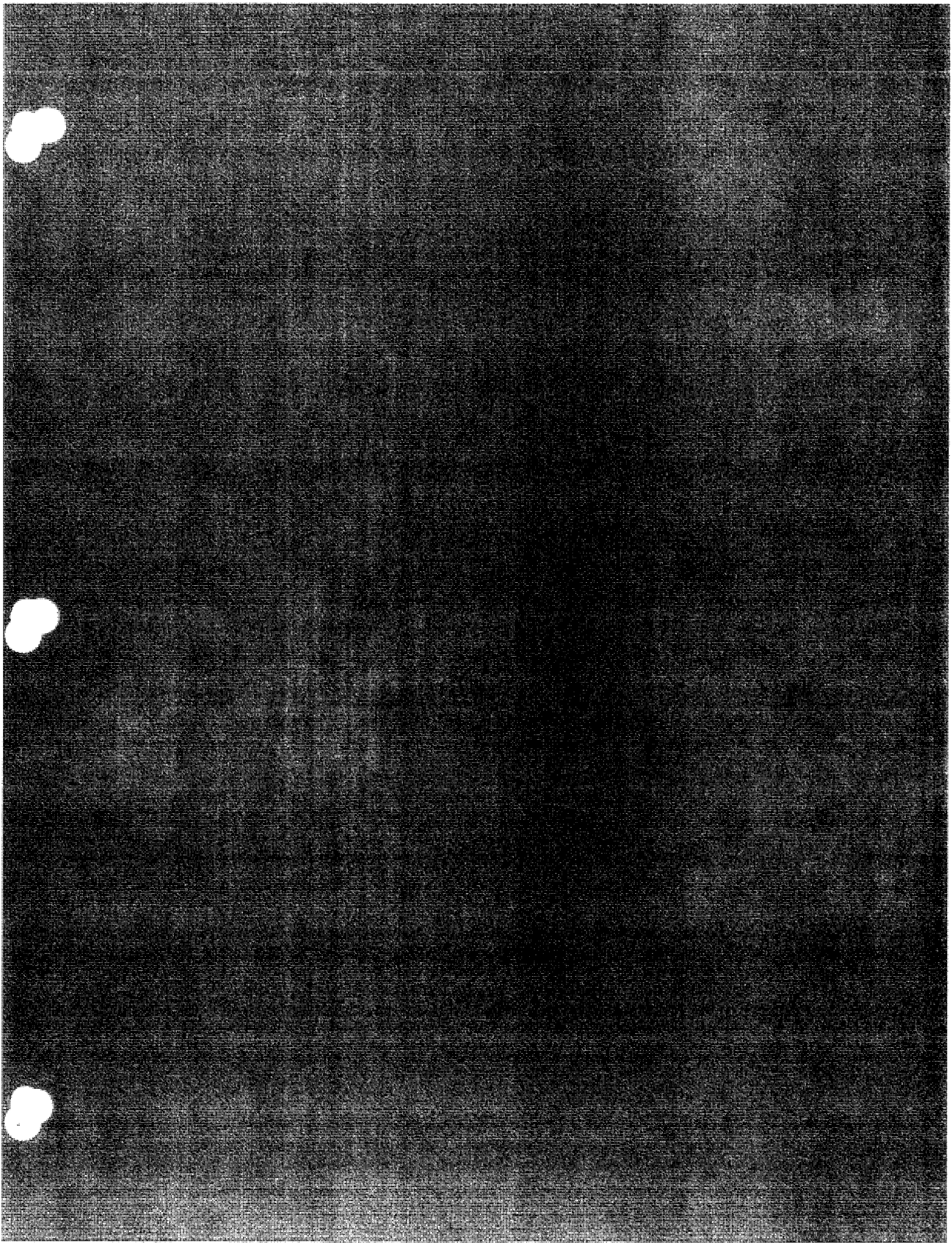
Date: Mon, 3 Dec 2007 23:26:31
To:"Omar A. Karim" <okarim@bannekerventures.com>,"Warren C. Williams" <Warren@bannekerventures.com>,"Joshua Kern" <joshuakern@districtdevelopmentgroup.com>,"Phinis Jones" <phinisjones@comcast.net>,"Sharon Huang" <shuang@tortigallas.com>,"Chris Donatelli" <Chris@dkdevelopment.com>,"Larry Clark" <Larry@dkdevelopment.com>
Subject: Jazz - Updated handout for mtg with OP

All:

Will print out copies and bring to the mtg.

Omar

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Larry Clark <Larry@dkdevelopment.com>
Sent: Wednesday, December 05, 2007 11:40 AM
To: Parker, Travis (OP); Omar A. Karim
Cc: Joshua Kern; phinisjones@comcast.net; warren@bannekerventures.com
Subject: RE: The Jazz @ Florida Avenue - Follow-up mtg to discuss zoning and HBRP review

Yes, thank you for your time yesterday and we appreciate the design comments from OP. We understand WMATA is in receipt of the comments and we'll address them at our next meeting.
As WMATA intends to make a selection soon, let's hold off any additional meetings to discuss BZA and HPRB until a developer selection is made.
These discussions would be more appropriate during the planning process.
Again, thanks for your time and we look forward to working with you in the near future.

From: Parker, Travis (OP) [mailto:travis.parker@dc.gov]
Sent: Wednesday, December 05, 2007 11:10 AM
To: Omar A. Karim
Cc: Joshua Kern; phinisjones@comcast.net; warren@bannekerventures.com; Chris Donatelli; Larry Clark
Subject: RE: The Jazz @ Florida Avenue - Follow-up mtg to discuss zoning and HBRP review

Omar,

I'd be happy to sit down with you. The times you offered for this Thursday and Friday don't work for me, but I am available Friday morning before 11:00 or anytime on Tuesday the 11th or Wednesday the 12th. Let me know if any of these times work for you and I will get David or Steve to sit down with us.

avis

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, December 04, 2007 8:01 PM
To: Parker, Travis (OP)
Cc: 'Joshua Kern'; phinisjones@comcast.net; warren@bannekerventures.com; 'Chris Donatelli'; 'Larry Clark'
Subject: The Jazz @ Florida Avenue - Follow-up mtg to discuss zoning and HBRP review
Importance: High

Travis,

It was a pleasure meeting you this morning. We appreciate the time that you took out of your schedule to meet with us. As promised, we would love to sit down with you and Dave or Steve to discuss the BZA and HPBR review process on this project. Would it be possible to come in for 30 minutes or so on Thursday afternoon, say 12:30 or 1. Alternatively, would Friday at 12 or 3 work?

Thank you in advance.

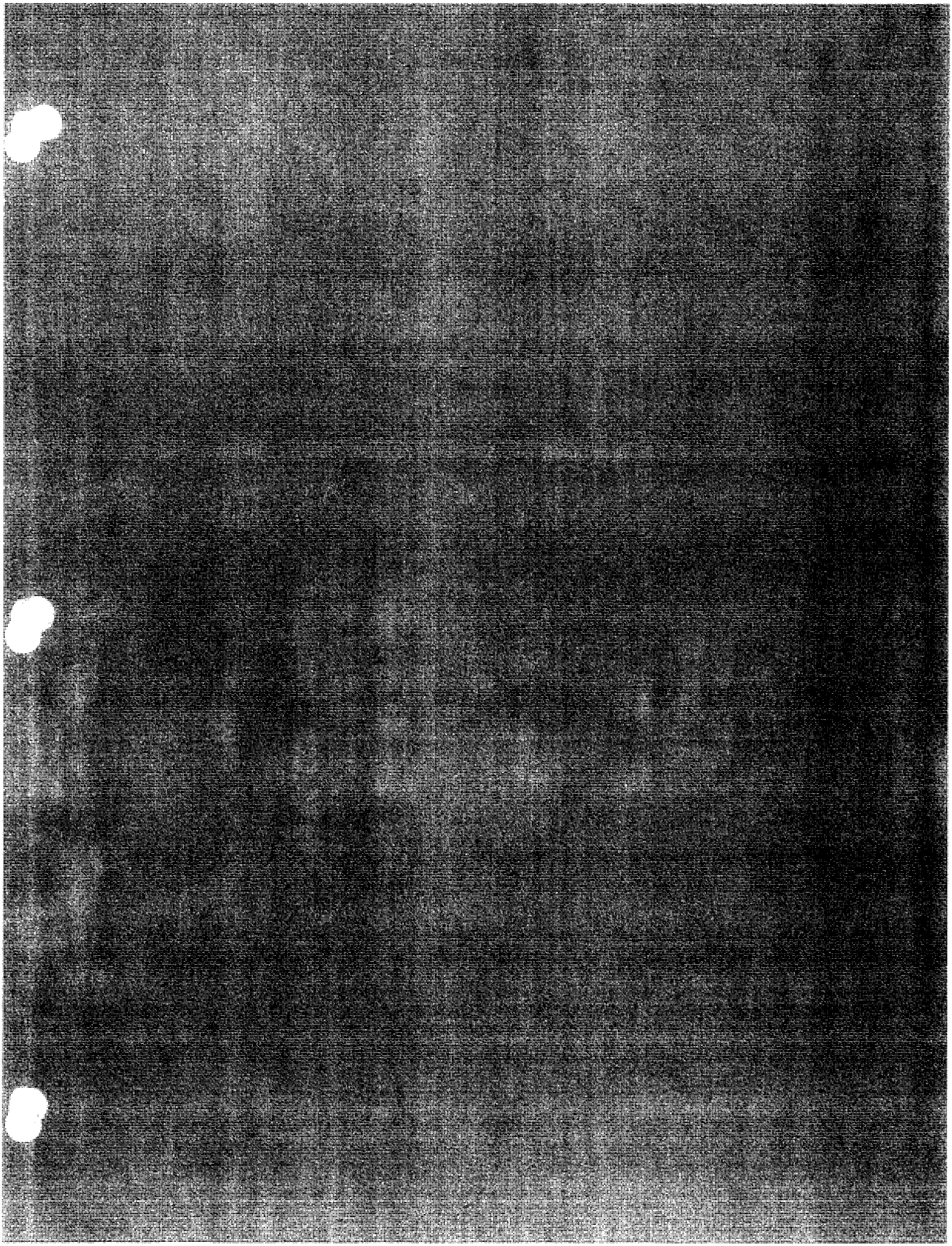
Omar

Omar A. Karim
nneker Ventures, LLC
00 12th Street, NW, Suite 700

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington, DC 20005
(202) 667-4110

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

om:	Omar A. Karim <okarim@bannekerventures.com>
nt:	Thursday, December 06, 2007 1:45 PM
To:	'warren@bannekerventures.com'; 'phinisjones@comcast.net'; 'Joshua Kern'; 'Chris Donatelli'; 'Larry Clark'
Subject:	Letter from WMATA
Attachments:	Letter Regarding The Jazz at Florida Ave..pdf
Importance:	High

All:

Yesterday, we received a letter from WMATA informing us of our meeting with them on 12/17 in addition to asking for clarification about a number of other issues. Please review the letter. Would like to schedule a meeting with the team early next week, say Monday afternoon or Tuesday. Would either Monday after 2pm or anytime Tuesday work for the group?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110

FOIA CONFIDENTIAL TREATMENT REQUESTED

December 4, 2007

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

Re: Shaw-Howard Florida Avenue Joint Development Site

Dear Mr. Karim:

Thank you for the submission of your proposal for the above-referenced 2007 Joint Development Solicitation (JDS) site.

The purpose of this letter is to bring to your attention missing or incomplete items or items that require further discussion and clarification. We would like to schedule an oral presentation by your team on December 17, 2007 at 10:30 a.m. at WMATA headquarters and have attached instructions for the presentation. We ask that you provide 10 copies of the supplementary information requested in this letter not later than the presentation and preferably before so that we may first review it.

The following items need clarification, correction or completion:

Technical Information
Within the schedule you presented, please indicate the outside, firm date by which a lease would be executed.

What, if any, zoning approvals or variances will you be seeking for Parcels 1 or 3?

Please explain your schedule more fully. It appears to build in very long time periods for negotiating a WMATA agreement and not enough time for local historic preservation, zoning, and building permit approvals.

Also, please provide an outside date for stabilization.

Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001
202/962-1234

By Metrorail:
Judiciary Square, Archives-Navy Memorial-Penn Quarter, Gallery Place-Chinatown—Red, Green and Yellow Lines
by Metrobus:
Routes 01, 02, 06, P6, 70, 71, 80, X2

A District of Columbia, Maryland and Virginia Transit Partnership

These instructions are intended to provide guidance to Developers (and Development Teams) who have submitted Proposals to the Washington Metropolitan Area Transit Authority (WMATA) in response to the Joint Development Solicitation (JDS) issued on August 24, 2007, and have been invited to give a presentation to the WMATA Evaluation Team.

1. **Purpose:**
The purpose of the oral presentations is to allow a Developer an opportunity to describe the key elements of its Proposal and to respond to questions from the WMATA Evaluation Team and jurisdictional representatives, approximately 8-12 attendees

2. **Organization of Presentations:**
The presentation should be organized into two (2), 10-15-minute, segments. We have allotted an additional 15 minutes for questions after each presentation.

Please note that the presentations and questions from those in attendance should be completed in approximately one (1) hour.

The presentation should be structured in the following manner:

a) Description of the Proposal highlighting relevant development experience of individual team development principals, Transit Oriented Development (TOD) principles, input received from both the local jurisdiction and community organizations, benefits to the local jurisdictions (taxes, jobs, etc.), anticipated schedule and timing of zoning requests, if appropriate. PLEASE DO NOT DISCLOSE ANY INFORMATION THAT YOU DO NOT WANT TO SHARE WITH THE APPLICABLE JURISDICTION. (Members of WMATA's Evaluation Team will be in attendance, and jurisdictional representatives are expected as well.)

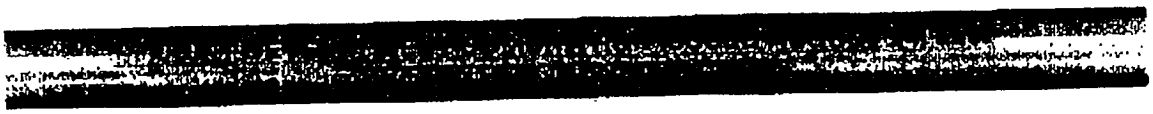
b) Proposed business relationship with WMATA, financial viability of the Proposal, and payments to WMATA. (Only members of WMATA's Evaluation Team will be in attendance.)

3. **Audio Visual Equipment, Handout Material and Other Aids:**
Developers are encouraged to use maps, graphics and other visuals during their presentations. However, elaborate presentations are neither necessary nor encouraged.

Equipment
A slide projector, screen and/or easels will be available **upon request.** All other audio visual equipment must be provided by the Developer.

Handouts
Each Developer should ensure that ten (10) copies of any handout materials are available at the time of the presentation. **WMATA staff cannot be responsible for reproducing any handout materials.**

4. **Location:**
All presentations will be held at the WMATA Headquarters Building, 600 Fifth Street, NW, Washington, DC. WMATA staff will escort you to the presentation room.



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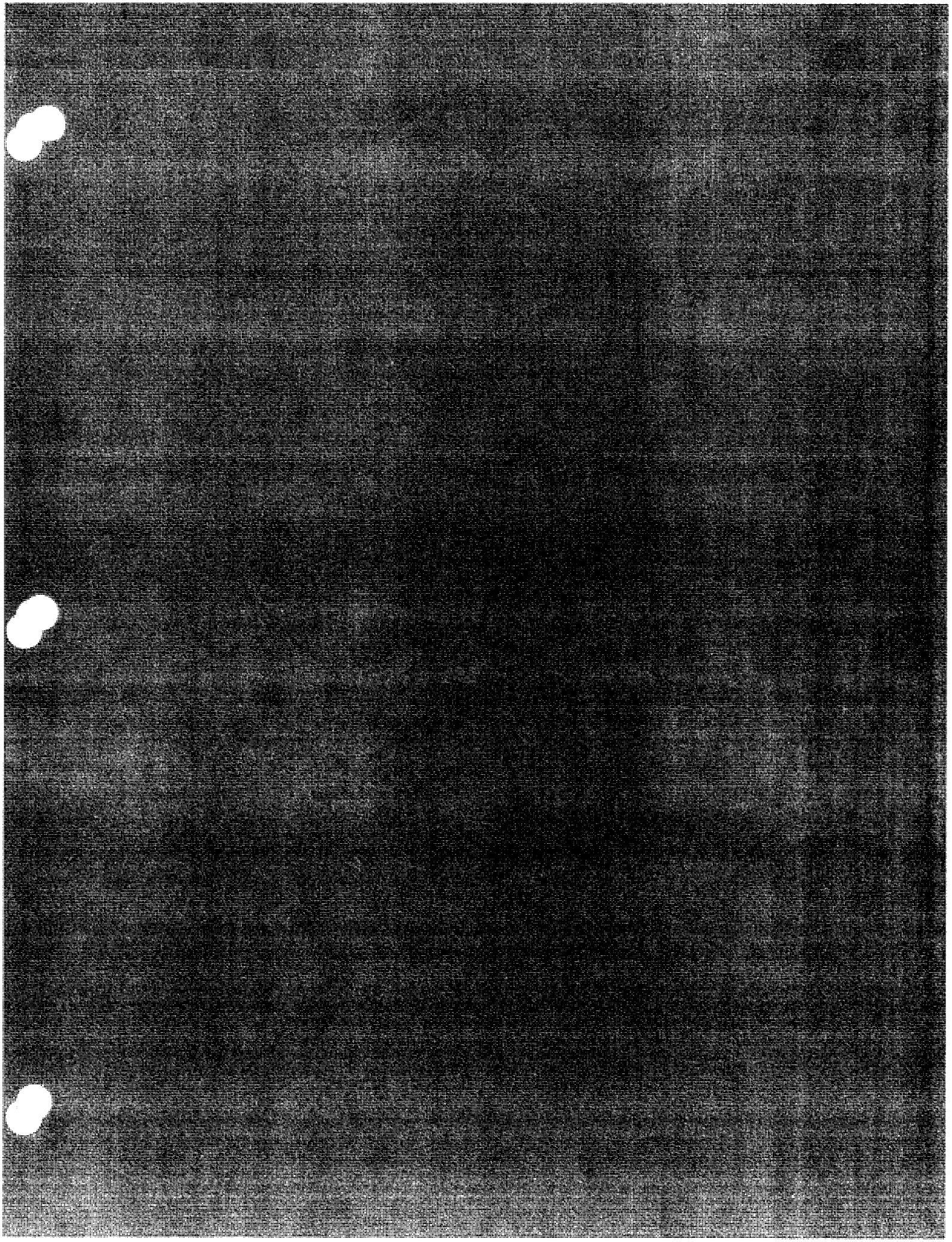


Omar Karim

From: Chris Donatelli <Chris@dkdevelopment.com>
ent: Thursday, December 06, 2007 2:41 PM
To: Joshua Kern; Omar A. Karim; warren@bannekerventures.com; phinisjones@comcast.net; Larry Clark
Subject: RE: Letter from WMATA

sounds good.

From: Joshua Kern [mailto:joshuakern@districtdevelopmentgroup.com]
Sent: Thursday, December 06, 2007 2:11 PM
To: Omar A. Karim; warren@bannekerventures.com; phinisjones@comcast.net; Chris Donatelli; Larry Clark
Subject: RE: Letter from WMATA

I can be available after 2 pm on Monday. Thanks.

From: okarim@bannekerventures.com
To: warren@bannekerventures.com; phinisjones@comcast.net; joshuakern@districtdevelopmentgroup.com; Chris@dkdevelopment.com; Larry@dkdevelopment.com
Subject: Letter from WMATA
Date: Thu, 6 Dec 2007 13:45:09 -0500

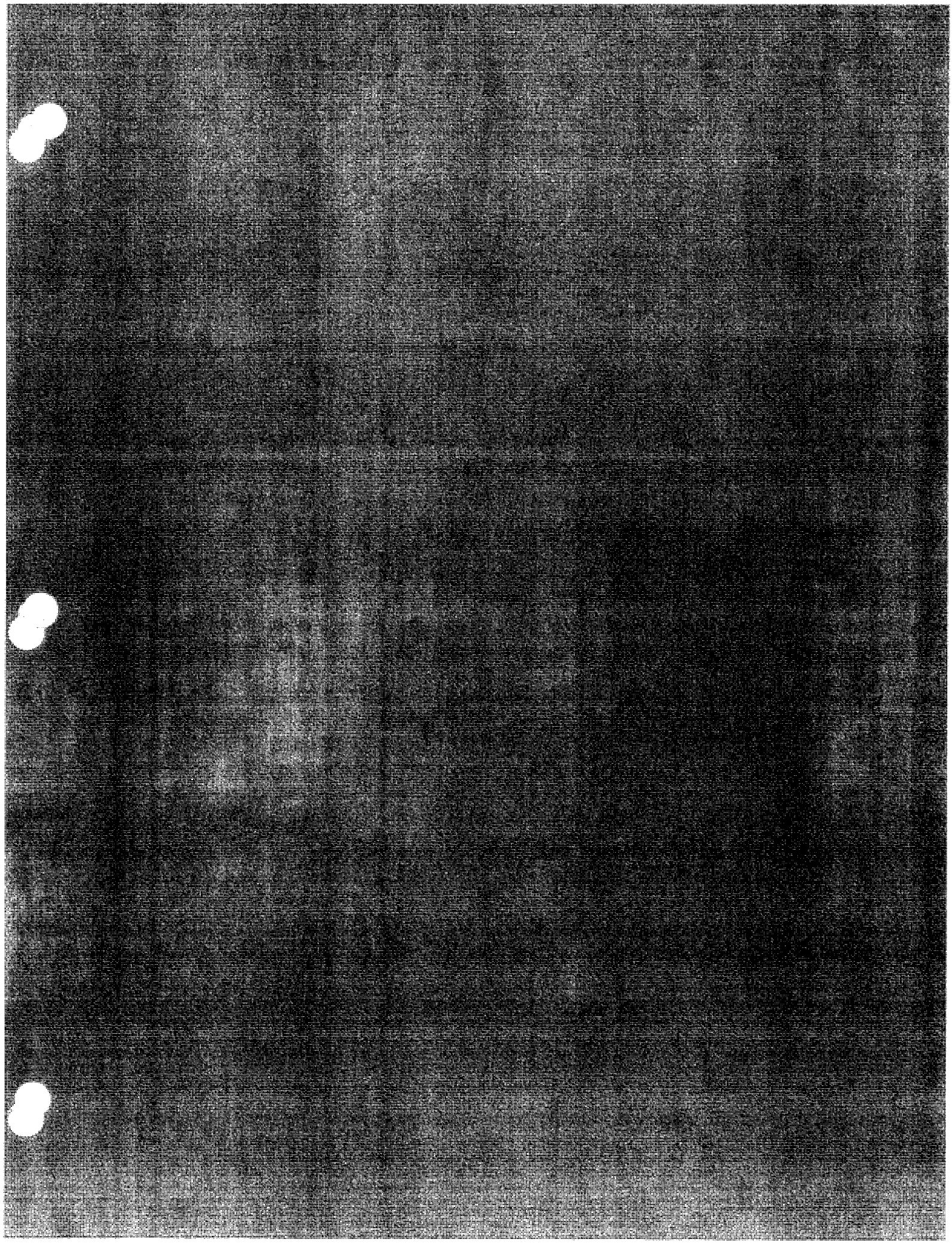
l:

Yesterday, we received a letter from WMATA informing us of our meeting with them on 12/17 in addition to asking for clarification about a number of other issues. Please review the letter. Would like to schedule a meeting with the team early next week, say Monday afternoon or Tuesday. Would either Monday after 2pm or anytime Tuesday work for the group?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014402



Omar Karim

m: Joshua Kern <joshuakern@districtdevelopmentgroup.com>
ɔent: Sunday, December 09, 2007 4:10 PM
To: Omar A. Karim
Subject: RE: agenda for tomorrow's wmata pre-mtg

how are you feeling?

From: okarim@bannekerventures.com
To: Chris@dkdevelopment.com; Larry@dkdevelopment.com; joshuakern@districtdevelopmentgroup.com; phinisjones@comcast.net; Warren@bannekerventures.com
Subject: agenda for tomorrow's wmata pre-mtg
Date: Sun, 9 Dec 2007 15:27:43 -0500

Below please find an outline of an agenda put together by josh for tomorrow's pre-mtg with wmata. Great job Josh!

Omar

Dear Team:

The following outline, divided into two three sections, may help serve to guide our discussion during Monday's ɔeeting. The first section includes action items for the week of 12/10 – 12/14 to help us prepare for the WMATA esentation. The second section addresses the presentation itself. The third and final section is intended to be a ɔatchall for all items not covered in the first two sections. We should plan to meet again as an entire team at least one more time before the weekend to perform a mock presentation.
Section 1: Preparing for the Presentation

- ❖ Meetings:
  - ➢ Councilmember Graham (can we schedule this mtg week of 12/10?)
    - ▪ Discuss team
    - ▪ Present overview of proposal
    - ▪ Address any lingering concerns
  - ➢ Myla Moss
    - ▪ Gather any additional community input
  - ➢ Travis Parker
    - ▪ Update schedule per WMATA's letter
  - ➢ Other WMATA Board Members
  - ➢ Investor/Financiers
    - ▪ MacFarlane
    - ▪ New Boston Fund
    - ▪ Others
  - ➢ Other

- ❖ Schedule (per WMATA letter)
  - ➢ Outside, firm date by which a lease would be execute
  - ➢ Zoning approvals or variances for Parcels 1 or 3
  - ➢ Generally needs fuller detail/explanation.
    - ▪ How long do we need for negotiating WMATA agreement
    - ▪ How long do we need for local historic preservation
    - ▪ How long for zoning
    - How long for building permit approvals
  - ➢ Outside date for stabilization

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Section 2: Presentation

- Team members in attendance
- Investor/Financier
- Architect
- General Contractor
- Zoning counsel
- Other (e.g., leasing agent, property manager…?)

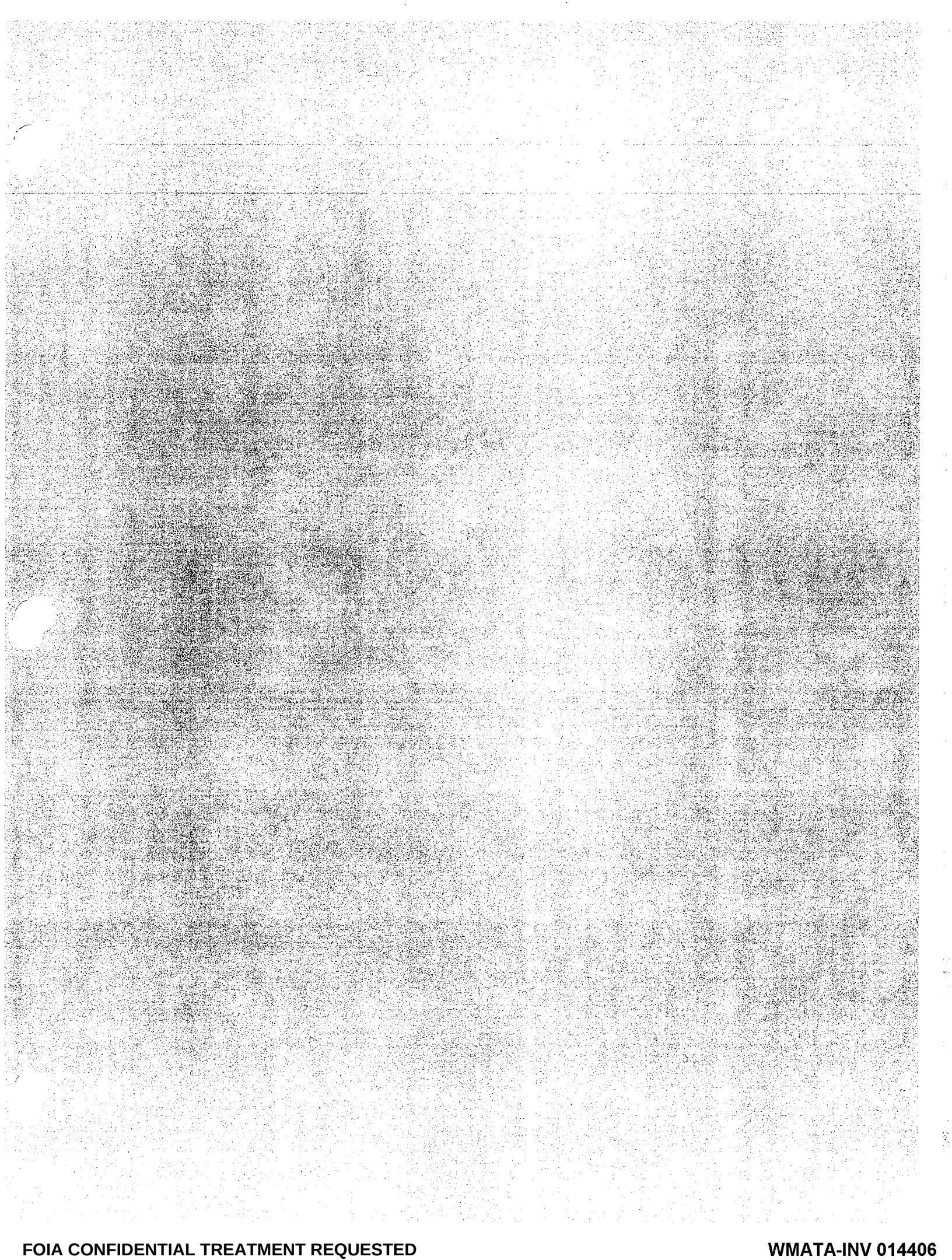
- Draft Table of Contents (divided into two sections per WMATA's direction)
- Description of the Proposal (10-15 minutes)
  - Development team
    - Relevant experience of individual team development principals
  - Program
    - Overview paying special attention to Transit Oriented Development principles
  - Input received from both local jurisdiction and community organizations
    - ANC 1B
    - LeDroit Park Civic Association
    - Columbia Heights Civic Association
    - Local residents
    - DDOT
    - OP
    - Other?
  - Benefits to the local jurisdictions (taxes, jobs, etc.)
  - Anticipated schedule and timing of zoning requests
- Proposed business relationship with WMATA (10-15 minutes)
  - Financial viability of the Proposal
  - Payments to WMATA

- Who will be responsible for preparing presentation
- Who will be responsible for presenting each section
- Schedule a mock presentation

Section 3: Other

- Internal development team issues
- Roles, responsibilities, and expectations of each member
- Lines of communication
- Other
- Talking points for likely questions
- What do we know about the people to whom we are presenting
- What else can we do to help our cause

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Joshua Kern <joshuakern@districtdevelopmentgroup.com>
nt: Monday, December 10, 2007 10:28 PM
To: chris@dkdevelopment.com
Cc: okarim@bannekerventures.com
Subject: Follow-up

Chris:

Thanks for participating in today's call. Following are the items we are asking you to complete.

1. Please update the schedule that Omar sent you per WMATA's letter with the following information:

- Outside, firm date by which a lease would be execute
- Zoning approvals or variances for Parcels 1 or 3
- Additional detail/explanation on:
  - How long do we need for negotiating WMATA agreement
  - How long do we need for local historic preservation
  - How long for zoning
  - How long for building permit approvals
- Outside date for stabilization
- Anything else you think is missing

2. I forgot to ask you for the latest market study. The letter from WMATA asked for us to assess the market for rental apartments in the area now that conversion of condominiums projects to rental product are occurring.

3. WMATA also expects to participate in capital events and in cash flow. Based on your experience, please let us know how you propose we include WMATA.

4. Schedule a meeting with Councilmember Graham

5. Submit a balance sheet for Donatelli Development per the WMATA email

6. Confirm availability on Thursday or Friday for a mock presentation

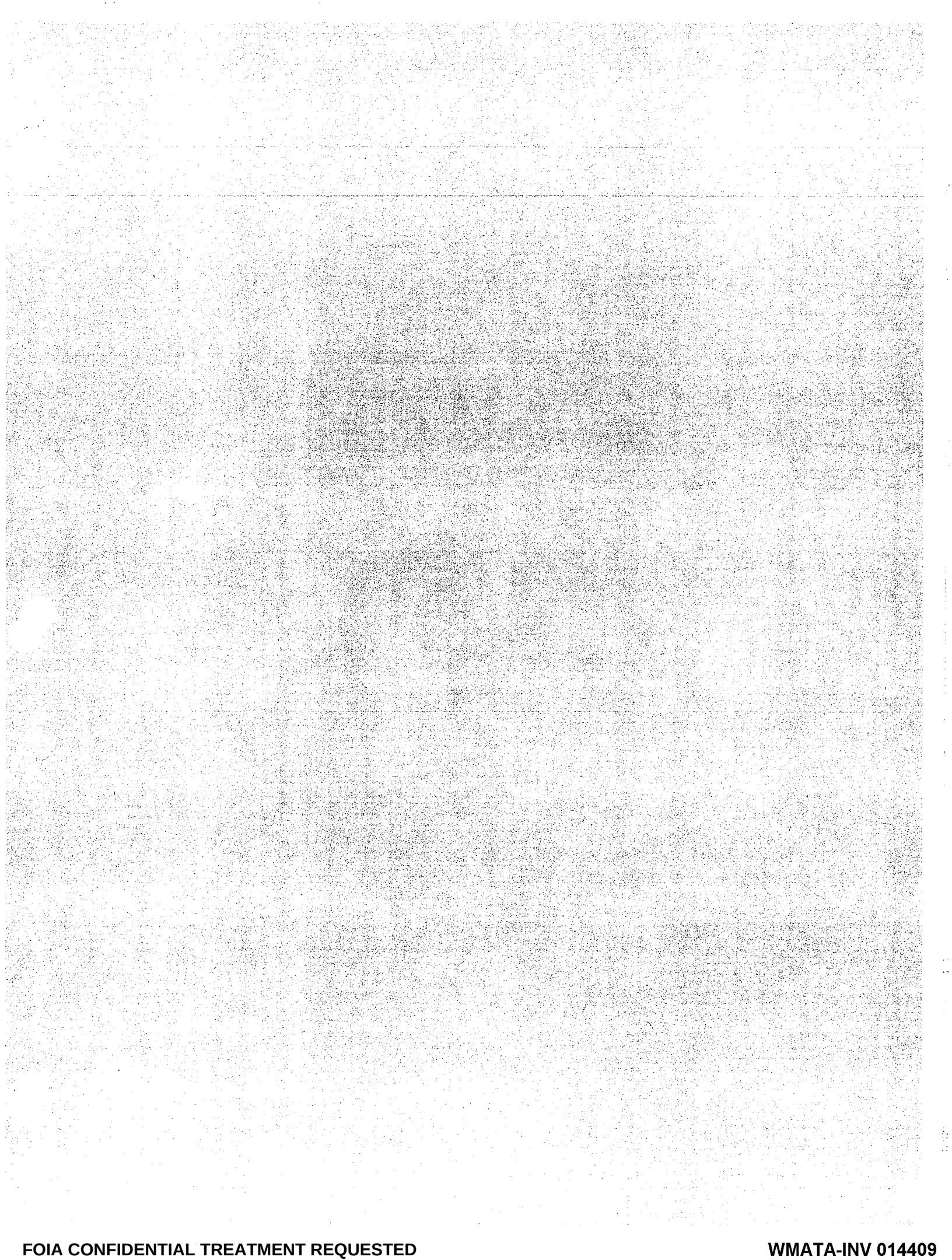
With the presentation less than one week away, time is of the essence. Please let me know by noon tomorrow if any of the aforementioned items are an issue.

hanks Chris. Feel free to call me if you have any questions or concerns.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Yours,
Josh

FOIA CONFIDENTIAL TREATMENT REQUESTED



MACFARLANE PARTNERS

December 13, 2007

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

Re: The Jazz @ Florida Avenue RFP

Dear Omar:

MacFarlane Partners is pleased to continue working with you and to join, as your investor/equity partner, the team led by your firm ("Banneker") in submitting a final plan to WMATA to develop The Jazz @ Florida Avenue in response to the WMATA Request for Proposal that was submitted on May 31, 2007. Having looked at other projects with you, we recognize Banneker as a leading minority-owned developer in the Washington, D.C., region, and believe that our financial strength can enhance your team's development capability. We also recognize the strong participation of another leading Washington, D.C., minority-owned developer – District Development Group.

We have reviewed your most recent proposal for the development of The Jazz @ Florida Avenue mixed-use project and believe your development plan to be qualitatively sound and attractive. Based on our discussions and negotiations, MacFarlane Partners will provide Banneker with the required equity for pre-development and development activities, including land acquisition. Based on the current development plan, the team expects the total development costs to be approximately $35 million, which will require approximately $8 million of equity. Our investment will be made on the terms upon which the team has previously agreed. These terms are consistent with structures we have utilized with other local developers in our most recent ventures.

MacFarlane Partners is a minority-owned real estate investment management firm that invests primarily in development and redevelopment projects, such as The Jazz @ Florida Avenue, in urban areas nationwide. The firm's investments to date are helping to develop, redevelop or reposition $19 billion in urban properties, encompassing 20 million square feet of commercial space and 26,000 multifamily housing units in Washington, D.C.; New York City; Los Angeles; Orange County; and the San Francisco Bay Area. We maintain several offices around the country, including one in Washington, D.C.

Having invested in urban, mixed-use development projects – sometimes serving as developers ourselves -- we believe we have the requisite experience and skill to assist you and the rest of the team in developing The Jazz @ Florida Avenue that is successful for both WMATA and District residents. We specialize in complex projects that require creative financing and innovative structuring. We also are accustomed to working with our development partners and local government agencies to form public/private partnerships, as well as resolve the regulatory and environmental issues that urban-infill projects typically encounter.

1155 Connecticut Avenue, NW 3rd Floor Washington, DC 20036 Phone 202.572.0700 Fax 202.572.0699

FOIA CONFIDENTIAL TREATMENT REQUESTED

Highlighted below are a few of the projects in which we have invested.

- **JBG Urban**, a joint venture with The JBG Companies and Morgan Stanley Real Estate that will develop and redevelop 93 assets on 42 sites located throughout the Washington, D.C., metropolitan area. The assets – which are in various stages of entitlement, planning, development or renovation – range from completed properties slated for renovation or demolition to undeveloped urban-infill sites. A majority of the sites are adjacent to or near existing and proposed transit stations along the area's Metro light-rail system; 25 sites are located in northern Virginia, 13 are in suburban Maryland, and four are within the District of Columbia. When fully developed, the portfolio will total eight million square feet of office space, 1.9 million square feet of retail space; 13,400 multifamily housing units; and 2,500 hotel rooms.

- **The Yards**, a mixed-use redevelopment project planned by Forest City Washington for the 44-acre Southeast Federal Center, which once was an annex to the Washington Navy Yard on the Anacostia River in Washington, D.C. The proposed uses envisioned for the project include 1.8 million square feet of office space, 2,700 residential units, destination and neighborhood serving retail space and a large riverside park. Development began in late 2007.

- **Half Street**, a mixed-use project that is being developed in multiple phases in Southeast Washington, D.C., immediately north of the new ballpark for the Washington Nationals Major League Baseball team. The first phase of the project, which began construction in January 2007, will consist of 260,000 square feet of office space, 328 for-sale condominiums, 50,000 square feet of retail space, and a 200-room boutique hotel in four adjacent buildings occupying the entire city block on the eastern side of Half Street SE, between M Street SE and N Street SE. Future phases will be built on adjacent blocks to the west and north of the first phase and are likely to include a mix of office, retail and multifamily residential space.

- **Solea**, a six-story residential mid-rise building located in the District's Columbia Heights neighborhood that is being developed in partnership with JLC and NCRC. With construction underway, Solea will include 55 for-sale condominiums, seven live/work units and 4,700 square feet of retail space when completed.

- **Bay Street Emeryville**, a mixed-use "urban village" developed on a former industrial site near the eastern approach to the San Francisco-Oakland Bay Bridge in Emeryville, Calif., that included a 365,000-square-foot lifestyle retail center, with 284 rental apartments (20% of which are designated for low-income residents) and 95 town homes on three to six floors above the retail stores. The retail component was completed in 2002 and was named "Best New Retail Development of the Year" in April 2003 by the *San Francisco Business Times*. The residential units were completed in 2006 and garnered a Market-Rate Residential Real Estate Deal of the Year award in March 2007 from the *San Francisco Business Times*.

- **Wilshire Vermont Station**, a mixed-use "transit village" that was developed atop an existing underground-rail transit station, approximately three miles west of downtown Los Angeles. Completed this past August, the property consists of two connected seven-story buildings with 449 apartment units (20% of which will be designated for low-income residents) and 36,000 square feet of street-level retail space that are configured around a public plaza and entrance to the Wilshire/Vermont Metro Red Line subway station.

- **NoMa West**, three mid-rise residential buildings (five to six stories in height) with approximately 500 rental apartments that will be developed on a four-acre, infill site in the emerging North of Massachusetts Avenue ("NoMa") neighborhood of Washington, D.C. Construction is expected to begin in the fall of 2008.

- **Metropolitan Lofts,** an eight-story apartment community that was completed in the summer of 2006 on a former commercial/industrial site near the Staples Center in downtown Los Angeles. It consists of 264 apartment units (20% of which are designated for low-income residents), 11,000 square feet of ground-floor retail space and an attached parking structure. The property, which is currently 97% leased and 96% occupied, is operated on a long-term ground lease from the City of Los Angeles Redevelopment Agency.

Founded in 1987, MacFarlane Partners has provided investment management services across a broad range of real estate strategies for institutional investors over the past 20 years, including the California Public Employees' Retirement System ("CalPERS"), the Teacher Retirement System of Texas, and the defined-benefit pension plans of AT&T and General Motors Corporation.

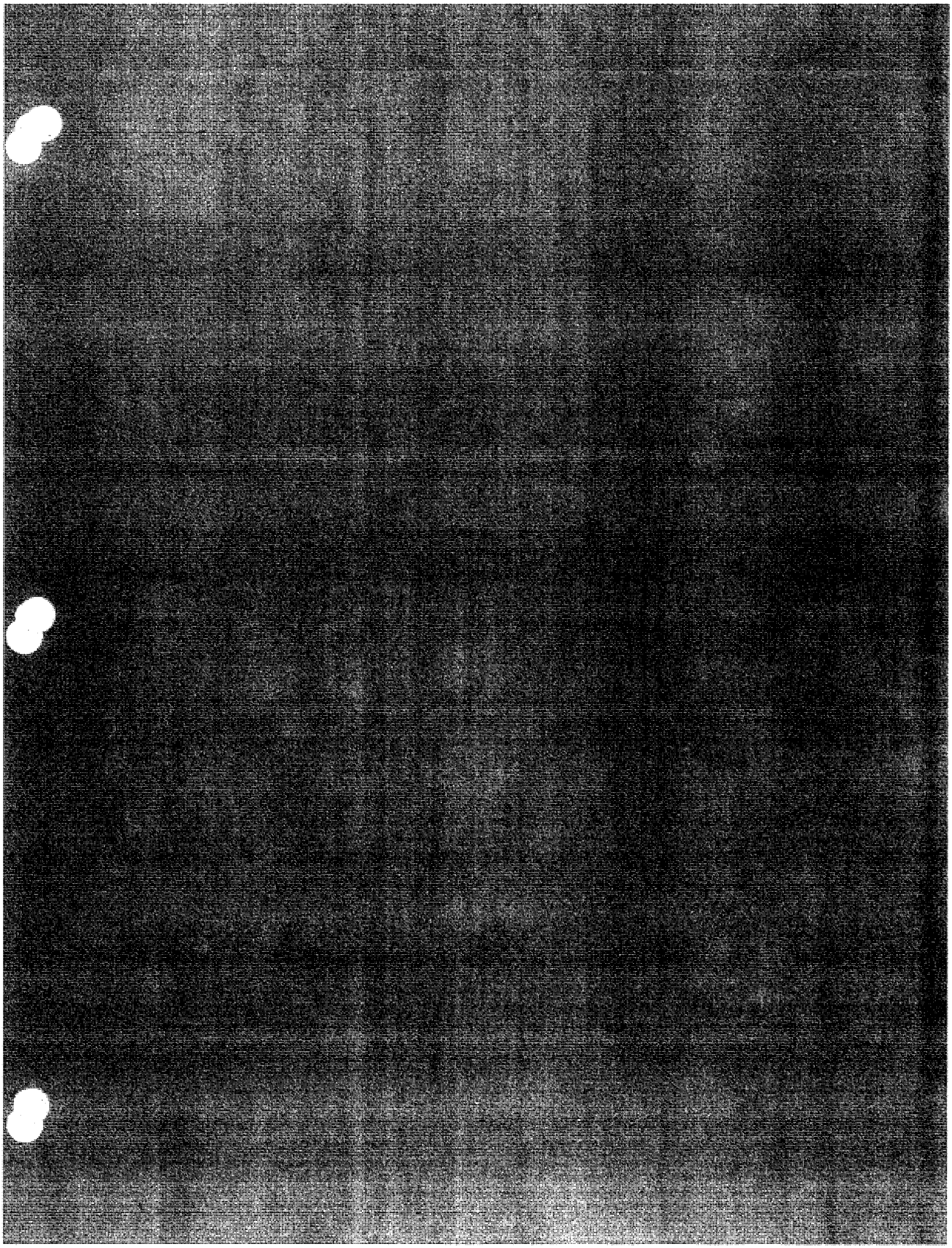
As managing member of an urban real estate joint venture with the CalPERS, the nation's largest public pension plan with $255 billion in assets, we have investment discretion over $1.45 billion in equity capital for investment in urban development and redevelopment projects in major cities throughout the U.S. We also manage a private institutional fund targeting urban property markets that was formed in 2006 and has an equity capitalization of $1.01 billion.

Both the CalPERS' venture and the urban investment fund have revolving credit facilities; the CalPERS' venture has a debt facility with Sumitomo Bank that currently totals $600 million, while the private fund has a debt facility with Bank of America that can be as large as 90% of the fund's eligible equity.

MacFarlane Partners strongly supports your proposal and is pleased to continue to be a part of Banneker's team for this innovative and worthwhile project for the citizens of Washington, D.C.

Sincerely,

Bradford H. Dockser
Principal , Investments



District of Columbia Housing Finance Agency
815 Florida Avenue, NW Washington, DC 20001-3017

December 13, 2007

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

Re: Letter of Interest as part of WMATA Joint Development Solicitation
Development of three parcels on Florida Avenue, NW
Tax Exempt Bond and Low Income Housing Tax Credit Financing

Dear Mr. Karim:

The District of Columbia Housing Finance Agency ("DCHFA" or the "Agency") has reviewed your response to the Washington Metropolitan Transit Authority Joint Development Solicitation (the "Proposal Response") to redevelop the above referenced parcels (the "Project") in the Shaw neighborhood of Washington, DC (the "District").

The Agency has a strong interest in participating in the financing of the redevelopment of over 18,000 square feet of currently vacant parcels. Your proposal to develop the site into a quality mixed-use residential and retail development (aptly called The Jazz @ Florida Avenue) is consistent with the Agency's strategic objective of encouraging the development of affordable housing in vibrant mixed income and mixed-use developments. Moreover, with the proximity of the Project located directly across the street from the Agency, we are enthusiastic to partner with you to develop this site.

According to the Proposal Response, which appears to be consistent with the requirements of your Joint Development Solicitation, your proposal is as follows:

- Redevelop the site, in a mixed-use platform, into 103 high quality units of mixed-income rental housing which will be built over 11,700 square feet of ground floor retail space.

- Make 20% of the units affordable to individuals or families who earn up to 50% of the area median income (AMI).

- Partner with District Development Group and Donatelli Development, both respected developers in the redevelopment of the site.

- Include neighborhood serving retail uses including cultural and arts space.

Phone: 202-777-1600 Fax: 202-986-6705 www.dchfa.org

FOIA CONFIDENTIAL TREATMENT REQUESTED

- Finance the $36 million development with an allocation of tax exempt bonds, equity from the sale of 4% low income housing tax credits (LIHTCs), institutional equity and possibly secondary permanent financing from the District of Columbia Department of Housing and Community Development (DHCD).

Although this letter does not represent a financing commitment from DCHFA, it does represent the Agency's strong interest in financing the subject project. Based on our current and projected bond volume cap for multifamily housing, DCHFA will be able to allocate tax exempt and/or taxable bonds and 4% LIHTCs to the Project. The final allocation of bond volume cap and low income housing tax credits will depend on the final build out, tenant mix and the resultant eligible basis of the Project.

We eagerly await your submission of a formal application for financing and are looking forward to working with you to bring this much needed and exciting project to fruition.

Sincerely,

Anthony L. Waddell
Director, Public Finance

cc: Mr. Harry D. Sewell
Mr. Cedric M. Brown
General Counsel's Office
LOI File

BANK OF GEORGETOWN

CORPORATE OFFICES
1054 31st Street, NW
Suite 18
Washington, DC 20007
Phone 202.355.1200
Fax 202.355.1201
bankofgeorgetown.com

GEORGETOWN
1001 Wisconsin Ave., NW
Washington, DC 20007

FRIENDSHIP HEIGHTS
5236 44th Street, NW
Washington, DC 20015

ARLINGTON/COURTHOUSE
2300 Wilson Blvd.
Arlington, VA 22201

CONNECTICUT AVENUE
1101 Connecticut Ave., NW
Washington, DC 20036

December 13, 2007

Mr. Joel R. Washington
Director Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Subject: Letter of Interest – The Jazz @ Florida Avenue

Dear Mr. Washington:

We are pleased to provide this letter of interest to the Banneker Ventures, District Development Group and Donatelli Development-led team in response to a Washington Metropolitan Area Transit Authority Joint Development Solicitation to develop three parcels on the 700 and 800 blocks of Florida Avenue, NW, Washington, DC. We recognize this team as a leading developer in the region and are excited about the possibility of partnering with you to build an incredibly designed, transit oriented mixed-use housing and retail project on these key Florida Avenue/U Street corridor sites.

We have worked with both Omar A. Karim and Chris Donatelli and the two firms of which they are the principals of and we are pleased to have the opportunity to work with them on The Jazz.

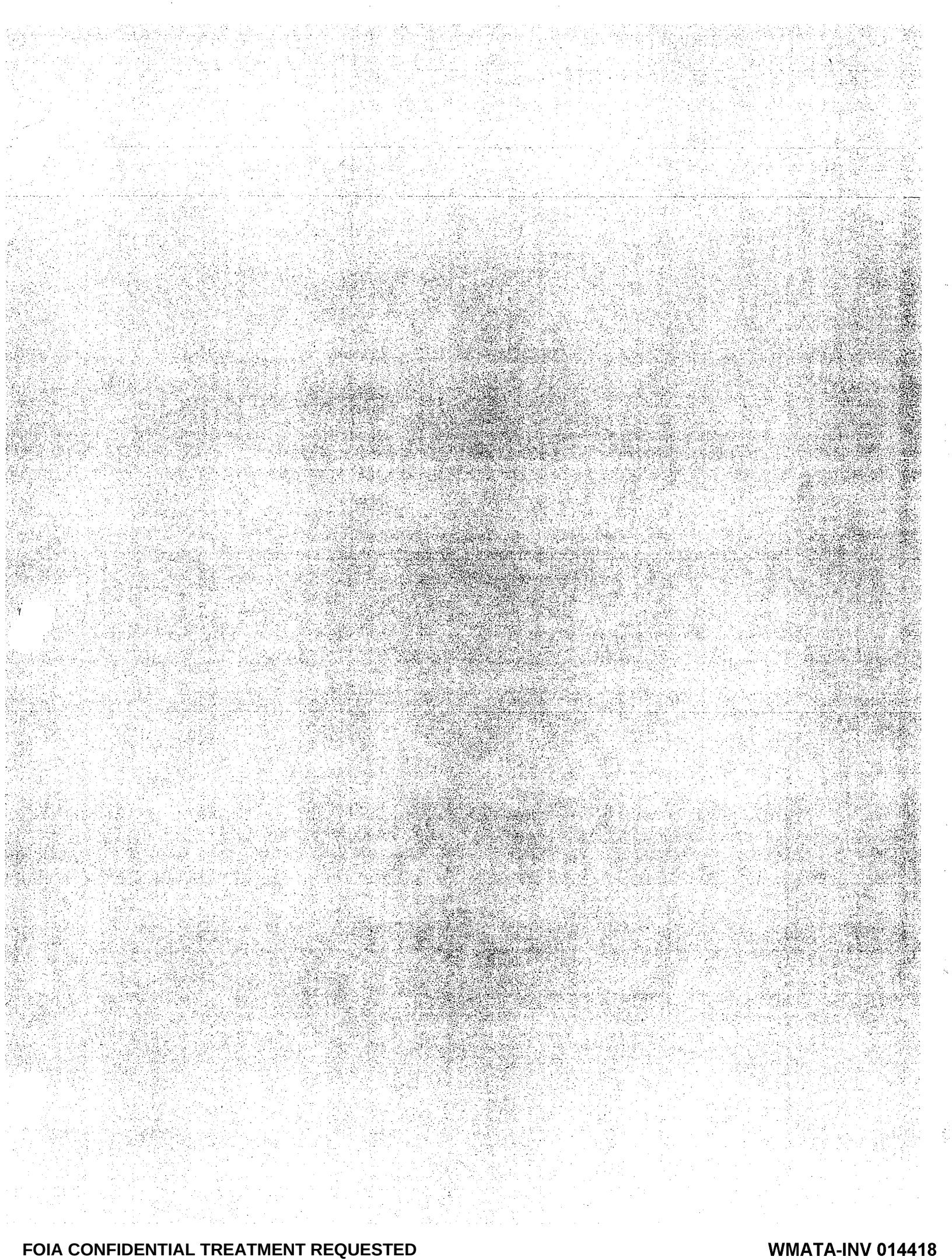
We have reviewed the proposed plans for the project and look forward to working with this team., should it be selected, to develop this key parcel along the Florida Avenue/U Street corridor.

As you may know, The Bank of Georgetown is a District of Columbia Chartered Bank with four branch locations.

The Bank of Georgetown is very pleased to provide this letter of reference and interest for the Banneker, District Development, and Donatelli led project.

Sincerely,

Jeffrey A. Banks
Managing Director, Business Development
The Bank of Georgetown



Omar Karim

From: Joshua Kern <joshuakern@districtdevelopmentgroup.com>
Sent: Sunday, December 16, 2007 10:47 AM
To: phinisjones@comcast.net; chris@dkdevelopment.com; okarim@bannekerventures.com
Subject: Recommended Strategy

Dear Team:

I think we should present to the WMATA staff on Monday. Our companies have reached out to citizens, investors, banks, and many other people and institutions asking for and receiving their support of our proposal. Additionally, the WMATA staff is expecting us to present. Under the circumstances, not presenting seems unprofessional and the worst possible option for us.

At the same time, we don't want to waste WMATA's time or be out of compliance and so my recommendation is that we present tomorrow with all three companies, but that as part of the presentation we respectfully request allowing Banneker to withdraw and to allow Donatelli assume the role of managing partner. This approach seems to address everyone's concern. We can spend today revising the presentation according to this new strategy.

My recommendation is also driven in part by my strong feeling that we are the best team for this project. We have tremendous community support, far and away the most relevant experience, and the proven capacity to build something truly special on this important cornerstone property.

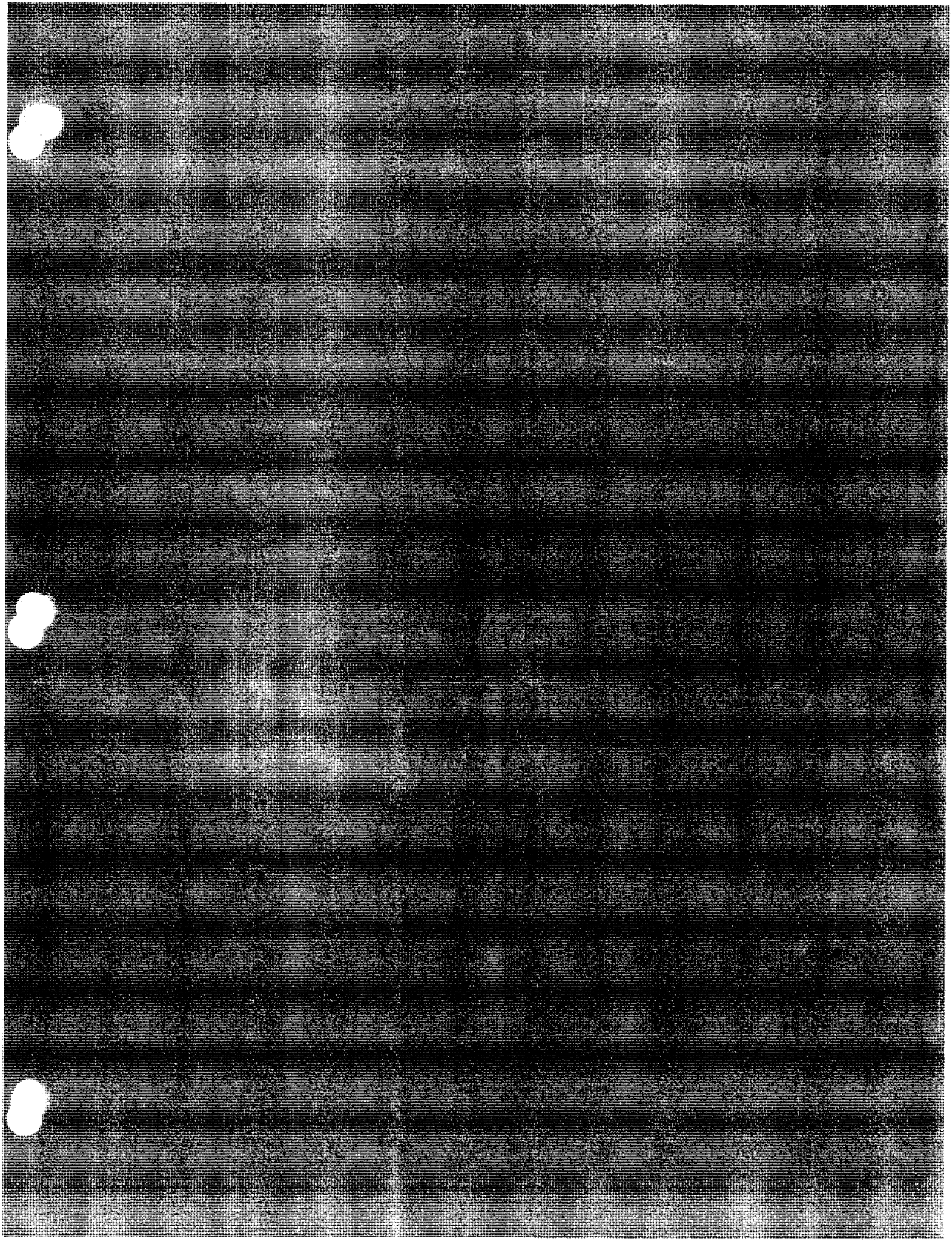
Ve should reach out to Councilmember Graham to let him know our plans and we should immediately begin revising the presentation.

After the presentation tomorrow, Donatelli and DDG should regroup on how best to move forward.

As time is short, please let me know immediately if you disagree with this approach.

Yours,
Josh

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

m: warren@bannekerventures.com
ent: Sunday, December 16, 2007 1:22 PM
To: Omar Karim; Sinclair Skinner
Subject: Re: Recommended Strategy

O,

Has Chris confirmed that us dropping out will get Graham's support?
Sent from my BlackBerry® wireless device

-----Original Message-----
From: "Omar A. Karim" <okarim@bannekerventures.com>

Date: Sun, 16 Dec 2007 18:00:32
To:"Warren Williams" <warren@bannekerventures.com>,"Sinclair Skinner" <sinclair.skinner@att.net>
Subject: Fw: Recommended Strategy

Thoughts?
Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
ashington, DC 20005
202) 667-4110 office
(301) 523-1810 cell

-----Original Message-----
From: Joshua Kern <joshuakern@districtdevelopmentgroup.com>

Date: Sun, 16 Dec 2007 15:46:49
To:"phinisjones@comcast.net" <phinisjones@comcast.net>,"chris@dkdevelopment.com" <chris@dkdevelopment.com>,"okarim@bannekerventures.com" <okarim@bannekerventures.com>
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FOIA CONFIDENTIAL TREATMENT REQUESTED

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Yours,
Josh

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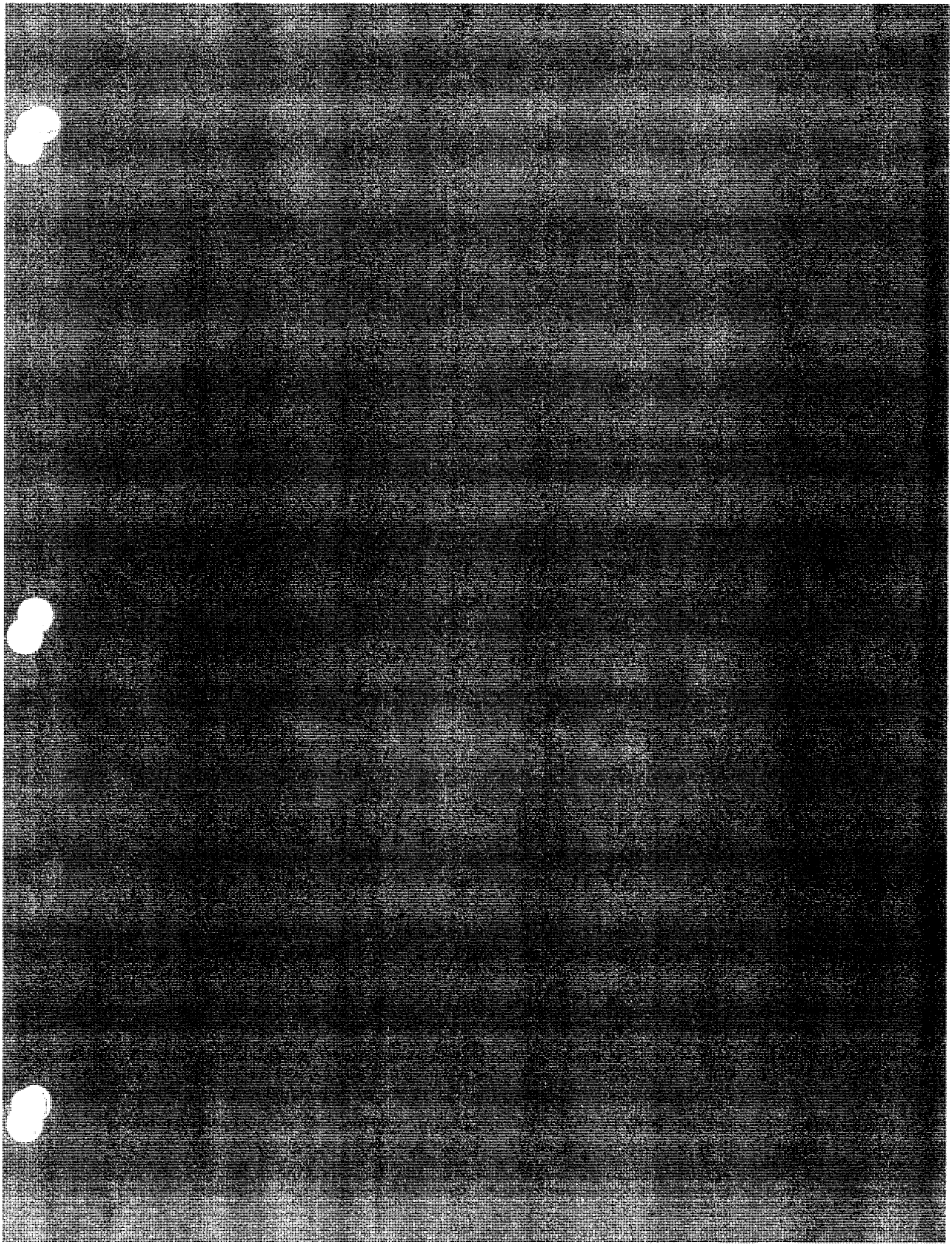

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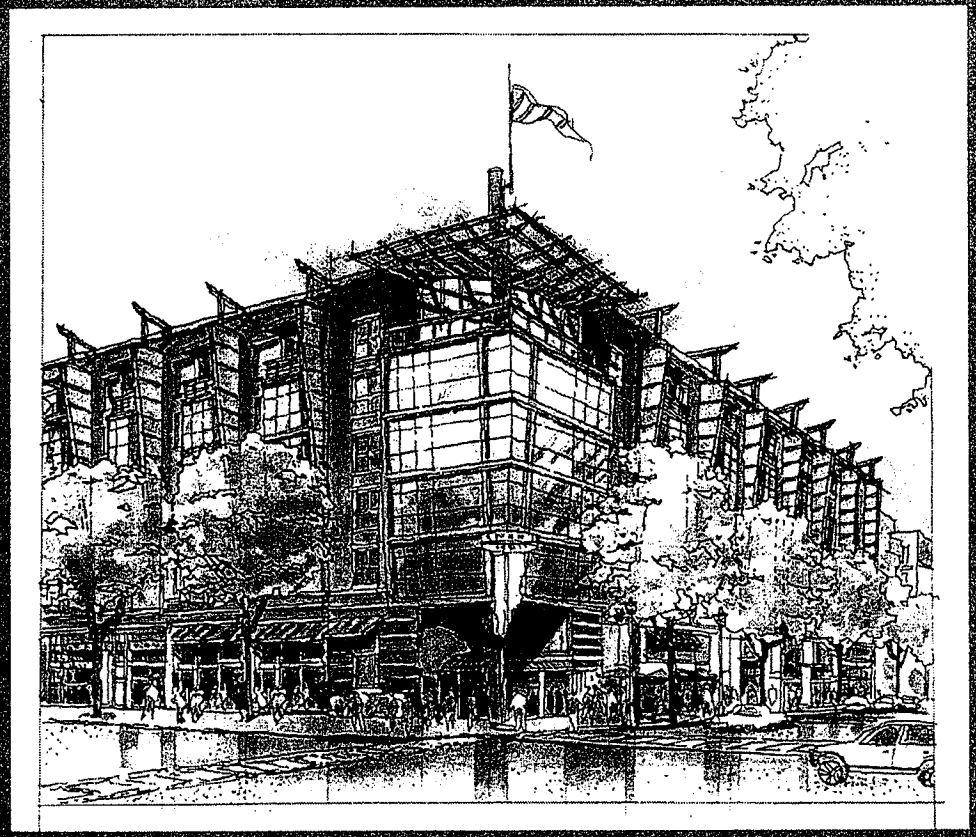


The Jazz at Florida Avenue

Presentation to WMATA
December 17, 2007

WMATA-INV 014424

FOIA CONFIDENTIAL TREATMENT REQUESTED

Description of Proposal

- Mixed-use residential and retail
- 103 residential units
- 11,750 sq ft of retail
- Transit-oriented development
- New restaurant, outdoor café and theatrical museum
- 47 parking spaces
- Experienced development team
- Broad-based community support

WMATA-INV 014425

FOIA CONFIDENTIAL TREATMENT REQUESTED

The Team

- WMATA (Owner)
- Banneker Ventures, LLC (Developer)
- District Development Group, LLC (Co-Developer)
- Torti Gallas + Partners, Inc. (Architect)
- MacFarlane Partners, Ball Street Funds (Equity Investor)
- DC HFA, Bank of Georgetown, PNC, HSBC (Debt Financing)
- Tompkins Builders, Inc. (General Contractor)
- Holland + Knight LLP (Land Use Counsel)

WMATA-INV 014426

FOIA CONFIDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC

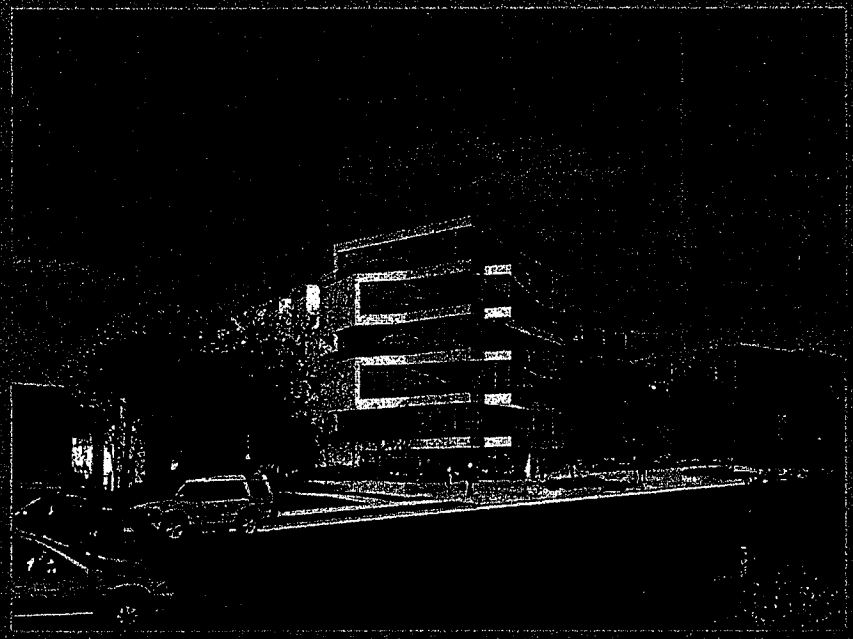
- DC-based firm whose management has 15 years of experience in real estate and finance
- Specialize in infill development projects
- Promote TOD principles
- Experience working in public-private partnerships

WMATA-INV 014427

FOIA CONFIDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC

The Driskell Residential



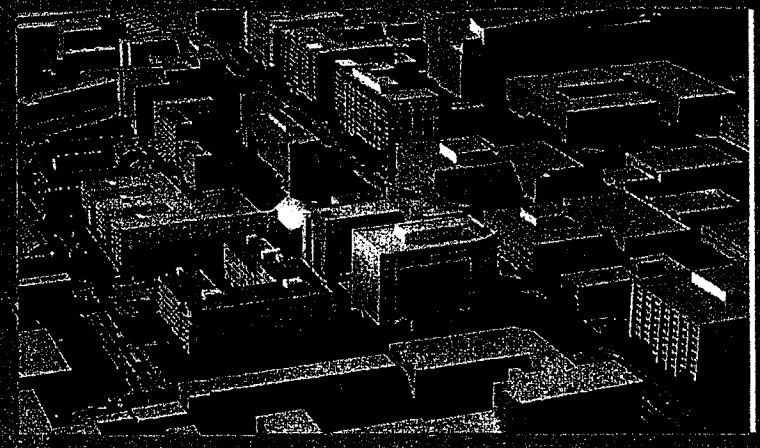
- $22M infill construction project
- 52 residential units
- 35 below-grade parking space
- Transit oriented (2 blks from Metro; Zip cars; bicycle racks)
- Lead on joint venture with Fannie Mae and Four Points, LLC

WMATA-INV 014428

FOIA CONFIDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC

Northwest One



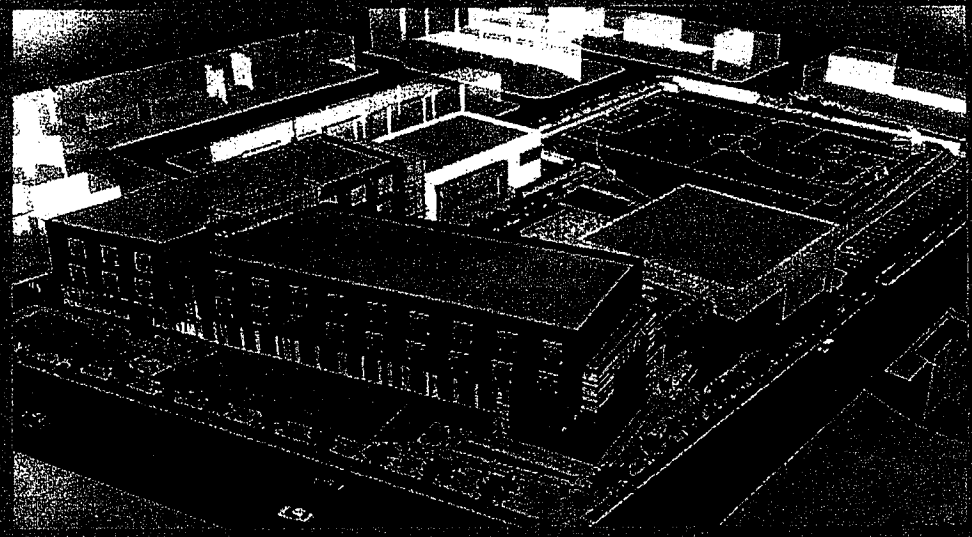
- $700M redevelopment of the NW1 neighborhood
- Partnership includes DC Govt, Banneker Ventures, William C. Smith, Jair Lynch Companies and CPDC
- MacFarlane Partners (Equity)
- Largest housing development in the District (1,630 units of housing)
- 220,000 sq. ft. office space
- 40,000 sq. ft. retail

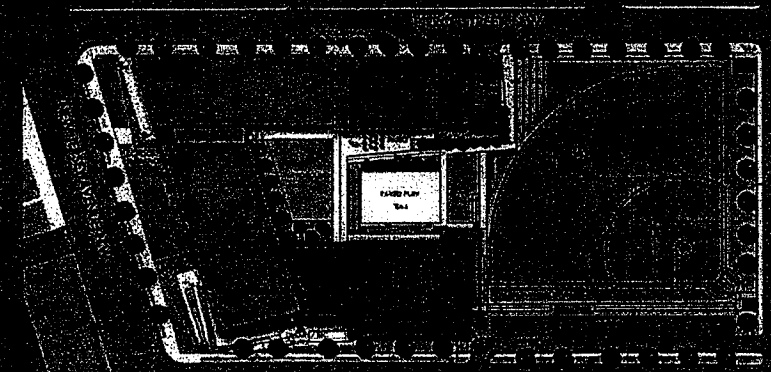
WMATA-INV 014429

FOIA CONFIDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC

Walker Jones School, Recreation Center and Library





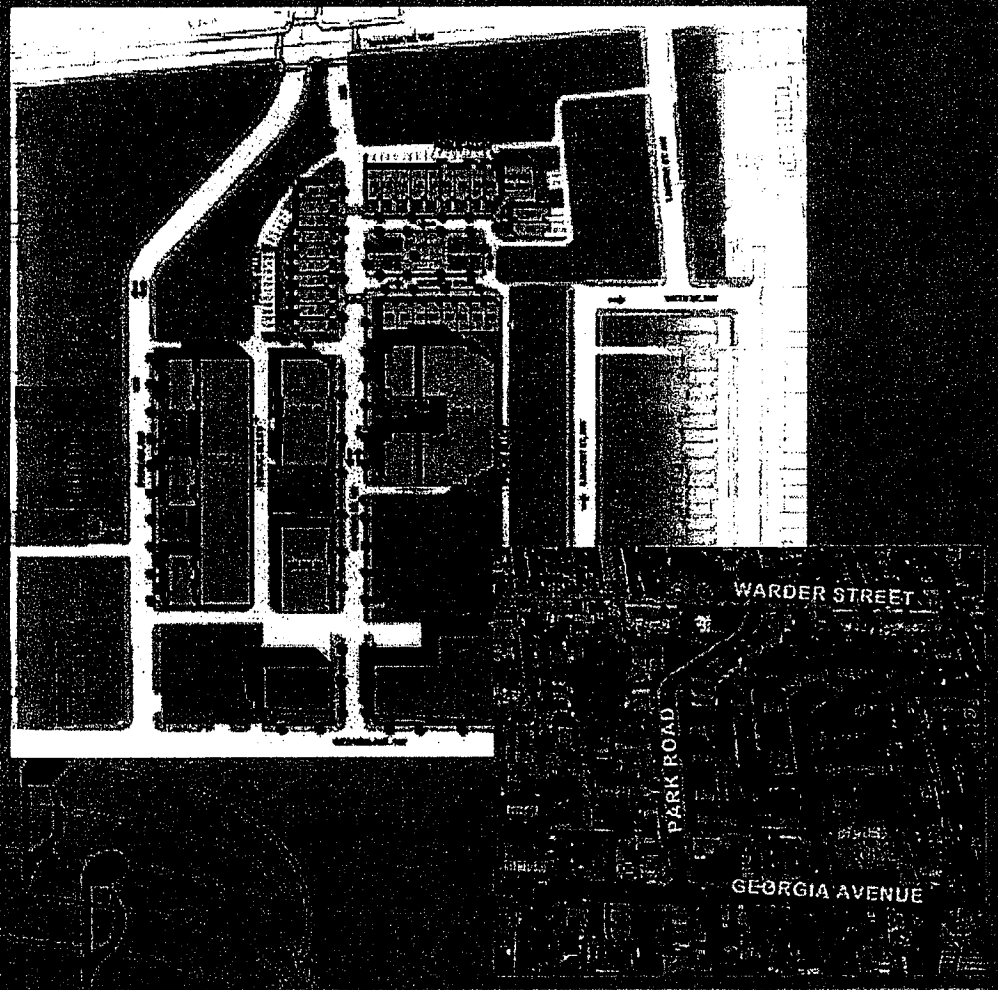
- $47M new construction, mixed-use project
- 100,000 sq. ft. k-8 school
- 20,000 sq. ft. recreation center
- 5,000 sq. ft. library
- Public-private partnership

WMATA-INV 014430

FOIA CONFIDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC

The Park Morton Redevelopment Initiative



- Master Planner for D.C. Housing Authority
- 5 acre site located 10 blocks from WMATA site (Ward 1)
- Plan calls for development of 550,000 SF of mixed-income housing
- Plan promotes TOD principles (2 blocks from Petworth Metro and Georgia Avenue bus line)

WMATA-INV 014431

FOIA CONFIDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC – Principal's Involvement

The Warrenton West

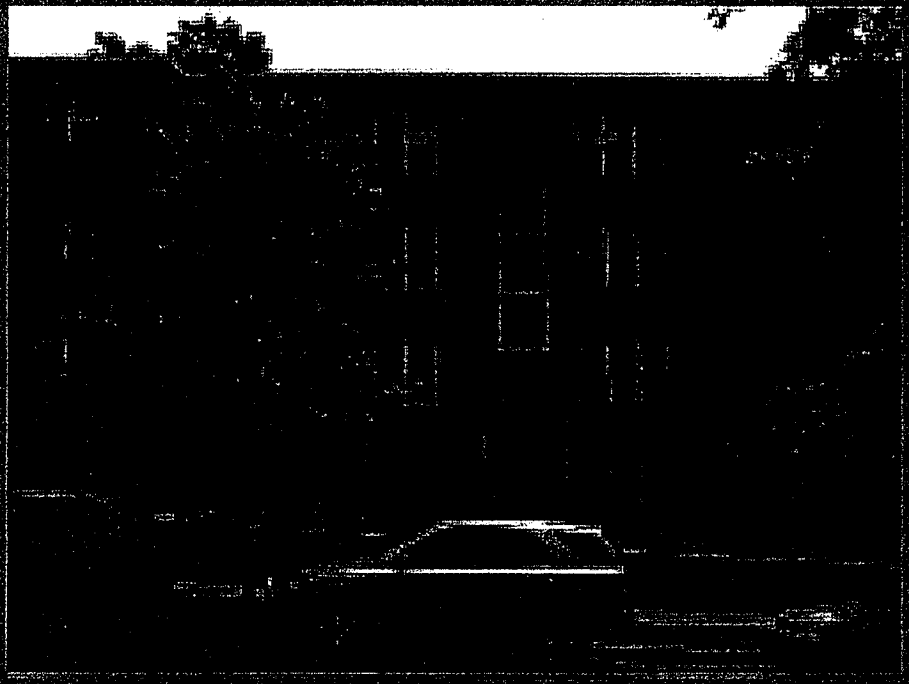
- $7M residential renovation project
- 18 units with mix of 1, 2 and 3 BR flats and duplexes
- 18 parking spaces
- Sold out units in less than 4 months
- Owner/Project Executive

WMATA-INV 014432

FOIA CONFIDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC – Principal's Involvement

The Warrenton Condominiums



- Moderate renovations of 1950's era building
- 14 residential condominiums
- Mix of 1 and 2 BRs
- Controlled-access surface parking, hardwood floors, granite countertops, ceramic tile kitchen and baths
- Owner/Project Executive

WMATA-INV 014433

FOIA CONFIDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC – Principal's Involvement

City Vista

- $220M mixed-use project anchoring revitalization of Mount Vernon Triangle
- 685 new residential units
- 55,000 sq. ft. Safeway
- 30,000 sq. ft. fitness center
- Partnership with Lowe Enterprises, Bundy Development Corporation and Neighborhood Development Company
- Served as Assistant Project Manager

WMATA-INV 014434

FOIA CONFIDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC – Principal's Involvement

Sixth Street Flats

- New construction project located in China Town
- $14M luxury condominiums
- Six stories with underground parking
- Transit oriented (1 blk from Gallery Place Metro)
- Completed on-time (12 month construction schedule)
- Served as Project Manager

WMATA-INV 014435

FOIA CONFIDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC – Principal's Involvement

The Icon

- New construction project located in Logan Circle
- $5.2M construction costs
- 19 luxury condominium units
- Light gauge-steel (similar to structure recommended for WMATA project)
- Served as Project Manager

WMATA-INV 014436

FOIA CONFIDENTIAL TREATMENT REQUESTED

District Development Group, LLC

- DC-based firm with 40 years of experience in real estate and urban development
- Currently partnered with Akridge and Clark Construction on proposed 300,000 sq ft office building
- Experience developing office and residential space throughout the District

WMATA-INV 014437

FOIA CONFIDENTIAL TREATMENT REQUESTED

District Development Group – Principal's Involvement

Thurgood Marshall Academy

- 60,000 sq. ft. new construction and renovation project
- $14M complex financing structure
- Recognized as Gold Standard for School Construction
- Transit oriented project (directly across street from Anacostia Metro)

WMATA-INV 014438

FOIA CONFIDENTIAL TREATMENT REQUESTED

MacFarlane Partners

- Largest minority-owned real estate investment management firm in the U.S. with $20B in assets
- Focus on underserved urban neighborhoods, urban-infill sites and smart growth in suburbs
- Helped build 20M sq ft of commercial space and 27,000 multi-family housing units in DC and other major cities

WMATA-INV 014439

FOIA CONFIDENTIAL TREATMENT REQUESTED

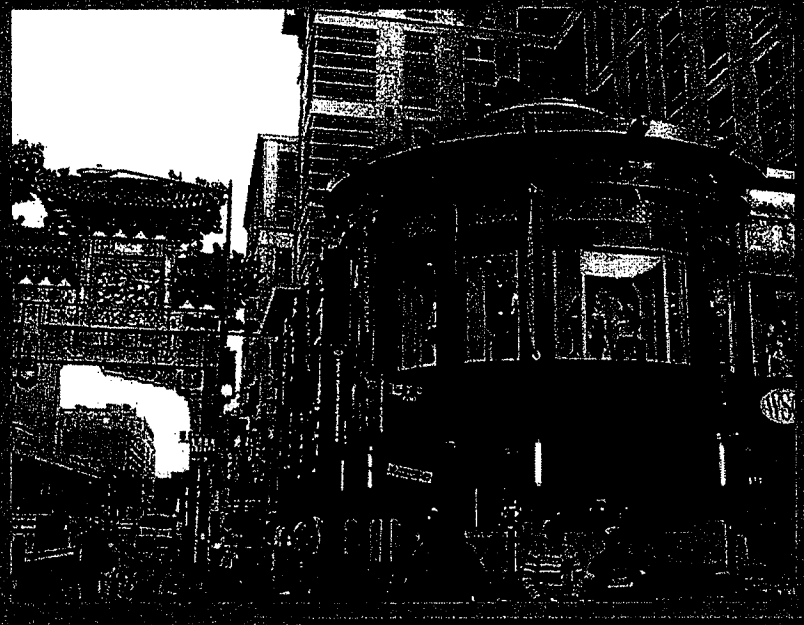
Ball Street Fund

- Founded by Brian Davis and Christian Laettner
- Headquartered in DC
- Vertically integrated development and investment company
- Focused on mixed-use projects in urban communities
- Focal project – West Village
  - 241 loft style apartments
  - Re-use of historic buildings
  - Downtown Durham, NC

WMATA-INV 014440

FOIA CONFIDENTIAL TREATMENT REQUESTED

Tompkins Builders, Inc.



- Largest DC-based general contractor
- Experience in building Metro related projects
- Experience building projects in the Shaw / Columbia Heights neighborhoods
- Committed to transit oriented developments

WMATA-INV 014441

FOIA CONFIDENTIAL TREATMENT REQUESTED

Torti Gallas + Partners, Inc.

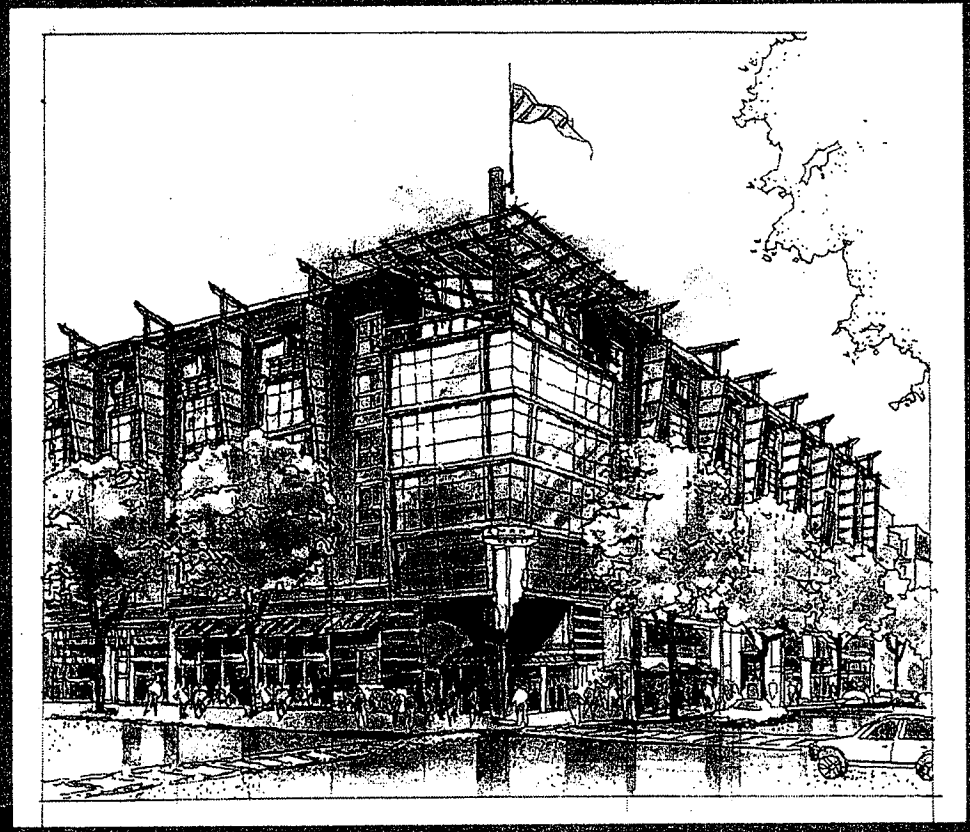
- Established in 1953
- National firm with local presence
- 65 national design awards in the last fifteen years
- Experience designing projects on WMATA land
- Expertise in mixed-use, urban infill projects
- Committed to TOD principles

WMATA-INV 014442

FOIA CONFIDENTIAL TREATMENT REQUESTED

Conceptual Design

View at the corner of 8th Street and Florida Avenue



- Mixed-use residential and retail
- 103 residential units
- 11, 750 sq. ft. retail
- 47 parking spaces for residential and retail uses
- Promote transit use
- Amenities include:
  - Theatrical Museum/Cafe
  - Utopia Jazz Restaurant
  - Additional neighborhood serving retail space

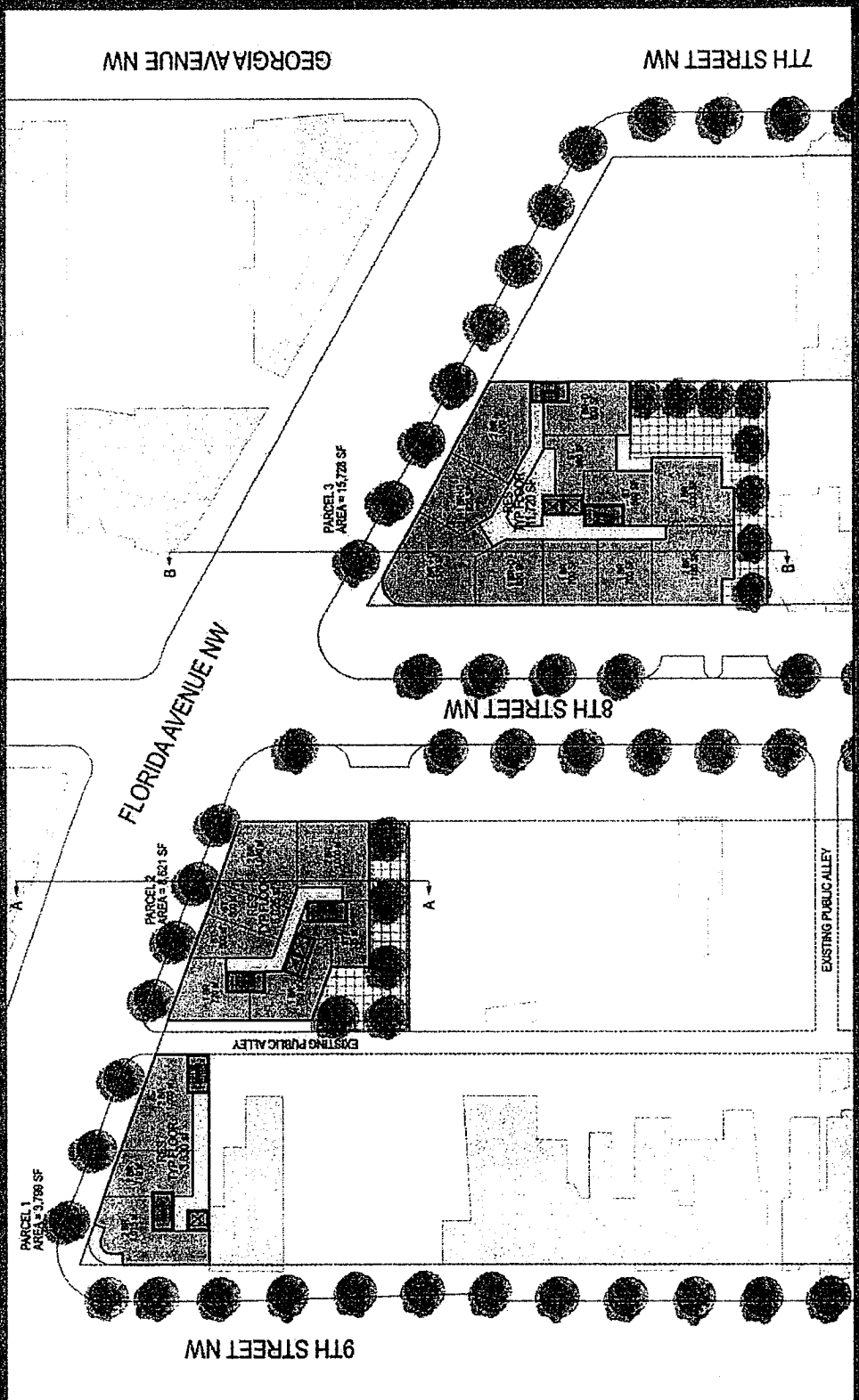
WMATA-INV 014443

Conceptual Design

Ground Floor Plan

Conceptual Design

Typical Residential Floor Plan



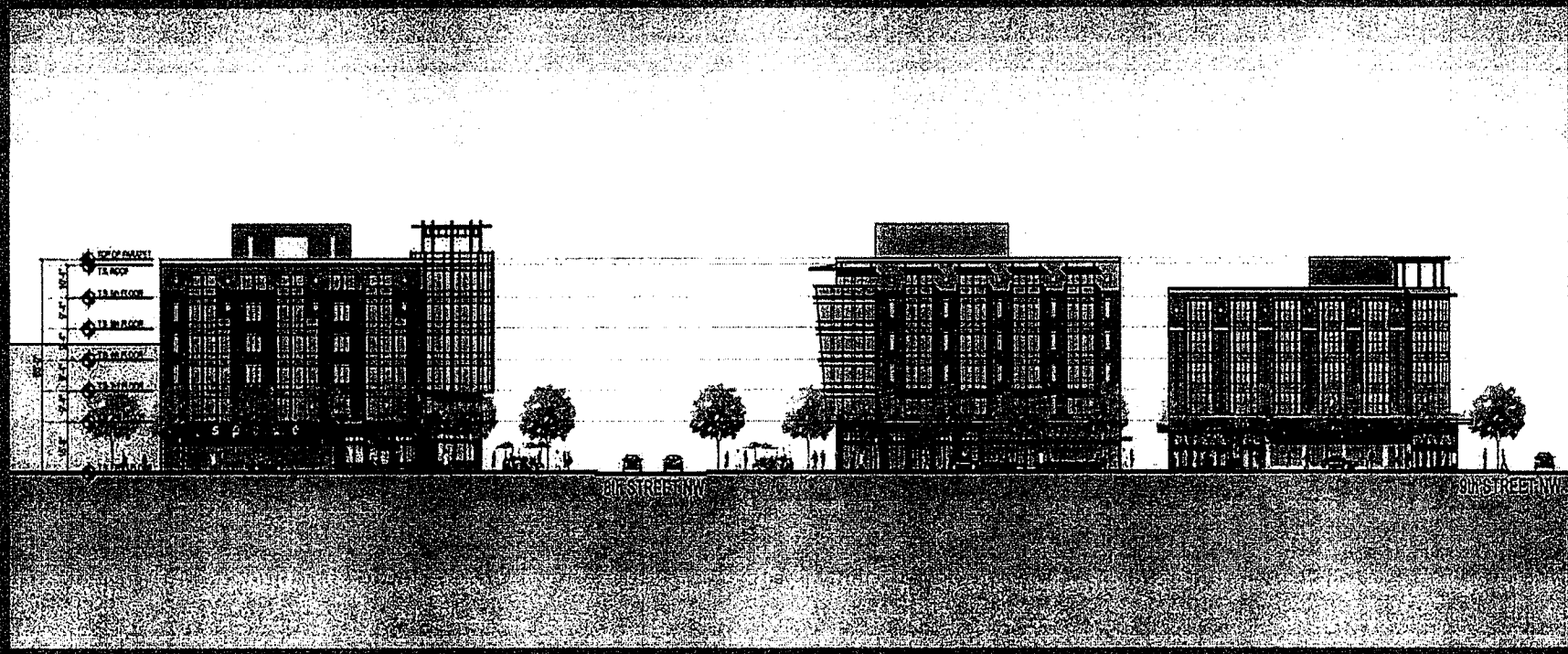
Conceptual Design

Garage Floor Plan

FOIA CONFIDENTIAL TREATMENT REQUESTED

Conceptual Design

Florida Avenue Elevation



WMATA-INV 014447

FOIA CONFIDENTIAL TREATMENT REQUESTED

Transit-Oriented Development

- TOD principles:
  - Maximize access to public transportation
  - Help accommodate new growth
  - Create compact, vibrant neighborhood centers within walking distance of transit

- How does The Jazz meet TOD principles?
  - Site within 2 blocks of 2 Metro stations
  - Served by several Metro bus lines, encouraging the use of public transportation over vehicles
  - Public realm and building design provide pedestrian and bicycle access and connectivity to existing street network
  - Mix of uses, with both residential and retail components

WMATA-INV 014448

FOIA CONFIDENTIAL TREATMENT REQUESTED

Local Jurisdiction and Community Input

- Supported by:
  - ANC Commissioner Myla Moss (1B01 Vice Chair)
  - LeDroit Park Civic Association
  - Columbia Heights Community Development Corp.
  - Lower Georgia Avenue Community Development Corp.
  - Area residents (citizen petition with 160 signatures)
- Design in conformity with:
  - Office of Planning guidelines (DUKE & Comp Plan)
  - Department of Transportation guidelines
- Presented at community charette hosted by ANC 1B

WMATA-INV 014449

FOIA CONFIDENTIAL TREATMENT REQUESTED

Benefits to Local Jurisdiction

- $36M investment in Shaw
- $268,970 in annual property taxes
- $304,212 in annual sales taxes
- $222,450 in one-time permit fees
- $350,000 in one-time transfer & recordation taxes
- 103 new residential units
- 10-20 units of affordable housing providing economic value of $2.27-$4.54M to the District
- 100 construction jobs for District & neighborhood residents
- 30 permanent jobs for District & neighborhood residents

WMATA-INV 014450

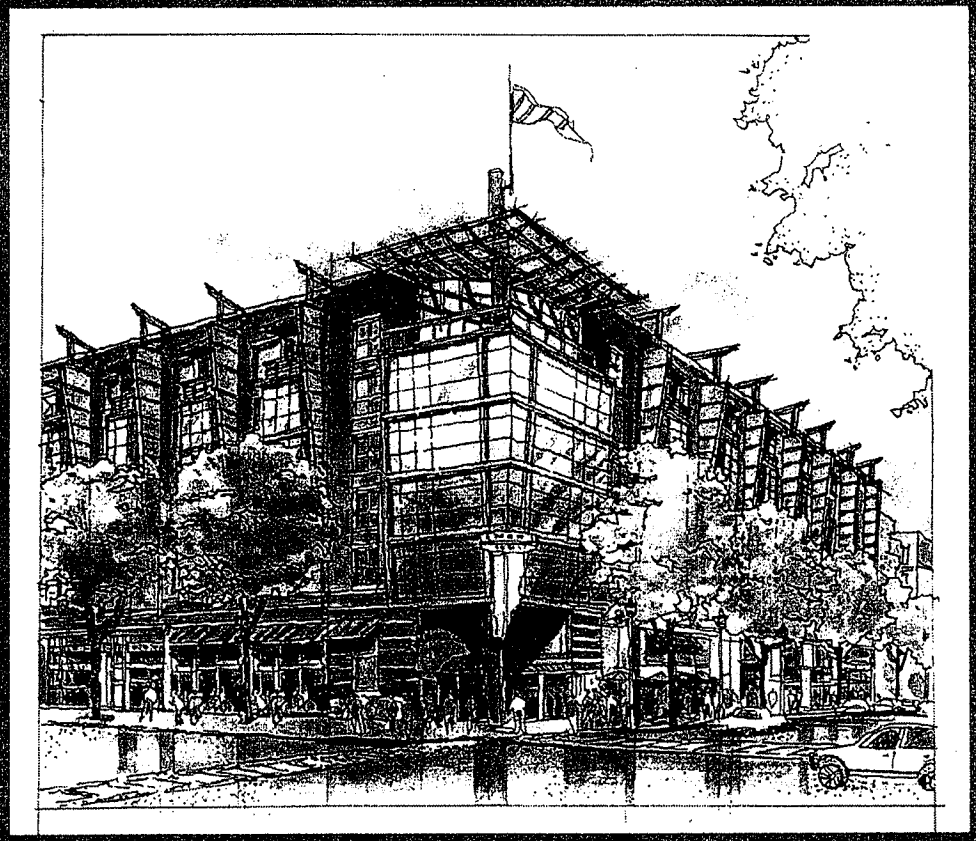
FOIA CONFIDENTIAL TREATMENT REQUESTED

Anticipated Schedule

- WMATA Negotiations and Approvals (2/08 – 6/08)
- Local Approvals
  - BZA (6/08 – 11/08)
  - HPRB (6/08 – 7/08)
  - ANC 1B (6/08 – 7/08)
- Pre-Construction (6/08 – 3/09)
- Lease Execution (3/09)
- Construction (3/09 – 4/10)
- Stabilization (6/10 – 10/10)

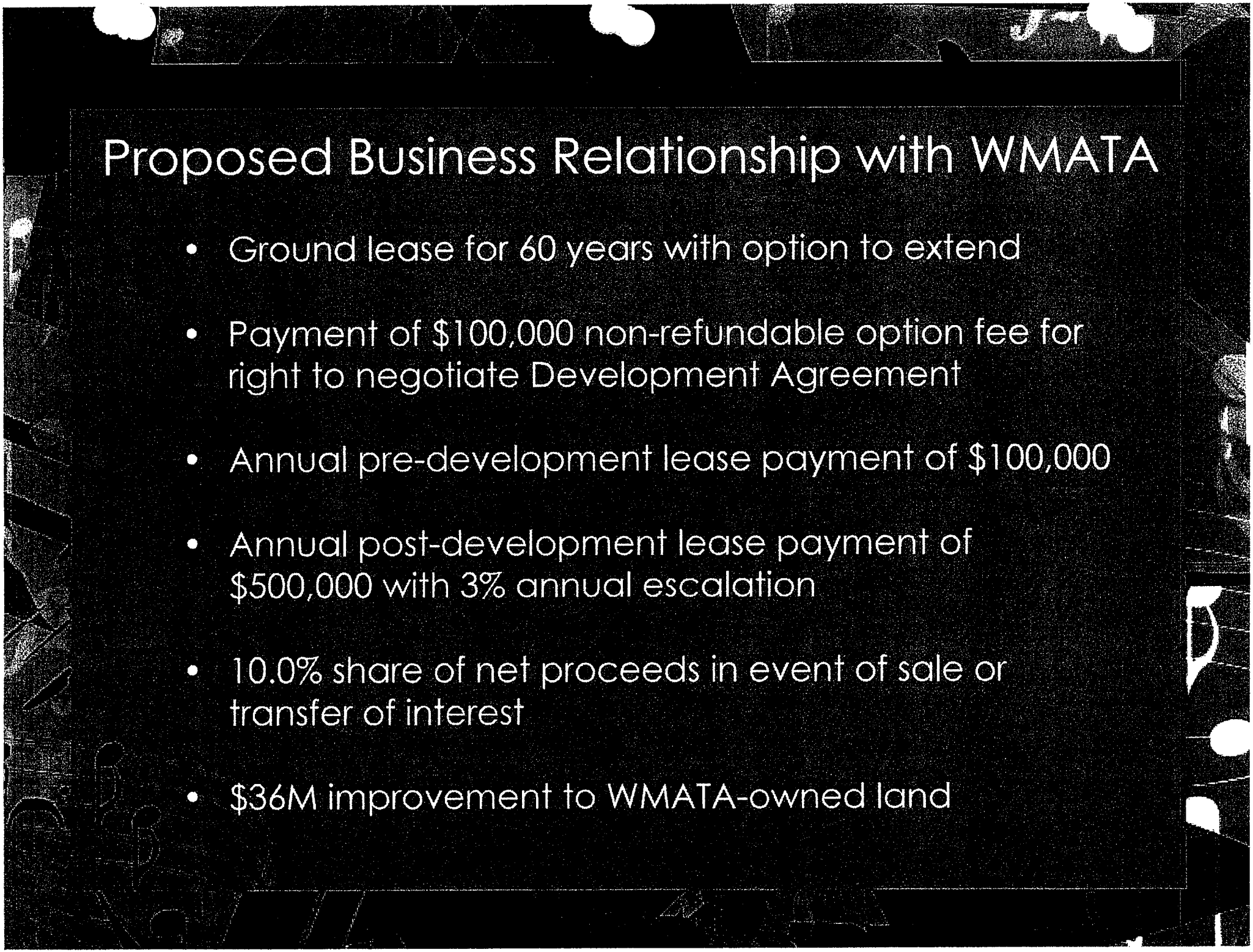
WMATA-INV 014451

FOIA CONFIDENTIAL TREATMENT REQUESTED



Section 2: Financial Information

WMATA-INV 014452



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014453

FOIA CONFIDENTIAL TREATMENT REQUESTED

Financial Viability

- Conservative proforma
- Debt coverage ratio of 1.27
- No public subsidies required
- No land assemblage contingency
- Uses supported by market demand

WMATA-INV 014454

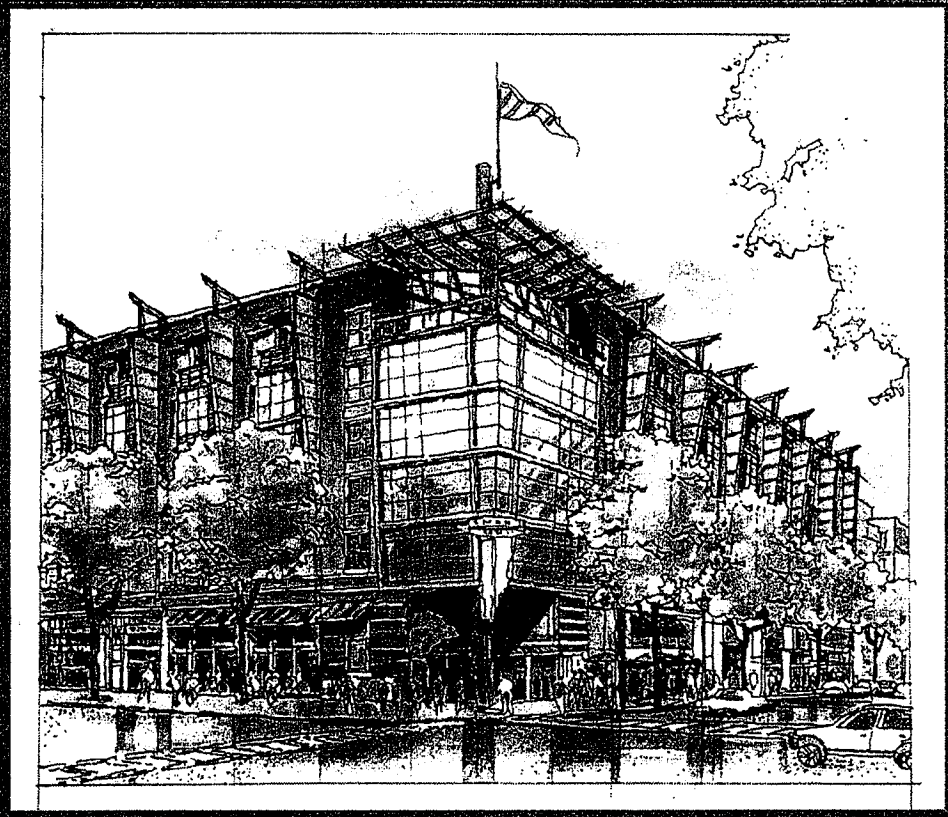
FOIA CONFIDENTIAL TREATMENT REQUESTED

Financial Viability

- Expressions of interest from institutional equity and debt partners
  - MacFarlane Partners
  - Ball Street Fund
  - DC Housing Finance Agency
  - Bank of Georgetown
  - PNC Bank
  - HSBC Bank

WMATA-INV 014455

FOIA CONFIDENTIAL TREATMENT REQUESTED



The Jazz at Florida Avenue

A Joint Venture of
Banneker Ventures, LLC and District Development Group, LLC

WMATA-INV 014456

BANNEKER VENTURES, LLC

January 29, 2008

BY HAND

Joel R. Washington, Director
Station Area Planning and Asset Management
Washington Metropolitan Transit Authority
600 Fifth Street, NW
Washington, DC 20001

RE: Shaw – Howard Florida Avenue Joint Development Solicitation

Dear Mr. Washington:

I am writing to inform you that Howard University has selected our team, Banneker Ventures and District Development Group, along with Metropolis Development Company, to be the developer for the CVS site adjacent to the WMATA-owned Shaw-Howard/Florida Avenue site. We wanted to immediately inform you of this development as it may impact your consideration in making a final selection of an offeror that best suits your site. Please find the enclosed letters from Metropolis and Howard regarding the adjacent CVS site.

The adjacent parcel owned by Howard and currently improved by a CVS, represents an important opportunity for WMATA to maximize density at this key intersection, and increasing WMATA ridership because of the proposed use on the site (a 140 room hotel), all while working with one development team to ensure the best project for these key parcels. Please also find attached 3 copies of the updated program incorporating the Howard-owned site. We would be happy to meet with you and your staff to discuss our plans for this site in more detail, the opportunities it presents for the WMATA-owned Shaw-Howard/Florida Avenue site, and to answer any remaining questions you may have about our proposal.

Additionally, during our interviews with you and your team last month, you all asked when would WMATA receive its share of cash flow or profit from the project. As a development partners, WMATA would receive its share along with the other developers after a reasonable preferred return is paid to the equity investors (principally MacFarlane Partners). As we begin negotiating a term sheet with WMATA, we will know the exact return that will be. However, based on our negotiations to date with MacFarlane, it looks like the return would be 12%. Following the payment of this return, the development partners (including WMATA) would begin sharing in the share of cash flow and/or profit. We believe that with the guaranteed

700 12th Street, NW • Suite 700 • Washington, D.C. 20005 • (202) 667-4110
814 Thayer Avenue • Suite 300 • Silver Spring, Maryland 20910 • (301) 565-4980
www.bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED

annual lease payment, coupled with this share in cash flow and/or profit, WMATA would best benefit from a partnership with our team.

Thank you for your time and continued consideration. Please call me at (202) 667-4110 with any questions.

Sincerely,

Omar A. Karim

Attachments

HOWARD UNIVERSITY

Office of Real Estate Development
and Asset Management

February 15, 2008

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

Dear Mr. Karim:

Howard University has reviewed your plans for the proposed development of the WMATA-owned Shaw-Howard/ Florida Avenue site and the adjacent Howard University owned parcel situated along Georgia Avenue. We are interested in exploring the possibility of participating in this joint development, which will allow for mixed-use development adjacent to a major metro station. This Project allows for the maximization of the potential value of the area and fulfills the District's plan for more dense development along Georgia Avenue. Additionally, the development of a hotel at this location will support Howard's objectives to provide accommodations for visitors to the hospital complex as well as the University.

We understand that you will be partnering in this project with Metropolis Development Company and the MacFarlane Partners, and believe that they will bring significant experience and financial capability to the development team. Their past experience working with WMATA and the District should help to ensure the successful development of this Transit Oriented Development.

We will be pleased to partner with Banneker Ventures, LLC, Metropolis Development Company and MacFarlane Partners (the "Development Team") in the joint development of the Howard/WMATA sites as a mixed-use project. This will be conditioned upon the selection of the Development Team by WMATA and your refinement of the plans and the completion of the necessary due diligence to our satisfaction.

Sincerely,

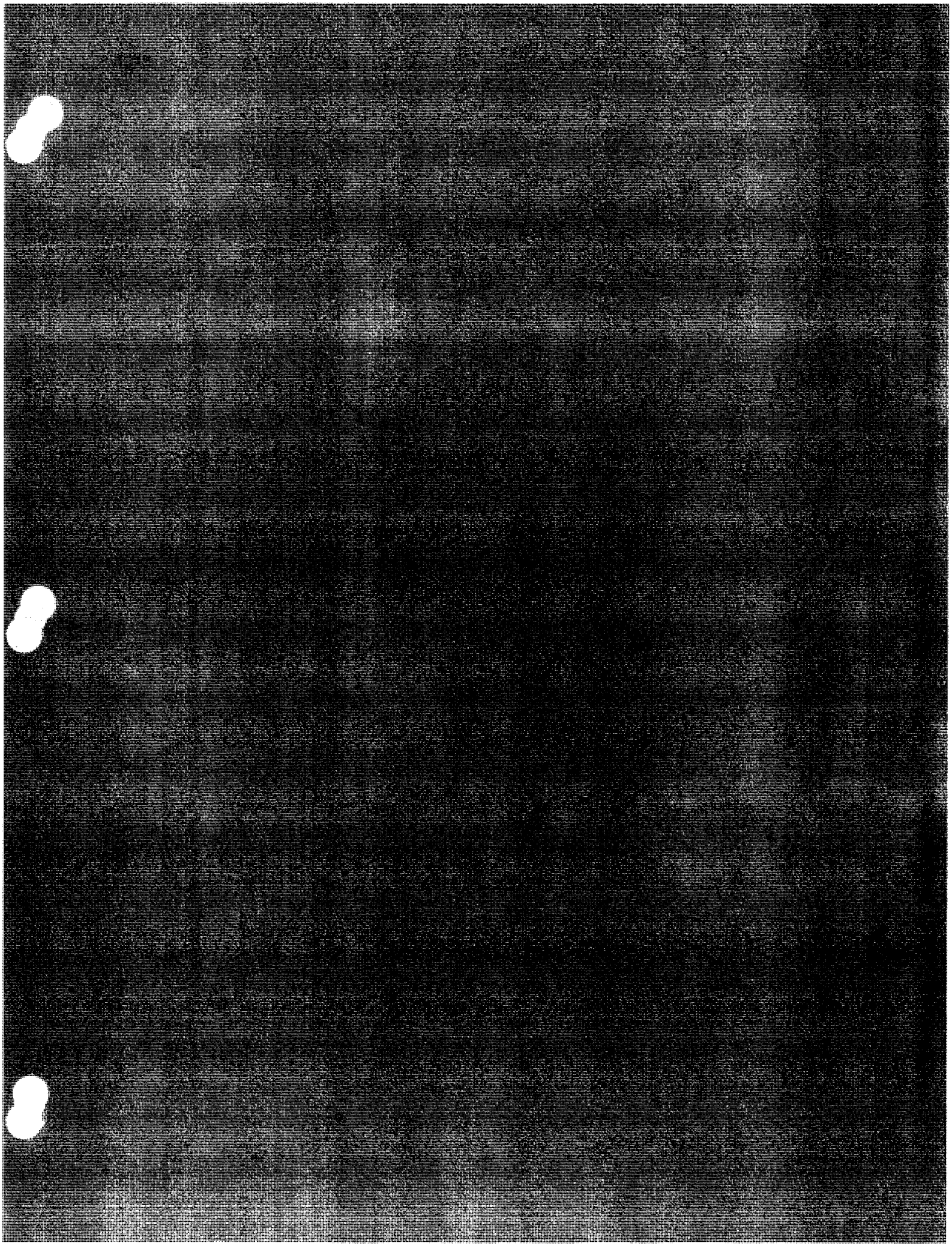
Diane E. Branch
Associate Vice President

cc: Hassan Minor, Jr., Ph.D.

2225 Georgia Avenue, NW, Suite 510
Washington, DC 20059

Telephone 202 238 2381
Facsimile 202 986 2953
www.howard.edu

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

om: Omar A. Karim <okarim@bannekerventures.com>
ent: Saturday, March 01, 2008 10:45 PM
To: joshuakern@districtdevelopmentgroup.com; 'Phinis Jones'
Cc: warren@bannekerventures.com
Subject: WMATA/HU project - Next steps
Attachments: Outline of Operating Agreement between BV, DDG, and Metropolis (HU parcel).doc; Outline of Operating Agreement between BV, DDG, and Metropolis (WMATA parcels).doc

Josh and Phinis,

Again, congratulations on all of your work to get us where we are on this deal!!! I could hardly sleep last night and this morning. Been up going full speed! Warren and I, like you two, are so excited.

With the short time period to execute a term sheet with WMATA (10 days from receipt of the term sheet, I believe), we have taken the liberty the draft an outline of two operating agreements between DDG, BV and Metropolis for the WMATA and HU sites. WMATA has said that they want to do their project separately. I included 35% share in development fees and promote to DDG and BV and 30% share in development fees and promote to Metropolis—although we did have not discussed this with Metropolis. Also spelled out a few more details that were not originally spelled out in the docs we were using earlier with Donatelli. Lets see if we can get on a conf. call tomorrow evening, if possible or Monday at the latest. Please advise if tomorrow evening (say 8pm) works or Monday at the same time.

e should get the term sheet from WMATA on Monday or Tuesday (according to Rosalyn Doggett). We have a couple f things to do before a term sheet—and later, a Joint Development Agreement—is executed, including:

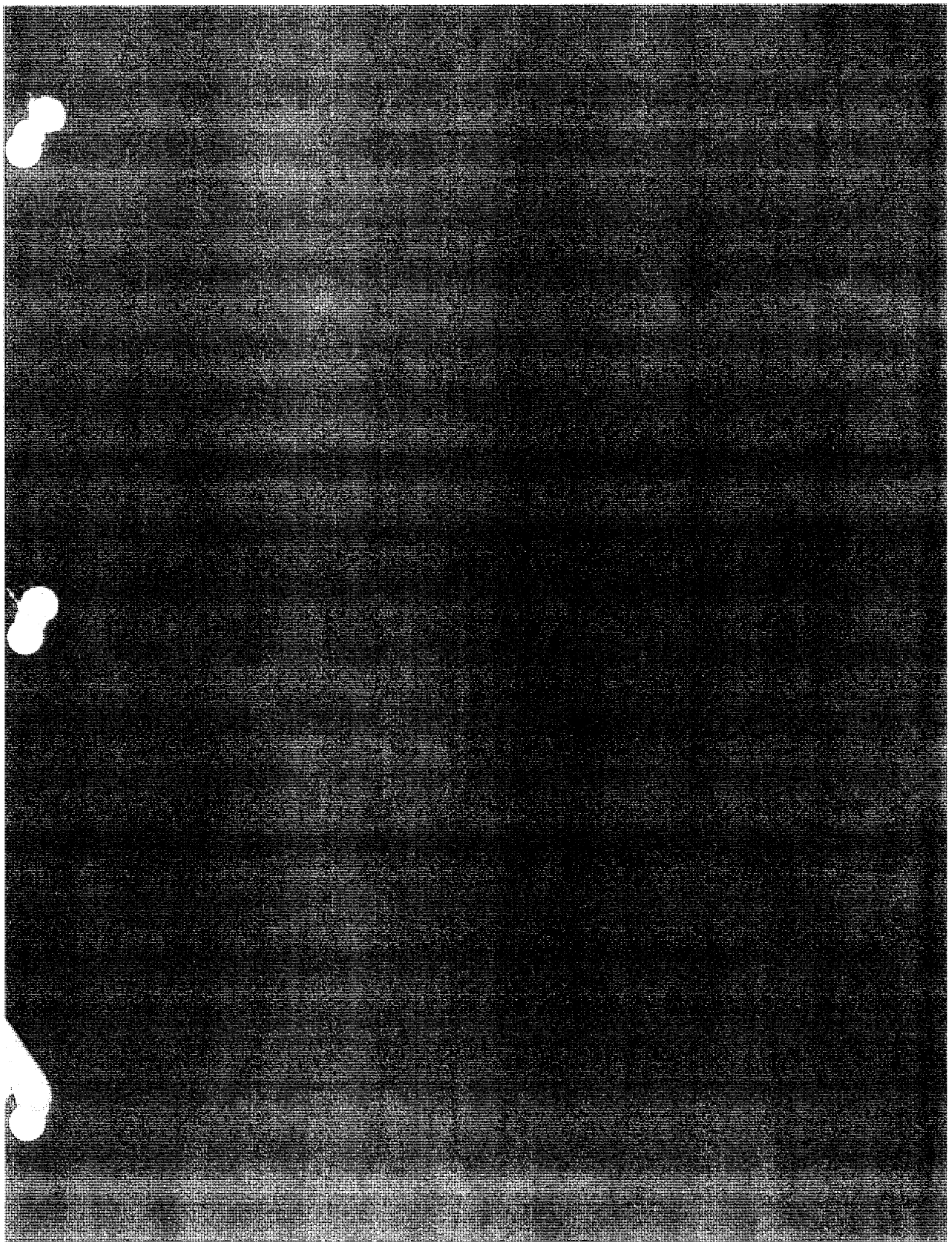
- Getting the outline of the Company's operating agreement together (b/t DDG, BV and Metropolis) for the WMATA site;
- Meet with our attorney (whom we recommend to be Art Horne of Shipley Horne) to negotiate the term sheet with WMATA. Mr. Horne recently negotiated a Joint Development Agreement for a buddy of mine who has been awarded two Metro sites in Prince George's County. He knows all the WMATA folks, including Joel and Rosalyn and believes we could meet Rosalyn's timeline;
- Putting together a pre-development budget;
- Getting the outline of the Company's operating agreement together (b/t DDG, BV and Metropolis) for the HU site;
- Meeting with Howard to map out a timeline to get an agreement together with them;

We should all review all of the docs that we submitted to WMATA, with a specific view on what we told WMATA we would do and under what schedule. Its going to be very aggressive. We will have to run on all cylinders. Ground breaking expected to take place 13 months from today.

Omar A. Karim
Banneker Ventures, LLC
0 12th Street, NW, Suite 700
/ashington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

[redacted]

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Rosalyn Doggett <rdoggett@wmata.com>
Sent: Tuesday, March 04, 2008 5:15 PM
To: okarim@bannekerventures.com
Cc: eric.smart@bolansmart.com; Joel R. Washington; Marc E. Biondi
Subject: ShawHoward Fl. Ave Project Term Sheet
Attachments: ShawHoward FL AVE Term Sheet 1- 3-3-08.rtf

Omar, please find below a draft term sheet for the Project for which Banneker Ventures has been tentatively selected as developer.

Upon your review, please call me as to next steps within the tight time frame in which we would like to execute a mutually satisfactory document.

You will note that the base rent is initally higher than what you proposed. This is as a result of FTA oversight, which I can explain to you as we discuss what I have inserted. The base rent does not contemplate affordable housing. Again, this is something that we can discuss.

Please also note that, in the interest of saving time, our General Counsel has not completed its review of the term sheet and that any final negotiated docuument will be subject to review and approval by our General Counsel.

I look forward to hearing from you. Please do call if you have any questions at the outset.

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

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

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

   1.2 Banneker Ventures, LLC, together with District Development Group, LLC and Metropolis Development Company LLC, will form a limited liability corporation for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, the terms of which consent will be provided in the Definitive Agreement.

2. **Definitive Agreement**
   The Definitive Agreement, to be presented to the Board for approval within five months' of Board Term Sheet approval, will be a Master Development Agreement ("MDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of fourteen months (14) months after the WMATA Board approves the Term Sheet or the issuance of the initial building permit to the DEVELOPER for the DEVELOPER Improvements.

3. **Property to Be Leased by Developer**
   WMATA will lease to DEVELOPER approximately 28, 892 sf of land area outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31.

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

   4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47

FOIA CONFIDENTIAL TREATMENT REQUESTED

below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

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

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide representations customarily acceptable to WMATA, but will not warrant title to the Leased Premises, the environmental history or condition of the property, or the fitness of the Leased Premises for any use. Subject to the representations customarily acceptable to WMATA, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: No later than full execution of the Definitive Agreement, WMATA will grant DEVELOPER a Right-of-Entry Permit. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period").

6. Security Deposit

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

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

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if the Definitive Agreement is not consummated for any reason other than WMATA's default, non-satisfaction of an express condition precedent to DEVELOPER's obligations, or DEVELOPER exercising its rights under the Study Period.

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

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

7. Consideration

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014467

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

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement, or twenty-eight (28) months after WMATA Board approval of the Definitive Agreement (the "pre-stabilization Period"). Pre-stabilization Rent will be $100,000 per year payable in advance in quarterly instalments of $25,000.

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a penalty payment. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly. In no event shall the Initial Base Rent (for a full year) be less than Five Hundred and Eighty Thousand and No/100 Dollars ($580,000.00). After the Initial Base Rent payment, Base Rent will be due annually on the first day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent multiplied by 1.--* for that year (the "Initial Escalation Factor"). [*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year10 of the lease]

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

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

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser

FOIA CONFIDENTIAL TREATMENT REQUESTED

process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.4 Capital Event Participation: Whenever a capital event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital events include assignments of the Definitive Agreement or the Lease, sales or re-financings of DEVELOPER's Improvements, and other dispositions, transfers, and conversions ("Capital Event"). Any transaction, at any level of organization, that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER's Project lender. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease as a result of any Capital Event.

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

7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement, WMATA will refund DEVELOPER's Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER.

7.8 WMATA Delays: The maximum length of 28 months for the Pre-stabilization Period will be extended, on a day-for-day basis, for delays caused by WMATA. In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, even though DEVELOPER's schedule may take longer than anticipated.

7.9 Additional Density:

7.9.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf of additional density and

FOIA CONFIDENTIAL TREATMENT REQUESTED

multiplying the product derived (Project land value) by 7%.

7.9.2 During the term of the Lease, any densities or unit totals approved for DEVELOPER Improvements that are more than those originally shown in the Approved site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above.

8. Conditions to Definitive Agreement Consummation

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

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

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

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

9. Special Considerations

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

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014470

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 014471

included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Circular 9300.1.A, Appendix B.

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

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

10. Indemnification

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

11. Insurance Requirements

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

12. Non-Binding Intent

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014472

This Term Sheet will have no binding effect on the parties. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet.

Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

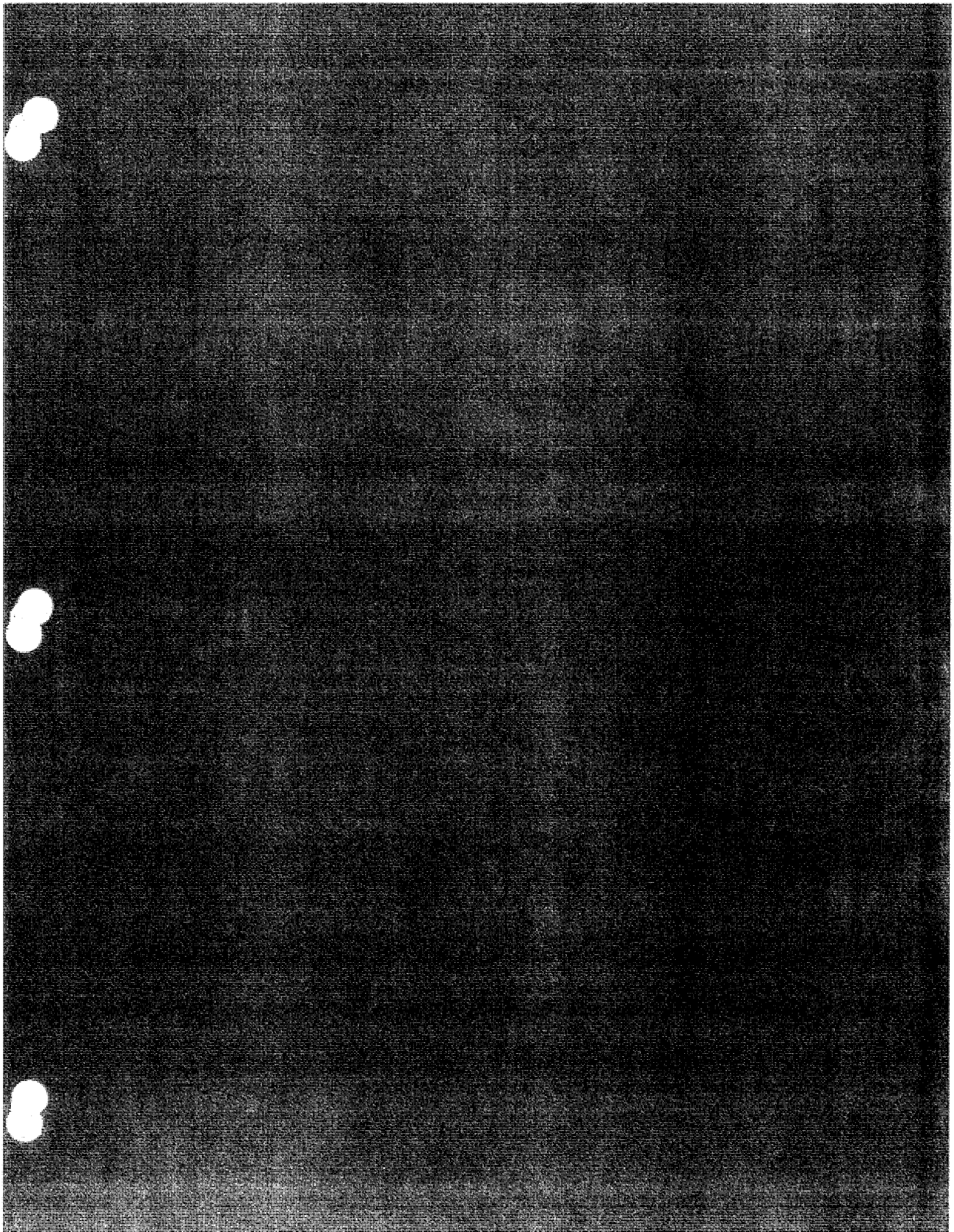
By:
Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title:

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014473



Omar Karim

From: Rosalyn Doggett <rdoggett@wmata.com>
Sent: Monday, March 10, 2008 11:20 AM
To: okarim@bannekerventures.com
Subject: Florida Avenue Term Sheet

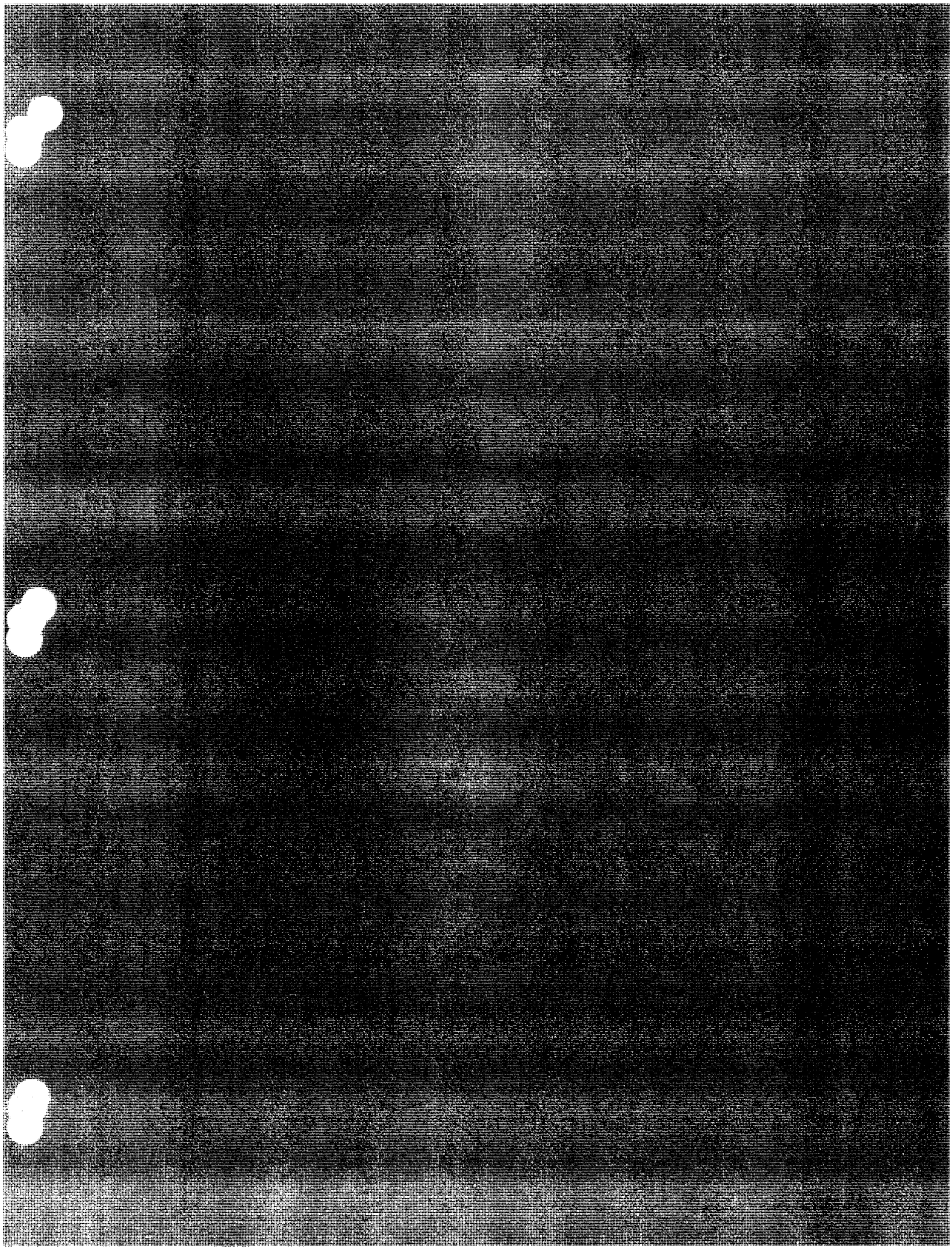
Good Morning, Omar

I have a briefing with my dept. head tomorrow a.m. and need to know that the Term Sheet is acceptable, particularly financial aspects which cannot go lower aftter I take to Board, and that your team is locked in.

Please advise.

Thanks, Rosalyn

FOIA CONFIDENTIAL TREATMENT REQUESTED

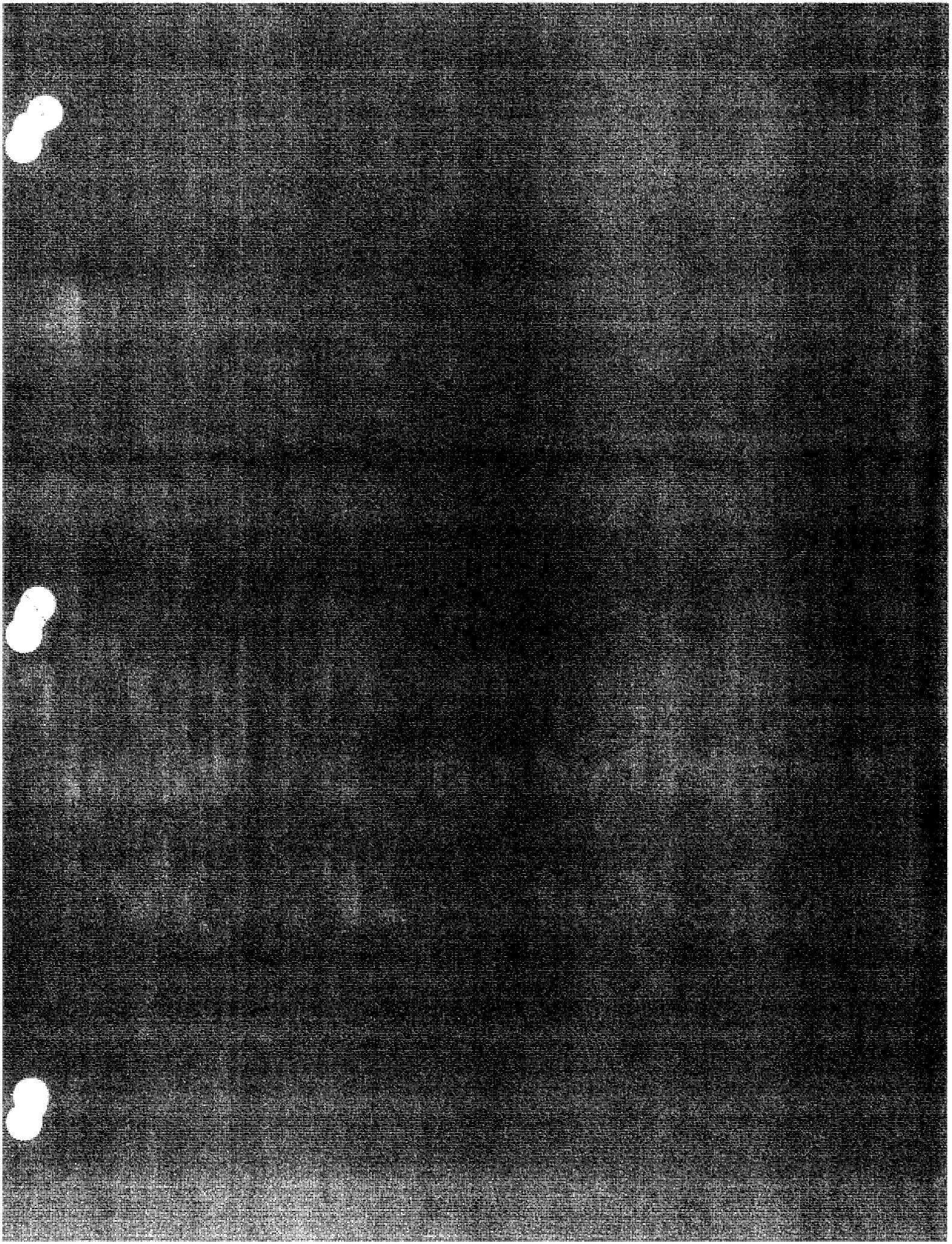


Omar Karim

From: Rosalyn Doggett <rdoggett@wmata.com>
Sent: Monday, March 10, 2008 1:29 PM
To: selfar@tortigallas.com; sfarrel@tortigallas.com; shaung@tortigalls.com; boloney@tortogallas.com
Cc: okarim@bannekerventures.com
Subject: florida avenue site plan

Please send me ASAP today a jpeg of the Jazz at Florida Avenue site plan dated 10/7/07. I have copied everyone since I am not sure who might be in the office. If questions please call me at 202 962 2208 or e-mail back.
Thanks, Rosalyn

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Stephanie Farrell <sfarrell@tortigallas.com>
Sent: Monday, March 10, 2008 2:03 PM
To: rdoggett@wmata.com
Cc: okarim@bannekerventures.com; Sherief Elfar; Sharon Huang
Subject: RE: florida avenue site plan
Attachments: 07138_Jazz100507.jpg

Rosalyn,
Please find attached site plan of the Jazz from 10/5/07 per your request. If this is not what you were looking for, please let me know.

Thank you,
Stephanie

Stephanie Farrell, LEED AP
Torti Gallas and Partners
1300 Spring Street, Suite 400
Silver Spring, MD 20910
Phone: 301-588-4800
Fax: 301-650-2255
Direct Dial: 240-645-1258
w.tortigallas.com

----Original Message-----
From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Monday, March 10, 2008 1:29 PM
To: Sherief Elfar; sfarrel@tortigallas.com; shaung@tortigalls.com; boloney@tortogallas.com
Cc: okarim@bannekerventures.com
Subject: florida avenue site plan

Please send me ASAP today a jpeg of the Jazz at Florida Avenue site plan dated 10/7/07. I have copied everyone since I am not sure who might be
in the office. If questions please call me at 202 962 2208 or e-mail
back.
Thanks, Rosalyn

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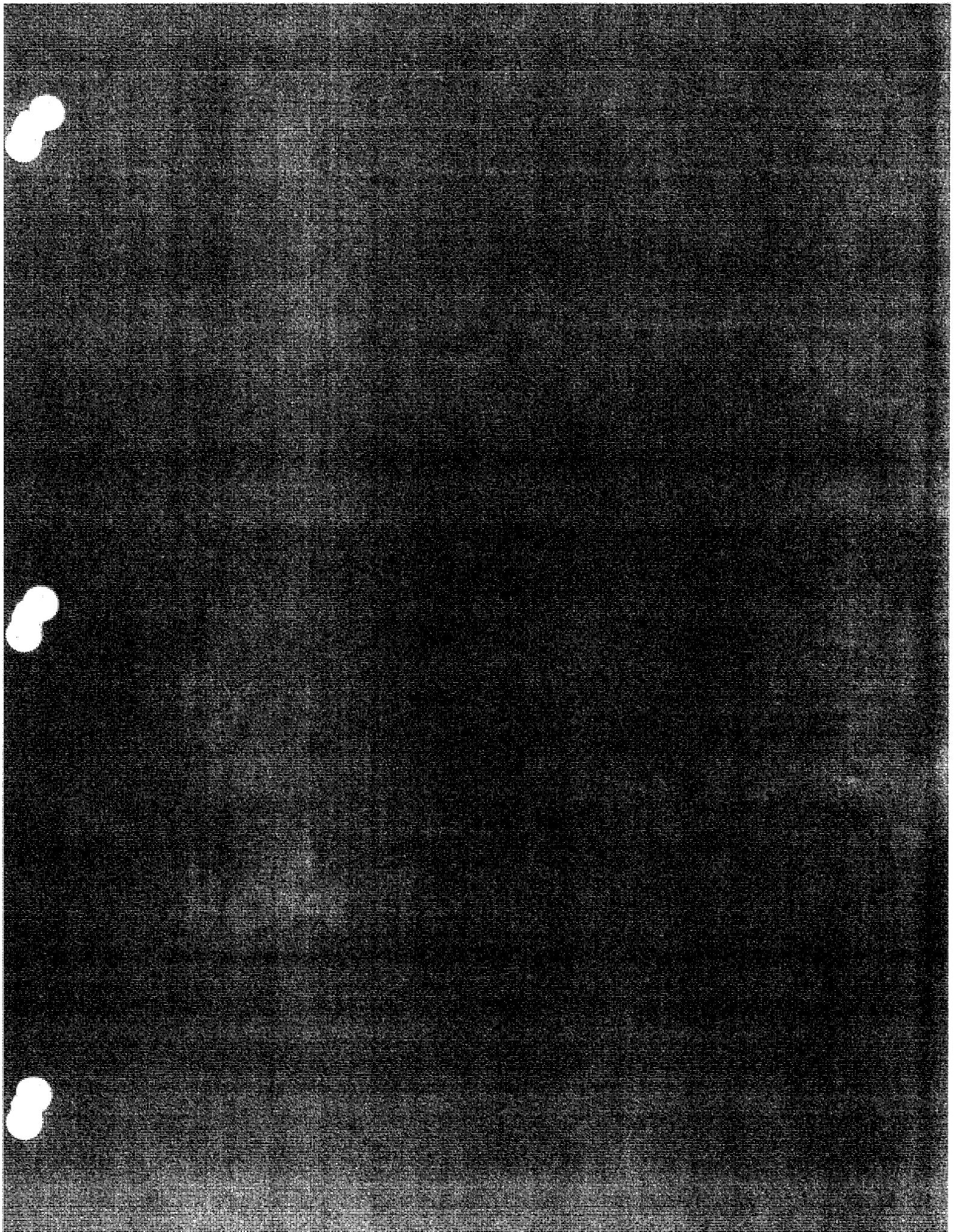


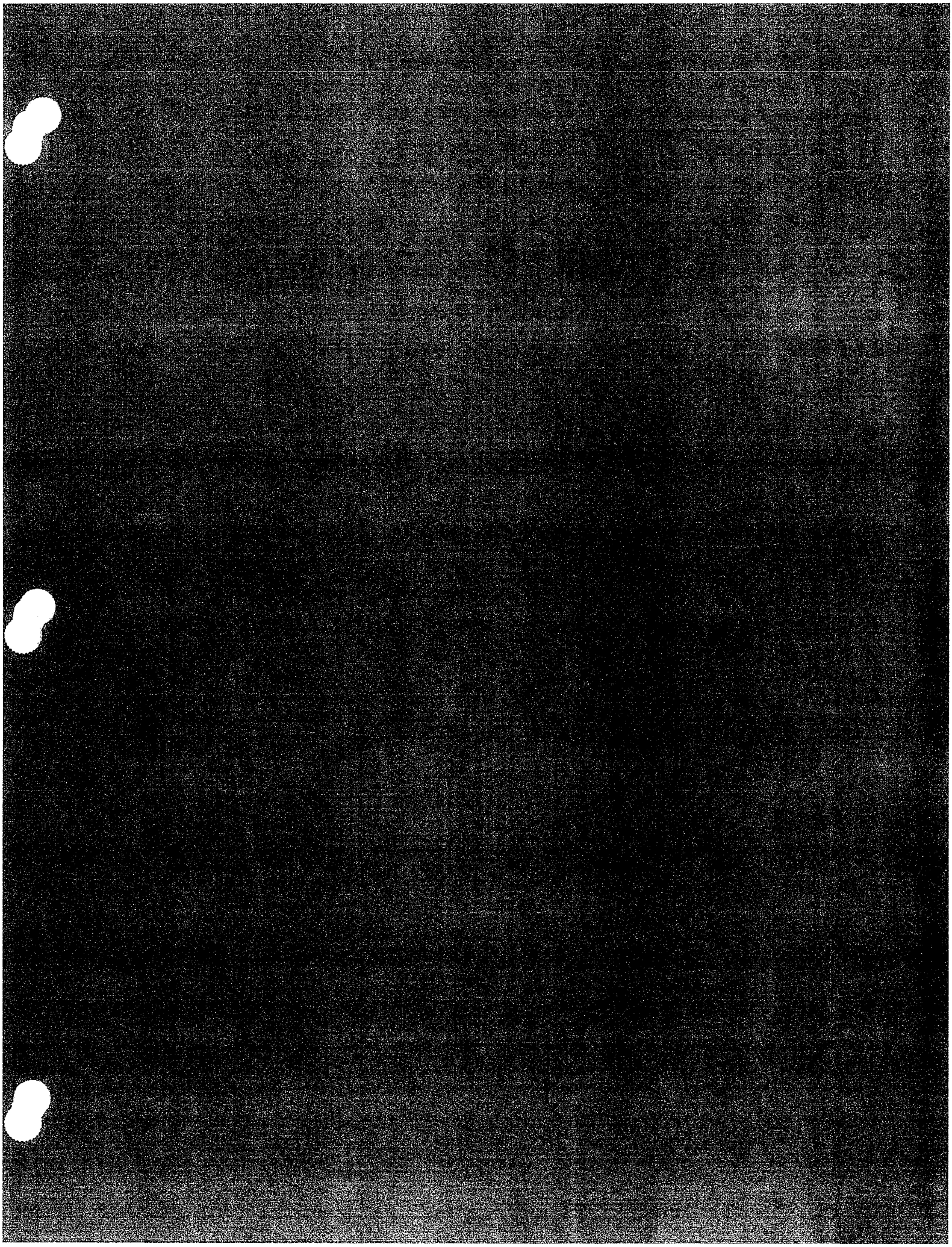
Omar Karim

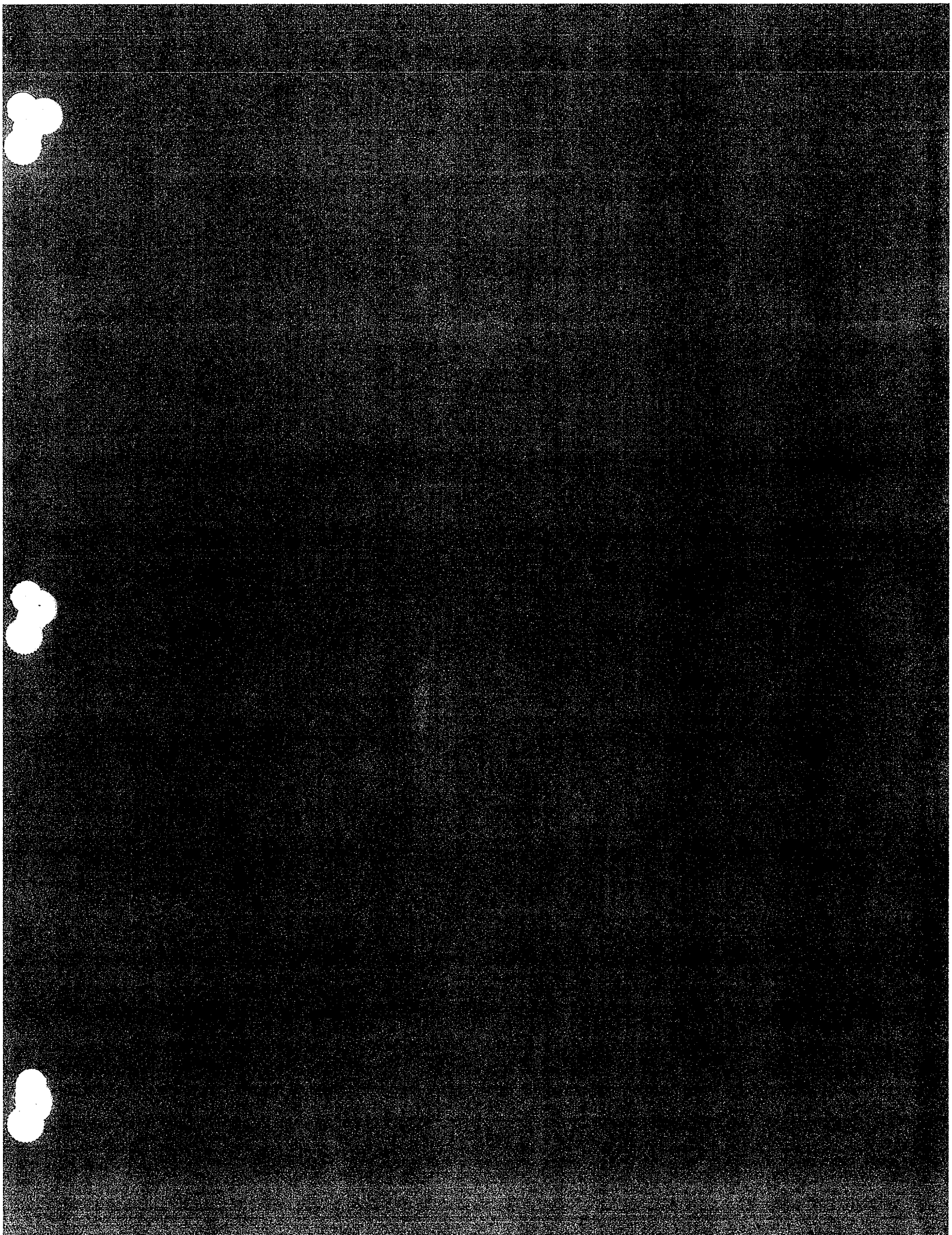
From: Rosalyn Doggett <rdoggett@wmata.com>
Sent: Monday, March 10, 2008 5:10 PM
To: okarim@bannekerventures.com
Cc: Marc E. Biondi
Subject: term sheet discussion

Marc Biondi, Office of General Counsel, and I have scheduled time to review your markup at 9:30 on March 12. We have scheduled a call or meeting with you on March 13 at 9:30.

If your markups are very few, perhaps-- but I don't promise at all-- we could accomplish both on March 12. We will have to see.

FOIA CONFIDENTIAL TREATMENT REQUESTED





3/11/08

1. Send HOC chart
2. Call Jaron 301-905-2024
3.

Mtg w/ MacFarlane Partners 3/11/08

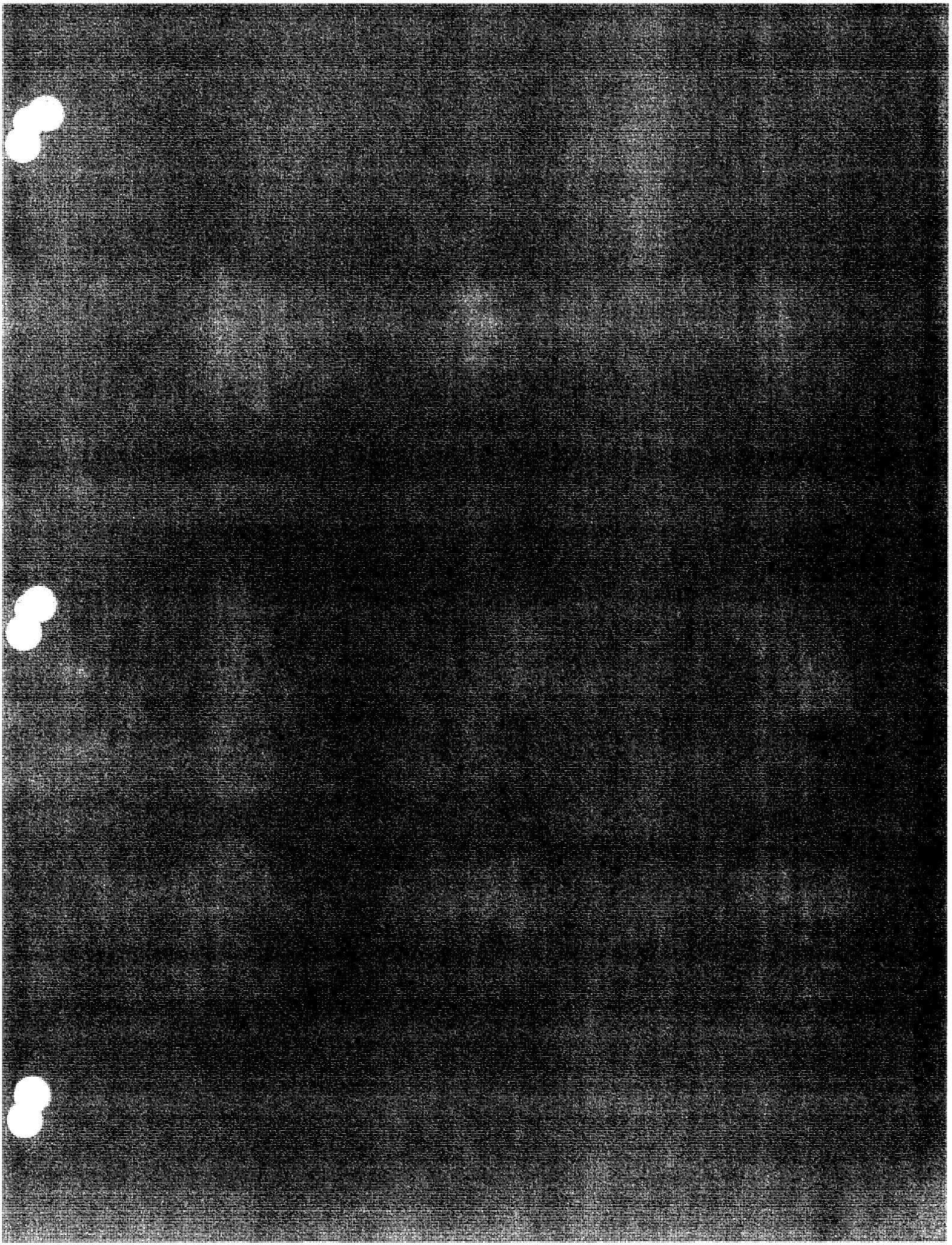
1. Email Proforma
2. 7%
3. 70% LTC - Construction.
4. Term sheet: 3/19
5.

Conf call w/ WMATA re: FL Ave Project. 3/13/08 10AM

Rosalyn Doggett
Marc Brown
Joel Washington

Appraisal JrWashington @ (202)962-2396

Concrete - 165 sf 152 Infinity Sys



Omar Karim

From: Omar A. Karim <okarim@bannekerventures.com>
Sent: Wednesday, March 12, 2008 7:36 PM
To: 'Rosalyn Doggett'; 'Marc E. Biondi'
Cc: 'Bryant, Seth'; 'Flynn, Guy'; Warren Williams; malone@metropolis-dc.com; 'Joshua Kern'; phinisjones@comcast.net
Subject: Updated Schedule - The Jazz @ Florida Avenue
Attachments: WMATA Project Schedule (as of March 2008).mpp

Rosalyn and Marc,

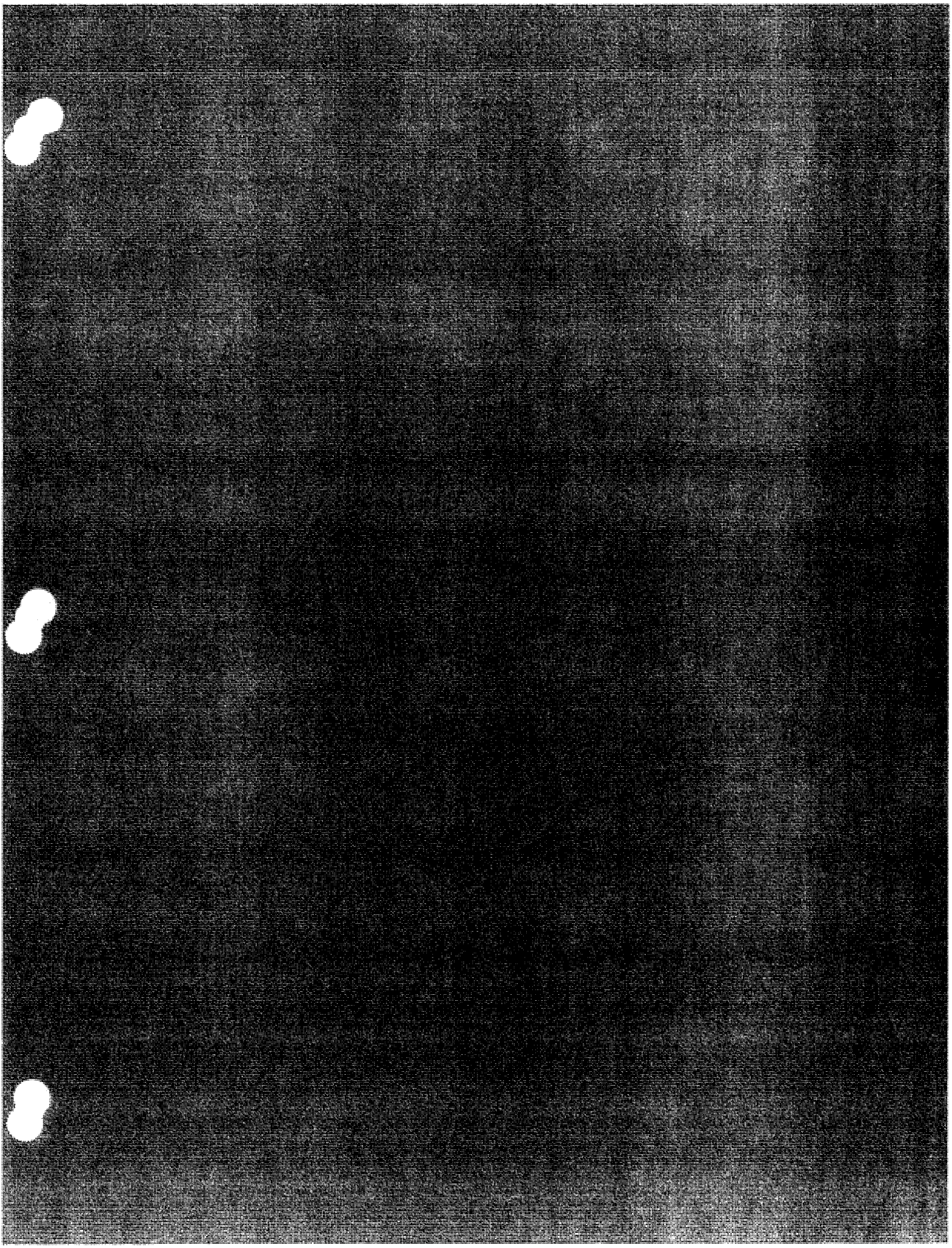
In preparation for tomorrow's conf call, we attach for your review the updated project schedule which reflect among other things, the proposed dates that the WMATA Board will approve the Term Sheet and Definitive Agreement (from Rosalyn), time to complete the designs (from Torti Gallas) and lease-up schedule (Delta Associates Year End 2007 Report of the lease-up pace). We look forward to speaking with you at 10am.

Best,

Omar

Omar A. Karim
Banneker Ventures, LLC
0 12th Street, NW, Suite 700
Vashington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

om:	Rosalyn Doggett <rdoggett@wmata.com>
ent:	Friday, March 14, 2008 12:51 PM
To:	okarim@bannekerventures.com
Subject:	Re: WMATA Project Schedule (as of March 2008).pdf - AdobeAcrobat Professional

Omar, as I conveyed in our phone conversation, please note that the rental payments to reach "status quo ante" would be

Pre-stabilization rent
$100,000/ year(pro-rated) for first 15 months
$115,000 for subsequent year
$130,000/year thereafter, pro-rated to the "outside date" for stabilization (45 months after definitive agreement execution)

First base rent paynent $597,000
Base rent scalated for first 10 years of lease payments at 1.5%/year Base rent escalated thereafter at 3%/year

Please note also that in section 7.9 any payments for additional density would be $60/FAR sf x 7% escalated annually from the date of development agreement execution until first base rent payment, when it is simply added to base rent.

I have to leave now. I hope I have covered the bases. Look forward to talking to you on Monday.
lyn

>> "Omar A. Karim" <okarim@bannekerventures.com> 3/13/2008 1:05 PM >>>
Great. Monday @ 9am it is. Seth will send out a dial-in #.
------Original Message------
From: Rosalyn Doggett
Sender:
To: Omar A. Karim
To: Marc E. Biondi
Cc: Guy' 'Flynn
Cc: Seth Bryant
Sent: Mar 13, 2008 12:55 PM
Subject: Re: WMATA Project Schedule (as of March 2008).pdf - AdobeAcrobat Professional

My Monday morning is open; I can converse any time and suggest 9 a.m.

>>> "Omar A. Karim" <okarim@bannekerventures.com> 3/13/2008 9:41 AM >>>
Hello,

Attached you will find the updated project Schedule as of March 2008.

.nanks

FOIA CONFIDENTIAL TREATMENT REQUESTED

C r A. Karim

anneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

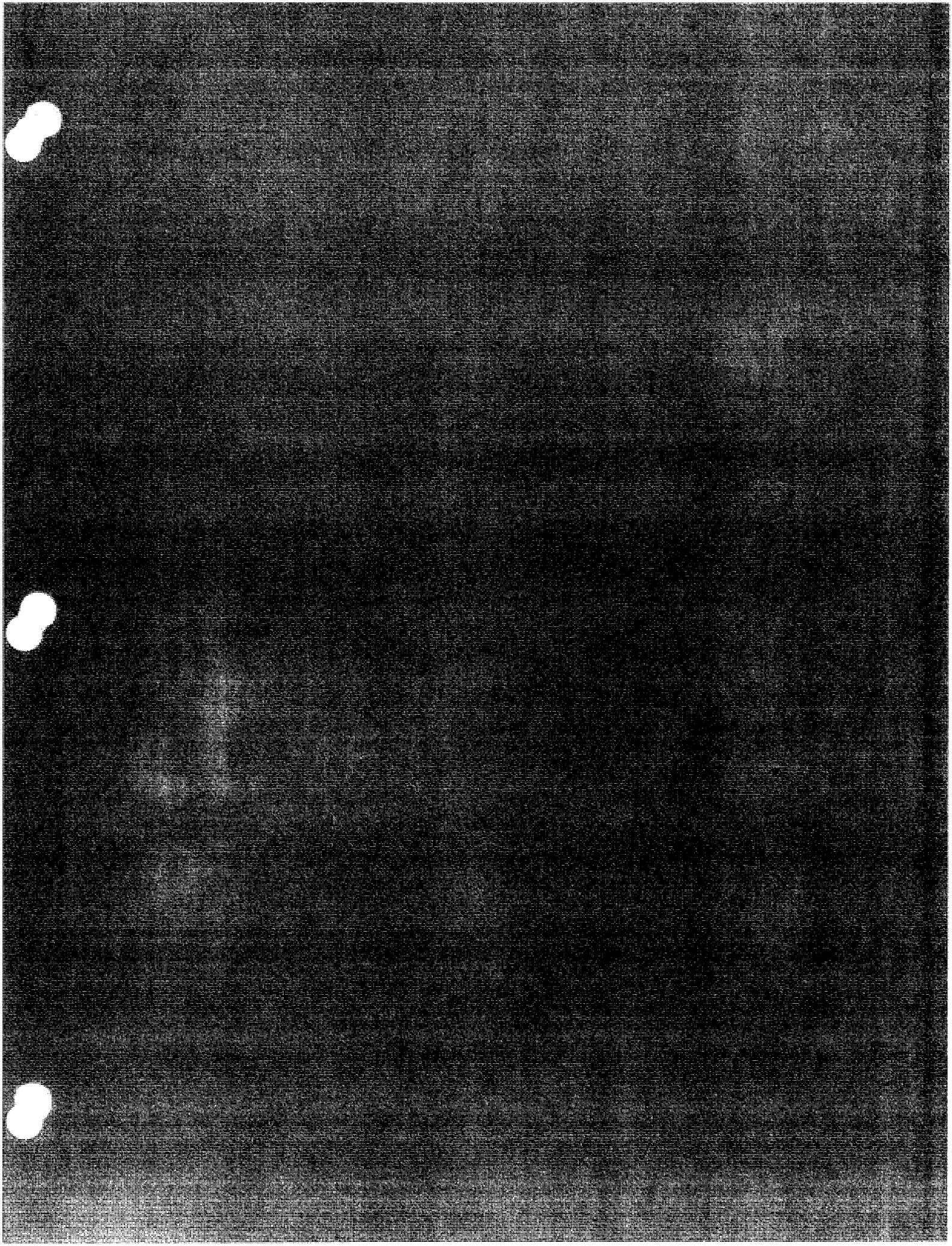
(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

Omar A. Karim
Banneker Ventures, LLC
12th Street, NW, Suite 700
ashington, DC 20005
202) 667-4110 office
(301) 523-1810 cell

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014489



Omar Karim

.ı:	Marc E. Biondi <mebiondi@wmata.com>
ent:	Monday, March 17, 2008 2:59 PM
To:	okarim@bannekerventures.com; Warren Williams; Phinis Jones; Josh Kern; Carmen Hernandez; Deborah Donning; Guy Flynn; Merrick Malone; Rosalyn Doggett
Cc:	Seth Bryant
Subject:	WMATA ROE
Attachments:	ROE.doc

Attached for your information please find a draft WMATA Right of Entry Permit. The Permit includes WMATA insurance and indemnification requirements.

This may not be the most current boilerplate, but I think the major issues are addressed

Marc

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

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

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>>> "Hernandez, Carmen" <Carmen.Hernandez@dlapiper.com> 3/13/2008
>>> 4:54:27 PM >>>

Good afternoon,

Per Seth Bryant's request, the conference call has been scheduled for Monday, March 17th at 9:00 a.m. (EST). Below please find the dial in information.

Dial in Number: 800-369-1986

Passcode:36153

ank you,

Carmen Hernandez

-nttp://www.dlapiper.com/>
Carmen Hernandez
Legal Secretary
DLA Piper US LLP
1251 Avenue of the Americas
New York, New York 10020-1104
212.335.4973 T
212.335.4501 F
carmen.hernandez@dlapiper.com
www.dlapiper.com <http://www.dlapiper.com/> Please consider the environment before printing my email

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tents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply
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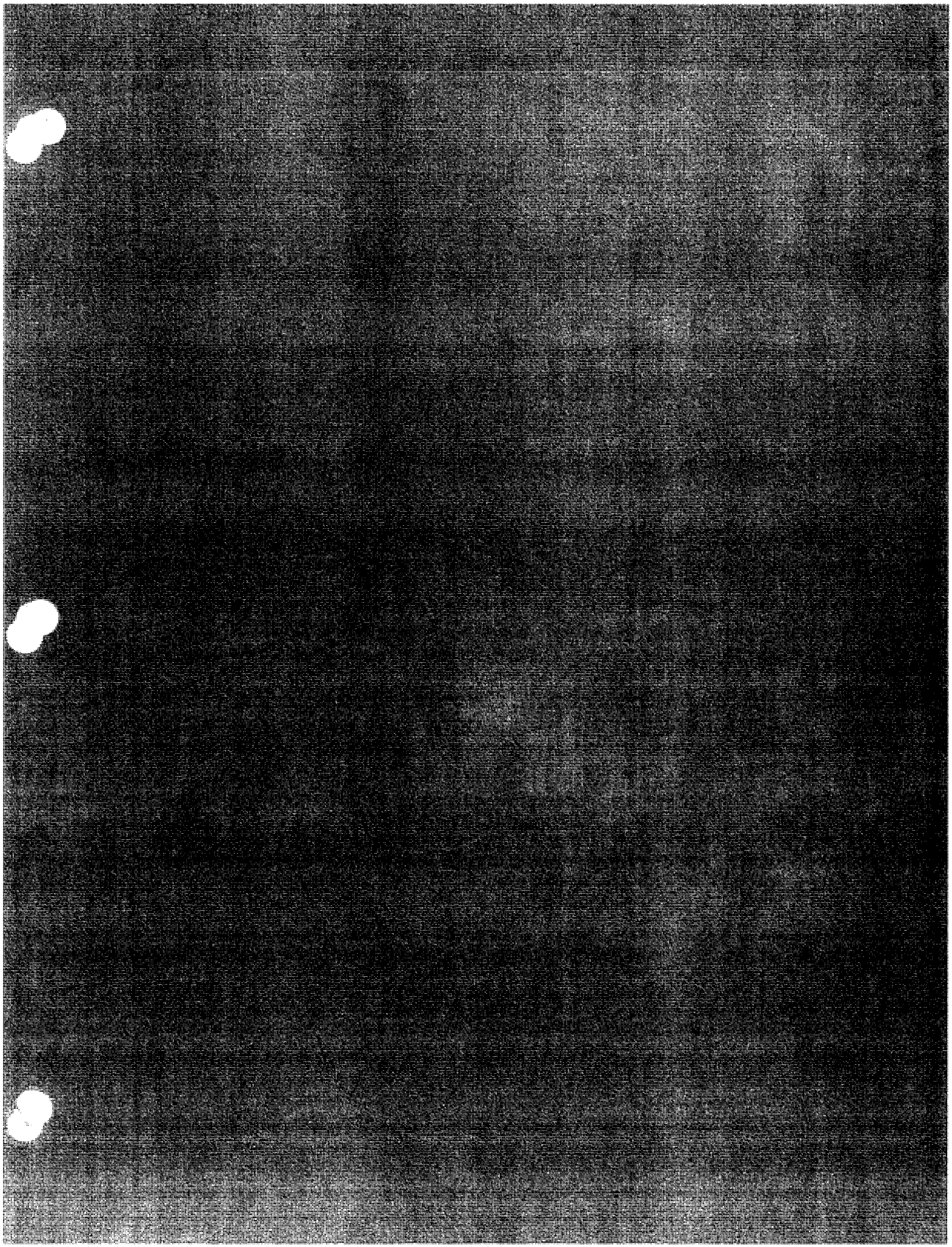
postmaster@dlapiper.com

Thank you.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014492



Omar Karim

ı:	Rosalyn Doggett <rdoggett@wmata.com>
ınt:	Tuesday, March 18, 2008 11:14 AM
To:	okarim@bannekerventures.com
Subject:	Fwd: Re: Final - WMATA Florida Avenue Term Sheet
Attachments:	redline FL AVE Term Sheet COUN 031808.doc; Final FL AVE Term Sheet COUN 031808.doc

Omar, I need your agreement right away. Thanks in advance.

>>> Marc E. Biondi 3/18/2008 10:33 AM >>>
Attached please find a red-lined and clean copy of the Final Term Sheet.

Please note three things:

As discussed by Roz and Omar, "Lease" has been replaced by "Base Rent payment" in Sections 7.3.2 and 7.3.3.

No change was found in the document provided this morning in section 8.5 regarding FTA Approvals, please let me know if a change was made as indicated in Omar's email below.

The language following section 8.6, was relocated to the beginning of section 8 in the last WMATA draft and that insert remains in this draft. (The language was originally provided by DLA at the end of Section 8)

ar please sign (or e-mail to say without reservation that you will sign upon Board approval).

Thanks for the speedy turnarounds,

Marc

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

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

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> "Omar A. Karim" <okarim@bannekerventures.com> 3/18/2008 9:03 AM >>>
.ıs. Doggett,

FOIA CONFIDENTIAL TREATMENT REQUESTED

As promised, attached please find a Final copy of the Term Sheet for the Florida Avenue project. We made five small changes reflected in Section 7.2, 8.5, 8.6 and 9.8.

Please call me with any questions.

Thank you in advance.

Omar

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

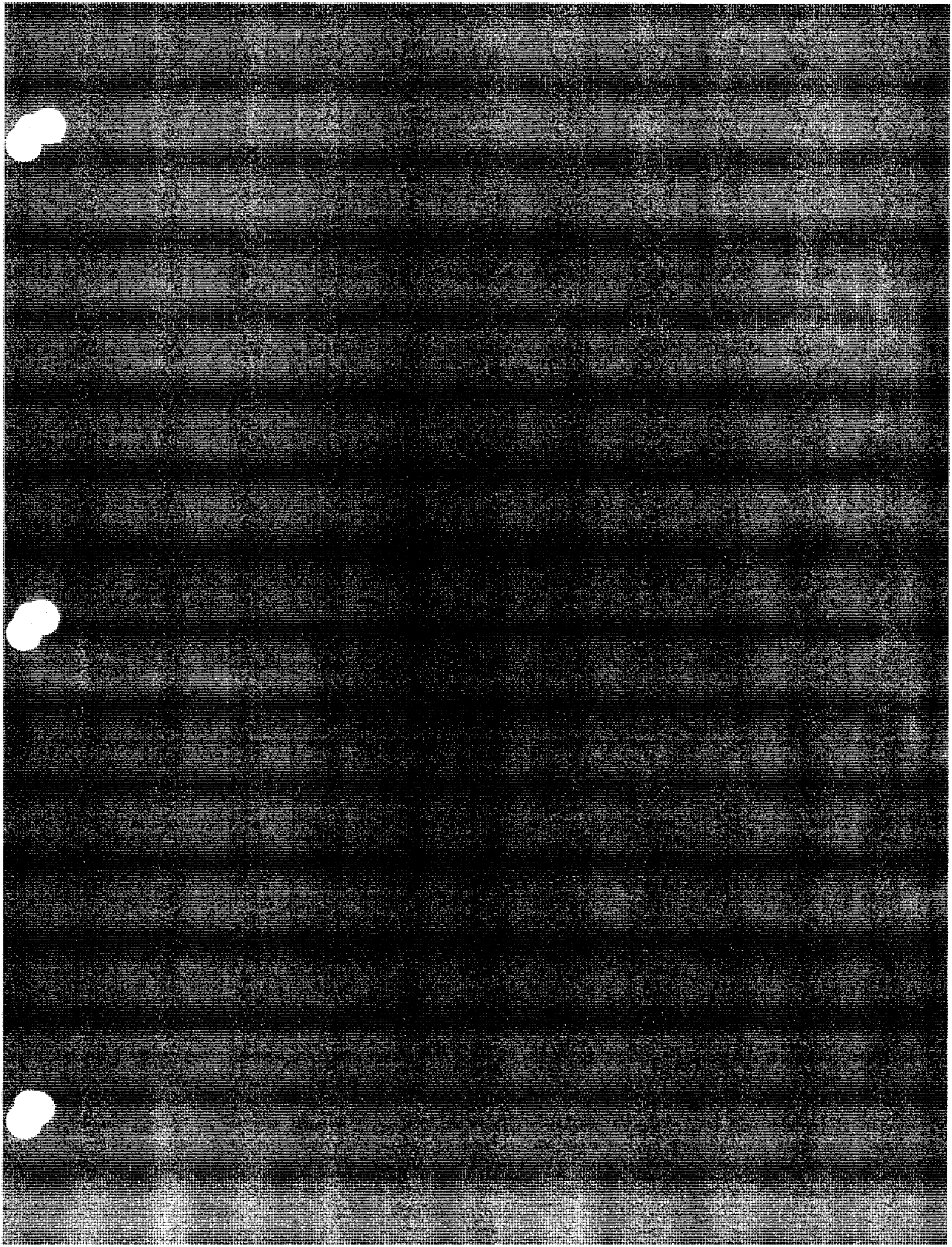
Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014495



Omar Karim

From: Merrick Malone <malone@metropolis-dc.com>
Sent: Wednesday, March 19, 2008 9:10 AM
To: Neil Albert; Omar Karim; malone@metropolis-dc.com; Phinis Jones; warren@bannekerventures.com
Subject: Re: Meeting with Deputy Mayor Neil Albert

Scott and I will be in attendance.

M
Merrick Malone

-----Original Message-----
From: "Warrick, Xzaquoinett (EOM)" <Quoinett.Warrick@dc.gov>

Date: Tue, 18 Mar 2008 19:24:12
To:<okarim@bannekerventures.com>,<malone@metropolis-dc.com>,<phinisjones@comcast.net>,<warren@bannekerventures.com>
Subject: Meeting with Deputy Mayor Neil Albert

All -
I'd like to check your availability for Friday, March 21st @ 1030am for a meeting with Deputy Mayor Albert. The meeting will take place in the DM's office. Wilson Building – Suite 317.

Requested invitees for this meeting will be from Metropolis (Merrick Malone and Scott); from Banneker Ventures (Omar and Warren) and from District Development Group (Phinis Jones and Josh Kern).

Please advise of your availability.

Thanks,
Quoinett

Xzaquoinett Y. Warrick
Executive Assistant/Scheduler
Office of Planning & Economic Development
1350 Pennsylvania Avenue, NW
Suite 317
Washington, DC 20004
202-727-6851
<mailto:Quoinett.Warrick@dc.gov> Quoinett.Warrick@dc.gov

[redacted]

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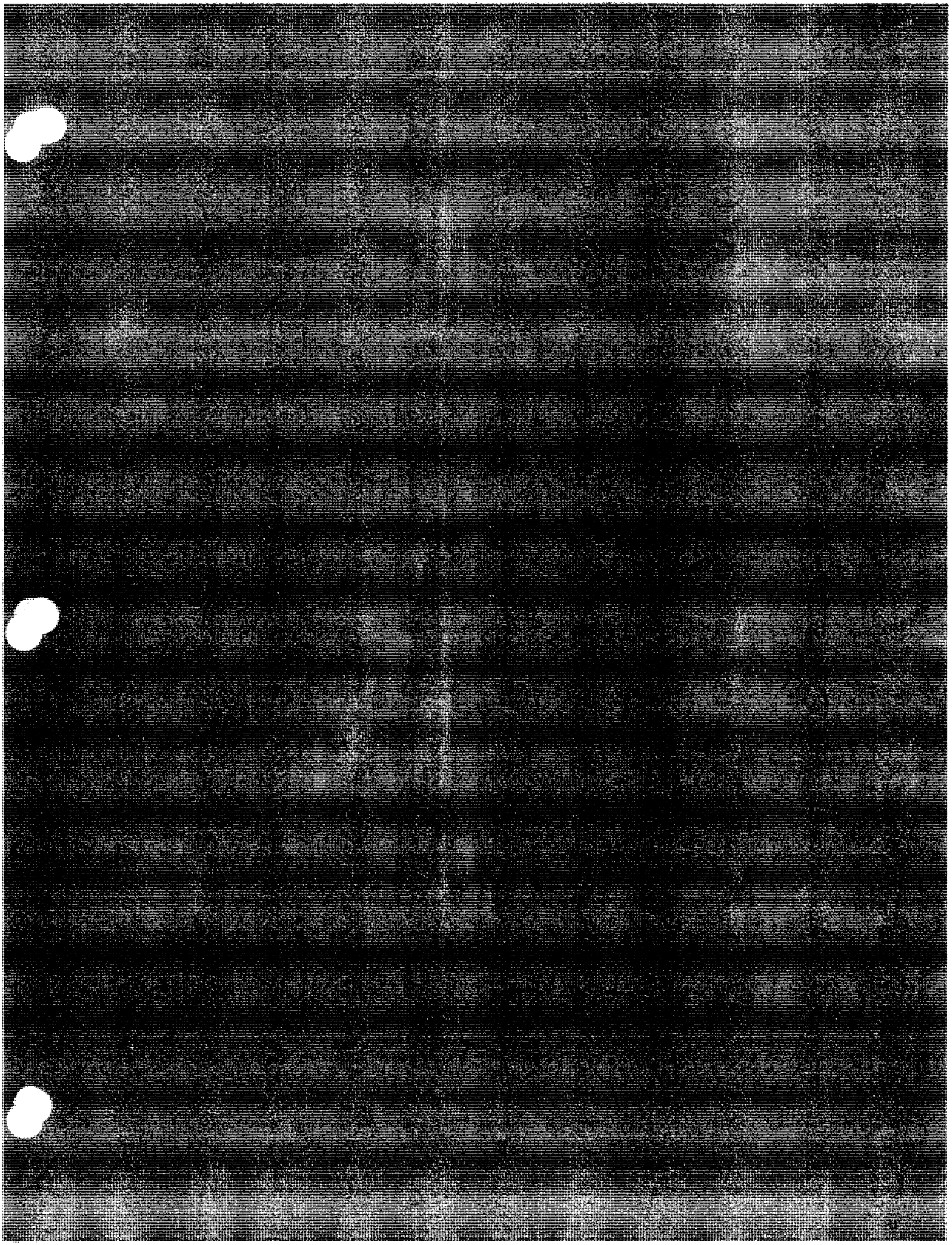
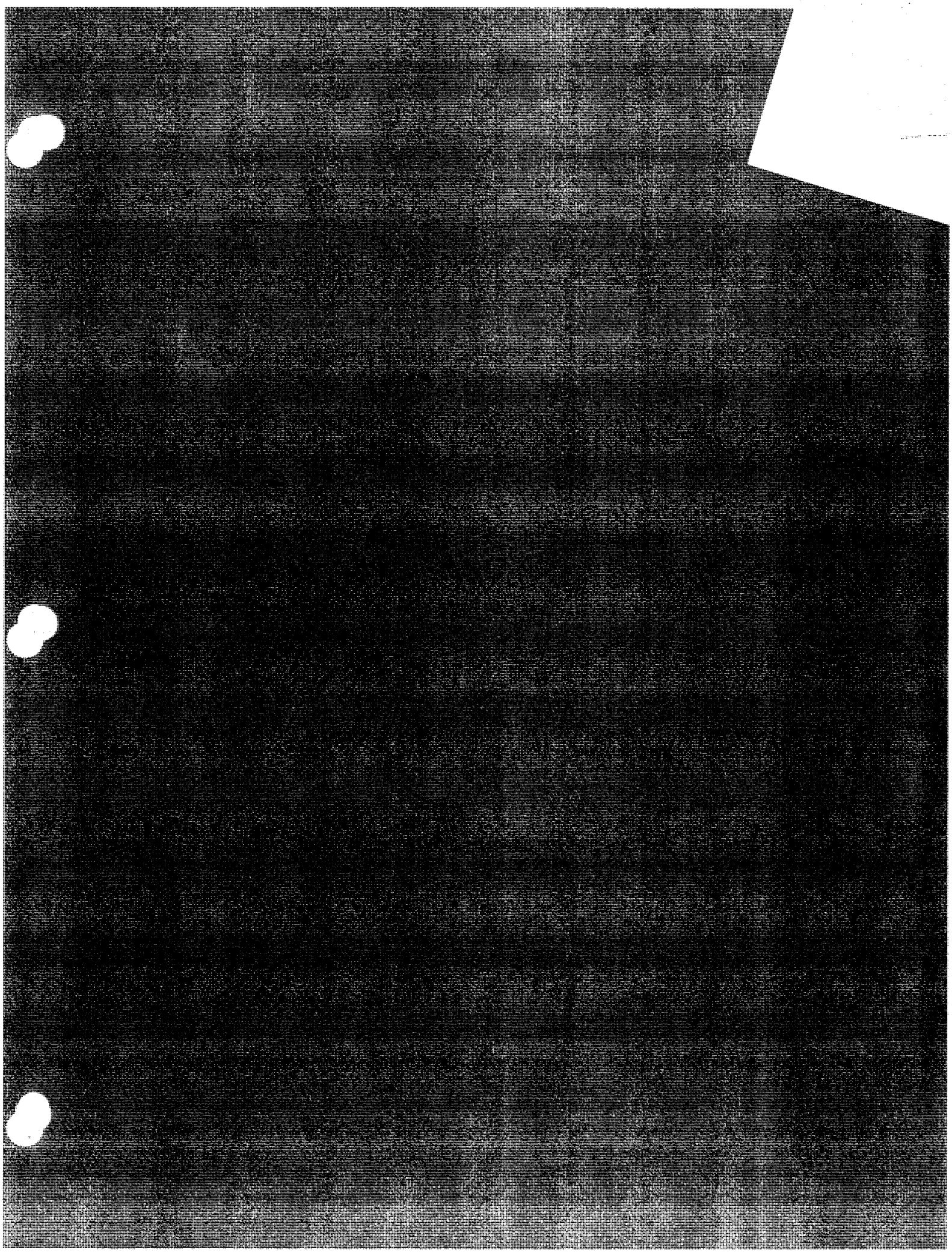




Minutes
Planning, Development and Real Estate Committee
April 24, 2008

The meeting was called to order at 9:07 a.m. Present were:

Committee Members:

Mrs. Catherine Hudgins, Chair
Mr. Emeka Moneme, Vice Chair
Mr. Christopher Zimmerman
Mr. Jim Graham
Mr. Peter Benjamin
Ms. Elizabeth Hewlett
Mr. William Euille
Mr. Marion Barry
Mr. Gordon Linton
Mr. Jeff McKay

The Committee meeting was called to order at 9:07 am. Mr. Benjamin moved, seconded by Ms. Hewlett, that the Committee convene to Executive Session at 9:09 am. The Committee voted in favor of the motion; the vote was unanimous.

The Committee meeting reconvened at 10:05 a.m.

Certification

Mrs. Hudgins moved that the Board certify, to the best of each member's knowledge, and with no individual member dissenting, that, at the just-concluding Executive Session, only such matters as are authorized for discussion in Executive Session under Board Procedure VI, and only those matters identified in the motion by which the Executive Session was convened, were heard, discussed or considered by the Board. The motion was seconded by Mr. Benjamin. The Committee unanimously voted in favor of the motion.

Approval of Agenda

The agenda was approved.

Approval of Minutes

The minutes from the March 27, 2008 meeting were approved with changes as modified by Mr. Peter Benjamin.

Action Items

A. Sale of Rosslyn Bus Alley

Mr. Zimmerman moved that the Committee recommend the Board approve authorization for staff to enter into a sales agreement with The JBG Companies ("JBG") for purchase of Rosslyn Bus Alley at the Rosslyn Metrorail Station and to allow Arlington County to use the proceeds from the sale of the bus alley to partially fund enhancements to the Rosslyn Metrorail Station. Motion was seconded by Ms. Hewlett. The Committee voted in favor of the motion; the vote was unanimous.

B. Florida Avenue Developer Selection

Mr. Graham moved that this matter be deferred for a period of not less than 60 days. The motion was seconded by Ms. Hewlett. The Committee unanimously voted in favor of the motion.

C. Royal Street Relocation Project

Staff sought to obtain concurrence from the Planning, Development and Real Estate Committee and Board approval to 1) establish a project for the replacement of the Royal Street Bus Garage; 2) establish a $4.3 million project budget; and to 3) authorize tasks to P2d for the alternatives analysis and Public Hearing planning process.

Mr. Requa informed the Committee that whether or not the financing of the alternatives analysis and public hearing process can be completed with federal funds is in question and, even though this project is being recommended, the acceptance of federal government wording changes and legislation will apply to the use of these funds for this project. Also, there is no intent to find other funds at this time not available through the grant process.

Mr. Zimmerman asked Mr. Requa from where the $4.3M was coming and what the $4.3M would buy. Mr. Requa responded there are grants available for construction of the new facility to replace Royal Street. He also responded the $4.3M was to start the construction project but is questioning if it can also be used for the alternatives analysis and public hearing process. Mr. Zimmerman then asked if more money would be needed to acquire a piece of property and build the facility. Mr. Requa responded yes additional funds would be needed.

Mr. Benjamin sought assurance that the $4.3M does not offset Metro Matters. Ms. O'Keeffe recommended to amend the Resolution to read, "That the Board of Directors amend the Capital Budget to establish a Reimbursable Project, separate from Metro Matters to fund an alternatives analysis, preliminary engineering, WMATA management

and the public hearing process for the replace of the Royal Street Bus Garage, subject to the availability of funding from FTA grants in the amount of $3.41M plus the required local match of $0.85M from the Virginia Department of Rail and Public Transportation."

Mr. Euille motioned that the Board approve staff to establish a project for the replacement of the Royal Street Bus Garage; establish a $4.3m project budget; and authorize tasks to P2d for an alternatives analysis and Public Hearing planning process. The motion was seconded by Mr. Zimmerman. The Committee unanimously voted in favor of the motion.

D. Policy Concerning Use of WMATA Property for Non-WMATA Transit Projects

Staff sought to obtain Board approval of a proposed policy allowing the no-cost transfer of WMATA-owned real property to local jurisdictions and state governments for reimbursable and other transit projects and to apply any sale proceeds from land transfers with non-governmental entities in connection with these projects to the particular reimbursable or transit project.

Mr. Benjamin stated that the Authority owns property that does not use federal funds, therefore, Federal Transit Administration (FTA) approval is not always required. He also stated there should be a positive statement that states that the benefits of this transfer would be evaluated and would be commensurate with the value of the land and the value to the region at large.

Mrs. Hudgins stated that the proposed policy is not comprehensive enough to protect the Authority. Mr. Catoe responded that Counsel will review the proposed policy to ensure that any change we make or any easement that we allow on our property or use of the land owned by Metro would be to the benefit either of Metro directly or Transit within the region.

Mr. Bottigheimer stated that there is flexibility to make transactions that are being proposed when something is operationally excessive to make it available and it may not be necessary to include in this policy.

Mr. Graham asked, if adopted, would this policy adversely affect our ability to dispose of property. Mr. Bottigheimer responded that it would not.

Mr. Zimmerman requested staff to prepare the distinction between the different ways property is disposed now. He then mentioned that the Joint Development Policy also has an excess property clause. Mr. Catoe agreed that staff would comply with this request.

Mr. Benjamin moved, seconded by Mr. Linton, that this item be deferred to a later date. The Committee unanimously voted in favor of the motion.

Information Item

A. Future Metrorail Capacity Needs

Mr. Harrington briefed the Board on Metrorail ridership growth trends over the next 25 years, discussed the adequacy of system and station capacity to handle projected ridership growth, and described capital improvements needed to enhance system capacity.

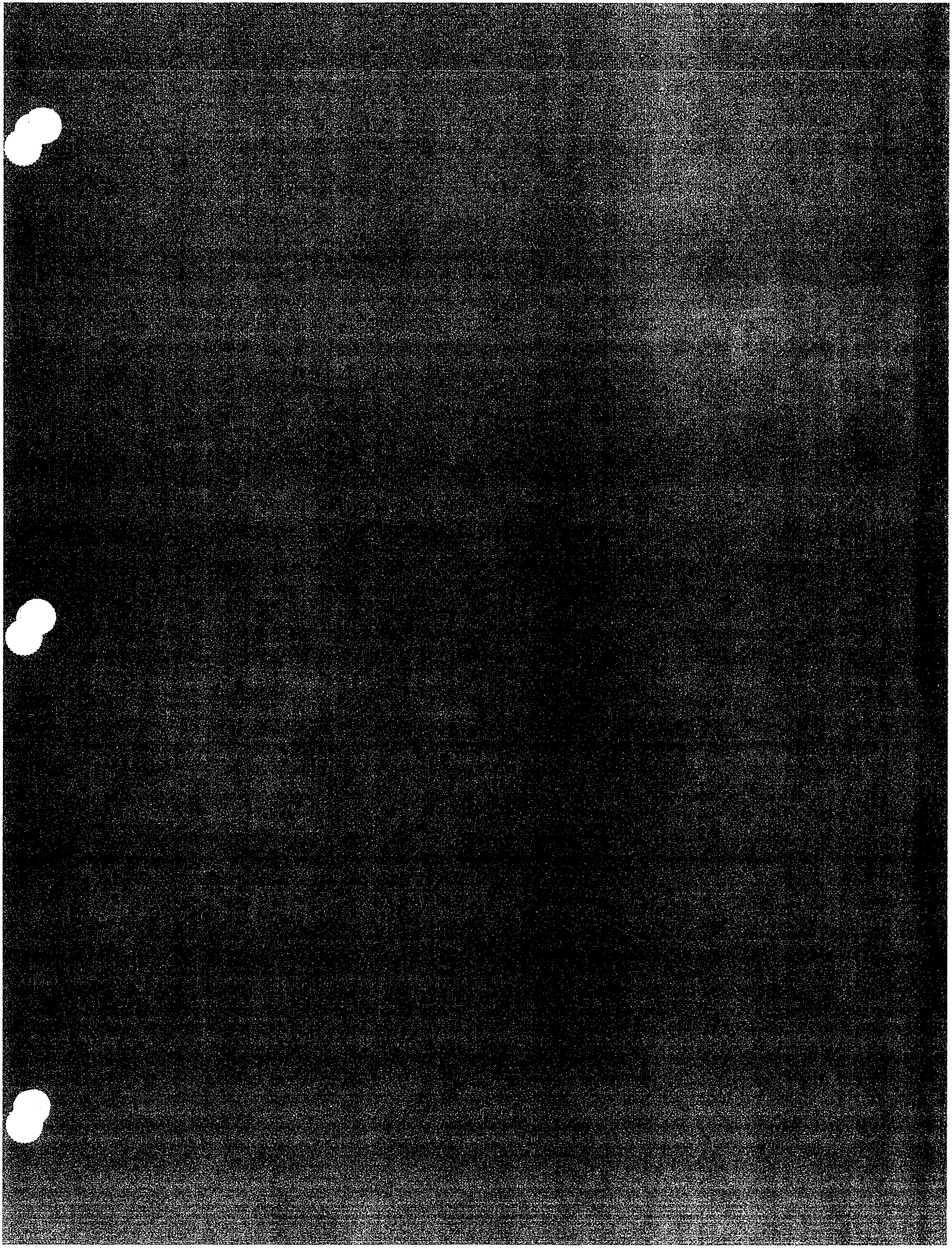
Mr. Zimmerman asked what was the growth in the last ten years. Mr. Harrington responded that over the last five years there has been under three percent a year growth on daily ridership and from analysis shows that peak hour-peak direction had a lower growth rate. Mr. Zimmerman then asked what has the accumulative growth rate been over the last ten years. Mr. Catoe stated it was a little higher than 30 percent and that staff was still working out the numbers.

Mr. Bottigheimer stated ridership associated with Dulles was ridership from the core out to Tysons, transfers coming from Vienna onto the new line inbound, riders from Loudon County into Tysons and being replaced at Tysons coming inbound. He also stated infrastructure associated with the Dulles corridor is really supporting the Dulles corridor's ridership so the conclusions are largely the same whether Dulles is built or not.

Mr. Zimmerman noted that Rosslyn was not in the presentation and asked why Courthouse was included. Mr. Harrington responded that from the ridership forecast Courthouse has high growth. Mr. Zimmerman stated that there is growth anticipated there but there was more growth anticipated in Clarendon. Mr. Bottigheimer replied that the analysis model is much stronger on the grouping of stations forecast than on an individual basis.

Mr. Benjamin asked if staff has evaluated the platforms for growth. Mr. Harrington responded that platforms were not studied in detail but it is something that will be looked at further, particularly for the core stations.

The meeting was adjourned at 11:10 a.m.



Omar Karim

om:	Flynn, Guy <guy.flynn@dlapiper.com>
ent:	Friday, May 09, 2008 2:09 PM
To:	jrwashington@wmata.com
Cc:	Rosalyn Doggett; Marc E. Biondi; Warren Williams; Omar A. Karim; Josh Kern; Merrick Malone
Subject:	Shaw-Howard/Florida Avenue Project
Attachments:	Document.pdf

Mr. Washington,

Please see the attached letter regarding this matter.

Thank you.

Guy E. Flynn
DLA Piper US LLP
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209-3600
410-580-4149 T
10-580-3149 F
uy.flynn@dlapiper.com
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T 410.580.4149
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May 9, 2008

VIA E-MAIL AND REGULAR MAIL

Mr. Joel Washington
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Re: Shaw-Howard/Florida Avenue Joint Development Site and April 24, 2008 WMATA Board Meeting

Dear Mr. Washington:

We are writing on behalf of our client, Banneker Ventures, LLC ("Banneker"), as well as on behalf of District Development Group ("DDG") and Metropolis Development Company ("Metropolis") (Banneker, DDG and Metropolis are, collectively, "Developer"), in connection with the Shaw-Howard/Florida Avenue Joint Development Site (the "Site"). We understand that the Washington Metropolitan Area Transit Authority ("WMATA") Board of Directors met on April 24, 2008 to, among other things, approve a Term Sheet setting forth Developer's proposal for the Site (the "Proposal"). We further understand that at the April 24th meeting, the WMATA Board voted to defer its decision on the Proposal for at least sixty days. It is our understanding that WMATA has neither given Developer any official reason for the delay nor given Developer any information regarding what is to happen during the deferral period.

We are writing to seek confirmation of Developer's status and to seek clarification regarding the next steps in the process. As you might imagine, Developer has expended significant resources in connection with this process and is anxious to move forward once Board action is finalized on this important first step.

We understand that Banneker, as lead for Developer, has offered to provide to WMATA any additional information relevant to the Proposal (in addition to the full information already provided by Developer in its response to WMATA's RFP). Please advise if there is any specific

information that the WMATA Board would find necessary or useful in its deliberations on the Proposal.

Developer remains committed to the development of the Site and looks forward to moving ahead expeditiously with the proposed project. Should you or the WMATA Board require any additional information, please do not hesitate to contact me or Banneker, on behalf of the Developer team, directly. I may be reached at (410) 580-4149. Omar Karim of Banneker may be reached at (202) 667-4110 or (301) 523-1810.

Very truly yours,

Guy E. Flynn

GEF:dad
cc: Omar A. Karim, Banneker Ventures, LLC (via E-mail)
Warren Williams, Jr., Banneker Ventures, LLC (via E-mail)
Rosalyn Doggett, WMATA (via E-mail)
Marc Biondi, WMATA (via E-mail)
Josh Kern, District Development Group, LLC (via E-mail)
Merrick T. Malone, Metropolis Development Company, LLC (via E-mail)

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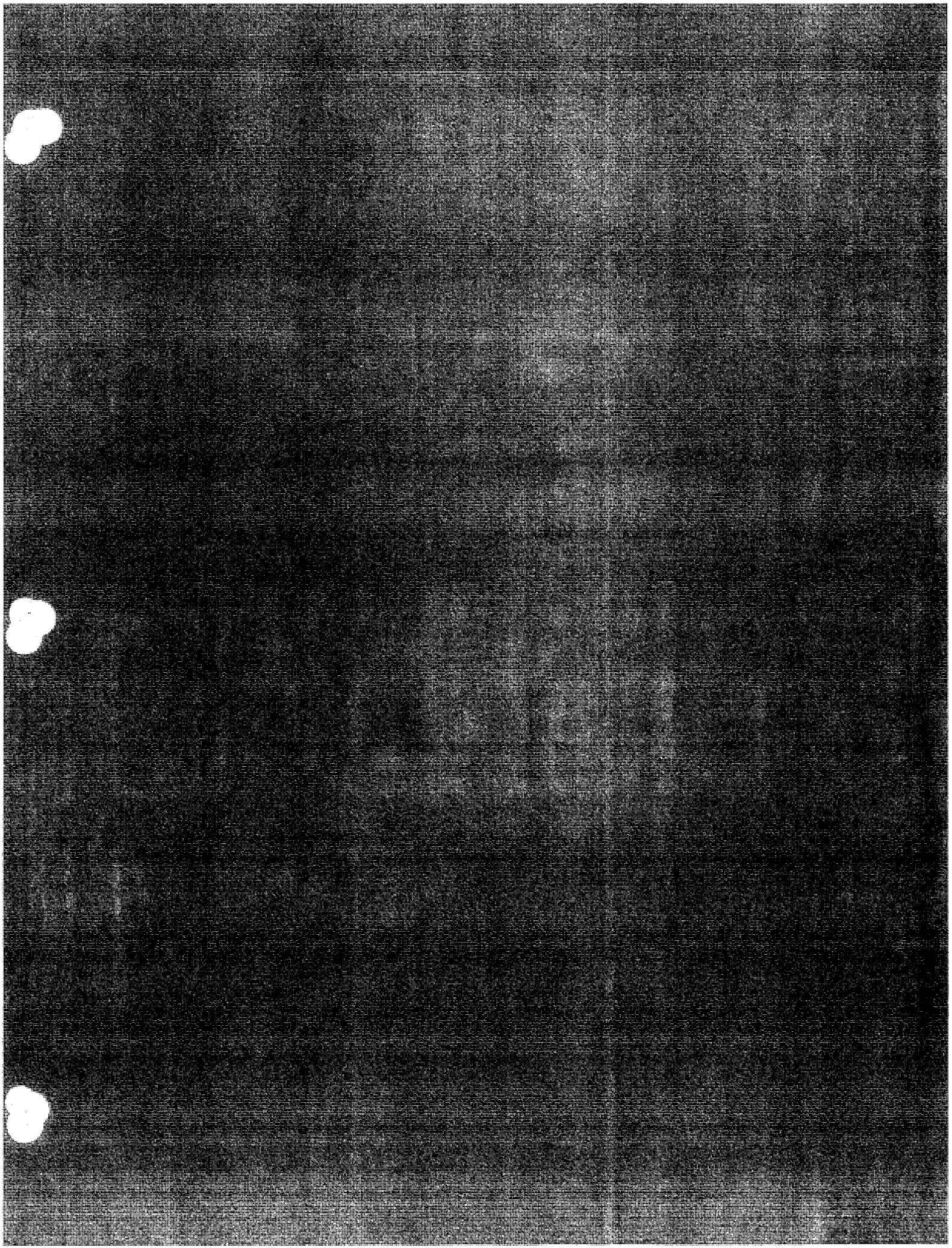


Omar Karim

.ı:	Omar A. Karim <okarim@bannekerventures.com>
.ent:	Friday, May 09, 2008 12:35 PM
To:	jrwashington@wmata.com
Cc:	'Rosalyn Doggett'; Warren Williams; 'Flynn, Guy'
Subject:	Shaw-Howard/Florida Avenue Project - Letter to WMATA from Banneker Ventures
Attachments:	Letter to WMATA from Banneker Ventures dated May 9 2008 (Final).pdf

Mr. Washington,

Attached please find a letter from Banneker addressing issues relating to alleged financial obligations to the District of Columbia by Warren Williams, Principal of Banneker. Please call me with any questions as we are eager to continue to work with you and your staff to get this exciting project underway.

Thank you in advance.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
' ·hington, DC 20005
2) 667-4110 office
,301) 523-1810 cell
okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014509

BANNEKER VENTURES, L.L.C.

May 9, 2008

VIA EMAIL

Joel Washington
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

RE: Shaw-Howard/Florida Avenue Joint Development Site – Follow-up

Dear Mr. Washington:

We are writing to respond to certain questions concerning alleged obligations due to the District of Columbia (the "District") by Mr. Warren Williams, Jr., Principal of Banneker Ventures ("Banneker").

To our knowledge, Mr. Williams, in his personal capacity, does not have any outstanding financial obligations due to the District, except, for local taxes that may be owing but not overdue. Furthermore, Mr. Williams, in his capacity as a Principal of Banneker, does not have any outstanding financial obligations due to the District, except, for local taxes that may be owing but not overdue.

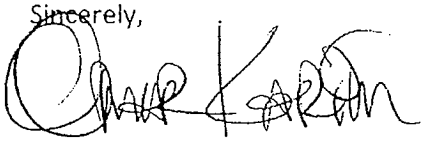
Prior to joining Banneker, Mr. Williams was a co-owner of Levelle, Inc., a company that operated The Coach & Four Restaurant (the "Restaurant") located in The Frank D. Reeves Municipal Center at 2000 14th Street, NW, Washington, DC 20009. It is our understanding that Levelle does not have any outstanding financial obligations due to the District nor has it ever been in arrears to the District under its lease during its more than 10 years of operation in this government facility. The only amount that Levelle has ever paid to the District aside from its normal lease payments and any license fees, local taxes or duties was a $100,000 payment made on January 6, 2005 as part of a settlement agreement and release of certain claims and cross-claims made between Levelle and the District. The settlement agreement resolved any disputes between Levelle and the District. At present, Mr. Williams no longer has any interest in Levelle and Levelle no longer operates the Restaurant. You may confirm that Levelle has satisfied its obligations related to the lease for the Restaurant and otherwise by contacting Bill Rice of the District of Columbia's Office of Property Management at (202) 724-4400.

We hope that this clarifies any questions that WMATA may have regarding financial obligations due by Mr. Williams, Levelle or any company associated with Mr. Williams to the District.

700 12th Street, NW • Suite 700 • Washington, D.C. 20005 • (202) 667-4110
814 Thayer Avenue • Suite 300 • Silver Spring, Maryland 20910 • (301) 565-4980
www.bannekerventures.com

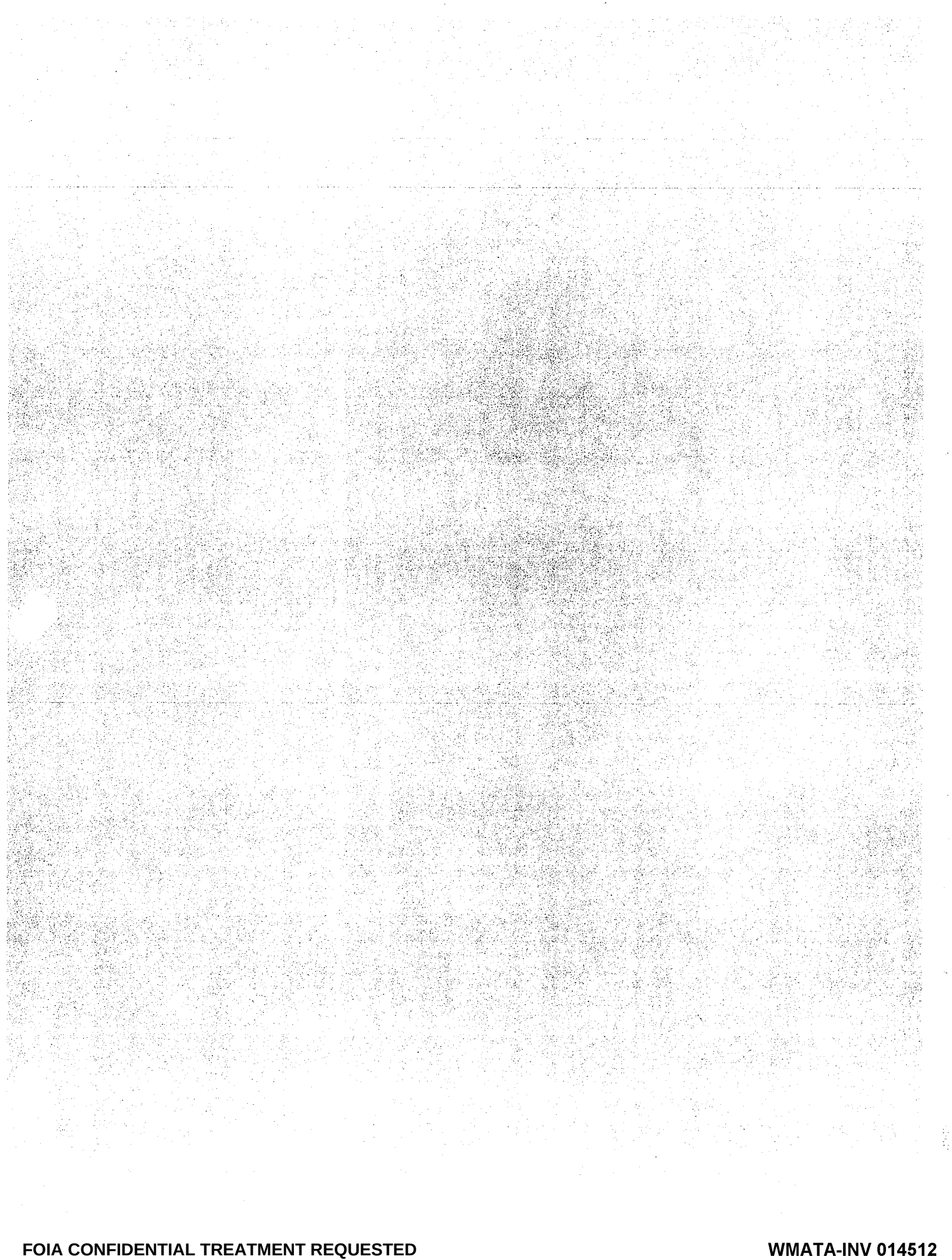
Should you have any additional questions, please feel free to contact me at (202) 667-4110 (office) or (301) 523-1810 (cell).

Sincerely,



Omar A. Karim

Cc: Warren C. Williams, Jr.
Guy Flynn, DLA Piper US LLP



Omar Karim

m: warrenwilliams@w2tech.net
ent: Sunday, May 11, 2008 9:48 PM
To: okarim@bannekerventures.com
Subject: Transcript Hearing on Lottery
Attachments: Transcript[1][1].Public Hearing.Revand Fin.txt

Omar,

Attached is a copy of the hearing from April 7th Office of Finance and Revenue. The purpose for me sending you this email is to ensure that you have it for Banneker Ventures records. It shows the pattern of Councilmember Graham's prejudice and malice toward myself and past/present business ventures. To the extent you need this evidence as he is attacking the 7th and Florida project that we are working on you've got it.

Because of your religious and moral beliefs, I would like to acknowledge in writing that Banneker Ventures has nothing to do with any gaming company of any type and in this case specifically W2Tech. Sorry for any damage that the Councilmembers have done to Banneker's reputation as a fine first class real estate development firm. I look forward to continuing our work on those projects.

Brotherly,

Warren

FOIA CONFIDENTIAL TREATMENT REQUESTED

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON FINANCE AND REVENUE

- -

PUBLIC HEARING:
"Contract No. CFOPD-7-C-053, On-Line Gaming System & Related Services Approval Resolution of 2008"
-- and --
"Euphemia L. Haynes Public Charter School Revenue Bonds Project Approval Resolution of 2008"

Monday, April 7th, 2008
Jack Evans, Chair

- -

Transcription of the above-entitled public hearing from the "On Demand Video" file available at the Distict of Columbia website by Jonathan Wonnell, a Registered Professional Court Reporter and Notary Public of the District of Columbia.

P R O C E E D I N G S
* * * * *

(Transcriber's note: The source recording file at the time of transcription was available at the Web address:

http://octt.dc.gov/services/on_demand_video/on_demand_april_2008_week_2.shtm

Unfortunately, this recording has many places where the audio cuts out for approximately one second and then resumes. I have placed the word "inaudible" in parentheses to reflect these gaps.)

* * * * *

CHAIRMAN EVANS: I call this hearing to order. Good morning and welcome to the Committee On Finance and Revenue's public hearing on two items, the proposed lottery board contract and a revenue bond approval. It is now 10:10 a.m. And we are in Room 120 in the John A. Wilson Building. Because of the enormous interest in the lottery board and the more routine nature of the revenue bond we're going to do the revenue bond first because I think it will go quite quickly and we can move ahead with that.

So PR 17728, the Haynes Public Charter School Revenue Bonds Project Approval Resolution of 2008 was introduced by Chairman Gray at the request of the mayor and would authorize and provide for the issuance, sale and delivery in an aggregate principal amount not to exceed $1.7 million of the District of Columbia revenue bond and not to authorize and provide a loan for the proceeds of such bonds to assist the Haynes Public Charter School in the financing, refinancing (inaudible) associated with the authorized project pursuant to Section 490 of the D.C. Home Rule Act. The proposed project is located at 3600 Georgia Avenue Northwest in Ward 1.

For those listening, industrial revenue

FOIA CONFIDENTIAL TREATMENT REQUESTED

bonds, the program is a (inaudible) administered by the states. The District of Columbia for this purpose is treated as a state. We administer the program. It allows an entity to borrow money at lower interest rates since (inaudible) backed by the full faith and credit of the federal government. And so these

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programs, these bond programs, come to my committee for a hearing and assuming they meet all the criteria then we approve them and move forward with the bond program.

So our first witness from the (inaudible) bond program is Stan Jackson. Mr. Jackson, welcome to the council. And if you can give us a, pull that microphone up there a little, Overview of what we have here. Make sure that things on.

MR. JACKSON: Good morning, Chairperson Evans and members of the Committee On Finance and Revenue (inaudible) development. My name is Stanley Jackson, the project manager for the D.C. revenue bond program. I appear before you today to seek your endorsement of a proposed $1.7 million bond issue on behalf of E.L. Haynes Public Charter School. The purpose of this session is to acquaint the committee with the nature and scope of the proposed financing and to permit the public to express their views regarding the proposed project.

Notice of this session was published in the Washington Times on March 30th, which was less than 14

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days in advance of the hearing. In accordance with federal law we will hold an additional in-house TEFRA on March 16th at 2025 M Street, Suite 600, at 10:00 a.m.

CHAIRMAN EVANS: April 16th. Right?

MR. JACKSON: April 16th. I apologize.

The law firms of Ballard, Spahr, Andrews & Ingersoll, bond counsel to the revenue bond program, has preliminarily determined that the applicant is a 501(c)(3) organization and that the project constitutes a permissible undertaking in the area of Section 490(a)(1) of the District of Columbia Home Rule Act.

The Office of Planning, the Department of Employment Services, the (inaudible) and the Department of Consumer and Regulatory Affairs have all approved the application. E.L. Haynes has certified its intent to enter into a CVE with the office of local business development and the CVE will be signed at the closing once final issuance amounts are determined. Thank you.

CHAIRMAN EVANS: Okay. Thank you very much. Now, as far as we can tell this complies with

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all the rules and regulations for the industrial revenue bond program?

MR. JACKSON: Yes, sir.

CHAIRMAN EVANS: Okay. And to your knowledge has anyone opposed or any comments we've gotten from the community, anything like that?

MR. JACKSON: No, sir.

CHAIRMAN EVANS: Okay. Okay. Thank you very much for your testimony. And just quickly I'd like to ask either Jennifer Niles or Eric Hoffman or

FOIA CONFIDENTIAL TREATMENT REQUESTED

both just to come up (inaudible) very short -- and I always stress that -- brief overview of what this is for.

MS. NILES: Councilmember Evans, it's a pleasure to be here. My name is Jennie Niles. I'm the founder and head of school of the E.L. Haynes Public Charter School. And given brevity you have in front of you some brief testimony. But E.L. Haynes is in its fourth year. It's a public charter school that we're relocating to the Petworth neighborhood. We're very excited about that.

We've just completed and reached

substantial completion on a new construction of 46,000 square feet for our pre-kindergarten through eighth grade program. Currently, we're prekindergarten through fifth grade and we're growing through twelfth grade. We're a year round school and we are dedicated to making sure every single one of our children is ready to go to college.

This bond request is part of a $19 million refinancing effort that it's taken us to build this new building for our school. I'd welcome any questions that you have.

CHAIRMAN EVANS: Okay. Any comments you'd like to make for the record?

MR. HOFFMAN: No. Just my name is Eric Hoffman with the law firm of Klein Hornig. We very proudly represent the borrower on this undertaking.

CHAIRMAN EVANS: Okay. As far as I can tell this is a very routine matter, has the support of the community and has complied with all the rules and regulations for the program. So good luck and I'm glad that the District could be of assistance in making this happen.

MS. NILES: Great. We're very happy too. Thanks very much.

CHAIRMAN EVANS: Okay. Thank you for coming.

Okay. We will now move to the other item on the agenda. It's PR 17721 the contract number CFOPD-7-C053, On-line Gaming Service and Related Services Approval Resolution of 2008. What this would do is approve a new contract for the D.C. Lottery's on-line and instant games as well as a network and communications support and other functions.

According to the transmittal letter submitted by the mayor, the proposed contract is for a period of six years with the option of one four year extension. It envisions consolidating the work of several existing contracts into one contract with (inaudible) services to be provided. From on-line and instant games, various management, network and telecommunications functions, marketing and promotions, field sales to various support and facility functions.

It's a comprehensive list of nearly

everything a lottery contractor would do to run the system. The transmittal letter indicates that by consolidating its functions into one contract the District will "receive a cost savings of approximately

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014516

5 to $8 million during the initial year of the contract and at least $5 million per year thereafter."

The members may recall that this was previously submitted to us as an emergency approval resolution, PR 17702, which was withdrawn (inaudible) the permanent version. I should note the approval resolution is firmly a matter before the committee as a whole with comments from the Department of, from the Committee On Finance and Revenue. We decided -- I decided against moving it as an emergency because it's a multi-year, multi-million dollar contract, and as such needs to have a hearing and the due diligence and review of the council.

And this is an interesting contract in the sense that it's a 45 day review period which began on March 17th. And the contract will be deemed disapproved on Thursday May 1st unless a resolution of approval is adopted by the council within 45 days. So

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just so people understand, if we do nothing, the council does nothing, this contract would be disapproved and the process would go and start all over again. (Inaudible.)

Okay. So that's all of the opening remarks. I've been recognized -- I've been joined by my two colleagues on the committee, Councilmen Graham and Barry. I didn't see who came in first, but I'll start with Councilmember Barry for any opening comments you may have.

COUNCILMEMBER BARRY: Chairman, the first shall be last and the last shall be first, so I'm gambling.

CHAIRMAN EVANS: The first shall be? What did you say? Whatever.

COUNCILMEMBER BARRY: Chairman, let me thank you for your leadership in this committee. I've been on your committee for the last three years on a number of tough issues you've risen to the occasion to give us leadership and I want to commend you for that. And (inaudible) this morning before the meeting. This contract has been very controversial. I know

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I personally have been lobbied by -- oh, a bunch of people on both sides of the (inaudible). That's the way it ought to be. This is democracy in action, so I welcome that kind of lobbying effort.

My question is probably around the fairness (inaudible) fair process whether or not you're comparing apples and apples and whether or not points were given to the other bidder that didn't get this contract. I understand they had been in business 24 years here with us, certified, et cetera. So those are the kinds of questions I want to ask the representative of the Office of Procurement of the Chief Financial Officer. This is a multimillion dollar contract and obviously there's a lot of concer because -- not just money here, but there are lives at stake here because there are employees that (inaudible) come on board to work with the new contractor or the employees who will lose and be out of work. And I'm sure they have mortgages andrents to pay and et cetera. So not just a dollar kind of contract (inaudible).

FOIA CONFIDENTIAL TREATMENT REQUESTED

Obviously I'm a strong supporter of the lottery. When I was mayor I was a strong supporter of the lottery. So it's not to question whether we support the lottery. We want the best service we can get. So I'm going to ask questions about performance of the previous contractor -- it was a managed group -- whether or not there have been any negative things being said or done programmatically.

That's where I come out on this, Chairman. And as I said, we'll talk about it after we finish all this process and see where we come out. But I have some serious questions about the fairness here from what I've heard. (Inaudible).

CHAIRMAN EVANS: Councilmember Graham?

COUNCILMEMBER GRAHAM: Well, thank you very much Mr. Chairman for this hearing on this very important matter. And I think that people really do have to understand the dimensions of this contract. I mean, we're talking about, you know, a great deal of money here. And we can't say precisely how much because of the way in which the contract is structured. But in addition this is a very important source of revenue, as you know, Mr. Chairman, for the District of Columbia. And so it's very important that this be handled correctly.

And I think at the outset there are two issues that I want to put on the table. Number one is really a two part (inaudible) qualifies this contractor and what might disqualify this contractor (inaudible) important responsibility. Both of those questions need to be answered to my satisfaction.

The second area of inquiry is something that over the years -- this is my tenth year on this council. You know, I have noticed that sometimes people get the attention of contracting officials by either offering more than what something is worth or indicating a willingness to do a particular service for far less than others are willing to do it. And this is a very important element. If you say, well, I'm going to give you three times the generally agreed upon value you get people's attention. You say, oh, you're going to -- you know, because everybody likes a deal. Everybody likes a bargain. And even the chief financial officer is no exception to that.

And that's in one case. In another case where we're asking people to perform (inaudible) D.C. government, a willingness to do it well below what others are able to do it at also gets attention. But then what happens in both cases? You end up with a situation where you don't really get performance because the contract has either been overbid or underbid in a way where you're just left with a controversy. And we don't want a contract award to be about controversy. We want it to be about a performance. And so those are the questions that are on my mind.

I think you were correct, Mr. Chairman, in not moving this forward as an emergency. And I think, you know, the very fact that this contract must be the subject of affirmative approval by this council, if

FOIA CONFIDENTIAL TREATMENT REQUESTED

this council, as you point out, doesn't act, there is no contract. And so this is not one of these passive review situations where if we simply do nothing it goes forward. Without the affirmative action by a date particular nothing will happen with this contract.

And so that is a high hurdle. And it is

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one that requires the type of serious attention that you're committing to this matter today. Thank you.

CHAIRMAN EVANS: Okay. Thank you very much, Councilmember Graham. Councilmember Catania?

Okay. No comments. Very good. Then we'll proceed to the witnesses. And our first (inaudible) are Jeffrey J. Young, the agency fiscal officer for the D.C. Lottery and Charitable Games Control Board and Eric Payne, the director of contracts and procurement in the Office of the Chief Financial Officer.

I did receive some questions as to why we're in this room. And I think I'd like to point out that during budget hearings the council chambers and the chambers on the fourth floor are both occupied by (inaudible) hearings and so we are not -- we don't have access. This room now does have cable television, though, so it will be broadcast probably like at 2:00 in the morning or something. But it will be broadcast on the DC-13 channel.

Okay. Mr. Young, welcome to the council. Do you want to start? And we have your statement? Or

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we don't have it here? All right. Very good.

MR. YOUNG: My statement is right there.

CHAIRMAN EVANS: Okay. Thank you.

MR. YOUNG: We passed it out. Good morning, Chairman Evans, members of the Committee On Finance and Revenue and staff members. My name is Jeffrey J. Young and I am the Chief Operating Officer for the D.C. Lottery and Charitable Control Board. I am currently serving as the DCLB's acting executive director while our executive director Ms. Janet A. Michael is recovering from an extended illness. As many of you know Ms. Michael. We certainly wish her the very best in her recovery from cancer.

I've been asked today to testify on behalf of the agency because (inaudible) operation of the lottery. I also serve as project lead and chief panelist for the proposed contract for the on-line gaming system. I believe you referred to it as CFOPD-7-C-53. What I want to do today is cover a couple of issues relevant to why we actually put the contract out for bid, what we're hoping to accomplish and give you some insight as to the process that we

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use in selection.

The need for the new gaming system, as this committee is aware, and Ms. Michael and I have testified since the restructuring of the agency in 2004, despite a major reduction in staffing, the DCLB management has operated the agency at an extraordinary level by approving processes, launching new products, instituting new games and, something we're very proud of, really focusing on our audit controls.

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Indeed some of our noteworthy accomplishments for 2007 include the following, being ranked in the top five nationally for per capita sales for on-line games, upgrading internal operations to improve data management records for enterprise applications, and celebrating 25 years of success by holding numerous community activities throughout the city where we thanked our players and our retailers.

The net effect of these improvements have been to achieve record and near record revenues the last two years, improve the certainty of our performance with respect to our transfer target, and to position the agency for future growth. These

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achievements have been manifested against the backdrop of a relatively outdated gaming delivery system, a troublesome telecom delivery system, and a vendor cost structure that has grown less competitive over time.

The current system has technology limits that prevent the DCLB from expanding into new game formats, rapidly changing service offerings and playing new game styles. These limitations hamper considerably our ability to market and expand the lottery in some product categories, for example, rapid draw games. Many of these limitations also impact the DCLB's ability to increase transfer growth, which is of key concern to the District because the money that we provide obviously through the operation of the lottery goes to the general fund.

As a result, even though the current gaming contract does not expire until November of 2009, the executive team at the DCLB started preparation for the acquisition of a new gaming system back in 2005, while simultaneously working to improve the technology in other parts of the organization. Some of these improvements include upgrading our servers, developing

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a data warehouse, adding business intelligence capability and automating parts of the claims process so our players enjoy better experience at the claims center.

Since 2005 the DCLB has preplanning (inaudible) requirements for the new gaming platform proposal. As part of that preparation we looked at proposals developed by other states, including Texas, Connecticut, Maryland and others. We also use a standards template developed by the North American Association of State and Provincial Lotteries for gaming system proposals. That's a big trade association for lotteries that cover North America.

The template is being used across the country by similarly situationed lotteries to help expedite and facilitate the development of a request for proposals for new lottery gaming systems. But we didn't stop there. Additionally we engaged a nationally recognized consultant, Patel Memorial Institute, to support the DCLB through the requirements gathering, proposal development, evaluation, and award phases of the project.

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Consequently the DCLB was extremely well prepared to complete the development work necessary to acquire a quality gaming system.

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In developing our request for proposal key areas of focus included the following: Achieving significant cost savings in operations and contractor fees, upgrading our technology to be server based with enhanced reporting features, security and customer facing peripherals and monitors -- a key feature of being able to expand our revenue opportunity without expanding the footprint of gaming -- increasing system performance for operating at above 98 percent availability, upgrading our telecommunications system on a digital platform that provides for end to end troubleshooting and network monitoring, gaining access to enhanced marketing support in play styles, increasing our ability to monitor games, and potentially adopt games developed by third parties, further improving management accounting for on-line and instant ticket products, obtaining a staff planning and implementation schedule that will ensure the successful launch of the new gaming system, and

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receiving a contract that is structured with at least a five year initial term and several one year options.

Now, to make these objectives (inaudible) were met, a high experience proposal review team or source selection evaluation board was convened to review the requirements, vendor questions and answers, and the vendor proposals. The SSEB was vetted by the CFO's contract office and includes senior people from the DCLB, including myself, people from finance, our IT department, operations, as well as representatives from the from OIO and also from the CIO's office of the front office.

Also the entire team participated in structured (inaudible) submitting our proposal response. Patel also reviewed each proposal. All of this information was reviewed, discussed and distilled in a proposal review process and factored into the vendor selection. As a result, we believe that the work product (inaudible) process produced the desired results.

The vendor recommended for the selection of this proposal, W2I, has met all the requirements of

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the proposal, including those highlighted above. They scored consistently well technically in all phases of the evaluation and received the highest technical score. The SSEB did not evaluate the price proposal. That price proposal is reviewed and commented upon by Eric and he'll cover that in his testimony. However, based on the bids, it is anticipated that the selected vendor will save the DCLB 4 to $5 million in cost savings during the first year of the contract. And that savings may grow over time depending on the revenue that's attained.

Also, there are, as was mentioned in Chairman Evans' opening statement, there's some collateral contracts that are involved as well. We pay about $900,000 a year for telecommunications service right now. That contract will go away. And an additional 42,000, or 45,000 was also included in validating our ITS system. So we're going to be able to save a substantial additional amount of money from that process.

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The potential also exists to grow gaming revenue early in the initial term which should also help improve the transfer to DCLB revenues to the general fund. The proposed system configuration includes updated technology, high speed data transmission, improved operational certainty, excellent customer facing of equipment and emergency backup.

The selected proposal also features enhanced accounting, reporting and auditing capabilities. There is an extensive new games library, a forward looking approach to marketing and enhanced play styles. The selected proposal also includes a goodstaffing plan and an adequate implementation plan for the proposed system. Furthermore, the selected vendor also participated in the best and final offer process, offered an excellent price reduction with an incentive to grow revenues above $300 million, and accepted a six year initial term and one four year option as part of the deal.

Now, we believe that the development of a new gaming system is vital to the continued success of the DCLB. We also believe that the recommended vendor delivers the best value and system to allow the DCLB to reduce costs, grow revenues and continue to improve overall operations. The new gaming system architecture should help usher the DCLB into a new level of market appearance, allow us to speak to new and existing customers differently, and do it in a more efficient way.

Ultimately, these improvements have the potential to better serve our customers, retailers and citizenry of the District of Columbia. With the adoption of a new gaming system, some resource modifications and continual process improvements, the DCLB is poised to accelerate its leadership in the lottery industry. Thanks to the management and staff of the agency the DCLB continues to demonstrate meritorious service and accountability.

We look forward to upholding these standards as we continue to transform our operations. Certainly to obtain more information about the agency, please see our website at www.dclottery.com. I want to thank you for this opportunity to present testimony on DCLB and the new gaming system selection process. We are looking forward to getting back on our planned implementation schedule and to complete the (inaudible) contract correctly and expeditiously.

We would like to thank this committee and the chairman for helping the DCLB to achieve its goals of contributing to the well-being of the citizens of the District. And I am now pleased to respond to your questions.

CHAIRMAN EVANS: Okay. Thank you very much for your testimony. And now we'll have the testimony of Mr. Payne.

MR. PAYNE: Good morning, Chairman Evans and members of the Committee On Finance and Revenue.

CHAIRMAN EVANS: Do you have a written statement?

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MR. PAYNE: I do. And it's --
CHAIRMAN EVANS: Here it is. Thank you.
MR. PAYNE: No problem.
And members of the Committee On Finance and Revenue, I am Eric W. Payne, director of the office of Contract (inaudible) chief financial officer. My colleague, Jay Young, of the District of Columbia Lottery gave me the opportunity to address this

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committee today on the proposed contract with W2I.
The current DCPS lottery gaming system is an antiquated system with components dating back over the last 25 years. In fact it has been said that the D.C. gaming system is the oldest system in North America. As a result of the age of the system and limits in its functionalities, the D.C. Lottery has had limited capacity to develop, market and provide new product offerings, which has a direct impact on the D.C. Lottery's ability to maximize revenue generation and the annual transfer of revenues to the District of Columbia.
Consequently in the spring of 2005 the office of contracts began working with the lottery to develop a procurement (inaudible) new proposals for a replacement, specifically a modern gaming platform. These efforts following countless hours of research, analysis and planning resulted in the issuance of a request for proposals on May 23rd 2007. The purpose was to solicit offers from firms that could provide an on line gaming (inaudible) and ancillary support services to the lottery. This contract is essential

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to the fundamental operation of the gaming network in the District among the approximately 500 retailer locations that conduct daily lottery transactions.
Given some of the historic challenges with the current contract and previous iterations of related contracts, it is imperative that the new awardee be able to provide efficient and efficacious service to the lottery, in addition to fundamentallily overhauling the current gaming network and installing 21st century technology to conduct the aforementioned services.
As the director of the office of contracts it is my responsibility to ensure that a full and open competitive procurement process is conducted for the acquisition of services and goods. Moreover, I am responsible for ensuring that the process is fair, transparent, and consistent with the prescribed procurement laws, regulations and best practices. In acquisitions where RFPs are utilized (inaudible) proposals on the open market, the contracting officer is tasked with making a best value determination in determining who the ultimate contract recipient will

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be.
In addition, the contracting officer is responsible for ensuring that all parties are treated in a fair and impartial manner, that the evaluative process is equitable, and that the overall source section process is conducted in a consistent and objective manner. It is my belief that this proposal which represents the culmination of these

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efforts, is consistent with the aforementioned principles and represents the best value for the District of Columbia.

The proposed contract is a six year contract with W2I, a joint venture comprised of W2Tech and Intralot. W2Tech is operated by Warren C. Williams, Sr., who serves as president of W2Tech and has over 35 years of lottery experience. In 1985 he met Tom Little, CEO of Intralot, when both works with Scientific Games to establish the D.C. Lottery. (inaudible) is the success senior to Games Interprises, which provided management and gaming industry expertise to the D.C. Lottery. Alaka Williams, who is the proposed general manager of W2I,

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has over 15 years of business and HR management experience which includes multisite operations, recruiting, training, development (inaudible) marketing and sales.

As president of Intralot, the second biggest integrated gaming and transaction processing lottery systems across five continents, Tom Little has over 35 years of lottery experience(inaudible) as a field technician with one of the first lotteries. Currently, Tom Little is responsible for all North American operations and has overseen the rapid expansion of Intralot's footprint in the lottery industry. Intralot is successfully running over 17 lottery operations internationally. In addition, Intralot is currently operating in South Carolina, New Mexico, Nebraska, Idaho and Montana.

It is important to note that Intralot has never been assessed liquidated damages, has never lost a contract, and has never missed a contractual deadline. And we certainly expect this record of stellar performance to continue. Combined, W2I has over 62 years of experience in developing, operating

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and maintaining lottery systems.

The office of contracts in concert with the source selection evaluation board determined that the contract should be awarded to W2I following an expensive vetting and evaluation process of all offerors. The universe of potential offerors technically qualified to fulfill (inaudible) requirements is fairly limited. The same offerors compete for similar contracts throughout the U.S. and in other countries as well. Not only did the office of contracts contact offeror directly, we also e-mailed each a copy of the RFP, phoned and e-mailed each to confirm receipt, and contacted each prior to the deadline for submissions to encourage each potential offeror to respond.

Our goal was to have maximum competition and to view as many technical proposals as possible to determine the best technological solution for the lottery. As the chief procurement officer for the OCFO, I then appointed a technical review panel comprised of subject matter experts to review the technical proposals received. (inaudible) by my

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colleague, Mr. Young, as he's previously testified. The panel was charged with reviewing the technical

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proposals received and determining, using the objective evaluative criteria contained in the RFP, the ability of each offeror to meet the technical requirements delineated in the solicitation.

To further validate their scores and ensure the capacity of each offeror to meet the requirements and to clarify questions naturally arising from the technical proposals, the panel traveled to each domestic lottery location where the offerors currently have implemented and are conducting similar gaming transactions akin to those sought by the lottery. Each offeror selected the site that they wanted the panel to visit and made their senior representatives and clients of these other domestic lotteries availability for site visits and discussions.

Lastly, each offeror was given an opportunity to submit a best and final offer. Following each round of scoring and review, the technical solution offered by W2I was consistently ranked highest across all the evaluative criteria. It

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is important to note that given the significance and importance of this fundamental overhaul of the lottery gaming system and network, I and/or a number of my staff was present and available in every evaluation meeting, discussion and site visit. The purpose was to ensure the adherence to the standard procurement protocols discussed previously and to make certain that this selection process was transparent, fair, impartial and objective.

The panel conducted their technical evaluation without any knowledge of the price proposal. Further, the OCFO and the lottery engaged in independent consulting firm, Patel, to assist in reviewing the technical proposals, provide input on areas needing additional clarification, and validate the technical recommendations of the panel. Across all evaluation categories, knowledge of the requirements, experience and delivering on those requirements, the technical approach to meeting the lottery's requirements, past performance and qualifications of key personnel, W2I stood head and shoulders above the other offeror.

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Following the SSEB's review, as a standard RFP procedure, the office of contracts evaluated the cost component of the proposals in concert with Patel in accordance with District law the offerors were given preference (inaudible) certified business enterprise. In the end, the cumulative value of the evaluative criteria (inaudible) price proposals provided clear demonstrative proof that the proposed award of the contract to W2I represented the best value for the District. I then reviewed all offers, BAFOs, recommendations and consultant reports and concluded that the award of this contract to W2I was in the best interests of the District.

It is important to note that it W2i is approved, the District will be able to immediately reduce the costs associated with the D.C. Lottery gaming system. These cost savings will go immediately from $11 million to approximately $6 million a year. Moreover, the first six years of this contract, given

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the proposed pricing schedule, it is estimated that the District will pay W2I approximately $41 million, an immediate savings of $31 million, which the

District would have paid the incumbent contractor had the current contract been extended over the same period of time.

This new contract is a win/win for the District of Columbia in terms of technological superiority and cost savings. Again, Chairman Evans, I thank you for the opportunity to testify today and to provide this brief statement for the record. At this time, Mr. Young and I will be happy to answer any questions you may have.

CHAIRMAN EVANS: Okay. Thank you very much for your testimony. We've also (inaudible) my colleague, Kwame Brown, who's a member of the committee and I'd like to afford him an opportunity for any comments.

No comments? Okay. Great.

Let's get right into the questioning. We'll have ten minute rounds from council members. We have a little clock. I think it's right here. And I'll begin with myself and we'll go in the order in which people came to the hearing.

Okay. My first question, I want to

focus -- well, with either person, but (inaudible) with you pretty much on your last comments about cost. It is extraordinary to see that we would immediately recognize a $5 million savings and even more extraordinary that it's almost half of -- 50 percent of what we're paying from $11 million to $6 ill million dollars. So could you further elaborate on that, that how in the first year we're going to have recognized that great a savings were we to go with the contract that's in front of us?

MR. PAYNE: Absolutely. I think frankly, Mr. Chairman, we're probably (inaudible) realize closer to $8 million in savings rather than $5 million in savings. Under the current contract the current incumbent contractor is paid a percentage of revenues from the lottery. That percentage is 4.2 percent. The percentage offered by the successful offeror is close to half of that percentage. Their compensation is directly tied to their performance. The greater the revenue produced for the D.C. Lottery the greater their compensation. Even at its highest point it comes nowhere close to meeting the percentage of

revenues (inaudible) currently been paying to the current incumbent contractor.

And what we discovered during our due diligence review as we surveyed other lottery jurisdictions around the country is that the rate we have paid for close to the last ten years has been extraordinarily high in comparison to other lottery jurisdictions. And so frankly, we're coming closer in line to when our domestic lotteries have paid for similar services rather than receiving an offer that is somehow lower than we should have reasonably expected.

MR. YOUNG: Let me also add, Chairman

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Evans --
CHAIRMAN EVANS: Sure.
MR. YOUNG: The marketplace for lottery platforms has changed substantially in the last ten years. There's essentially a lot more competition in the marketplace where people are openly competing for bids at an extraordinary level. So we actually hit the marketplace at a really good time. As more people were focused, interested, and as there's more of a

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commonality in the technical specifications between the platforms, the competition has moved dramatically towards price competition. And that has been true around the country. And as we've seen that in a number of jurisdictions.
As a result of that, we have been able to time it appropriately and take advantage of the marketplace, which has been driving costs down.
CHAIRMAN EVANS: Okay. Staying focused on this for the moment, because this is confusing. It appears that we have (inaudible) contracts. And from what my notes have here at least three of them, the communication contract runs through December 31st of this year. The on-line lottery until November of '09 and the instant lottery function through (inaudible) 2010. And so when you have three contracts then you have a new contractor coming in. And then one of the arguments being presented by the group that didn't get the contract is there's up-front costs that need to be invested in the system to upgrade it or convert it.
And so given all of these issues coming together, is it really realistic that there will be

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savings in the first year? How do you address that, either person or both?
MR. PAYNE: Well, I'd say the contract is clear. The vendor clearly did an analysis of the business risk associated (inaudible) for this contract, as well as assessing the existing lottery retail locations and the vendor has assumed the risk ofen ensuring that an adequate conversion occurs within a timely process. And frankly, the new contract will not begin -- we will not begin compensating the new vendor until the new system has been tested, until the new system has been validated, until we're able to ensure that the new system is able to do as it has been proposed in this contract.
And if at that time it occurs before November '09 or 2010 when the Elsom contract expires or when the network support contract expires, we will work with those other vendors to terminate their contracts for convenience, which means we will pay them for all reasonable costs incurred to date and simply convert to the new system.
But by doing that we immediately save the

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costs associated with those three contracts. We currently pay G-Tech almost a million dollars a year for network support services. We pay Elsom $141,000 a year for (inaudible) services and we've paid LTE about $11 million a year for the online...
CHAIRMAN EVANS: Okay. Mr. Young, anything you want to add to that?

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MR. YOUNG: Yeah. Also because there's a direct cost to the communications contract, which Mr. Payne already described as nearly a million a year, but there's an opportunity cost right now that we estimate at about $4 million a year, and that's why over two years ago we attempted to swap out the telecom contract and put a high speed network in place and the vendor didn't perform. As a result we did not move forward with that change-out. And so instead we held that change-out over and compressed by the on-line gaming system and the telecommunications system to be bid at the same time.

And that's not an atypical practice in the lottery industry. Many people actually (inaudible) services and the gaming platform services included in

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the same contract. We simply went from having two separate contracts and tried to combine them so that one actually could be administered. And there's reasons for that. Besides the opportunity costs of telecom, which is caused by outages, inability to troubleshoot at the store level, knowing where the network outages are actually taking place, and getting them fixed, we also have the ability now under a new contract to (inaudible) problems are to reduce down time and also to increase up time, which theoretically means we'll be able to sell more product.

So there's a combination effect between the two of them. And we've analyzed that over the last three years.

CHAIRMAN EVANS: Okay. Focusing quickly on the company -- the proposed vendor, W2i Venture is comprised of a local LSDB certified corporation, which is W2Tech, and then in partnership with Intralot, which is a multinational company. Focusing on Intralot quickly, my information it's a Greek company? Is it based in Greece? Is that where its corporate headquarters is? I don't know who I should ask.

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Either one.

MR. YOUNG: Yes, it is.

CHAIRMAN EVANS: You mentioned in your testimony there, I didn't see the exact word, they're kind of involved in other jurisdictions in the United States. Specifically what jurisdictions are they involved in, whether cities or states, and what do they do in those jurisdictions?

MR. PAYNE: Intralot is responsible for -- and I'm sorry, Chairman. I believe it's approximately five or six domestic locations. If you refer to page 4 of my testimony those locations are South Carolina, New Mexico, Nebraska, Idaho and Montana.

CHAIRMAN EVANS: Right.

MR. PAYNE: They also operate in total 17 lottery operations internationally with over 40 offices. But I think it's important to augment my testimony by further stating that Intralot is again the second largest lottery provider in the world. And they, as the trends appear, are rapidly gaining market share worldwide. Since 2004 they've gained nine contracts. Six of those G-Tech lost. Three of those

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Scientific Games lost. This company has never lost a

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contract that it's been awarded. So we're very excited about the new partnership and look forward to developing a state of the art lottery system in the District.

CHAIRMAN EVANS: So when you say they're operating, start with South Carolina. What do they actually -- do they run the entire South Carolina lottery or do they -- what do they do there?

MR. YOUNG: (Inaudible) referenced, they just won the bids, so there is an incumbent and they will be replacing those companies on a going forward base. So they actually don't have operating history in South Carolina or -- what's the other one?

MR. PAYNE: New Mexico.

MR. YOUNG: New Mexico.

CHAIRMAN EVANS: So what about Nebraska, Idaho and Montana?

MR. YOUNG: Yeah. They're operating there.

CHAIRMAN EVANS: So they run the lottery system similar to what they're bidding on here in those three jurisdictions?

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MR. YOUNG: Absolutely. And in fact our data center will be run out of the Idaho location.

CHAIRMAN EVANS: Okay. And how long have they been in Nebraska, Idaho and Montana, just to try and get a history? Have they been there a couple years or --

MR. YOUNG: One of them very recently over the last two years and the other one I think goes back as far as four or five years.

CHAIRMAN EVANS: Four or five years ago? Okay. And I'm running out of time. You can't see in the audience. We have a clock here so I'm down to my last mini seconds. One of the questions that we'll be raising and I'll raise it and it will probably take me over the time limit is, Intralot is partnered with W2Tech. And so the question becomes, because it states in the contract that W2 Tech will operate over 51 percent of the business interest.

So (inaudible) situations (inaudible) a large company and a smaller local company that team up. But the local company really has to operate 51 percent of the business. That's the whole goal of

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these types of arrangements. And many times in the past it hasn't been that way. It's been more form over substance. What can you assure this committee that indeed that's not going to be the case in this situation? And now I've run over my time, so if we can quickly answer that and then go to Councilmember Barry.

MR. YOUNG: The only way I can take an approach to that is we are as part of the proposal process required implementation plan and a schedule, including staffing capabilities, resumes and things like that of that nature. And so within that -- within the W2I proposal they describe the series of services that they will be providing directly on behalf of the lottery. And that includes a fair amount of field support, local staffing, helping support the emergency backup center, deliveries, ticket stock, everything that basically is

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required and currently gets done today locally. So a substantial portion of their work effort will duplicate the work effort that's being done today.

CHAIRMAN EVANS: Okay. Thank you very much. Councilmember Barry? And you'll have to -- for those that came in, everyone has to use my mike because we only have one hookup to the television cameras.

COUNCILMEMBER BARRY: Thank you very much, Mr. Chairman. Let me welcome Mr. Evans and Mr. Payne to this very, very important hearing. Mr. -- not Mr. Evans. Mr. Payne.

MR. PAYNE: Yeah.

COUNCILMEMBER BARRY: And Mr. Young. Excuse me. I was looking at my chairman over here.

Mr. Payne -- I think I'll ask Mr. Young. Who made up the panel?

MR. YOUNG: Who was comprising the panel?

COUNCILMEMBER BARRY: Names of people.

MR. YOUNG: Myself, I was the chief panelist. Mr. Michael Brown, who's in our operations area in the finance department within the lottery. Mr. Bruce Jones, who is our director of IT within the lottery. We also had Mr. Mike (inaudible), Dr. Ghandi, Tony Teyhuis, who was an auditor in OIO.

COUNCILMEMBER BARRY: Thank you, Mr. Young.

You made a lot of references in your testimony as to how antiquated the system is and how out of touch and out of tune we are. My own view is that that's not the fault of the present contractor; that's the (inaudible) problem. Do you agree -- that you're implying that it was the contractor that was at fault for this antiquated program. And I just don't agree with you if that's your implication of the lottery system itself.

I want to ask you (inaudible) contractor (inaudible) do we have a performance evaluation?

MR. YOUNG: Yes, we have.

COUNCILMEMBER BARRY: Did they do all that was asked for them to do?

MR. YOUNG: It was satisfactory, I believe. (inaudible) performance review, the most recent performance review was satisfactory.

COUNCILMEMBER BARRY: What's the levels of the review?

MR. YOUNG: I'm sorry?

COUNCILMEMBER BARRY: Satisfactory, very satisfactory, unsatisfactory --

MR. YOUNG: I don't recall exactly, representative Barry. But I recall that the most recent review was satisfactory.

COUNCILMEMBER BARRY: What's higher than satisfactory?

MR. YOUNG: What's higher than satisfactory? I don't know exactly.

COUNCILMEMBER BARRY: Can you find out?

MR. YOUNG: Yeah. I can find out. (inaudible).

I'm sorry. We found out (inaudible) poor, unsatisfactory, satisfactory and excellent. That was

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the four stage process --
COUNCILMEMBER BARRY: Is there a form that you fill out?
MR. YOUNG: There's a form that you fill out.
COUNCILMEMBER BARRY: Could you get us a copy of that evaluation?
MR. YOUNG: Yeah. We can get you a copy of that form. And that evaluation -- I stand corrected as well. The most recent evaluation came out as

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unsatisfactory, and the unsatisfactory nature of that was due to a litany of problems that we've experienced with outages and performance on the most recent annual year. So --
COUNCILMEMBER BARRY: Are those outages the fault of the contractor or somebody else's fault?
MR. YOUNG: They were a combination of things that we've expensed with the service of the vendor including schedules, delivery dates.
COUNCILMEMBER BARRY: But not the outages and other things that you spoke of?
MR. YOUNG: Yeah.
COUNCILMEMBER BARRY: I'm trying to get at who's --
MR. YOUNG: One of them was clearly the fault of the vendor (inaudible). We had an outage of several hours or more in duration at a number of our retailers. And that was caused by a telecom failure on the part of the vendor. So as a result of that we just assessed liquidated damages to them this year and that amount has been collected or is in the process of being collected.

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COUNCILMEMBER BARRY: How much was it?
MR. YOUNG: It was over $300,000.
COUNCILMEMBER BARRY: And the contractor agreed to the liquidation?
MR. YOUNG: Yes.
COUNCILMEMBER BARRY: Was it a settlement?
MR. YOUNG: I'm sorry?
COUNCILMEMBER BARRY: Was it a settlement?
MR. YOUNG: No (inaudible).
COUNCILMEMBER BARRY: Do you think that the D.C. Government should be a party to sending dollars abroad?
MR. YOUNG: You mean philosophically or --
COUNCILMEMBER BARRY: Not philosophically. Realistically. Do you think that the players who play these lotteries and who put into the profit -- there's a profit in this game, isn't there?
MR. YOUNG: Yes, there is.
COUNCILMEMBER BARRY: Do you think these profits should be sent abroad to Greece or somewhere else?
MR. YOUNG: You mean like Italy --

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COUNCILMEMBER BARRY: Whatever they go.
MR. YOUNG: -- or Greece or?
COUNCILMEMBER BARRY: Wherever the corporate headquarters is of this company, should these profits be sent abroad?
MR. YOUNG: (Inaudible). I'm not sure. As

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the stated purpose of the country is to achieve by whatever means --

COUNCILMEMBER BARRY: I disagree with that. I don't think the United States ought to be sending -- the D.C. Government ought to be (inaudible) sending profits abroad. The dollar is already at an all time low right now. The Euro is higher than the dollar. And China has almost eight trillion dollars or something of our dollars over there. We need these dollars over here, didn't we? Anyway, that's where we are.

Now, in terms of the comparison in terms of Mr. Payne, how much we save, this is admirable. But in terms of Mr. Manning's group, did you compare his proposed prices, not what he's doing now, but his proposed prices with this W2I?

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MR. PAYNE: Yes, sir. We did.

COUNCILMEMBER BARRY: And how did they compare? What was the difference?

MR. PAYNE: There was a substantial difference between the price offered by Mr. Manning's group and the price offered by the --

COUNCILMEMBER BARRY: You mean for the future, not what he's doing now, but --

MR. PAYNE: A substantial difference.

COUNCILMEMBER BARRY: His best and final.

MR. PAYNE: Sir?

COUNCILMEMBER BARRY: His best and final, do you have a score sheet that would show this committee the difference financially between the two?

MR. PAYNE: Yes, sir. And let me just say a couple of things. First, there was a Post article today that cited a protest at the Contract Appeals Board. So we certainly want to be a bit cautious by not getting too deeply into the source selection process here and let that administrative adjudicative process play out. Secondly, I will say to you that had this contract been proposed for award to LTE, we

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would be paying almost 30 percent more in the first year of that contract than we would under this one.

COUNCILMEMBER BARRY: Does the contractor agree with those numbers?

MR. PAYNE: It's a percentage of sales and it's a mathematical calculation. I mean --

COUNCILMEMBER BARRY: But the sales can be predicted sales as well as what's going to come in in reality?

MR. PAYNE: I agree with that, Mr. Barry.

COUNCILMEMBER BARRY: It seems to me that in all fairness, if you pull out a number of projections based on historical data and future risk assumptions, you ought to at least have an agreement from both contractors that these numbers are in line with what their projections are. And so I want to make sure we're comparing apples and apples.

MR. PAYNE: Yes, sir.

COUNCILMEMBER BARRY: Okay. Now, the other thing, I think Mr. Young indicated that price was a part of the consideration. Because I asked you, Mr. Payne, what percentage of the award would be price and

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what percentage would be technical?
MR. PAYNE: One-third of the evaluative criteria was technical, two-thirds was price.
COUNCILMEMBER BARRY: Was price a consideration here?
MR. PAYNE: Absolutely.
COUNCILMEMBER BARRY: Why did Mr. Young say is wasn't?
MR. YOUNG: Because that's not what was evaluated under SSEB. Only the front office reviews prices. We only review the technical proposal.
COUNCILMEMBER BARRY: Mr. Chairman, we've got a problem here in the sense that Mr. Young should have at least been aware -- do you have scoresheets?
MR. YOUNG: Yes, I do.
COUNCILMEMBER BARRY: (Inaudible.) technical side between the two offerers -- do you have the score sheets?
MR. YOUNG: Yes, we do.
COUNCILMEMBER BARRY: Is it possible that we could get that?
MR. PAYNE: I think we'd like to see what

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the legal filing is over at the Contract Appeals Board. But we certainly recognize the oversight role of the council and we're happy to have the discussion with the chairman about the appropriate way to submit any and all documentation you might request.
COUNCILMEMBER BARRY: Now, in what states is the W2I -- well, no the Greek company. What's the name of the Greek company?
MR. PAYNE: Intralot.
COUNCILMEMBER BARRY: Intralot. In what states are they operating similarly to what they're proposing to operate here. The actual operating. Not saying we're going to do it, but operating. What states?
MR. PAYNE: Well, again, both offerors were given an opportunity to make a recommendation of where we might go and visit similar technology. For the successful offeror that state was Idaho. And we had an opportunity to travel to Idaho to view the technology.
COUNCILMEMBER BARRY: Wait a minute. My question is what states does Intralot operate similar

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functions as proposed here.
MR. PAYNE: Again, Intralot is located in --
COUNCILMEMBER BARRY: My question was what states do they operate similar and carry out similar functions that's being proposed here.
MR. PAYNE: Idaho, South Carolina, New Mexico, Montana.
COUNCILMEMBER BARRY: You said they have started there yet. They haven't started there in South Carolina, right?
MR. PAYNE: Nebraska, Idaho, Montana.
COUNCILMEMBER BARRY: Now, wait a minute. In Nebraska Intralot and their partners there are operating and carrying out similar functions as is proposed here in the District?
MR. PAYNE: They carry out lottery

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functions --
COUNCILMEMBER BARRY: Please. Do me a favor.
MR. PAYNE: Yes, sir.
COUNCILMEMBER BARRY: Answer the question.

I'm not a lawyer, but answer the question. Answer the question.
MR. PAYNE: They carry out lottery functions in those three states.
COUNCILMEMBER BARRY: No. These were similar. Suppose you've got a function where you move these two nameplates from here over there. Now where in these states are they moving these two nameplates somewhere similar to what you're asking them to do here?
MR. PAYNE: Yes. Again, there are similar operations in the three states that I listed that will be similar to the functions that are proposed here in this contract.
MR. YOUNG: Let me make one clarification to your question (inaudible) Barry, and that is that the District of Columbia is the only jurisdiction in the country that has a LSDB requirement at our same level and that has an operating entity function at the level across the board --
COUNCILMEMBER BARRY: When was W2I certified?

MR. PAYNE: I believe within the last twelve months.
COUNCILMEMBER BARRY: Did G-Tech and LTE get bonus points for their longevity?
MR. PAYNE: They both received the maximum preference points allowable under this RFP.
COUNCILMEMBER BARRY: Mr. Chairman, may I have another round?
CHAIRMAN EVANS: Yes.
COUNCILMEMBER BARRY: Thank you. I will yield to my distinguished colleague.
COUNCILMEMBER GRAHAM: Well, let me follow up on my opening remarks where I said that I wanted to inquire into what qualified these particular offerors and what might disqualify them. So let's start with the qualifications. But first let me understand a little bit better, W21.
MR. PAYNE: I.
COUNCILMEMBER GRAHAM: W2I. I'm sorry. W2I. Who are the principals of W2I?
MR. PAYNE: Warren C. Williams, Sr. is the president.

COUNCILMEMBER GRAHAM: No. I thought Warren C. Williams, Sr. was the president of W2Tech.
MR. PAYNE: Warren C. Williams, Sr. is the president of W2I, as I understand it, Mr. Graham. Ms. Alaka Williams that is proposed as the general manager. And Mr. Tom Little of Intralot will have a significant operating role as well. And combined (inaudible) 60 years of lottery experience.
COUNCILMEMBER GRAHAM: Wait a minute. Our time is limited so if you would just kindly restrict yourself to my question. I thought Alaka Williams was

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the proposed general manager for W2Tech. Isn't what you testified to, Mr. Young?
MR. YOUNG: No. I didn't testify to who the principals were.
COUNCILMEMBER GRAHAM: Where is the d/b/e in all of this? Which is the d/b/e?
MR. PAYNE: W2Tech combined with Intralot as a joint venture, 51/49 percent to form W2I.
COUNCILMEMBER GRAHAM: Okay. Who are the principals with W2Tech then?
MR. PAYNE: The principals of W2Tech as I

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understand it are Warren C. Williams, Sr. and Jr. And I'm unfamiliar of any other principals within W2Tech.
COUNCILMEMBER GRAHAM: So that the prinipals of W2I and W2Tech are the same?
MR. PAYNE: I would not say that because, again, it's a joint venture, which now adds Intralot, an international lottery provider, to the management mix.
COUNCILMEMBER GRAHAM: And is it W2I that is the d/b/e?
MR. PAYNE: Yes, sir.
COUNCILMEMBER GRAHAM: Okay. Now, the Washington Post reported this morning that a person by the name of Janisha Richardson was the president of one of these companies, and had a 51 percent ownership. Where does she appear?
MR. PAYNE: She's not (inaudible) that we have seen, Mr. Graham. I certainly think we might ask the (inaudible) to validate whether that Post article is accurate.
COUNCILMEMBER GRAHAM: So you don't have any information whatsoever on any role being played by

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Janisha Richardson?
MR. PAYNE: You know what? Actually, I stand corrected. She is listed on the project as a controller in the staffing plan. And that person would be responsible for the project budget and ensuring timely payments to vendors and suppliers.
COUNCILMEMBER GRAHAM: What is the name -- I'm a little confused here. What is the name of the newly qualified d/b/e?
MR. PAYNE: W2I.
COUNCILMEMBER GRAHAM: W2I.
MR. PAYNE: Yes, sir.
COUNCILMEMBER GRAHAM: Was the contract solicitation extended in order for W2I to qualify as the d/b/e?
MR. PAYNE: Absolutely not.
COUNCILMEMBER GRAHAM: So there was no extension of a seven-day period (inaudible) accommodate this application and approval?
MR. PAYNE: No, sir. I will say, Mr. Graham, that as is standard fare in solicitations, there were about 125 questions that were asked of us,

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the government. And to make sure that we answered all the questions comprehensively, there (inaudible) of the time frame for responses in order to give us, the government, additional time to answer those 125 plus (inaudible) publish and disseminate them to the

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offerors. There was no any extension for any other reason.

COUNCILMEMBER GRAHAM: Now, you have stated, and it's hard for me to keep track of say who said this. You look very similar, actually, in a way.

MR. YOUNG: I'm more handsome.

COUNCILMEMBER GRAHAM: With that exception. But someone testified, and I think it was you, Mr. Young, that Warren C. Williams senior has 35 years of lottery experience. Can you document that? You testified to that effect, Mr. Young.

COUNCILMEMBER GRAHAM: Mr. Payne did. And sir, what I would point to again is when the lottery was first developed and implemented here in the District, it's actually quite coincidental that Mr. Williams, Sr. and Mr. Tom Little both worked in the implementation of the D.C. Lottery. And both have

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been involved in the lottery industry since then.

COUNCILMEMBER GRAHAM: They have been? Because I'm familiar with Warren C. Williams' participation as an alcohol licensee on U Street. But can you document that since 1985 he has maintained an active involvement in lottery and games?

MR. PAYNE: I would certainly say that if the committee is interested in that documentation, we're certainly happy to ask for it as the Procurement Office --

COUNCILMEMBER GRAHAM: No, no, no. This is your testimony I'm asking.

MR. PAYNE: Sure.

COUNCILMEMBER GRAHAM: You said, and in fact I even put quotes about it. You said that Warren C. Williams had 35 years of lottery experience. Those were your precise words to this committee this morning.

MR. PAYNE: Absolutely.

COUNCILMEMBER GRAHAM: My question is can you document that statement?

MR. PAYNE: If you're asking me to provide

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you with a copy of a resume or any other documentary proof, I am certainly happy to submit that. I will tell you that we relied as we did with all offerors on the information submitted and the technical price proposals and best and final offers.

COUNCILMEMBER GRAHAM: Well, that may be fine. But since it's your statement I'm just simply asking you to provide me the basis for that statement.

MR. PAYNE: Yes, sir.

COUNCILMEMBER GRAHAM: Would you do that? Through chairman? Can we get that information?

You know, I am concerned also about the qualifications, not of this company, which is on the Athens stock exchange, you know, but about the local players in terms of their abilities and established qualifications. Have you looked into this?

MR. PAYNE: We have looked into it as part of our due diligence review, the responsibility and capacity and capabilities of the proposed offeror. And those -- the corporate entity passed muster with (inaudible) Employment services and the Office of Tax and Revenue. Moreover, neither of the corporate

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entities are listed on the federal (inaudible) District of Columbia's list of excluded parties.

COUNCILMEMBER GRAHAM: Have you done any Clean Hands inquiry into the principals and officers of the local companies?

MR. PAYNE: We would be putting the cart a bit before the horse, Mr. Graham, if we started looking at individuals. We do have a mandatory criminal background check and additional due diligence review that we would conduct once we received the green light from this committee.

COUNCILMEMBER GRAHAM: Because Warren C. Williams, Sr. and Warren C. Williams, Jr. have both been involved in major controversies with the District of Columbia in the last few years. Have you made any inquiry into these issues?

MR. PAYNE: Sir, we have not. But we're certainly happy to address any items that the committee would like to bring to our attention.

COUNCILMEMBER GRAHAM: Well, you know, it's a very interesting question about Clean Hands and the Office of the Chief Financial Office. It so happens,

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Mr. Jeff Kudre, if you don't mind me mentioning him, when he was at ABRA, he and I were very much involved in developing information on how OCFO approaches Clean Hands issues. You may remember this. And I have quite a lot of information on this. I don't have quite enough time to go into it at the moment. But my basic finding was that OCFO (inaudible) in terms of its review for Clean Hands at that time.

Now, I think there have been improvements made but I would like to know if there is anything in the backgrounds of these individuals that would positively disqualify them from the award of such a contract, such as do they owe the District of Columbia major amounts of money, you know, have there been things that they've done in the District of Columbia that raise question about their ability to perform. And that would apply to any of the principals in any of the local companies, including Janisha Richardson.

The final question on this round I just want to ask is I'm concerned that the District of Columbia has been low-balled in this offer. And, you know, it's a very -- two-thirds of this decision is

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based upon price. And, you know, I think that it is not uncommon for bidders to come in and promise the world one way or another, and then of course get the contract and then the actual performance is different.

But here we have some indications of what this company might be doing. And here I am referring to Intralot, because while it's not prominent in the United States lottery games, it does have three states with a track record, Nebraska, Idaho and Montana.

Do these systems operate on a percentage of revenue?

MR. PAYNE: I'm certain that Idaho does. And in fact Idaho's percentage of revenue is less than this that's been offered in the District. I would probably have to defer to Mr. Young or others that might have additional subject matter expertise.

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COUNCILMEMBER GRAHAM: Well, my time is about up and I try to honor that. I would like to know just precisely what the financial arrangements are in Idaho, Montana and Nebraska, and what are the proposed financial arrangements with South Carolina and New Mexico.

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MR. PAYNE: Yes, sir.

COUNCILMEMBER GRAHAM: I assume you've looked into that?

MR. PAYNE: Yes, sir.

COUNCILMEMBER GRAHAM: Okay. Through the chairman can we get that information?

Ten seconds. And I would like a list of all the officers and principals of any kind that are associated with the two local companies so that we know exactly who is what and what they're proposed to be doing.

Five seconds over. Thank you.

COUNCILMEMBER CATANIA: Good morning. I have two concerns and questions that I'd like to have addressed. One, I'd like to see a copy, if I could, of the joint venture agreement between W2Tech and Intralot. And that is simply a perfunctory administerial issue. I'd prefer, you know, if I could have it by the end of the week. My concern there -- is it isn't so much a concern as I wanted to confirm for myself that this is a bona fide joint venture.

MR. PAYNE: Yes, sir.

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COUNCILMEMBER CATANIA: That there have been joint ventures in the past in the District outside of this particular area where a party on its face has 51 percent but in reality does not have 51 percent because when it comes time to making the decision if there is a disagreement, the default decision maker is an appointee of the 49 percent holder (inaudible) as a bona fide joint venture. And so if I could have a copy of it I could confirm for myself that it's a bona fide joint venture.

The second issue of concern for me is just a confirmation of their ability to perform. Both of you gentlemen seem satisfied based on your site visits that Intralot has been successful at implementing lotteries. It's the second largest (inaudible) in the world. That should speak (inaudible) for its ability to perform.

But on a question similar to the chairman's, you know, about the ramp-up time it will take for them to succeed, is it your testimony that the time allotted provided they are given the contract they'll begin working immediately to begin performance

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that we won't officially hand over a lottery to them until we are confident that they can perform, so it isn't as if we kind of wake up one day and they're in charge without any preliminary approvals. Is that correct?

MR. PAYNE: That's absolutely right.

COUNCILMEMBER CATANIA: All right. I want to say, you know, how much I commend certain aspects of this solicitation from what you've testified today. The inclusion of -- is it called the Patel Institute?

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MR. PAYNE: Yes, sir.
COUNCILMEMBER CATANIA: You know, I hope this is something we will do more of, frankly, going forward in this government when we have contracts of such significance that have enormous technical expertise, that would go beyond the normal expertise of our contract and procurement officers, which are more process than content in many ways, that I think it's an excellent precedent to set to go out and find someone who can assist us on that technical aspect while of course we reserve the right on all the procedural things. So I want to commend the Office of

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the Chief Financial Officer for that. I think that's an excellent step forward.
But let me ask about the technical issue. Because the remaining questions in my mind concern how is it that this new vendor will be able to perform better for less, which leads me to believe that if this is in fact true we may have, it appears, to have paid too much for too long to our incumbent vendor. And I'm not prepared to say one way or another, because I'm not an expert here today. But if this, in fact, does come to fruition, that would certainly raise that question.
But before we get to the money, I want to talk more about the technical aspect of this proposed new vendor versus our current vendor, because in my memory this is not the first time in which charges of failure to perform have been levied against the incumbent vendor when it comes to technology. And we here are not in the position, the council is not in a position to play the judge and jury. It's usually one side versus another.
And so would either of the witnesses care

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to testify exactly what is it about the incumbent's technology that is inferior to that which is proposed? Is it a platform of dial-up versus high speed internet? What exactly is the difference in technology between the incumbent and that which is proposed?
MR. YOUNG: Councilmember Catania, I think I'll try to take the first part of the question. Essentially, the technology between the two vendors is very similar. I mean (inaudible) standards (inaudible). There is adherence to certain standards for software development at CMM level 4, level 3. There is an adherence to the right kind of development and protocols for exchanging data. All those kinds of things at various levels.
But essentially the platform that W2I proposes under the Intralot standard is a lot more open. It's based on open architecture, which is the most current standard really in IT. It's designed to really interact effectively with third party systems and so that there's a possibility that you could, for example, plug and play games that are developed by

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third parties and not just limit it to games that are developed by the incumbent or the incumbent provider.
COUNCILMEMBER CATANIA: So that's more flexible system.

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MR. YOUNG: So it could be a more flexible system. (inaudible) we looked at, it's not a question of not or underperforming. They have a very good system. It's an ES system. Their ES system is used around the country. It's a very effective system. It's highly secure. It passes traffic well. It does everything that it purports to do. But there are other elements to the protocols and so forth that you have to look to as well.

And what we looked to was a true open architecture throughout the layers of the platform, so that there is actual interoperability between the two at all layers; that it wasn't just a proprietary, for example (inaudible) and then wrapped around a couple other things that were less proprietary. We wanted to be able to interact, for example, with the new Oracle database system.

COUNCILMEMBER CATANIA: Mr. Young, I'm

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sorry, if you could with greater specificity explain other than flexibility what is the difference in the technology between the incumbent and the company which is proposed, the vendor that was selected.

MR. YOUNG: Okay.

COUNCILMEMBER CATANIA: And if your colleague wants to join in as well. I'm looking for -- there was a reference to -- it may not be the software of the two vendors, but it may be the technological platform that they're operating under, the telecommunications aspect. Is there a difference in, again, the telecommunications aspect between the current vendor, the incumbent, and the proposed?

MR. YOUNG: Well, let's take telecommunications for example. The proposed vendor proposed a digital meshed radio application, which is a high speed data transmission with a higher broadband capability than what's proposed by G-Tech. The G-Tech proposed the visa application which is widely used around the country. It's effective for transmission. That sort of thing.

COUNCILMEMBER CATANIA: This is a cable

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versus a broadband?

MR. YOUNG: No. It's all digital. Everything is digital. It's a question of delivery mechanism. And for all practical purposes, to the extent that there are any problems with the delivery system, we made it open enough so that you could use different strategies to service the account.

COUNCILMEMBER CATANIA: Can I ask Mr. Young, there is always a concern when switching from one vendor to another when there's so much money at stake for the treasury. And so a lot is going to rely on not only their ability to perform, but their ability to perform on day one. In the event that there are liquidated damages for their inability to perform early on, what is the District's recourse in terms of liability? Will it be to this W2I, which we're going to -- I'm going to hypothesize is a newly created venture without a lot of assets for us to really -- to seize, for lack of a better term, in the event of liquidated damages.

Do we require W2I to have some degree of

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liquidity, some degree of resources? For instance, if

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early on (inaudible) perform and liquidated damages arise, we don't want to be going off an undercapitalized shell. What is the District's recourse?

MR. PAYNE: Well, Councilmember Catania, I will say that there are probably three quick things. Number one, there is a bonding, an insurance component to any contract that we might do. And that certainly offers us the financial resources and wherewithal if there are any problems that arise.

COUNCILMEMBER CATANIA: This is an insurance product they (inaudible) certain sum of money?

MR. PAYNE: That's correct. And they bid at risk related to their performance. And secondly, the thing that was certainly extremely attractive about the W2I offering is that unlike the other market capitalizations there are cash reserves that their partner brings to the table are substantially greater than that offered by any other offeror. In fact they will finance the development of this new venture through those cash reserves as opposed to through

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other debt financings or other offerings.

COUNCILMEMBER CATANIA: I think that's commendable. I'm sorry for interrupting. But I think that is absolutely commendable. So if we can expect that the junior partner, Intralot, is going to provide seed capital to the joint (inaudible) sufficient to pay for bonding, any liquidated damages, and a (inaudible) the sunken costs of operation, much the way many capitalists operate.

I mean, what I'm seeing, Mr. Chairman, is what we are being offered here is something (inaudible) unique here in the District not often seen in the District where you have capitalists acting like capitalists as opposed to the District which historically never saw a private sector partner it didn't want to completely make whole from jump street. So I think that's what startling here. We have people willing to risk capital to make a return on that money. That doesn't seem outrageous. That seems like the way the world works.

What's the third source of protection?

MR. PAYNE: Well, the third thing I was

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going to say just as a matter of fact, the junior partner (inaudible) liquidated damages in any previous contractual agreement, nor (inaudible) missed a contractual deadline. The same certainly cannot be said of the other offerors.

COUNCILMEMBER CATANIA: Well, this is the end of my time. But I'll have more questions. I mean, this is of course an important contract and we want to make sure that each of us individually have done our own due diligence to make sure in form and entrance the process was handled fairly and that the new vendor can perform and that there are consequences if they do not. But Mr. Chairman, thank you. I'll have more questions in the second round but would like to see a copy of the joint venture agreement.

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CHAIRMAN EVANS: Councilmember Brown?
COUNCILMEMBER BROWN: Thank you, Mr. Chairman. Welcome Mr. Payne, Mr. Young. Let me first start off by saying that I look forward to getting the joint venture agreement as well as the information that was requested as it relates to Clean Hands. This is interesting here. Mr. Payne, you mentioned

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(inaudible) venture agreement.
And the reason why this is interesting, if we're going to set a precedent of how we do joint venture agreements in the District of Columbia then I want no agency to come before me to ever say that no one has the bonding. I don't want to hear another no one has the financing. Because in every instance as we are rebuilding our schools, as we were trying to build the Nationals baseball park, as we are doing development all over the city, I think this should be a model if this is true that the joint venture partner, which is the certified business, you know, does not have to have 51 percent equity, does not have to have the bonding requirements necessary. This may be good. Because it's never happened.
Do you understand where I'm going here? Everywhere I go people say they can't do it. Mr. Catania, you know that very well. They say they don't have the bonding capacity. Let me just talk about that. No one is more in support of local businesses than me. So I have more credibility than anyone on local businesses. So can you tell me with this joint

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venture partnership, are you saying that the local business who got certified as a local business doesn't have to have any bonding requirements for that 51 percent? It's all coming from the 49 percent partner (inaudible) testimony, Mr. Payne?
MR. PAYNE: Absolutely not. My testimony --
COUNCILMEMBER BROWN: What is the bonding requirement of the joint venture partner, the majority joint venture partner, Mr. Payne?
MR. PAYNE: The bonding requirement is not allocated or apportioned among the JV partners. The bonding and insurance requirement is for the newly formed entity, W2I. And the assets that are brought to bear or the coverage is that of the entity W2I, not of the junior venture partner, the majority or the minority junior venture partner.
COUNCILMEMBER BROWN: So how did they determine the joint venture partner relationship has been certified, Mr. Payne? They would have to certify based on the fact that the joint venture partner can perform 51 percent of the work; is that correct? Did

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you look at the joint venture agreement partner that came from the department of small and local business? This is what they have telling local businesses for years in the District of Columbia and have been denying them access to participate in the economic reward that this city is seeing. And what is going here and what's taking place today is something that is the direct opposite.
So what I'm just trying to figure out here,

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if in fact 51 percent means 51 percent, which has denied many people an opportunity to participate in the economic reward of this city, then what part of the 51 percent are they going to be doing? I would imagine there's some up-front costs to this operation as you mentioned that we will see cost savings because they will put up front money to create a platform to provide those cost savings and once that happened turned over to them. Is that correct?

MR. PAYNE: That is correct.

COUNCILMEMBER BROWN: So how much is the -- are they putting 51 percent of the capital into this project, Mr. Payne?

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MR. PAYNE: Well, Mr. Brown, with all due respect, without a copy of the JV agreement in front of me, I certainly don't want to get into the minutia of it. But we will provide it as you've asked. I will say that the roles and responsibilities of both W2Tech and Intralot are clearly delineated in the contract and in their ultimate proposal that we now propose be awarded as a contract. And it is without any equivocation whatsoever that I can say that there is a true partnership in this offering.

I will say lastly that the interesting thing that we discovered when we did our site visits -- and I personally traveled to both Idaho and Rhode Island -- is that the LSDBE partner for this offering, this contract offering, actually took the lead on the technical and substantive presentations. They did not sit silently in the room while the --

COUNCILMEMBER BROWN: Just for time sake, Mr. Payne -- and you know I have a tremendous amount of respect for you and your integrity in what you're doing, Mr. Payne, but it's very clear that you kept articulated that the junior partner around bonding,

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the junior partner around financing, the junior partner around a number of different things were articulated through this panel. And I'm just trying to figure out what is the majority partner take on and what is the majority partner's responsibility.

And the reason why this is important to me, because if this is what we're doing in the government today then we're doing something different than what has been told to many people that live here in the District of Columbia, that have had their businesses here in the District of Columbia, that have been told no, you can't have this.

And other contracting officers have denied, have denied something that you tend to look differently upon. And I'm not saying what you're doing is wrong. I want to be clear what is the consistency within the government as it relates to these joint venture partners and while we have been denying so many people for so long an opportunity to participate. So that's what's very interesting here to me.

Let me move down to the $31 million in cost

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savings. Because quite frankly when you hear $31 million in cost savings, that's a lot of money. And for many of us, we are moving in a direction we would

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like to applaud you for finding those cost savings if they're reality. Can you help me break down how we came to $31 million in cost savings, one; and two, at some point during the current contract I believe after revenues are reached at like $320 million or so -- I can't remember where that number is -- they get cut off. That means they don't make any more money. And in this current contract it seems to be open, which means -- is that correct?

MR. PAYNE: Well, just a clarification, there is no cap under the current contract. We have averaged over the last eight, nine years, between 9 and $11 million in payments to LTE to operate a system that is only a portion of what's being offered under this new contract. Secondly, just to be very clear about this, under the current contract the percentage of sales is 4.2 percent. Under the contract that's being offered by W2I the percentage of sales if annual sales are less than 300 million is 2.29 percent.

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If -- is 300 million, it's 2.5 and greater than 330 it's 2.6.

COUNCILMEMBER BROWN: Mr. Payne, just because of time's sake, that's because they offered a larger opportunity; am I correct?

MR. PAYNE: I would not agree with that, Mr. Brown.

COUNCILMEMBER BROWN: It's the same opportunity, Mr. Payne?

MR. PAYNE: Actually, the networks were combined previously. It was the on-line gaming network and the support system. It was thereafter that it was bifurcated and separated into two separate contracts.

COUNCILMEMBER BROWN: No. I'm saying the contract now versus the contract that we currently have, is it the same or is it a larger contract that's going to encompass more things in it? That's the question I have.

MR. PAYNE: The contract now would be probably about one-third of what we would get under the new contract, but we're paying probably twice as

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much for it.

COUNCILMEMBER BROWN: And then with we're saving -- so it's smaller, we're paying twice as much for it, but we're saving $31 million over a period of time?

MR. PAYNE: I'm talking about the current contract, Mr. Brown, which is why we thought it wise to compete early to seek a replacement system in order save revenue for the District of Columbia. We immediately go from $11 million a year to $6 million under just the one contract, not to mention the additional $1.3 million that we would save if we eliminated two other contracts whose services would be provided for under this contract.

COUNCILMEMBER BROWN: And you mentioned in Nebraska and Idaho, because those are the places that they are currently performing now; is that correct?

MR. PAYNE: Yes, sir.

COUNCILMEMBER BROWN: But they don't have any joint venture partner in those situation or scenarios; is that correct?

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MR. PAYNE: Honestly I don't know, I don't know the answer to that but I'm happy to find out if joint venture partners exist in any of the other five domestic locations.

MS. FORD: I'm a big supporter of joint venture partners. Let me just say that, you know, right off the bat. But if this one is structured -- and maybe this one can be the model for the rest of the government. Maybe you have opened up the eyes where everyone has been denied for so many years in the District of Columbia, that it actually is kind of sad. It's sad that people have been told no, no, no, no, no, no, and then in this particular instance it's okay.

So I want to see how we move forward and how we look back at these contracting officers that have denied local businesses the opportunity to participate based on the same reasons that you're articulating should we go forth in this case. That's just something -- the risk assessment. The vendor's risk assessment. You have a copy of that; is that correct?

MR. PAYNE: I'm not sure?

COUNCILMEMBER BROWN: Councilmember Catania asked the question of moving forward in the plan that they have to ramp up, do you feel comfortable in what they've laid out that they're going to be able to deliver what they say they're going to be able to deliver.

MR. PAYNE: Yes.

COUNCILMEMBER BROWN: And so you've made that decision and assumption based on, you know, of course, going somewhere and taking a look at what they have done some sort of risk assessment; is that correct?

MR. PAYNE: Well, I would say that there were three levels of review, Mr. Brown. There was the technical evaluation panel who reviewed the technical proposals and the answers to questions we raised. There was the independent consultant, Patel Memorial Institute, who is a leader in the lottery industry who reviewed those evaluations and came to their own conclusions, which only further validated the evaluation panel. And then there was my independent judgment as the contracting officer.

COUNCILMEMBER BROWN: So let me ask you a question. Both of you -- and my time is up. If both of you are around if this passes and goes through some first phase, are you both prepared to resign if we don't see the cost savings that you are articulating to us right now?

MR. PAYNE: Absolutely.

COUNCILMEMBER BROWN: Thank you.

(inaudible.)

MR. PAYNE: Whoever did the first contract should have resigned because it was too high.

MR. YOUNG: Sure. First year. No question.

CHAIRMAN EVANS: Thank you, Mr. Brown. We'll start second round. And we're prepared for my colleagues until everybody has all of their questions

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answered we'll continue to move forward on this. My questions are kind of picking up where a lot of people have left off. It seems to me an evaluation (inaudible) this committee moves forward with this contract one of the central issues is was the process fair.

MR. PAYNE: Yes, sir.

CHAIRMAN EVANS: And you outlined, both of

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you did, particularly you, Mr. Payne, the process that was followed. And of course the losing party is claiming that indeed it wasn't quite fair. And have you -- has it been brought to your attention what their claims are, because they've now filed with the contracts appeals board a complaint that this process was not fair. So has that been brought to your attention?

MR. PAYNE: I read it in the Post this morning. I'm uncertain of what the basis would be for the protest. And generally the process, Mr. Evans, is the contract is awarded. The unsuccessful offeror asks for an opportunity to be debriefed and that's when I would discuss their strengths and their weaknesses. They have not been -- they have not asked for that opportunity because the contract has not been approved and we're unclear of what the basis is for the protest.

CHAIRMAN EVANS: Okay. And how did this -- for all of our edification, how did this process start?

MR. YOUNG: All right. This is the way it

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started. As part of our restructuring of the D.C. Lottery which we've testified in front of your committee on oversight a couple of times we had to go through a number of things that we looked at, staffing, systems, internal and external technology, cost estimates, auditing, security. We've gone through a number of those things. And in fact the one year I think we were audited about 18 or 19 times through a combination of sources for financial, operations, technology, procurements, any number of things. In one year at least 18 times.

So this process started by looking at all the aspects of the agency and trying to find the best way to put it back together to be as efficient, cost effective and productive as possible. That started with the restructuring. It continues through strategic planning and outlook. It continues through development of enterprise resource system internally and also continued through trying to find ways to manage our costs and our gaming alternatives in the field. And so that led us directly to what we were doing with our gaming platform.

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Now, as I indicated we started the process several years ago looking at the telecommunications system and figuring if we could get it in advance in front of that that would take a number of issues off the table with respect to the gaming system architecture, because you need a delivery system to actually get the gaming information from the players in the terminals back to the centralized systems.

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So we tried to front-end that process by changing over telecom first. For a number of reasons that wasn't able to happen.

So we continue to operate a dual platform right now, (inaudible) one part radio and one part analogue in many respects, and it has a lot of problems. So we knew that. And so that led us to say, hey, well, the most effective way we can get this done is to combine the procurements between telecom and the gaming system so we get the best feature functionality and the best costs available to the agency.

With the incentive being we've been given a mandate from Dr. Ghandi's office not to expand the

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nature of gaming in the District of Columbia, but to produce as much additional revenue as we can within the confines that we're working with. And that leads us directly to efficiencies and directly to service offerings in marketing games that (inaudible) want to play and enjoy. And that's the mission that we launched under.

As a result of that we started strategizing, as I said, back in 2005 for a contract that expires in November of 2009. And we looked at the various aspects, the technologies, what was outstanding, our current cost structures, and ways to manage our P&L statement to produce the highest and best results possible.

And that led us to a series of refinements, information gathering, and then to put together an RFP process that was based not just on want or like or dislike or anything but was the best available information in the marketplace at that time. And that's what we did. We put that information together. We sent it out.

CHAIRMAN EVANS: When was the RFP sent out?

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MR. PAYNE: May 2007.

CHAIRMAN EVANS: Okay. May 2007. Go ahead.

MR. YOUNG: The RFP was sent out on May 2007.

CHAIRMAN EVANS: And how many people responded to it?

MR. YOUNG: There were inquiries from a number of people, but formal proposals we received two.

CHAIRMAN EVANS: Two, okay.

MR. YOUNG: There were several rounds of questions and clarifications that we had to go through. I think there were three amendments to the RFP that cover a variety of things, having to do (inaudible) and the number of terminals, things of that nature, all the little things people are interested in. And we did that and then we had it out and got the responses back.

CHAIRMAN EVANS: Mm-hmm.

MR. YOUNG: We put together, as I said, one of the best teams that I've seen on RFP since I've

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been here. And we went holidays, weekends and evenings to make sure that all the requirements were

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reviewed, pulled together, and that we did field trips as required. And we went the extra mile on those because we pre-planned each of the field trips, we asked specific questions of the proposals of the respondents at each place and we made sure that we talked not only with the vendors but with the lotteries that the vendors service in those specific jurisdictions, right down to we tried to have it be the exact amount of time, roughly the same amount of questions, and got the same type of proposals (inaudible).

So there was a Power Point presentation given at both vendors that we reviewed, had a chance to ask questions of, and then evaluate. On top of that we asked our outside contractor to also review the technical and price proposals and give us some insight as to what the best way to evaluate and look at those things.

CHAIRMAN EVANS: And and they looked at that independent of you all?

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MR. YOUNG: Exactly.

CHAIRMAN EVANS: And came back with the recommendation that you have?

CHAIRMAN EVANS: Well, they came back with information about each of the elements in each proposal.

CHAIRMAN EVANS: Okay. Did they make a recommendation?

MR. YOUNG: No. They did not. There's no specific recommendation that was made by the contractor and we did not ask for that.

CHAIRMAN EVANS: Okay.

MR. PAYNE: But they also helped us determine what additional questions to ask of the offerors and any concerns about the technological solutions that were offered and validated the price.

MR. YOUNG: Exactly. We also used their counsel in developing our "Baffle".

CHAIRMAN EVANS: Right.

MR. YOUNG: And trying to structure a competitive process to figure out how can we best incentivise our potential partner to work with us

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to provide more revenue and more contribution to the general fund.

CHAIRMAN EVANS: Okay. And then you came back with a request for the best and final offer --

MR. YOUNG: Yes, sir.

CHAIRMAN EVANS: -- from both entities? And when was that done? Just approximately.

MR. PAYNE: Was it November? I believe November of '07.

CHAIRMAN EVANS: Of '07. And then they responded by when?

MR. PAYNE: Probably within two weeks, if I'm not mistaken.

CHAIRMAN EVANS: Okay. Both companies responded and then you made a decision at that point selecting the one company?

MR. YOUNG: Right.

MR. PAYNE: And only one chose to reduce their price, which was the other thing.

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CHAIRMAN EVANS: Okay.
MR. PAYNE: So we got a further price reduction as a result of this additional negotiation process.
CHAIRMAN EVANS: Okay. So again, at every step in the process, again, going back to my first comment, the process was fairly done, both companies (inaudible) to participate in the process to the same extent and to a large extent, and so both companies should not be able to step forward and say, "My information was not considered?"
MR. YOUNG: Well, that was our intention all along as we put in additional security as possible. As Mr. Payne indicated, it's not typical, necessarily, to have procurement at the table every step of the way. And we had a procurement official with us on the site visits and in the evaluation meetings even though they didn't have a vote.
We also made sure that our counsel was aware of everything that we were doing. They reviewed the correspondence (inaudible) each vendor and was a part of the strategy sessions that we used in developing our evaluation criteria and coming up with the final report.
CHAIRMAN EVANS: Okay. So if we come to the conclusion when looking at this that the process was fair, my next line of questioning in my next round or if it gets there would be on the price. If the process was fair, did indeed the proposed winner have the lowest price. Because again, what the group that didn't win are saying is if you evaluate as an apples to apples, and indeed they don't. And so we'll have to further explore. And one of the questions that was asked earlier was about giving information to the committee is so we can side by side review this, which I think would be very important even if we do it in a confidential nature, so that the members have that before them.
Two quick questions, as I am in my last minute that are just unrelated but out there, number one, as part of the ownership group it was just stated -- I don't know if it was in the paper or certainly in information that Sinclair Skinner is a part of this group. Again, someone who is known and somewhat controversial in the city. To your knowledge is Mr. Skinner a part of the group that was proposed to win this contract in any form?
I mean, in one of the subs, in the major group, in some other subgroup, as a contractor to some group in any way, shape or form are you aware even if it's not in the document that you are looking at that he is a party that is part of this?
MR. PAYNE: I am unaware of any involvement of a Mr. Sinclair Skinner. And there is no mention of him in any of the documents. He has not participated in any of the discussions and negotiations that we've had regarding this agreement.
CHAIRMAN EVANS: Okay. And would you say the same thing as well?
MR. YOUNG: Yes, sir.

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CHAIRMAN EVANS: Okay. Well, my time has expired so we will go to Councilmember Barry.

COUNCILMEMBER BARRY: Mr. Chairman, let me commend Mr. Young and Mr. Payne for your forward -- and the staff -- their forward review by moving forward and trying to do best practices around the country. My question doesn't have anything to do with that. So I want to commend you for that kind of approach of looking at it. Again, my question is

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trying to get -- is it the fairness process question. The original RFP, Mr. Young, it was in May of '07. What was the contemplated closing date under the original RFP? What date?

MR. YOUNG: I don't know. Was it 60 days? I'm sorry, Councilmember Barry. I don't remember off the top of my head exactly when the closing date is. It's normally 60 to 90 days.

COUNCILMEMBER BARRY: How many extensions were there?

MR. PAYNE: There were three amendments, Mr. Barry. I'm not sure that all of them required time extensions. But there definitely was at least one if not two extensions of time. And we did not do our site visits until November of 2007.

COUNCILMEMBER BARRY: Did you visit Nebraska, Montana and Idaho?

MR. PAYNE: No, sir. We asked each offeror to select one site for us to travel to.

COUNCILMEMBER BARRY: What came up with that brilliant idea? Do you think they wanted to send you to some place they were not performing?

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MR. PAYNE: We actually did get some candid feedback from them.

COUNCILMEMBER BARRY: Do you think that if I'm a contractor trying to get a contract and you ask me where should I go look at my wares, my works, I'm going to send you somewhere where I would have some problems? See, seems to me the agency itself should have selected where it wanted to go and go. That's my opinion about it.

The other area I have a concern about, at the time that the RFP was issued was W2I certified?

MR. PAYNE: I'm actually checking because I have a copy of the d/b/a. They were certified -- well, I have correspondence in the file that says as of September 18th 2007 they were certified d/b/a.

COUNCILMEMBER BARRY: At the time the RFP was issued they were not certified?

MR. PAYNE: I would presume that's correct.

COUNCILMEMBER BARRY: Not presume, Mr. Payne. You're a lawyer. Anyway and so Mr. Graham asked you about this question, was there an extension that would coincide to seven or eight days before they

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were certified. At what point can the committee get these dates of these extensions, the nature of the extensions?

MR. PAYNE: We will certainly provide answers to any and all questions before the end of the week and that will include a chronology of when the RFP was issued, the closing date, the amendment date

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and the (inaudible) any extensions as well. But I can tell you with absolute certainty, since I'm the gentleman what made the decision to extend, that it was not done for any other reason outside of the traditional source selection process, Mr. Barry.

COUNCILMEMBER BARRY: But the committee would have no way of knowing that as a matter --

MR. PAYNE: Absolutely.

COUNCILMEMBER BARRY: We would have no way of knowing (inaudible)

MR. PAYNE: Yes, sir.

COUNCILMEMBER BARRY: -- his statement, and I believe his statement, that from a committee point of view, we would have no way of knowing that.

MR. PAYNE: Yes, sir.

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COUNCILMEMBER BARRY: In terms of the best and final -- well, let me ask you this. In terms of the price how much -- what's the percentage of revenue appointment given to each offeror for longevity?

MR. PAYNE: For longevity?

COUNCILMEMBER BARRY: Yeah. In 15 years you get so many points, in 20 years you get so many points. Are you familiar with that? It affects the price too. That is, you get -- your bottom line price may be above another offeror, but when you add the points (inaudible) 15 years or 20 years, you then get that bottom line price reduced.

MR. PAYNE: Mr. Barry, just as a point of clarification --

COUNCILMEMBER BARRY: Do you agree with that situation?

MR. PAYNE: I hear what you're saying. But just as a point of clarification, one-third of the scoring regimen was for technical, two-thirds was for price.

COUNCILMEMBER BARRY: I got that.

MR. PAYNE: And then there was an

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additional portion that was for the LSDBE preference points, which is traditionally the case. And both offerors received those preference points.

COUNCILMEMBER BARRY: They did not receive the same preference points.

MR. PAYNE: Again, both offerors received those preference points and it did not --

COUNCILMEMBER BARRY: Did they receive the same preference points? Yes or no?

MR. PAYNE: Mr. Barry, we will share in confidence with the committee all of the source selection documentation. I do think that given the bid protest that is pending before the --

COUNCILMEMBER BARRY: I understand that. (inaudible) did both offerors see equal preference points. And I maintain because the one part of the preference point is longevity or the length of time. They couldn't receive the same.

MR. PAYNE: Mm-hmm.

COUNCILMEMBER BARRY: So I would like to get that breakdown of the preference points. Do you agree that preference points do under the law affect

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the price, the bottom line price?

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MR. PAYNE: I don't think that they (inaudible) affect the determination. But I think it's important to note that it is a best value determination. If we had a case where there was a --

COUNCILMEMBER BARRY: I would disagree with you on that and would suggest that you talk to Eric Moses and others over there. And in fact I know for a fact I had the same discussion with Reagan, the chief procurement officer and he admits says that in some instances or most instances the preference points do affect the price. (inaudible) I'm going to talk to Mr. Moses myself today to make sure that I'm on the right track with that.

Now, in coming to the best and final, how much was the price reduction for W2I and LTE? Do you understand what I'm asking?

MR. PAYNE: I do hear what you're asking. I'm happy to talk about what's before the committee.

COUNCILMEMBER BARRY: He said there was a best and final. You talked about all these numbers.

MR. PAYNE: There was no price reduction

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from LTE. There was a price reduction from the proposed awardee.

COUNCILMEMBER BARRY: How much was that?

MR. PAYNE: It went from the initial 2.68, if I'm not mistaken, to 2.29. And both of those numbers were substantially less than the initial and final offer submitted by the other offeror. So in this case we have the best technical solution and the lowest price.

COUNCILMEMBER BARRY: Now, the other -- well, that's a matter of debate. When we see the documents we'll make that decision about that.

MR. PAYNE: Yes, sir.

COUNCILMEMBER BARRY: That's an assumption or an assertion.

Now, in terms of the start date. One contract ends November of 2009. If the counsel approves the contract what will be the start date of the new contract?

MR. PAYNE: The one that's before us today?

COUNCILMEMBER BARRY: Yes.

MR. PAYNE: We will go through a conversion

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and a testing and acceptance and validation process. We certainly would hope to expedite that process because days mean dollars. It certainly I believe would be the hope to have this conversion process completed within six to nine months. If there's an opportunity, do it sooner, then we'd like to do it sooner.

COUNCILMEMBER BARRY: Would you cancel the on-line contract?

MR. PAYNE: We would terminate those contracts for convenience.

COUNCILMEMBER BARRY: I mean, I understand your anxiety to get money and quickly and I have the same desire. The question is whether or not that's a fair situation based on the circumstance to terminate the contract, but that's a determination that lawyers and others can make about that. That just seems -- when a person goes into business, you know, you have a

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projected pro forma and you assume that you're going to do that for whatever the life of the contract is unless there's gross improprieties or scandal or misappropriations and all that stuff.

But this is a situation (inaudible) save the government money, which I understand. I commend you for that. But it may be done at the expense also -- Mr. Payne, you make a great deal of how loose the other contract was. I appreciate that. I really do. But I don't think we need to blame the present contractor for that looseness without blaming the government.

MR. PAYNE: Agreed.

COUNCILMEMBER BARRY: The government official who signed that contract. And I'm sure this council, at some point -- Mr. Evans, not you personally -- but the council at some point approved that loose contract.

And so (inaudible) that I don't think that the implication -- not that you used it specifically, but implied that it was loose because you said that the government official who signed that ought to resign for giving way the store in that regard. I just wanted to make that very clear --

MR. PAYNE: Yes, sir.

COUNCILMEMBER BARRY: -- and again, to

await the information from the review and we again commend you for your diligence. And we may come to a different conclusion based on what information we get.

MR. PAYNE: Yes, sir.

COUNCILMEMBER BARRY: But at least there's no question that you've done a good service to the District of Columbia Government to try and take us forward. Thank you all very, very much. Thank you.

CHAIRMAN EVANS: Councilmember Graham?

COUNCILMEMBER GRAHAM: Thank you very much. You know, what's become apparent to me in the course of this hearing just so far is there's so many issues that we need to look at here for real. And starting with the fact that, you know, you have said -- I mean, just the role of Janisha Richardson has got to be clarified because now I have the Washington Post story from this morning done very ably by Rolonda Woodley, who we all know and respect, and Dan Keating.

And she writes that the W2Tech, Janisha Richardson is listed as a principal owner, as a principal owner. And that doesn't jibe with the information that you have, even as to this element --

you know, one thing we've got to be clear about is who's involved and who isn't involved. And the Washington Post is reporting that Janisha Richardson is the principal owner and you don't have her as such, you know, that kind of raises a question, wouldn't you say, Mr. Payne?

MR. PAYNE: Well, I certainly would say, Mr. Graham, that if there are concerns about any proposed personnel that we should be made aware of those. And we are happy (inaudible) issues associated with these folks during the course of our due diligence review, be it Ms. Richardson or anyone else.

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COUNCILMEMBER GRAHAM: Right. But I'm just saying (inaudible) at that level. I'm not talking about digging down. I'm just simply saying that we ought to have the right title and role associated with the a particular name and we don't even have that much in agreement at the moment. Alaka Williams, is she related to Warren C. Williams, either Jr. or Sr.? Does she have any relationship?

MR. PAYNE: I believe that she is the spouse of Jr.

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COUNCILMEMBER GRAHAM: She is the spouse of Warren C. Williams, Jr. Now, there's nothing against the law of course in being a spouse. You're entitled to be a spouse. Everyone knows that. But the fact of the matter, this does seem like a lot Warren C. Williams one way or another. And assuming that -- well, I don't want to assume. You're going to document the 35 years of lottery experience of Warren C. Williams, Sr.

It has been suggested to me that there was gaming experience 30-plus years ago, but there was no continued activity in that field and so if that's true and you're going to tell us whether it's true or not and I don't want to necessarily conclude until I see what you have. If that's true, however, then what we have here are the local players -- and I know some of these people, as you probably know -- not having any gaming experience whatsoever and all of the gaming experience (inaudible) from Athens, Greece, (inaudible) remote Nebraska, Idaho, Montana. They seem to have sewed up that near far west market.

But there are other states that have

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gaming, you know, that are closer by and bigger and more sophisticated and so on. But so all of this, you know, suggests to me that there are a lot of issues. And Mr. Chairman, I'm wondering, you know, considering the time element here, whether there's any chance whatsoever of getting these issues resolved. I mean, I'm not even talking about any appeal that may have occurred, which I know nothing about. But the fact of the matter is that we have major issues here.

Does it concern the Office of the Chief Financial Officer that there have been major controversy associated with Warren C. Williams, Jr. and Sr. over the past six to eight years? Can you concerned about what happened in terms of the Club U revocation (inaudible) where the people that you're about to award this contract had a valuable privilege where the ABC Board determined had to be taken away from them because -- not because of a single event, not because Mr. Brown was stabbed, as it turned out, mortally on the floor, on the dance floor of the Club U and then dragged by the bouncers and dumped into the lobby of the Reeves Center and those are the facts of

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what happened, but because of a pattern of violent events which led to Chief Ramsey, who was the chief of police at that time, determining that this business could not stay in business.

Does that concern you in terms of as you contemplate the award of a license?

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the fact that -- and you're going to document where the 35 years of ongoing gaming experience is for Warren C. Williams Sr. But you know these are the types of facts that you really are certain at this stage. We are before the council of the District of Columbia, one of its committees, to consider an empowerment of your office. And since the facts are not accurate, this leaves significant doubts in my mind. So I would suggest that you review this LSDB.

The other thing I just want to say about Club U, I mentioned the last time out that there was a pattern of violence. Chief Ramsey's letter talks

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about that. You can get a copy of it. If you can't find a copy I have a rather extensive set of files on all of this. But it wasn't just that. It was year after year of unpaid rent, unmet obligations, poor security, an ongoing battle between the Office of Property Management and the lessee. And this bar, as you might remember, was located in the Reeves Center. It was located in the Reeves Center. And so it was a whole pattern of problems associated with the lessee that you really need to examine.

So thank you very much, Mr. Chairman, for me just being able to add -- these are factual issues, Mr. Payne. I mean, I'm not here just casting aspersions, besmirching, as you said. I'm raising factual questions and I appreciate, Mr. Catania, your acknowledgment that we really do need to get to the bottom of all of this before we consider anything further. Your response I certainly would entitled you to that.

MR. PAYNE: We certainly will review all of the information provided today.

COUNCILMEMBER GRAHAM: Thank you.

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CHAIRMAN EVANS: Thank you, Councilmember Graham. Back to my turn. And I have kind of random questions at this point in time. And I kind of want to move on because we have other witnesses as well. So I'll kind of go through my random questions. I had mentioned Mr. Skinner earlier on, so if you could incorporate his name into the names you were going to look at to see if indeed he has any role or participation, in this when you get back to us on that.

The second one is -- you mentioned in your testimony that in 2006 the current vendor had a situation where an employee -- I don't want to get this wrong -- stole a computer or did something that was illegal. Could you tell us quickly what that was and what role if any that has played in this selection process?

MR. PAYNE: Well, let me take the second part of that first.

CHAIRMAN EVANS: Okay.

MR. PAYNE: That security breach played absolutely no role in this selection process. As the

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contracting officer I instructed both the independent consultant and the SSEB not to consider it. There was a security breach that I'll let Mr. Young speak more about, but the security breach and its aftermath was

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absolutely not considered in this solicitation. What we considered were the technical proposals and the cost proposals before us for a prospective action. (inaudible).

CHAIRMAN EVANS: (inaudible) ask the question now. At any time did either one of you say to the current vendor that a security breach would be a factor and maybe a disqualifying factor in the selection of the next vendor?

MR. YOUNG: No.

CHAIRMAN EVANS: Okay. Mr. Young and Mr --

MR. PAYNE: No.

CHAIRMAN EVANS: Okay. It's on the record now. (Inaudible) ten or twenty seconds, because I just want to keep moving.

MR. YOUNG: Yeah. We had a situation that's been widely reported, I think we spoke to it in our testimony on oversight (inaudible).

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CHAIRMAN EVANS: Right.

MR. YOUNG: And our financial testimony as well. And I think when we testify later this week we'll probably mention it again.

CHAIRMAN EVANS: Okay.

MR. YOUNG: But we came up with a situation where it was disclosed that some unauthorized transactions were being done in the marketplace that basically spoofed some of the lottery systems.

CHAIRMAN EVANS: Okay.

MR. YOUNG: And we determined that internally. I myself convened a group that went through and troubleshot the whole issue. It came down to some security problems. And also some issues related to being able to better monitor equipment and access codes and things of that nature. And some internal employees basically had an opportunity -- of the current vendor -- to access things end to end and participated in some unauthorized transactions, which we promptly discovered, shut down and kept all of our retailers whole in the process and also turned over the information to OIO for further handling.

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The nature of that has been widely discussed, disseminated, and it's currently being prosecuted through the attorneys in the OCFO's office and also OAG.

CHAIRMAN EVANS: Okay. And then quickly to take this to a very basic level, the lottery turns over to the District treasury approximately $70 million a year give or take. It goes up or it goes down, but it roughly stays in that amount. If we go with the new vendor does that mean that that $70 million jumps to 80 or 90 dramatically or are we looking at the same amount?

MR. YOUNG: Not necessarily. As we've testified any number of times there are a number of factors which enter into whether or not the transfer is increased to the District of Columbia. One of them is operating costs, obviously. Another one is the prize winning scenario of the games and in the games played that particular fiscal year as well as some other aspect that may enter into the fray as well.

So it depends. But this much we have been

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able to demonstrate over the last couple of years, which is when we generate greater revenue, top line revenue, and we manage our cost structure appropriately in the right kind of scenarios, we are able to contribute more money to the general fund. And it is our stated hope and objective to definitely increase that number out beyond the 70 range.

We're been up in the 72, 73 million in some good years even approaching 74 million. The highest number I think on the record in the 25 years of the lottery is something about 85 million. And that was under a different scenario where retailers were paid less and there was a (inaudible) lower priced payout scenario than we've experienced over the last two or three years.

But under normal situations if we're able to increase our revenue dramatically into the 75, 80, 300 million-dollar range, we should logically expect under the right scenarios that more money would be transferred to the government.

CHAIRMAN EVANS: Okay. Two final questions. When this was first brought to our attention it was submitted or at least thought of as being an emergency. Why was this -- and I was just puzzled by that. Why was this sent down as an emergency?

MR. PAYNE: I'll respond to that. Chairman Evans, the last almost three years now I've served as the contracting officer for the OCFO. And we've had very limited number of contracts that have required an act of council approval. And for that very limited number of contracts I would guess six, seven times we have traditionally transmitted them as an emergency because frankly we hadn't planned as far out as Mr. Catania alluded as we probably should have. Others just because we were interested in getting the contract in place sooner rather than later.

In this particular case we not only did it because that had been standard fare, but we also did it because we were concerned about realizing immediate cost savings and getting the conversion process started sooner rather than later.

CHAIRMAN EVANS: Okay. And then my final question is under our kind of -- under the scenario (inaudible) be voted on at the committee as a whole a week from tomorrow in order to meet the time frames. If that does not happen what is the next step?

MR. PAYNE: I think there are probably two or three other things we have to be concerned about. I guess first if it does not get approved barring any new facts Mr. Graham's concerns or other concerns raised by the committee, I believe that we would have to evaluate and determine whether we would resubmit the contract for approval. And I presume we would resubmit it for approval.

Secondly, on a dual track is the bid protest, which we read about in this morning's paper. We certainly look forward to seeing what those legal filings and documents refer to. But we, I presume, will litigate this proposed award before the Contract

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Appeals Board and go from there. We may -- but those are the two options as I understand them.

CHAIRMAN EVANS: Okay. Finally, Mr. Graham asked me if I would ask to check if W2Tech principals owe the Office of Property Management back rent on Club U. So if you could add that to the list of will you check out. Counselmember Catania, you mentioned

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you might have another --

COUNCILMEMBER CATANIA: Thank you, Mr. Chairman. And I'll wait for them to make their notes because I want to make sure they have the information.

Mr. Young -- and maybe this is better to you, Mr. Payne, as the contracting officer -- if we don't go forward with this contract and say you resubmit, it does not mean that the incumbent wins the solicitation; it means we have to go through another solicitation process; is that correct?

MR. PAYNE: I think we would have to discuss it internally within the OCFO. To date -- I guess I'm not clear, Mr. Catania. If there is a requirement to go out and re-compete I certainly think that given the short timeline here and some of the concerns that have been raised by the committee, we may simply resubmit the proposed award contract as-is with further answers to the questions that have been raised by members of the committee.

There is no grounds -- there are no grounds that I'm aware of that would require us to go back out and re-compete and to attempt to get additional

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offerors to bid on this solicitation.

COUNCILMEMBER CATANIA: Mr. Chairman, what I'm getting at is, for whatever reason, and I came today giving the benefit of the doubt to the office of procurement, your role -- Mr. Young as well. I'm comfortable giving the benefit of the doubt to the OCFO and the process. And the presumption is in your favor unless I view evidence or see evidence to the contrary. Okay?

But if the majority of my colleagues think a different view, take a different view, and they don't want to go forward with this vendor, and it is the right of seven to do as they please, whether it means sufficient, better, worse or whatever. That would not though -- if this contract one as submitted or if you resubmit this vendor next month, if it is defeated that does not mean that the incumbent who was the other provider would necessarily win the contract, correct?

MR. PAYNE: That is correct. They would re-compete at that time.

COUNCILMEMBER CATANIA: Then (inaudible)

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re-compete?

MR. PAYNE: Yes, sir.

COUNCILMEMBER CATANIA: From a different perspective, if for whatever reason, and we are -- the council is permitted to vote up and down on a contract for any reason we like whatsoever. But you are guided by certain regulations in law on what you can and cannot consider in going forward. And so if for instance -- it seems to me we may have another bid

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protest or another lawsuit on our hands if after we have gone through this our own individuals have said, you know, I'm following the process with everything you've done, that the vendor is the best quality, lowest price, if we (inaudible) haven't we paper trailed a lawsuit for the other vendor?

MR. PAYNE: Absolutely.

COUNCILMEMBER CATANIA: So we face exposure here. And certainly had you done perhaps what my colleague suggested, which was to go and look at these other matters, which from a human perspective we certainly want to know who we're doing business with, but on doing due diligence with them outside of the

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confines of the contract, had you denied them the contract because of their activities at Club U or whatever, even if we may feel in our gut that's right, you would have subjected the city to a lawsuit had you picked the incumbent for those reasons which are outside what the rules and regulations permit you to consider, correct?

MR. PAYNE: Yes, sir. That's correct.

COUNCILMEMBER CATANIA: All right. Well, I think this is just interesting to get on the record and I want to thank you for that. Thank you.

CHAIRMAN EVANS: Okay. Thank you very much, Councilmember Catania and I want to thank both of you for coming down to testify today. You both did a very good job in providing information. And then my staff will work with you, with both of your staffs to get the information back to the committee members as fast as possible. Okay?

MR. PAYNE: Thank you, Mr. chairman.

MR. YOUNG: Thank you.

CHAIRMAN EVANS: Thank you.

Okay, we have three more witnesses on the

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witness list which I will call, Mark Jones, former deputy director of the lottery, Ann Walker Marchant from the Walker Marchant Group and then Phil Nofi, N-o-f-i. If all or any of them are here, please come forward. Any? All? None? Oh. Here comes somebody. Okay. Welcome to the council. If you'd like to enter your name.

MS. MARCHANT: Okay. Good afternoon. My name is Ann Walker Marchant and I am here representing LTE. I think some of my colleagues are joining me up here as well.

CHAIRMAN EVANS: Okay. If anybody wants to come forward, now would be the time. And generally we'll give everyone three minutes to testify. Okay?

MS. MARCHANT: Great. I'll let everybody introduce themselves.

MR. MANNING: My name is Leonard Manning. I'm the chief executive officer of Lottery Technology Enterprises.

CHAIRMAN EVANS: Okay.

MS. FORD: For the record, I'm Joanne Dottie Ford. I'm a partner at Baach, Robinson & Lewis

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and I'm LDE's lawyer.

CHAIRMAN EVANS: Okay. And who would like to start?

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MS. MARCHANT: I will start.
CHAIRMAN EVANS: Okay. And then pull the mikes up and make sure they're on because it's hard to pick everybody up.
MS. MARCHANT: Okay. Great.
As I stated, my name is Ann Walker (inaudible) representing LTE. I'm happy to be here in support of Lottery Technology Enterprise addressing the issues surrounding the protest of the lottery contract recommendation award to W2I. I'm a long term resident in D.C. and the owner of a communications firm here in the District (inaudible) Leonard Manning for most of my life and George Walker for all of my life. In addition to my relationship with LTE, George Walker is my father. I feel particularly qualified to speak to the credentials of the LTE team.
Leonard Manning and George Walker own 99 percent of LTE and their partner, G-Tech, owns 1 percent. So their partnership is 99 percent owned by

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a local entity. Mr. Manning and Mr. Walker have over 50 years of combined experience running the lottery in D.C. The LTE partnership with G-Tech has over 80 years of experience and is tried, tested and experience with not only running lotteries internationally, nationally and here in D.C., but also with Keno and rapid games. This has been a successful partnership generating record revenues as stated by Ms. (inaudible).
In dealing with the sums of money that this lottery contributes to the city, it is imperative that the individuals and entities entrusted with this contract have impeccable credentials and reputations and be known quantities. The local team of George Walker and Leonard Manning have unimpeachable credentials, decades of experience and expertise in lotteries, a proven record of delivering results in driving revenue for the city, a strong and historical record of contributing to the communities in which they live and do business, and have successionfully executed the current contracts producing (inaudible) over the life of the contract.

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We contend that the lottery contract process was flawed and tainted. We respectfully request that this committee reject the recommendation to award the contract to W2I. The process has not been transparent. The recommended awardees do not meet the required qualifications. Proper procedures were not followed and amendments to the RFP submission process were made to favored -- the W2I entity. And finally, the, quote, unquote, significant cost savings referred to in the recommendation transmittal are inaccurate (inaudible) cost savings between the two bidders' proposals when comparing apples to apples. Looking at the cost proposals for this contract it is clear that there is no significance in price difference.
I will just address this communication (inaudible) that were raised by Mr. Young. First, I would like to say that it was the D.C. Lottery Board that chose not to fully upgrade the system because they wanted the Keno game matted. Secondly, the

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telecommunication provider that were responsible for the aging networks was Verizon and was a contractor to

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the lottery board selected by the lottery board.

It was Verizon's network's and systems that were aging and outdated. LTE was asked to take over the telecommunications aspect of the network and were instructed to add Keno and make enhancements rather than doing the proposed upgrades. LTE made the necessary enhancements. The system enhancements were made and fully meet all contractual requirements. On the issues of the data center that were raised, the W2I proposal is (inaudible) in Idaho. The LTE data center would be in D.C. and would provide an additional 40 jobs to the District of Columbia, not to the residents of Idaho.

We feel that this contracting process has been tainted and we respectfully request that the members of this committee reject the recommendation to award the contract to an entity that fails to meet the qualifications required by the RFP. The specific details of our claim are outlined in detail in the protest filing that we have submitted. And I would be happy to provide copies to anyone who would like. But let me address a few examples.

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First, the RFP requires that the contractor have at least one lottery contract in North America and operate Keno and fast games. Neither W2 nor Intralot meets this requirement. The named participants have no relevant experience as required by the RFP. Williams Sr.'s experience was 20 years ago, not 20 years of experience. A lot has changed in 20 years. Not only do they not have relevant experience, but they did not exist nine months ago.

It is evident in the process that concessions were made early on to favor W2I. For example, the original submission date for proposals was September 13th 2007. W2I received its LSDB certification on September 12th, but it did not have its joint venture certification by September 13th. The contracting office issued an amendment to the RFP extending the submission date by one week to September 20th, therefore allowing W2I time to receive the required certification. W2I received their joint venture certification on September 17th.

I will not go through point by point because it is detailed in our protest. I know that

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each of your are committed to transparency and fairness in the procurement process. It is what the residents of D.C. expect and deserve. Thank you very much for your time. And I look forward to answering any questions and having the opportunity to have my colleagues speak as well.

CHAIRMAN EVANS: Absolutely. Okay. Mr. Manning?

MR. MANNING: I thank the committee for hearing us today.

CHAIRMAN EVANS: Pull that mike up as close as you can.

MR. MANNING: Okay. I thank the committee for hearing us today. I'm just here to answer any

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questions that the committee may have of Lottery Technology Enterprises, our proposal or our protest. And along with the protest, Joanne Ford, who is our attorney, can weigh in on that.

CHAIRMAN EVANS: Okay. (inaudible) go ahead.

MR. MANNING: One thing that Ms. Marchant mentioned was the dates of the certification. One

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question that came up by Mr. Barry was the type of certification. LTE (inaudible) certified for long term -- as a long term business, being in business over 20 years. We're also in the enterprise zone and we receive that (inaudible) small business (inaudible) also.

W2Tech was certified September 17th, but they are certified as a small business enterprise. Enterprise in a development zone and (inaudible) advantaged (inaudible) enterprise. That's how they received their points.

CHAIRMAN EVANS: Could you make sure that you submit to the committee your protest and any other relevant documents that we don't have that may be useful in doing our evaluation. Mr. Manning, let me ask you on the cost side, much was made by the earlier testimony which you heard that your percentage of 4.2 was significantly higher than anywhere else in the country and that the proposed new contractor (inaudible) 2.5, 6, whatever they are, was more in line with what was in today's world. Can you comment on that?

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MR. MANNING: Yes. The 4.2 percent that was mentioned is what we're currently being paid. That was negotiated eight and a half years ago by the Office of Finance and Revenue with LTE. It was a (inaudible) negotiation process and we have all the papers and all regarding that negotiation, which we could make available if you so desire to see.

Our bid in this procurement was not 4.2 percent. It was 3.1 percent. And that 3.1 percent, no, we did not lower it for the best and final. But what we said after sales reached $330 million it was cut off, we would get no more percentage. We would have a return on our investment. We would still have incremental costs for papers, other supplies, but we would not get a penny of the revenue after $330 million.

So that was the basis of our claim that the prices were relatively the same.

CHAIRMAN EVANS: Okay. And --

MR. MANNING: And also the price given by the contracting officer today does no go along with the proposed resolution in the council of the District

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of Columbia where it states in 2(e), section 2(e), the proposed contract and subsequent multiple year contract is priced at a base rate of 2.990 percent if the annual sales are less than $300 million, 2.500 percent if the annual sales are greater than $300 million, and 2.600 percent if the annual sales are greater than $330 million.

CHAIRMAN EVANS: Okay. So it's fair to say

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that, again, the 4.2, which was negotiated eight-plus years ago may have been the industry standard then?

MR. MANNING: That was the industry standard. And another question was asked if there were any contracts higher than that. And the answer is, yes, there is still an existing contract I believe in New Mexico at 8 percent.

CHAIRMAN EVANS: Okay. Councilmember Catania, do you have any questions? Okay. Go ahead and I'll come back to myself.

COUNCILMEMBER CATANIA: Mr. Manning, thank you for coming down and putting your point of view on the board. You have managed this lottery for a very long time in the District of Columbia and I know that

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when we were last going through the solicitation there were concerns about L-Tech, but you were on hand to explain some of what your colleague did today, which is some of these things were beyond the control exclusively of your company, that there were decisions made by the lottery board that impaired your ability to make improvements.

And so I think (inaudible) point I'm glad you put it on the record, that, you know, it isn't fair to lay for the past practice of the lottery, things that could have or would have gone better or should have gone better exclusively at your feet, to lay that at your feet; that this is a partnership that involved the Office of the Chief Financial Officer, whose responsibility it is to assist the lottery board with the operations. But this is a partnership. But some of the responsibility should be borne on both parties.

For me, though, the final equation outside of performance, which is another matter -- and I have to be honest with you. I'm not equipped to decide who can and cannot perform. I have to rely on the

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technical expertise of our individuals from contract and procurement. They claim that they've relied on this outside entity that has confirmed the technical capabilities of the other vendor. So I'm admittedly not in a position to say who can and cannot perform.

So for me it comes down to an issue of price. You and your colleagues testified that your price was 3.1 percent of revenue. There is a graduated increase on the part of this (inaudible) W2I. They start at 2.29 percent and then they go up gradually. But the difference between 2.29 and 3.1 percent, while if may not seem like a lot, actually is a lot. That's a 30 percent, you know, more or less price differential.

And so if I'm going to do my duty to the citizens of the city, all things being equal -- and let's stipulate for a moment that they are. And we can come back (inaudible) about whether or not the process was unfair, and I do want to delve into that, because these are points that we have to be satisfied that the process was adhered to.

But simply on price alone you would concede

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that 30 percent is a significant difference?

MR. MANNING: I would concede that, yes.

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But in our proposal there is a cutoff. And I don't know if the price, because (inaudible) it does not have 2.2 percent. It has the price being -- I can't see without my glasses -- but 2. 99 percent. And this is the piece we got off the Web.

COUNCILMEMBER CATANIA: May I just confirm what Mr. Payne or I believe it was Mr. Young mentioned that this was the pricing strategy of the winning vendor, that below 300 million was 2.29, between 300 and 330 million 2.5, and above 330 2.6. And I believe your point is that you were willing to forgo any percentage above 330 million. What is the current revenue of our lottery?

MR. MANNING: Like 265 million.

COUNCILMEMBER CATANIA: Is it fair to say that that has been relatively static over the last decade?

MR. MANNING: There was a big increase with Keno.

COUNCILMEMBER CATANIA: With the exception

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of that game.

MR. MANNING: It's risen gradually over the years.

COUNCILMEMBER CATANIA: Let me ask it differently. The difference between 265 million and 330 million, that's an enormous increase.

MR. MANNING: Yes.

COUNCILMEMBER CATANIA: And so is it fair to assume that in the course of this contract that we really think we're ever going to get to the 330 million, or if so is it going to be so many years off out into the distance that the delta between getting nothing at 330 and us being charged 30 percent more for your services is really statistically insignificant? Do you follow what I'm saying?

MR. MANNING: Yeah.

COUNCILMEMBER CATANIA: I just don't know -- and I'm not in a position to know whether or not it is in anyone's business plan to get to 330 million, and if so when. Could any of your colleagues offer --

MS. FORD: Yes. Phil, can you --

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MR. MANNING: Mr. Catania, I still don't know what their actual price is.

COUNCILMEMBER CATANIA: That's fair, Mr. Manning.

MR. MANNING: Because this document has another number.

COUNCILMEMBER CATANIA: I think I was clear in my prior round where I say I come to this with the benefit of the doubt given to our professionals. So the benefit of the doubt I give to the Office of Contract and Procurement in this process. But I am trying to make sure that I am comfortable and have confirmed for myself that the process was fair. So this is the first stage.

And so you've brought a gentleman to the table and perhaps you could tell us when do we expect to get to $330 million. And I'm sorry, you'll need to identify yourself, sir.

MR. NOFI: My name is Phil Nofi. So

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basically my witness is, I've been in the lottery business for over 30 years.

COUNCILMEMBER CATANIA: Are you associated with, contracted with or employed by --

MR. NOFI: I am a consultant to LTE. I was here as part of their procedure to bid this contract. And my role was the numbers.

COUNCILMEMBER CATANIA: Mr. Nofi, my question is in the response to the OCFO for this particular contract, when do you all believe you'll be at 330 million in revenue?

MR. NOFI: Oh, how I base my assumption on the bid price. And specifically --

COUNCILMEMBER CATANIA: I'm sorry. We're on limited grounds. I just need to know when did you on your assumptions believe that you were going to generating $330 million in revenue.

MR. NOFI: In the second year of the contract.

COUNCILMEMBER CATANIA: So that would be what year, 2010?

MR. NOFI: It would be based on what the lottery told us to base our bid on, which was $300 million (inaudible) project growth based on what has been going on in the past decade of operation here, on the basis of growth of percent 4 percent annual growth, which is reasonable based on the past ten years, we would then based on the lottery's introduction of new games, increase of Keno, the new fast pace games that are a part of the system --

COUNCILMEMBER CATANIA: Mr. Nofi, (inaudible) again, the numbers have to make sense.

MR. NOFI: Absolutely.

COUNCILMEMBER CATANIA: And if we are at 265, whatever the lottery bold or whoever told you (inaudible) incredible to think that in two years you're going to go, assuming a 4 percent increase, to go from 265 million to 330 million in what is in essence two years. (inaudible) 65 million. Back of the envelope, that's 25 percent or more increase in two years. I don't care who gave you the assumptions, unless you're introducing significant new games that would be a dramatic increase and one unsupported by past practice.

MR. NOFI: Well, and past practice going from eight years ago the lottery's revenue was 200 million. (inaudible) $266 million.

COUNCILMEMBER CATANIA: Right. It took us eight years to essentially make up the revenue that you are (inaudible) do in two without the introduction of new games.

MR. NOFI: No, no. It would definitely include the introduction of new games. That's the whole premise of what the lottery had said and what we know as part of the historical issue of where the new games -- specifically the new games would be based on the Keno system and the introduction of fast paced games --

COUNCILMEMBER CATANIA: Thank you, Mr. Nofi.

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MR. NOFI: Okay.
COUNCILMEMBER CATANIA: Mr. Manning, again, I've probed this because I'm trying to see what the value of zero percent over 330 will be and the likelihood that we will reach that and whatever that would be over time is going to be equal to or greater than the 30 percent price differential below that. Okay? And so I have got to see what makes sense just on its face. And I'm -- certainly if you want to

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provide additional information to support your point of view, I'm happy to have it. But at this point it looks like it's a -- if it's a pricing issue alone, the price (inaudible) challenger.
So let's go to the other issues concerning process. And I think these issues of playing with time frames very seriously because this is something that will inspire a lack of confidence in contract procurement if the larger community thinks that deadlines and dates don't matter.
(inaudible) there's always the possibility of coincidence. But I don't really think coincidence exists in contracting and procurement, to be honest. What justification were you given for the fact that the time (inaudible) for submitting solicitations was postponed from September 13th to September 20th? Because I'm certain -- Ms. Ford, perhaps this is where you could be helpful. I'm sure you inquired about that. And what was the response given to you?
MS. FORD: In that amendment, which was amendment number 3, there were only three changes. One was to strike a reference to the old LSDBE program

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that was described in that in the original solicitation. The other two amendments were to change the preference to update the information on how many preference points are given to resident-owned businesses, 3 as opposed to 5 -- 5 under the new law as opposed to three. Those were the only changes.
COUNCILMEMBER CATANIA: And those are separate from the long term business, which gets additional points above and beyond resident-owned businesses, there's locally owned, there's small business, there's disadvantaged, resident owned and then long term resident-owned, and perhaps you know what points are assigned to that. But there are more, and I agree.
MS. FORD: That's right. There are more. So there was a change in the law on that part of the CD program. And it updated the change. Those were the only two -- the only changes in amendment number 3. Earlier they said there were questions that were being responded to. There were no questions responded to under that amendment. There was nothing done in that amendment to change the solicitation or the

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description of the solicitation or anything that the offerors needed to know.
COUNCILMEMBER CATANIA: And I apologize, Ms. Ford. You all know this stuff backwards and forwards. So sometimes there's a break. And I'm just asking you if you can give me Sesame Street version, nice and simple. The movement of the date from

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September 30th to September 20th, that was on the deadline for (inaudible) solicitation or was that a movement in date for some other purpose? Were solicitations first completely due on the 13th and that was changed to the 20th?

MS. FORD: That's correct. No. Initially --

COUNCILMEMBER CATANIA: What does this have to do with the amendment?

MS. FORD: In amendment number 1 they changed the date that solicitations were due from August 24th to September 13th. In that same amendment they answered 126 questions that had been posed in the first round of questioning by the potential offerors.

COUNCILMEMBER CATANIA: Okay.

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MS. FORD: In the second amendment they answered an additional 48 questions that were posed by the offeror. They did not change the date the date which had been stated, which was September 13th. By September 12th, by the third amendment, they moved the date from September 13th to September 20th. No questions were answered. No changes were made to the structure of the solicitation.

COUNCILMEMBER CATANIA: But you just testified, though, that there were additional amendments made to the solicitation so that it would conform with the law.

MS. FORD: It just -- it repeated in the solicitation that the resident-owned businesses now have five points under the law as opposed to three points.

COUNCILMEMBER CATANIA: And there were two other items as well?

MS. FORD: No. They changed that in two places and they eliminated a reference to -- an old reference to the LSDBE program.

COUNCILMEMBER CATANIA: And so this

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amendment 3 was issued when?

MS. FORD: September the 12th, the same day that W2Tech was certified.

COUNCILMEMBER CATANIA: Mr. Manning?

MR. MANNING: We got a telephone call on September 12th from someone I did not know and said she was with the Office of Finance Procurement Division, and they're changing the date. I thought it was a hoax. I thought it was a way to get (inaudible) to submit on time. I requested something in writing, because everything else we received, either it was -- from that office was an e-mail or a FedEx. They sent me an e-mail to that effect.

COUNCILMEMBER CATANIA: Mr. Manning, just -- and I appreciate the chairman's indulgence. Other than the moving of the date, did you find were you at all burdened or treated differently than the other vendor from the point in time -- I mean, that you are aware of. There may be things of which you are not aware of, but you can only testify what you are aware of.

Did you find at any time between September

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20th when the solicitations were all filed and the

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time in which an award was announced, which I presume was last month, did you see anything or did you feel that you were treated differently than the (inaudible) vendor?

MS. FORD: We detailed that in the protest that we have filed. What we look at is a period of time that went from October 24th when we received a letter from Eric Payne, when LTE received a letter from Eric Payne. It is an attachment. It's attachment number 12 to the protest.

COUNCILMEMBER CATANIA: Ms. Ford, just in the interests of this -- and you understand we have not had a chance to read the protest. It was just filed today. And for purposes of this public forum, if you could put one or two of those items out that you believe are the most egregious that demonstrate that you were unfairly treated in this process?

MS. FORD: Well, let me just leap to the end and that would be the awarding or the announcement of the recommendation to make the award. We weren't notified of that. We found out about it and Joanne

00169

can discuss the specifics of it. But we found out about it by doing a search and it was in a public document that had been filed.

No one ever notified us or alerted us to it. So the ten day protest time frame could very well have expired before we were notified of the recommendation to award.

COUNCILMEMBER CATANIA: May I be a bit more specific? I'm looking for evidence that in your view -- and again, this is your view -- that you were burdened during the selection process. And that's an annoyance and one that can be adverse to your (inaudible). But at somewhere along the line did you feel that there was an inclination or predisposition against you as the vendor, and if you could just demonstrate with an example or two how that manifested itself.

MS. FORD: There were two things. I started to say the October 24th letter that we received from Eric Payne said in the letter, tied the -- there was a negotiation that was occurring between (inaudible) and the D.C. Lottery concerning

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the security breach that was earlier described and how much G-Tech and LTE, or particularly G-Tech, would owe the D.C. Lottery as a result of the security breach.

During those discussions by a letter on the 24th Eric Payne wrote to LTE and to G-Tech and told them that the outcome of those discussions would determine what they do with the procurement that was underway.

COUNCILMEMBER CATANIA: And is a copy of that letter submitted --

MS. FORD: A copy of that letter is attachment 12 to the protest.

COUNCILMEMBER CATANIA: And just quickly, because the chairman is being indulgent here of my time. That's the one, attachment 12. And Ms. Ford, what would be the second example?

MS. FORD: The second would be during the period of time immediately before the best and final

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offers were posed on December the 11th (inaudible).
COUNCILMEMBER CATANIA: September?
MS. FORD: I'm sorry. On December the 11th, 2007.

COUNCILMEMBER CATANIA: Okay.
MS. FORD: And when the responses to those offers were due, which was (inaudible) 2007, the -- Eric Payne and Jay Young, who you (inaudible) were in discussions again with LTE and G-Tech about resolving the amounts of (inaudible) that were due to the lottery.
COUNCILMEMBER CATANIA: May I ask how would that, though, burden a separate solicitation? I understand the first one. If there is an implicit connection within attachment 12 -- and I will review that later -- but the fact that you are negotiating on one track on whatever the remedy is to the existing contract that you have, I don't see exactly how that connects to the process over here where you yourself on your own are deciding what the best and final offer you will make to continue that relationship. I don't see immediately the connection.
MS. MARCHANT: It connects first because the letter that I mentioned on October 24th by Eric Payne connects it (inaudible) connects the two. And second, because on December 6th, as we articulate, the lottery came up with a series of new damages that they wanted LTE and G-Tech to pay, unquantified, some of them we think were improper, and the process we believe is tainted because at the same time the BAFO process is going on, LTE is under pressure from the lottery and the OCFO to concede on certain damages and know that their response going forward would be tied to the concessions that were made.
COUNCILMEMBER CATANIA: Still, Ms. Ford -- and Mr. Chairman, thank you. I still don't see the connection. And let me explain why. And I would be happy to have -- and Mr. Manning, given your long service to the city and the esteem with which I hold you, I would offer you the chance to make as much supplemental testimony to me as you would like. Because this is an important process that it's fair and open.
I would only see a connection between the (inaudible) and our settlement negotiations, which I would tell you I would probably support the District, in an effort -- if we actually believed we were owed money, I would want us to use every tool at our disposal, frankly, to make sure we're made whole. And you would do the same if you were in the shoes. As a lawyer with a fiduciary responsibility to your client, you would do the same.
Now, I would see some connection between (inaudible) breach and the best and final offer. I would see you conceding that if you were actually to reduce and respond to the best and final offer. But you showed no sign of duress in the best and final offer. And there's objective evidence to demonstrate that, because you did not budge. You were given in the course an opportunity to have a best and final

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offer. You were given a chance to reduce, you know, your rate, which the other vendor did.

According to testimony of the prior panels from the Office of Chief Financial Officer, when the best and final offer round occurred the other side blinked and they reduced their rates from 2.9 to whatever. But you didn't blink. And I would expect if you felt that you were under duress, if they were using nefariously or adverse to your interests this offer of settlement over here, I would have expected

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you to blink and lower your rates, but you didn't. And why?

I'd prefer to hear from her. Thank you, Mr. (inaudible)

MS. FORD: We were dealing with the same people. We relied on the integrity of the procurement process. We didn't think that LTE should have to reduce -- within the BAFO process, the way the questions were posed, it did not ask for a reduction in rate.

COUNCILMEMBER CATANIA: But may I just jump in, Ms. Ford. And I'll give you a full chance to explain.

MS. FORD: Okay.

COUNCILMEMBER CATANIA: Isn't that exactly the essence of best and final offer? And bear with me, because I'm not an expert in contract and procurement. It seems to me there are two things you're fighting over at the best and final offer. You've already done all you can do on the technical aspect. Best and final offer comes down to consideration. It comes down to how much it's going

00175

to cost me to get this service. That is in my limited view of contract and procurement. We're done -- because we're past the technical aspect. It's what is it going to cost me for this service.

Isn't it absolutely not only implicit and explicit and everything else the notion of price?

MS. FORD: Well, when you say the notion of price, in this procurement where there are 2000 of the 3000 points on price, they were asked one question that was asked was how were those 2000 points going to be allocated. The D.C. Lottery and OCFO refused to explain how the allocation of those points --

COUNCILMEMBER CATANIA: I'm sorry for interrupting you, but didn't you know that? If the solicitation said 2000 of the 3000 points are based on price -- I mean, again, we're struggling for credibility on this side and also on the CFO side. You both are in a competition for credibility so I can, you know, decide on which side to fall.

If you knew from the solicitation that two-thirds of the award would be determined on

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(inaudible) you don't need anyone to explain that. And so when they say best and final offer, if two-thirds of it comes down to price and you all are very sophisticated businessmen and women -- then you know it comes down to price.

I'm trying to grapple with, you know, am I

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looking at a process that was unfair -- and I am going to go and explore on the notion of moving that time frame, because that is something that I need an answer to because there are no such thing as coincidences in contracting procurements. This much I know. But on the (inaudible) and that's why I'm exploring further if you were further burdened, and I don't see it yet.

MS. FORD: But we don't know how the price was going to be allocated, which is what I was saying on the question 47 on the --

COUNCILMEMBER CATANIA: You didn't know it was two-thirds?

MS. FORD: We knew it was two-thirds. We didn't know how the 2000 points would be allocated among the 2000 what elements would be looked at for price. We were asked if it would be done (inaudible)

00177

prices done, the highest gets this percentage and the rest goes down.

COUNCILMEMBER CATANIA: I see. You didn't know if it was a sliding scale or a winner take all? You didn't know?

MS. FORD: We don't. We didn't.

COUNCILMEMBER CATANIA: But you did understand that price was important, that price was two-thirds.

MS. FORD: We did.

COUNCILMEMBER CATANIA: You understood that chances are the best price was going to be privileged, you just didn't know how much?

MS. FORD: I'm sorry. But this was also a procurement where the bottom line is in the best interests of the government. Their price could be lower because their data center is in Idaho and is not contributing to employment in the District. LTE's data center is here in the District. And so therefore there's the price of having the people who operate the data centers operating (inaudible) Opportunity Systems, Inc. within the joint venture has operated

00178

that the way the District would like to have local businesses do that.

COUNCILMEMBER CATANIA: This is very helpful. Mr. Chairman, (inaudible) Mr. Manning have the last word. Mr. Manning?

MR. MANNING: One other thing. In the proposal it did ask us to give our best price at the very beginning because a best and final was not guaranteed. So we didn't know if there would be a best and final.

COUNCILMEMBER CATANIA: This reminds me somewhat of the District's sludge contract -- do you remember the sludge contract from last year? -- where, you know, we had an incumbent party for a long time. The incumbent party lost. A new party came in because there wasn't a best and final offer at the end. And so they thought there would be. And so, you know, there's some flexibility in the Office of Contract and Procurement (inaudible) and sometimes (inaudible) wrong and they lose.

And what I'm trying to figure out is did you all get it wrong, did you miscalculate on rate and

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did you lose, or is there sufficient evidence to suggest that the process was either -- was manipulated or privileged in a way. Those are my choices.

MS. FORD: And one of the things we ask is that -- this started out as a ten-year contract here with a five year term and a five year option, with one five year option. We had seen two different things in the information that it's now a six and five, a six and four. And we heard today that the reduced price, the price that they ultimately ended up with, came in a negotiation, not as a result of a BAFO, but came from further negotiations with the changing of the number of years and the term. Those are all different things that we're looking at.

COUNCILMEMBER CATANIA: Again, Mr. Chairman. Thank you. I ask Ms. Ford and Mr. Manning, if you have additional information that you want me to review before I make a decision, you know, I'd ask that you get it to me as soon as you can because there's going to be some coming in and just the timing of it all. I'd be happy to look (inaudible) understand the tension that I'm trying to navigate

00180

here. Thank you. Thank you, Mr. Chairman.

CHAIRMAN EVANS: Okay. Thank you, Councilmember Catania. Your questions were very good and I'm glad you were able to ask them. And so what I would like to ask you all to following up to submit to us, if you choose -- and this would hold true for the other group if there are representatives here from that group and/or or they're watching us on TV -- is the financing stuff. I'm particularly interested in that.

It's kind of been portrayed that if you do the apples to apples your financing is better. And I'm sure the other side would say the same thing. And I'd be interested in getting that from you, why you think you are legitimately the lower bidder. I can get from them why they think they're the lower bidder. The Office of Contract and Procurement will give us their analysis, which they said they would. Frankly, we'll just sit down and try to figure it all out. And that would be very helpful to me and I think to the other members of the committee to get that to us as soon as possible.

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I don't have any idea what I or the rest of the committee or the council will be doing. I did say up front that if this is to go forward it must be (inaudible) committee as a whole a week from tomorrow. Given the volume of information that has been requested and the uncertainty in this, (inaudible) see what his sense is about going forward. But it does sound like even if we don't vote next Tuesday that the contract will be resubmitted.

And so this will not come to an end, but will continue as we go forward. So it's important that we get as much information as we can as fast as we can to continue this analysis and then come to a conclusion. Okay?

MR. MANNING: Thank you.

CHAIRMAN EVANS: I want to thank all of you for coming down to testify. Is there anyone else in

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the room who has not had an opportunity to testify who would like to do so at this time? Anyone else here? Okay? Again, thank you all for coming down and this hearing is adjourned.

(Audio ends.)

UNITED STATES OF AMERICA)

DISTRICT OF COLUMBIA)

I, JONATHAN WONNELL, a Notary Public in and for the District of Columbia, do hereby certify that the within transcript is a true and accurate record of the on-demand video file of the above-entitled public hearing.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties to this action and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2008.

_____

JONATHAN WONNELL

My Commission expires:
October 1, 2012

FOIA CONFIDENTIAL TREATMENT REQUESTED

-----Original Message-----
From: Jim Link [mailto:jim@[redacted]]
Sent: Wednesday, May 28, 2008 03:38 PM
To: "Jim Link", "Crystal Wright", alakawilliams@[redacted] "Byron Boothe", "Jay Lapine", warrenwilliams@[redacted] abolden@[redacted]
Subject: Lobbying update
Importance: High

Good afternoon. Quick update?Crystal and I are meeting with Councilmember Jim Graham tomorrow at 11am. This will be our first meeting and also our most important meeting and we are going to get together tomorrow morning ahead of time to make sure we have all our facts straight and the message and discussion leads us to a point where he feels comfortable and he has ownership of the effort to obtain Council approval of the W2I contract.

As for others, we also have a meeting tomorrow at 4pm with Cheh (Ward 3). Kwame Brown told us that he is booked solid for the next three weeks. Catania is also too busy. I?ll keep you posted on the others.

Jim

James E. Link
Partner

American Capitol Group

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From: Jim Link [mailto:jim@[redacted]
Sent: Friday, May 30, 2008 1:59 PM
To: Jim Graham
Subject: Thank you

Dear Councilmember Graham,

I wanted to let you know that I greatly enjoyed and appreciated meeting you yesterday and for the opportunity you gave the Williams? to engage with you in reconciliation.
I found the meeting to be productive and I look forward to discussing next steps. Please feel free to contact me any time?my cell phone is [redacted] begin_of_the_skype_highlighting [redacted] end_of_the_skype_highlighting.

Best regards,

Jim

James E. Link
Partner

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Fax: (202) 628.3770

CONFIDENTIALITY NOTICE:

From: Jim Graham [mailto:Jim@grahamwone.com]
Sent: Monday, June 02, 2008 8:12 AM
To: Jim Link
Subject: RE: Thank you

Thanks. Do you think they will do anything?

I typically answer emails before 9 AM on weekdays. If you email me

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after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181
begin_of_the_skype_highlighting 202-724-8181
end_of_the_skype_highlighting; 202-724-8109 (fax).

Chairman, Committee on Public Works and the Environment (including alcohol regulation). Main Committee Number: 202-724-8195 begin_of_the_skype_highlighting 202-724-8195
end_of_the_skype_highlighting. 1350 Pa. Ave., NW, #116, Washington, DC 20004.

Voting member, Board of Directors, WMATA/Metro.

Website: www.grahamwone.com

From: Jim Link [mailto:jim@[redacted]
Sent: Monday, June 02, 2008 2:56 PM
To: Jim Graham
Subject: RE: Thank you

Yes. Wheels are in motion. Everyone took your concerns seriously. I would like to discuss with you and/or Calvin at a time convenient for you. Thanks much.

Jim

James E. Link
Partner

American Capitol Group

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-----Original Message-----
From: warrenwilliams@[redacted] [mailto:warrenwilliams@[redacted]
Sent: Monday, June 02, 2008 5:46 PM
To: Crystal Wright
Cc: Alaka Williams W2; 'Jim Link'; Bolden, A. Scott
Subject: Re: Graham

We should discuss with the councilmemeber, the fact that, even though I don't like it to prove to him that I'm "onboard" and "non-threatning" I would give him the wmata project.

The legal realities are that I can't do that. Banneker Ventures own 35% of the rights to develop the sites. Two other companies have much more to lose. If we tried to drop out they would sue us. We've got six figures of expenses as well as a six figure deposit being held by wmata.

Is this something Omar and I go in with Jim and Crystal to discuss with the councilmember? Our wmata board meeting where this gets voted on is this thursday.

Advice?

Warren
Sent from my BlackBerry® wireless device

-----Original Message-----
From: Jim Link [mailto:jim@[redacted]
Sent: Monday, June 2, 2008 06:43 PM
To: warrenwilliams@[redacted] "Crystal Wright"
Cc: "Alaka Williams W2", "A. Scott Bolden"
Subject: RE: Graham

Warren, I think we should be upfront with Graham about why this piece of his request cannot be accommodated. Its pretty clear that you are unable for very strict legal reasons to unilaterally make that decision. Is there a possibility that this project could be expanded to include someone of his liking? This Metro project is only one project in a long list of upcoming projects and if we were to have some idea of that list and work with Graham proactively going forward and perhaps on something specific that he wants, that would be very useful and valuable to him. Let me know what you think...we should have an idea of our position and what we can offer before we have the conversation with Graham or Calvin. Jim James E. Link Partner www.americancapitolgroup.com Washington, DC 122 C Street, NW Suite 500 Washington, DC 20001 Phone: (202) 628.3750 begin_of_the_skype_highlighting (202) 628.3750 end_of_the_skype_highlighting Fax: (202) 628.3770 CONFIDENTIALITY NOTICE: This e-mail and any attachments contain information from the American Capitol Group, LLC, and are intended solely for the use of the named recipient or recipients. This e-mail may contain privileged client communications or work product. Any dissemination of this e-mail by anyone other than an intended recipient is strictly prohibited. If you are not a named recipient, you are prohibited from any further viewing of the e-mail or any attachments or from making any use of the e-mail or attachments. If you believe you have received this e-mail in error, notify the sender immediately and permanently delete the e-mail, any attachments, and all copies thereof from any drives or storage media and destroy any printouts of the e-mail or attachments. -----Original Message----- From: warrenwilliams@[redacted] [mailto:warrenwilliams@[redacted] Sent: Monday, June 02, 2008 5:46 PM To: Crystal Wright Cc: Alaka Williams W2; 'Jim Link'; A. Scott Bolden Subject: Re: Graham We should discuss with the councilmemeber, the fact that, even though I don't like it to prove to him that I'm "onboard" and "non-threatning" I would give him the wmata project. The legal realities are that I can't do that. Banneker Ventures own 35% of the rights to develop the sites. Two other companies have much more to lose. If we tried to drop out they would sue us. We've got six figures of expenses as well as a six figure deposit being held by wmata. Is this something Omar and I go in with Jim and Crystal to discuss with the councilmember? Our wmata board meeting where this gets voted on is this thursday. Advice? Warren Sent from my BlackBerry® wireless device -----Original Message----- From: "Crystal Wright" Date: Mon, 2 Jun 2008 14:05:50 To:"'Alaka Williams W2'" , , "'Jay Lapine'" , "'Byron Boothe'" Cc:"'Jim Link'" , "'A. Scott Bolden'" Subject: Graham Jim said that Graham emailed him back thanking him also and say "Do you think they will do anything?" It is pretty clear he wants us to come back with something. . . Crystal Wright Public Relations Strategist Baker Wright Group, LLC 5853 Nebraska Ave., NW Washington, DC 20015 w: 202/829-0848 begin_of_the_skype_highlighting 202/829-0848 end_of_the_skype_highlighting c: 202/549-8072 begin_of_the_skype_highlighting 202/549-8072 end_of_the_skype_highlighting www.bakerwright.com

From: Bolden, A. Scott
Sent: Monday, June 02, 2008 8:26 PM
To: 'warrenwilliams@[redacted] Crystal Wright
Cc: Alaka Williams W2; 'Jim Link'
Subject: RE: Graham

I have made my thoughts on this nonsense very clear to warren. this is complete bs and we are getting very close to corruption, bid rigging and other inappropriate conduct and I am not going to be a part of it. perhaps the us atty should make the call on this by speaking with Mr. Graham about his request. Am I clear on this. To even consider it is placing each of us at risk. Period.

A. Scott Bolden
abolden@[redacted]

Reed Smith LLP
1301 K Street, NW
Suite 1100-- East Tower
Washington, DC 20005
Phone: 202-414-9266
>Fax: 202-414-9299
>

From: Bolden, A. Scott
Sent: Monday, June 02, 2008 8:31 PM
To: 'warrenwilliams@[redacted]' 'Jim Link'; 'Crystal Wright'
Cc: Alaka Williams W2
Subject: RE: Graham

any follup discussions and meeting with mr. graham, please sure I attend. the political stuff, we can negotiate. the bid withdrawl is off the table.

A. Scott Bolden
abolden@[redacted]

Reed Smith LLP
1301 K Street, NW
Suite 1100-- East Tower
Washington, DC 20005
Phone: 202-414-9266
>Fax: 202-414-9299
>

-----Original Message-----
From: Jim Link [mailto:jim@[redacted]
Sent: Wednesday, June 11, 2008 11:39 AM
To: "Byron Boothe", "Jay Lapine", "Crystal Wright"
Cc: warrenwilliams@[redacted] "Alaka Williams W2", "Bolden, A. Scott"
Subject: RE:

The reason I said it that way, is that I wanted it to be clear that we could not even consider the request. I think it would be worse if we said, "we considered your request and cannot accommodate it." James E. Link Partnerwww.americancapitolgroup.com Washington, DC 122 C Street, NW Suite 500 Washington, DC 20001 Phone: (202) 628.3750 Fax: (202) 628.3770 CONFIDENTIALITY NOTICE: This e-mail and any attachments contain information from the American Capitol Group, LLC, and are intended solely for the use of the named recipient or recipients. This e-mail may contain privileged client communications or work product. Any dissemination of this e-mail by anyone other than an intended recipient is strictly prohibited. If you are not a named recipient, you are prohibited from any further viewing of the e-mail or any attachments or from making any use of the e-mail or attachments. If you believe you have received this e-mail in error, notify the sender immediately and permanently delete the e-mail, any attachments, and all copies thereof from any drives or storage media and destroy any printouts of the e-mail or attachments. -----Original Message----- From: Byron Boothe [mailto:Byron.Boothe@[redacted] Sent: Wednesday, June 11, 2008 12:34 PM To: Jay Lapine; Jim Link; Crystal Wright Cc: warrenwilliams@[redacted] Alaka Williams W2; Bolden, A. Scott Subject: RE: Seriously I do not like the last line it empowers Graham too much it suggest that whatever we discussed we realized the subject matter may be dirty and thus we became a part of it in that we considered it! Byron Boothe Vice President, Government Relations INTRALOT USA 11360 Technology Circle Duluth, Georgia 30097 Cell:502-552-3348 ----- Original Message----- From: Jay Lapine Sent: Wednesday, June 11, 2008 12:02 PM To: Jim Link; Jay Lapine; 'Crystal Wright' Cc: warrenwilliams@[redacted] 'Alaka Williams W2'; 'Bolden, A. Scott'; Byron Boothe Subject: RE: Jim This is great-perfect. If Crystal is ok I think we use it. Also, I completely agree with you about JG but it is important that we make the record not him and with this addition you have doe so beautifully. Thanks so much Best Regards, Jay Jay M. Lapine, Esq. VP & General Counsel Intralot, Inc. 11360 Technology Circle Duluth GA 30097 770.295.2449 This e-mail message and any attached files are confidential and are intended solely for the use of the addressee(s) named above. This communication may contain material protected by attorney-client, work product, or other privileges. If you are not the intended recipient, any review, use, dissemination, forwarding, printing, copying, or other distribution of this e-mail message and any attached files is strictly prohibited. If you have received this confidential communication in error, please notify the sender immediately by reply e-mail message and permanently delete the original message. ... -----Original Message----- From: Jim Link Sent: Wednesday, June 11, 2008 11:49 AM To: 'Jay Lapine' ; 'Crystal Wright' Cc: warrenwilliams@[redacted] ; 'Alaka Williams W2' ; 'Bolden, A. Scott' ; 'Byron Boothe' Subject: RE: Yes, but Graham is perhaps the biggest conspiracy theorist I have ever come across and will pin this on us regardless. If we add such language, let me know what you think of the following.."I wanted you to also be aware that our communications person, Crystal Wright, received a call from a reporter from the DC Examiner who was asking questions about our meeting and seemed to know a great deal about what was said. Since I don't talk to reporters, I

would suggest that you contact Crystal directly if you would like to know more about this. Please know that no one from our team contacted the media as it would not be in our interest or your interest to publicize what was discussed." James E. Link
Partner www.americancapitolgroup.com Washington, DC 122 C Street, NW Suite 500 Washington, DC 20001 Phone: (202) 628.3750 Fax: (202) 628.3770 CONFIDENTIALITY NOTICE: This e-mail and any attachments contain information from the American Capitol Group, LLC, and are intended solely for the use of the named recipient or recipients. This e-mail may contain privileged client communications or work product. Any dissemination of this e-mail by anyone other than an intended recipient is strictly prohibited. If you are not a named recipient, you are prohibited from any further viewing of the e-mail or any attachments or from making any use of the e-mail or attachments. If you believe you have received this e-mail in error, notify the sender immediately and permanently delete the e-mail, any attachments, and all copies thereof from any drives or storage media and destroy any printouts of the e-mail or attachments. _____ From: Jay Lapine [mailto:Jay.Lapine@[redacted] Sent: Wednesday, June 11, 2008 11:20 AM To: Crystal Wright; Jim Link Cc: warrenwilliams@[redacted] Alaka Williams W2; Bolden, A. Scott; Byron Boothe Subject: RE: I really like the way you have put this together. I do however, concur in the opinion of my wise co-counsel. You guys are so good with the right words couldn't we persuade you to do your magic once again to make the record we need but be subtle about it-Please Best Regards, Jay Jay M. Lapine, Esq. Vice President & General Counsel Intralot, Inc. 11360 Technology Circle Duluth GA 30097 770.295.2449 jay.lapine@[redacted]

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have been asked these questions stand by what they say emphatically. As for Metro, there are a number of factors that make it impossible for us to even consider accommodating your request. Please let me know if you have any questions. Thanks, Jim" James E. Link
Partner www.americancapitolgroup.com Washington, DC 122 C Street, NW Suite 500 Washington, DC 20001 Phone: (202) 628.3750 Fax: (202) 628.3770 CONFIDENTIALITY NOTICE: This e-mail and any attachments contain information from the American Capitol Group, LLC, and are intended solely for the use of the named recipient or recipients. This e-mail may contain privileged client communications or work product. Any dissemination of this e-mail by anyone other than an intended recipient is strictly prohibited. If you are not a named recipient, you are prohibited from any further viewing of the e-mail or any attachments or from making any use of the e-mail or attachments. If you believe you have received this e-mail in error, notify the sender immediately and permanently delete the e-mail, any attachments, and all copies thereof from any drives or storage media and destroy any printouts of the e-mail or attachments.

From: Jim Link [mailto:jim@[redacted]
Sent: Wednesday, June 11, 2008 12:31 PM
To: Jim Graham
Subject: RE: Thank you

Councilmember Graham,

I know you are out of town, but hopefully you are checking email?

We looked into the questions you asked. As you know, Warren Williams spoke emphatically that he had absolutely no involvement in paying for, producing or promoting the racist posters that were painted of you. Warren spoke with his father who said he did not know about or pay for the posters. While he couldn't speak for his partner Paul who is deceased, no one believes he would have paid for them either.

Warren also spoke with Sinclair Skinner who denied putting the posters up or paying for them to be produced. He did have a newspaper at one time that he was the editor of called the Georgia Ave. Defender and does remember his editorials that were critical of you and which spoke about gentrification, but that was the extent of his actions.

The Williams family confirmed with me again that no family member ever made a contribution to the campaign of Chad Williams, who challenged your seat.

I realize that you have had doubts about these matters, but these are the answers which I have received and those who have been asked these questions stand by what they say emphatically.

10/06/2011

As for Metro, there are a number of factors that make it impossible for us to even consider accommodating your request.

I wanted you to also be aware that our communications person, Crystal Wright, received a call from a reporter from the DC Examiner who was asking questions about our meeting and seemed to know a great deal about what was said. Since I don?t talk to reporters, I would suggest that you contact Crystal directly if you would like to know more about this. Please know that no one from our team contacted the media as it would not be in our interest or your interest to publicize what was discussed.

Please let me know if you have any questions.

Thanks,

Jim

James E. Link
Partner

American Capitol Group

www.americancapitolgroup.com

Washington, DC

122 C Street, NW
Suite 500
Washington, DC 20001
Phone: (202) 628.3750
begin_of_the_skype_highlighting
(202) 628.3750
end_of_the_skype_highlighting
Fax: (202) 628.3770

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From: Jim Graham [mailto:Jim@grahamwone.com]
Sent: Wednesday, June 11, 2008 2:26 PM
To: Jim Link
Subject: RE: Thank you

Sinclair was observed putting the posters up.

I would rather not continue this on email.

I will check on the examiner. I know I did not speak to them.

The rejection of your application at Metro (which has not been approved) is

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necessitated not by any of this but by other factors relating to the application.

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me.

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181
begin_of_the_skype_highlighting 202-724-8181
end_of_the_skype_highlighting; 202-724-8109 (fax).

Chairman, Committee on Public Works and the Environment (including alcohol regulation). Main Committee Number: 202-724-8195 begin_of_the_skype_highlighting 202-724-8195
end_of_the_skype_highlighting. 1350 Pa. Ave., NW, #116, Washington, DC 20004.

Voting member, Board of Directors, WMATA/Metro.

Website: www.grahamwone.com

Omar Karim

›m: Bryant, Seth <Seth.Bryant@dlapiper.com>
›ent: Thursday, May 29, 2008 3:33 PM
To: okarim@bannekerventures.com; Flynn, Guy
Cc: warren@bannekerventures.com
Subject: Re: WMATA - Minutes of April WMATA mtg and Agenda for June WMATA mtg re Florida Avenue selection

Thanks Omar. Will take a look and circle back with thoughts or issues. We can inquire with Marc re wording of the agenda to determine if there is internal significance. Please let us know if you hear anything on that point.

By the way, how was ICSC? Any good connects? Did you stop by the DLA Piper reception?

Talk to you soon.

Seth

B. Seth Bryant
Of Counsel
DLA Piper US LLP
1251 Avenue of the Americas
29th Floor
New York, NY 10020-1104
T 212.335.4752
F 212.884.8552
C 646-469-6105
nail: seth.bryant@DLAPiper.com

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Omar A. Karim <okarim@bannekerventures.com>
To: Bryant, Seth; Flynn, Guy
Cc: Warren Williams <warren@bannekerventures.com>
Sent: Thu May 29 14:29:37 2008
Subject: WMATA - Minutes of April WMATA mtg and Agenda for June WMATA mtg re Florida Avenue selection

Seth/Guy,

Attached please find a copy of the Minutes from the April WMATA Board mtg in which Jim Graham moved to push back the Florida Avenue Developer selection. Also, please find a copy of the Agenda for the June 26th planning and real estate committee mtg in which the Florida Avenue selection is back on the table. However, as you can see, Item 1A asks the cmte to approve the Term Sheet for the Chiller Site deal (in which Donatelli Development is the developer) but item 1C does not specifically ask the cmte to approve the Term Sheet for the Florida Avenue deal. I have a call in to Joel to inquire why this is the case.

Omar

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

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Thank you.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014593

Omar Karim

›m: Joel R. Washington <jrwashington@wmata.com>
›ent: Tuesday, June 03, 2008 12:12 PM
To: Omar A. Karim
Subject: BOARD AGENDA REVIEW.htm
Attachments: BOARD AGENDA REVIEW.htm

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA BOARD AGENDA REVIEW
as of
JUNE 03, 2008

JUNE 12 — **Planning, Development and Real Estate Committee**

Public Session

Information Agenda:

PLJD	Jackson Graham Building Relocation Analysis (N. Bottigheimer)

Action Agenda:

PLJD	Policy Concerning Use of WMATA Property for Non-WMATA Transit Projects (N. Bottigheimer)
PLJD	Bus Network Evaluation (N. Bottigheimer/J. Hughes)
PLJD	Rhode Island Avenue-Approval of Interim Parking Plan (N. Bottigheimer/J. Washington)

Executive Session

Action Agenda:

PLJD	Florida Avenue Developer Selection (N. Bottigheimer)

Planning, Development and Real Estate Commitee Agenda for June 12, 2008 at 9:00 AM

Action Items

I. Approval of Agenda	
II. Approval of Minutes of April 24, 2008	
III. Approval of Minutes of May 22, 2008	
IV.A. Policy Concerning Use of WMATA Property for Non-WMATA Transit Projects	N. Bottigheimer
IV.B. Bus Network Evaluation	N. Bottigheimer
IV.C. On-Call Engineering Services	J. Requa
IV.D. Rhode Island Avenue Interim Parking	N. Bottigheimer

Information Items

V. Jackson Graham Building Relocation Analysis	E. Smart/N. Bottigheimer
VI. Subsequent Agenda	

Some presentations are available in Adobe Acrobat (PDF format). Viewing these presentations requires the free Adobe Reader software.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014599

Omar Karim

›m: warrenwilliams@w2tech.net
›ent: Monday, June 16, 2008 4:44 PM
To: Omar Karim
Subject: Fw: Conflict of Interest

FYI. Let's discuss Wednesday
Sent from my BlackBerry® wireless device

-----Original Message-----
From: "Bolden, A. Scott" <ABolden@ReedSmith.com>

Date: Mon, 16 Jun 2008 16:31:38
To:<warrenwilliams@w2tech.net>
Subject: FW: Conflict of Interest

fyi.

A. Scott Bolden
abolden@reedsmith.com

Reed Smith LLP
301 K Street, NW
›uite 1100-- East Tower
Washington, DC 20005
Phone: 202-414-9266
>Fax: 202-414-9299
>

-----Original Message-----
From: Coleman, Keith D.
Sent: Monday, June 16, 2008 2:16 PM
To: Bolden, A. Scott
Cc: Coleman, Keith D.
Subject: Conflict of Interest

I researched the WMATA and District procurement regulations and criminal statutes that might address our scenario with regard to Councilmember Graham. The WMATA procurement rules and the District procurement rules make clear that procurements are to be conducted in a manner above reproach. The WMATA procurement regulations state that Board members may not make any commitment or promise relating to the selection of a contractor or award of a contract nor can Board members make a representation which could be construed as such a commitment. See WMATA Procurement Manual 210.3(b). The WMATA Manual states that any Board ›ember that willfully violates the above provision shall forfeit his/her office or employment. See WMATA Procurement Manual 210.2(a).

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The District Office of the Inspector General (OIG) would likely be interested in the facts surrounding Graham's inappropriate comments. The OIG's mission is to detect and deter fraud, waste and mismanagement throughout the Government. In carrying out its duties and responsibilities, the OIG refers all evidence of criminal violations to the Department of Justice. Looking at our facts, Graham's statements may violate 18 USC 201 "Bribery of public officials and witnesses." The law applies to the District Government. See 18 USC 201(1).

According to the law, a violation occurs if someone being a public official, directly or indirectly demands or seeks anything of value personally for or because of any official act performed or to be performed by the public official. See 18 USC 201(c)(1)(B).

I am available to conduct additional research, if necessary.

Keith D. Coleman
202.414.9353
kdcoleman@reedsmith.com

Reed Smith LLP
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005
202.414.9200
>Fax 202.414.9299

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* * *

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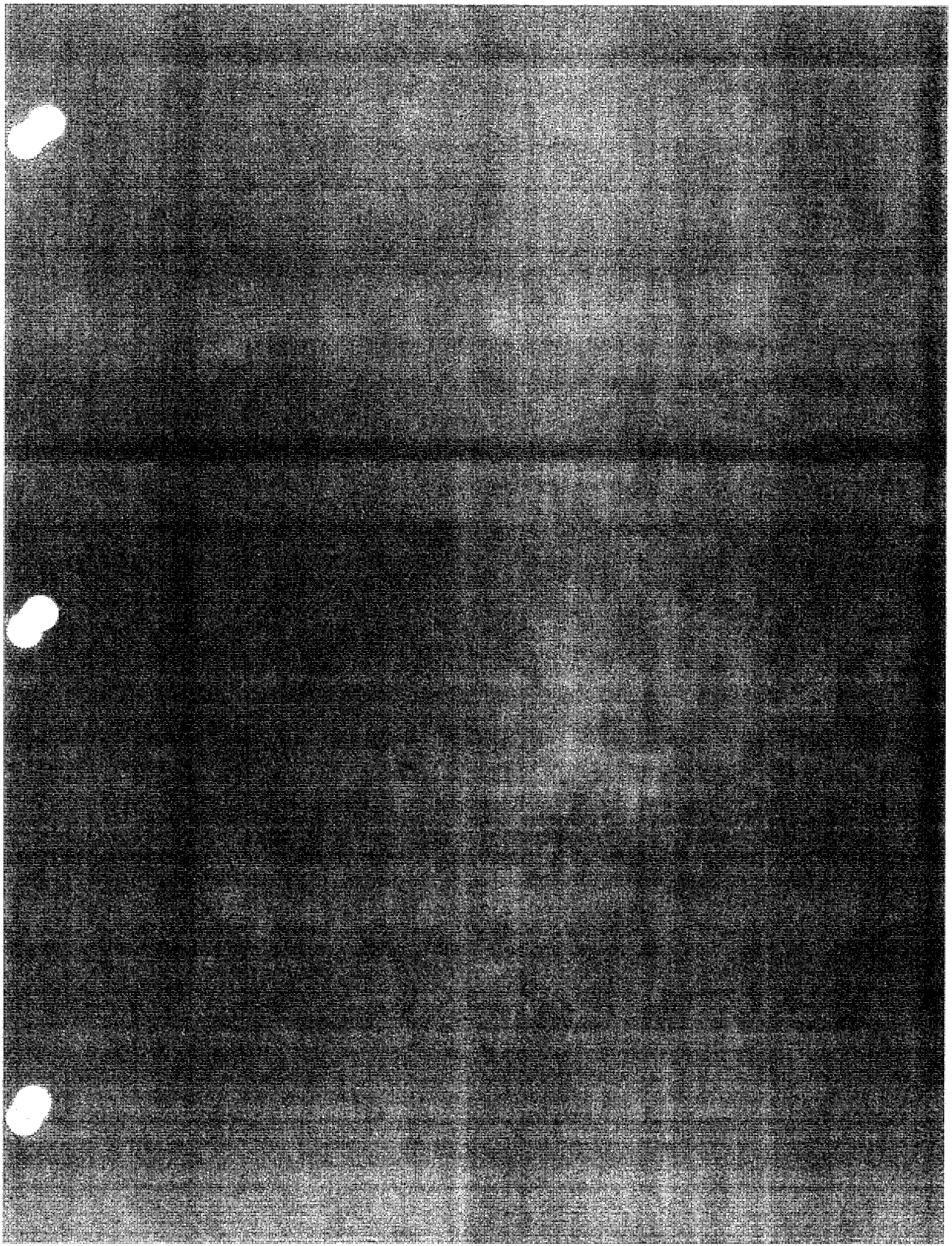
* * *

To ensure compliance with Treasury Department regulations, we inform you that, unless otherwise indicated in writing, any U.S. Federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or applicable

state and local provisions or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.
Disclaimer Version RS.US.1.01.03
1c1

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.1831 / Virus Database: 2092/4568 - Release Date: 10/22/11



CM

6/17/08

247

[illegible] x4,5[illegible]

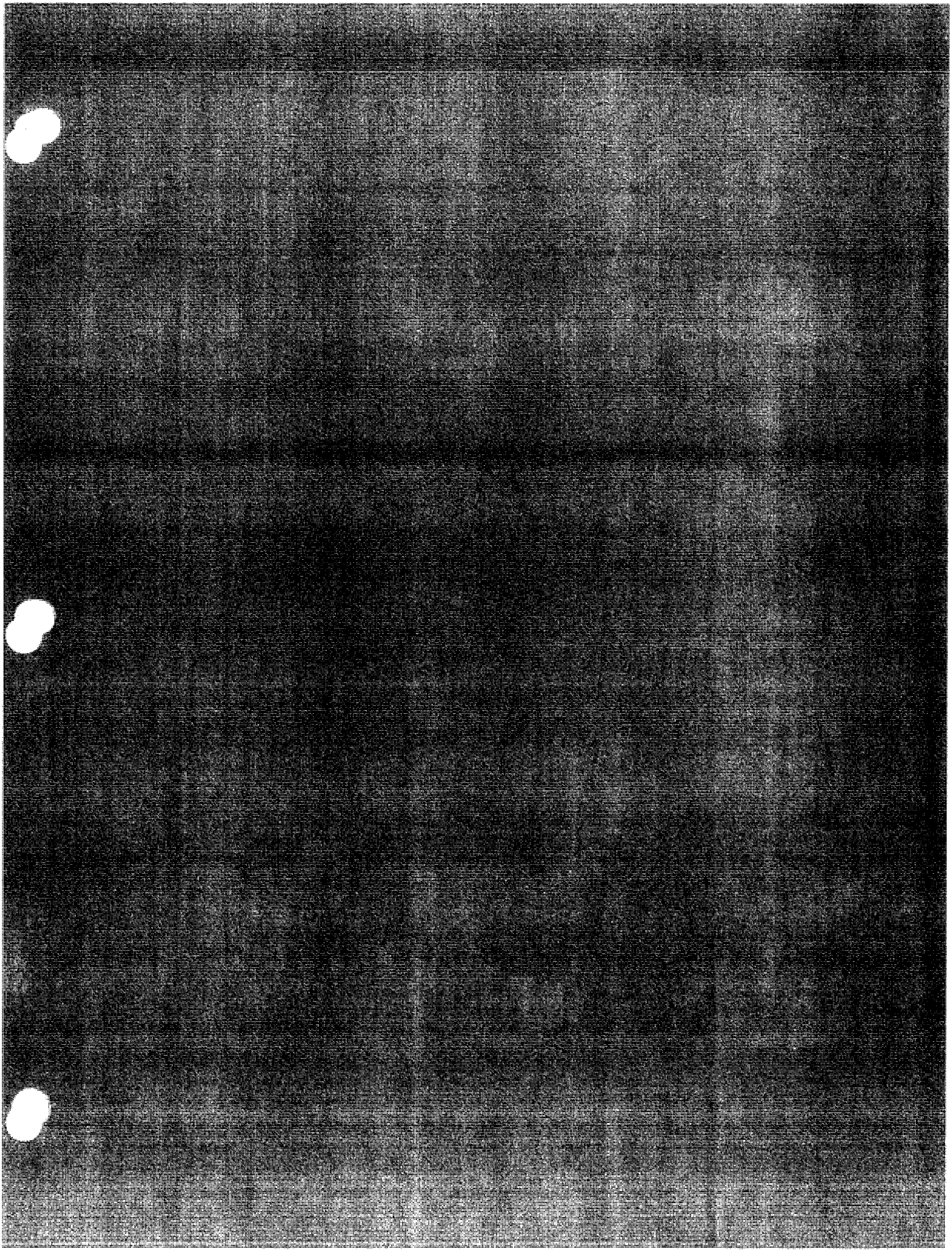
WMATA

Josh Adler - Ward he's getting vs that they are wanting until we work out something out before they approve our deal.

- 10 yr ground lease, started 10/7

1st	250
2-5	150 K / + taxes (paid monthly)
6-10	200K

- Started at 4.7M to 3.6 M
- Renunced to sub-ordinate fee interest to construction [illegible]



Omar Karim

From: Josh Adler <josh@lakritzadler.com>
Sent: Tuesday, June 17, 2008 3:42 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Ground Lease
Attachments: image001.gif; 1920 8th St NW Plat.pdf; 1920 8th NPV.xls; 1920 8th street standalone rendering 12-17-07.jpg

PERSONAL AND CONFIDENTIAL

Hello Omar:

Following up on our telephone conversation today, we'd like to see if there is a mutually agreeable arrangement we can reach with respect to the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels. 1920 8th Street, AKA 1916-1930 8th Street, NW, is an 11,320 SF lot in the C2B/Arts zone. A plat is attached.

We have designed a free-standing 47,600 SF by-right commercial building with 26 surface parking spaces for the site, which we intend to begin marketing for pre-lease or sale in the event that we are unable to develop this site with the adjacent WMATA parcels or reach an acceptable arrangement with the selected developer for the WMATA parcels. I'm attaching a rendering of that plan as well.

To recap, the Ground Lease contains the following essential terms:

- Medal, Inc., as Landlord and 1920 8th Street, LLC, as Tenant.
  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 at the end of the last renewal term (that is, on August 3, 2017) shall be $3,419,256.20.
- A one time fee of $175,000 payable to Landlord for resubordination of Landlord's fee interest in land to Tenant's permanent financing lender (if such lender is different from Tenant's construction lender), to be paid upon the sooner of: 1) resubordination of Landlord fee interest to new lender following substantial completion of project, or 2) upon exercise of purchase option.
- 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.
- For an additional $30,000 one-time "combination fee", Landlord is required to allow Tenant to cross-collateralize Landlord's fee interest with other adjacent parcels, and combine the Ground Lease parcel with other adjacent parcels through the subdivision process. In other words, a developer can use the Landlord's land equity to finance a project that includes, but is not limited, to the 1920 8th Street property itself.
- Ground Lease is freely assignable and transferrable by Tenant without any consent or restriction by Landlord.

As we discussed, there are two big value benefits in the Ground Lease as we have structured it: 1) the ground lease payments pay down the purchase option over ten years, resulting in a very favorable carry cost and total land cost under the ground lease compared to a fee simple purchase at market value today, especially after discounting for the time-value of money over that period; and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect, and amplifying the impact of the back-loading of the land purchase cost in net present value calculations.

The attached Excel spreadsheet shows the value of the ground lease and purchase option today, once the future ments are discounted over the balance of the ten year term. As you can see from the highlighted column, a ground purchaser that pays a $3.5 million assignment fee for the ground lease in August 2008, pays the ground lease irectly until the end of its final term, and then exercises the final option price of about $3.6 million in August 2017, is paying the equivalent of $100/FAR-foot for the fee interest in the land today, and this is how we have derived our assignment price. I should note that a bank-ordered appraisal obtained for 1920 8th several years ago put the land value at $6.5 million, or $127/FAR-foot, so we are discounting considerably from that value, to your benefit, by using the lower $100/FAR-foot value.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the delayed closing, the payments we have already made toward the Ground Lease and the ongoing cost of the Ground Lease to us until you close.

Our thought on this would be to sell you a $3.5 million option on the ground lease for approximately our cost to-date and expected cost through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Most of your advance payment would be credited to the assignment price at settlement.

As of August 3, 2009, our two years of ground lease payments and property taxes (approximately) will have come to about $500,000 – that is the amount we will have paid to Medal, Inc., and to the D.C. Government for property tax, and does not include any of our legal, due diligence, or any other costs associated with the site. We would also charge a $100,000 nonrefundable fee for a partial recovery of these costs. All but the $100,000 fee would be credited toward your $3.5 million assignment cost at settlement, and all would be nonrefundable in the event that you failed to close, in which case control of the Ground Lease would revert to us.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $600,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) The Assignment Option Fee would reimburse 1920 8th Street LLC for the 2007-2008 ground lease and property tax payments already paid, would prepay the 2008-2009 ground lease and property tax payments (through August 4, 2009), and would provide $100,000 additional reimbursement of expenses to 1920 8th Street LLC.
4) Upon Seller's nonrefundable receipt of the Assignment Option Fee, Seller would notify WMATA of its intention to withdraw from competition for the adjacent WMATA parcels.
5) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $3 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $3.5 million, less credit for $500,000 of the Assignment Option Fee.)
6) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $600,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. Of course, it also has the substantial benefit to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), and of removing us as competitors for the WMATA parcels.

We would appreciate your feedback on the proposed arrangement by the end of this week. We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
20 8th Street LLC

LAKRITZ | ADLER

FOIA CONFIDENTIAL TREATMENT REQUESTED

SUBDIVISION
SQUARE 393
8th STREET, N.W.
PUBLIC ALLEY
10'
10'
WEST
94.33
EAST
94.33
NORTH
120.0
SOUTH
120.0
46
11,320 SF
45

Omar Karim

From: Josh Adler <josh@lakritzadler.com>
Sent: Tuesday, June 24, 2008 5:16 PM
To: okarim@bannekerventures.com
Subject: Proposal
Attachments: image001.gif

Omar,

We were expecting some feedback on our proposal last Friday. Have your people reviewed it yet?

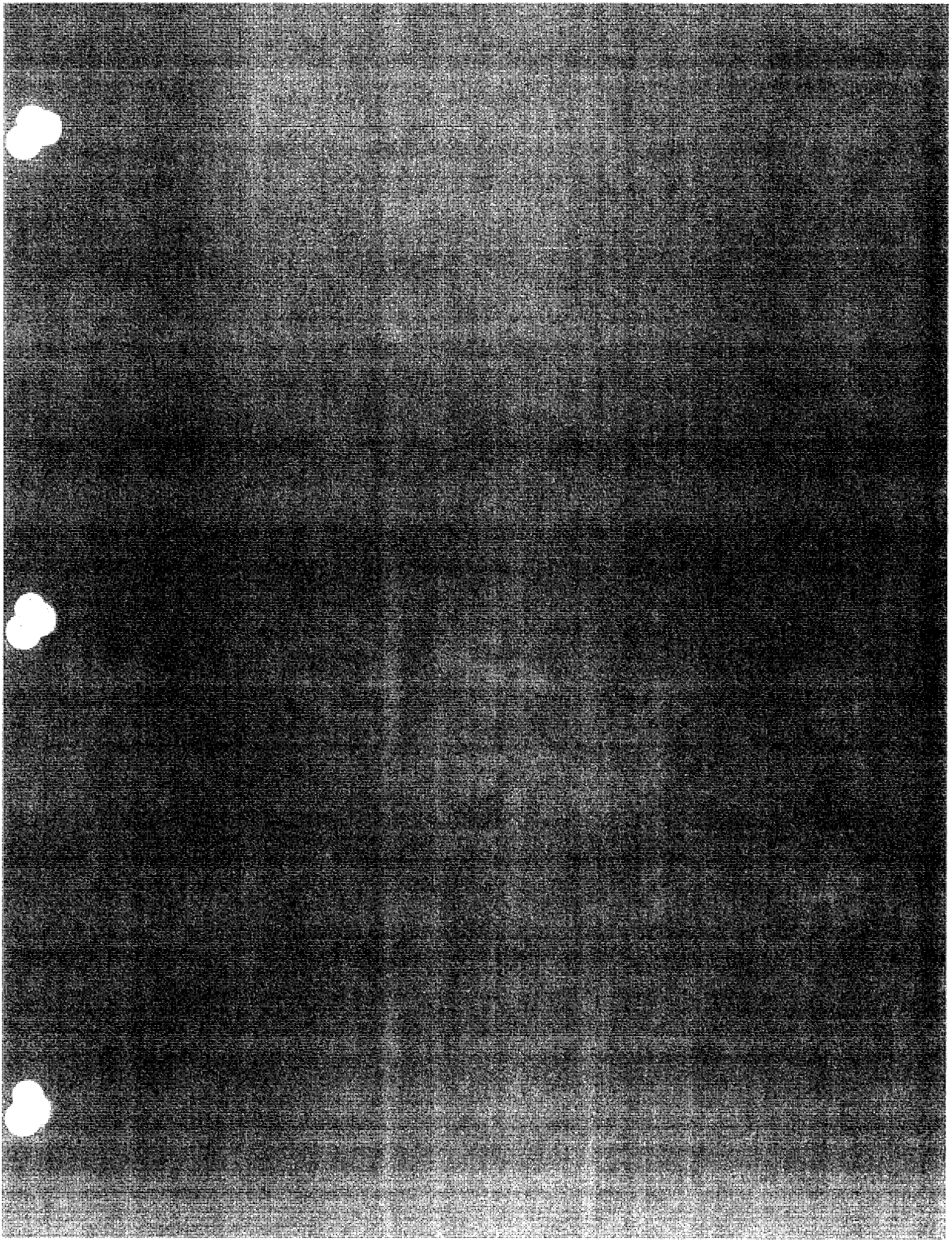
Thanks,

Josh

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

FOIA CONFIDENTIAL TREATMENT REQUESTED



Subsequent Agenda
Planning, Development and Real Estate Committee

June 26, 2008

I. Action Items

A. Approve Term Sheet on Navy Yard Chiller Site (N. Bottigheimer)
B. Policy Concerning Use of WMATA Property for Non-WMATA Transit Projects (N. Bottigheimer)
C. Florida Avenue Developer Selection (N. Bottigheimer)

II. Information Item

A. Jackson Graham Building Relocation Analysis (N. Bottigheimer)

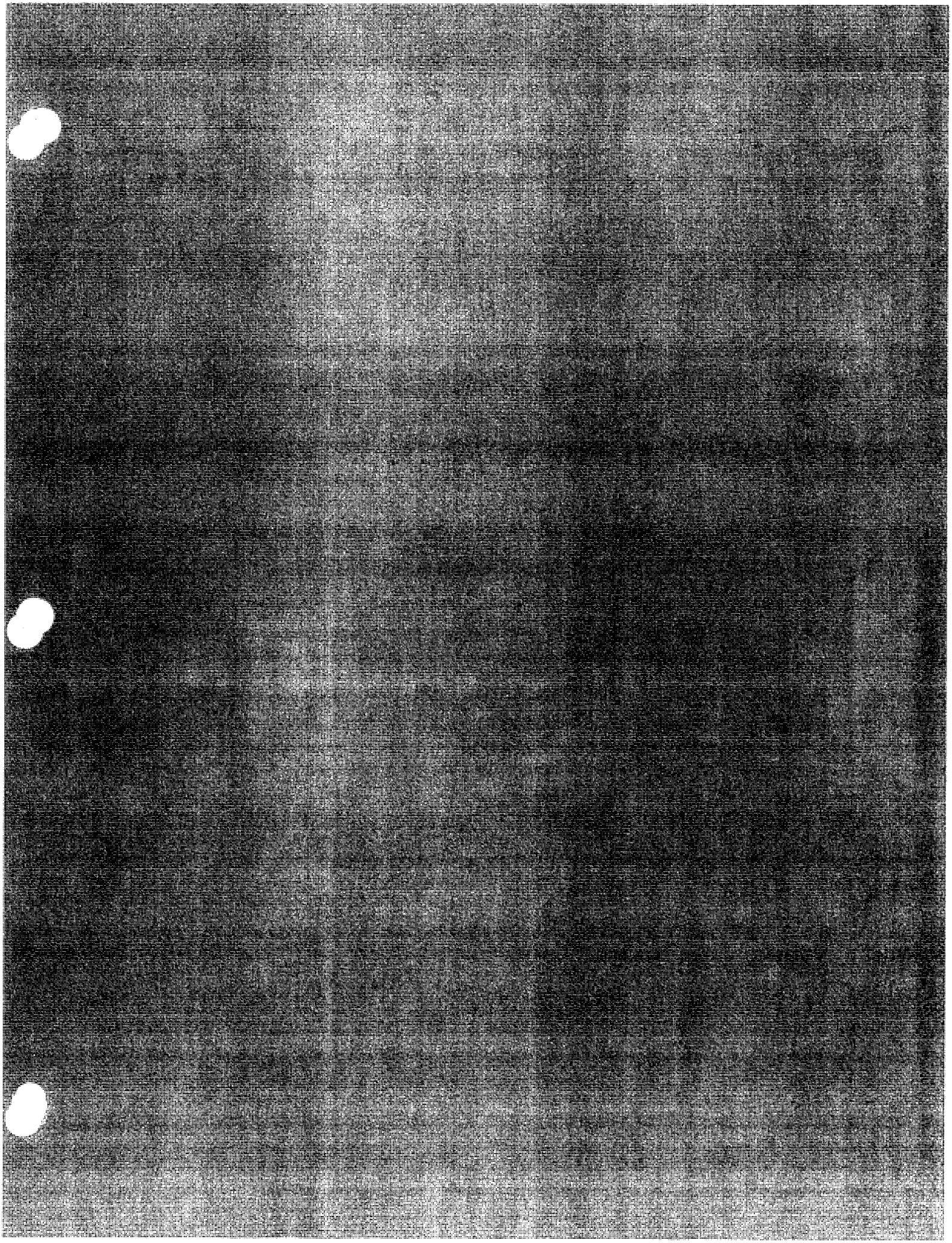
July 24, 2008

I. Action Items

A. Lease with Prince George's Metro Center, Inc. (N. Bottigheimer)
B. DBE Program for Joint Development Activities (N. Bottigheimer)

II. Information Item

A. FY11 and Beyond Capital Improvement Plan (N. Bottigheimer/ T. Harrington)



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

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 014617

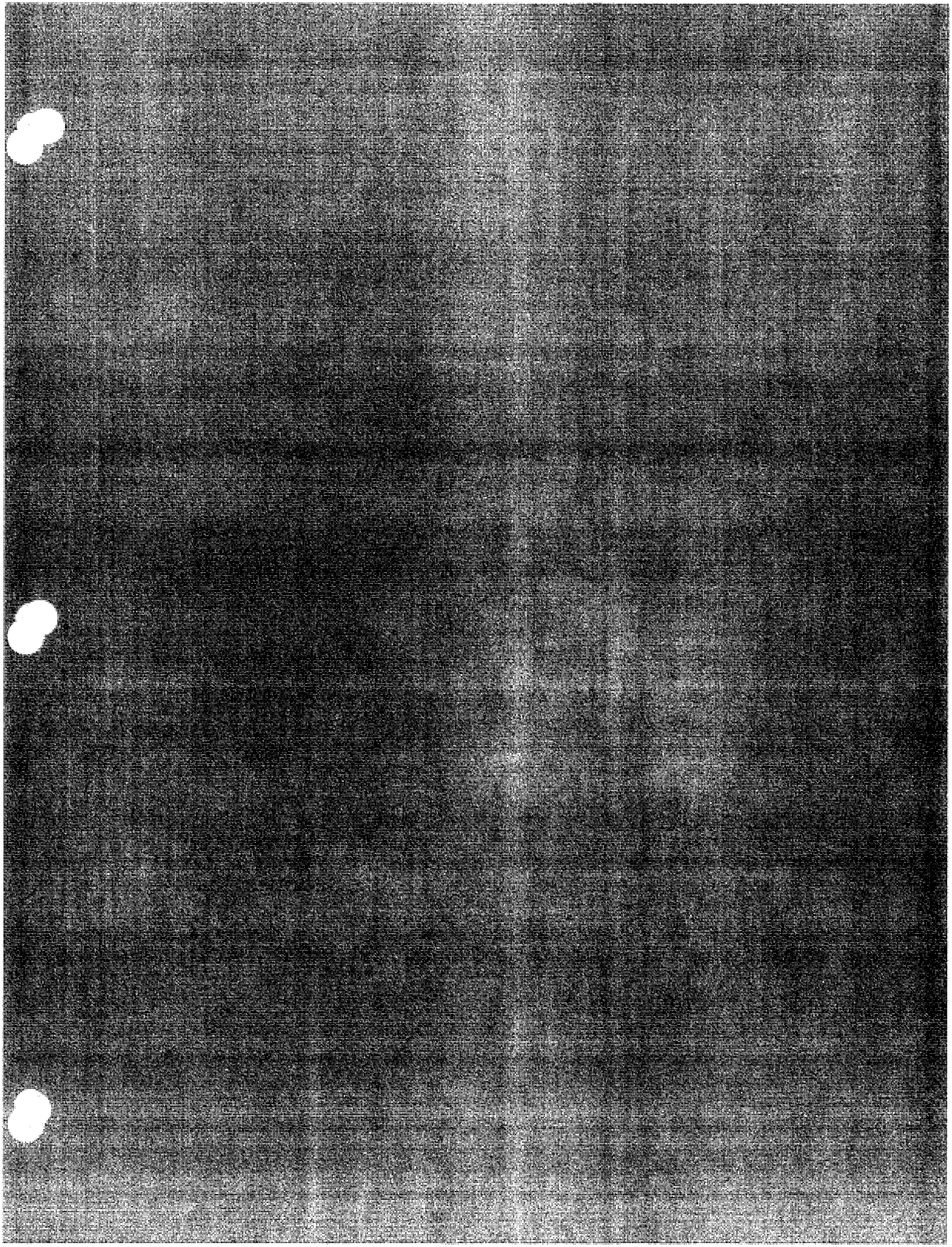
VI. Action Item

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 WMATA-INV 014618



REVISED

Agenda
1331st Meeting of the Board of Directors
June 26, 2008
11 a.m.

I. Call to Order

II. Public Comment Period ..... Mr. Zimmerman

III. Approval of Agenda ..... Mr. Zimmerman

IV. Approval of Minutes ..... Mr. Zimmerman
- A. May 22, 2008 Board Meeting

V. Report by Riders' Advisory Council ..... Ms. Iacomini

VI. Report by Chairman ..... Mr. Zimmerman
- A. Chairman's Report

VII. Report by General Manager ..... Mr. Catoe
- A. General Manager's Monthly Report
- B. Employee Spotlight - Recognition of:
  Stefan Petrowski, General Mechanic
  Donnell Morina, Rail Operator
  Christopher Depetris, Bus Operator

VIII. Report by Planning, Development and Real Estate Committee ..... Mrs. Hudgins
- A. Policy Concerning Use of WMATA Property For Non-WMATA Transit Projects
- B. Bus Network Evaluation
- C. On-Call Engineering Services
- D. Rhode Island Avenue Interim Parking
- E. Florida Avenue Developer Selection (Pending Executive Session Discussion)

IX. Report by Finance, Administration and Oversight Committee ..... Mr. Benjamin
- A. FY09 Budget Approval
- B. Approval of District of Columbia OneCard Program
- C. Diesel Swap Authorization

Washington Metropolitan Area
600 Fifth Street, NW
Washington, D.C. 20001
202/962-1234

By Metrorail:
Judiciary Square-Red Line
Gallery Place-Chinatown
Red, Green and Yellow Lines

A District of Columbia, Maryland and Virginia Transit Partnership

FOIA CONFIDENTIAL TREATMENT REQUESTED

D. Approval to Initiate & Award a Contract for IT Data Security Assessment, Plan and Phase I Implementation
E. Approval to Initiate & Award a Contract For Enterprise Geographic Information System (GIS) and Upgrade the WMATA Internet & Intranet Websites
F. Approval to Initiate & Award a Contract for Desktop Support Technicians
G. Approval to Initiate & Award a Contract for Consulting Services for Major Applications
H. Approval to Initiate & Award a Contract for Enterprise Architecture Business Analyst
I. Approval to Initiate & Award Contracts for Basic Ordering Agreements to Provide Information Technology Services in Support of Major IT Initiatives
J. Approval to Initiate & Award Contracts for On-Call Technical Consultant Services for Collective Bargaining

X. Report by Customer Service, Operations and Safety Committee . . . . . Mr. Graham

XI. Administrative Actions:

1. Approval to Initiate & Award a Contract for the procurement of Dell Personal Computers (PCs), Servers, Laptops and Related Components for Use in WMATA Facilities . . . Ms. Peck

2. Approval to Initiate & Award a Contract for FY09 Insurance Program Renewal . . . Mr. Keele

3. Approval to Initiate & Award a Contract for Door Control Unit Maintenance Program . . . Mr. Kubicek

4. Approval to Initiate & Award a Contract for Ultrasonic Rail Flaw Testing . . . Mr. Kubicek

5. Approval to Initiate & Award a Contract to Lease a Rail Grinder . . . Mr. Kubicek

6. Approval to Initiate & Award a Contract for Rail Car Communications Control Panels . . . Mr. Kubicek

7. Approval of FY09 Project Development Program . . . . Mr. Bottigheimer

8. Approval to Increase Largo Extension Budget . . . . Ms. O'Keeffe

9. Approval to Modify Contract for Close-out of Metro Matters Contract at Greenbelt and Shady Grove Yards . . Mr. Requa

10. Approval to Enter into an Agreement with the United States Mint for Acceptance of the Dollar Coin . Mr. Woodruff

11. Approval of Fraternal Order of Police (FOP) Labor Contract . . . . . Ms. Burnside

12. Ratify Tax Advantaged Lease Emergency Procurement . . . . . Mr. Woodruff

13. Ratify Actions for Reduced Fares . . . . . Mr. Woodruff

XII. Reports by D.C. . . . . Mr. Graham
WSTC . . . . . Mr. Benjamin
NVTC . . . . . Mrs. Hudgins

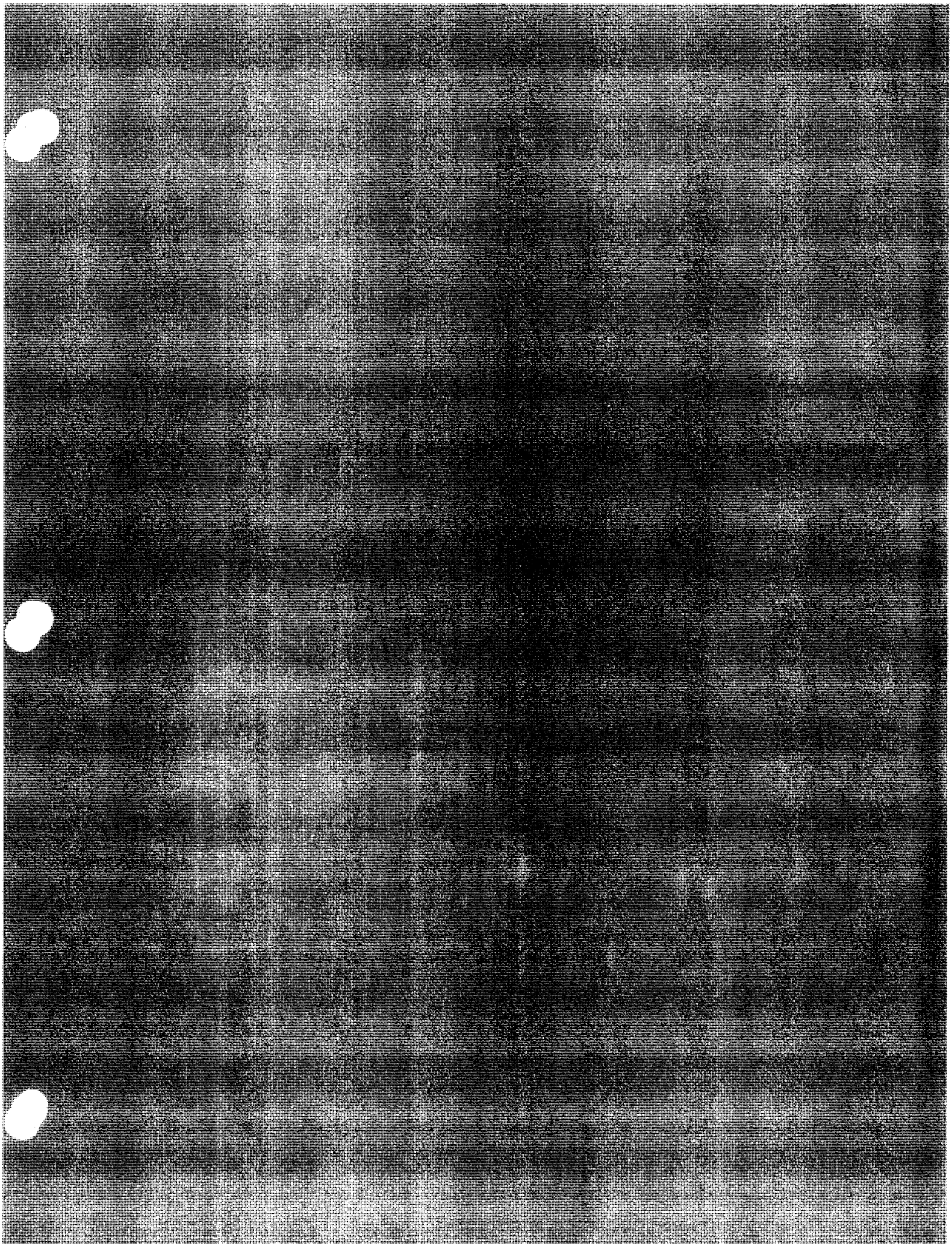
XIII. Motion for Executive Session
A. Monument vs. WMATA
B. SmarTrip Contract Operations
C. Safety and Security Matters

XIV. Reconvene

XV. Certification

XVI. Action on Matters Arising from Executive Session . . . . Mr. Zimmerman

XVII. Adjournment



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

Washington Metropolitan Area Transit Authority

FOIA CONFIDENTIAL TREATMENT REQUESTED

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.

Minutes

1331st Meeting of the Board of Directors
June 26, 2008

Mr. Zimmerman called the meeting to order at 11:10 a.m. Present were:

Directors
Mr. Chris Zimmerman
Mr. Jim Graham
Mr. Peter Benjamin
Mrs. Catherine Hudgins
Mr. Emeka Moneme
Ms. Elizabeth Hewlett

Alternate Directors
Mr. Marion Barry
Mr. Jeff McKay
Mr. Anthony Giancola
Mr. Gordon Linton

Staff
Mr. John Catoe
Mr. Gerald Francis
Ms. Helen Lew
Ms. Carol O'Keeffe
Mr. Shiva Pant
Mr. Chuck Woodruff
Mrs. Leen'da Chambliss

Public Comment Period:

There were no speakers during the public comment period.

Approval of Agenda:

The agenda was approved as submitted by unanimous consent.

Approval of Minutes:

The minutes of the May 22, 2008 meeting were approved as submitted.

Washington Metropolitan Area Transit Authority

600 Fifth Street, NW
Washington, D.C. 20001
202/962-1234

By Metrorail:
Judiciary Square-Red Line
Gallery Place-Chinatown
Red, Green and Yellow Lines

A District of Columbia, Maryland and Virginia Transit Partnership

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014630

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 014631

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 014632

B. Bus Network Evaluation

Mrs. Hudgins referred the Board to the request for approval to authorize the General Manager to inform all interested parties of the acceptance of the finding of the Bus Network Evaluation Report validating the need for all 185 expansion standard transit coaches called for in the Metro Matters Funding Agreement as fulfilling the requirement of the Metro Matters Funding Agreement adoption.

Mrs. Hudgins moved, seconded by Mr. Moneme, approval of this resolution. 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 (2008-30) has been made a part of the official file.

C. On-Call Engineering Services

Mrs. Hudgins referred the Board to the request for approval for authorization of the FY09 annual work programs for three on-call engineering services contracts.

Mrs. Hudgins moved, seconded by Mr. Giancola, approval of this action. This motion was unanimously approved.

Ayes: 6 - Mr. Zimmerman, Mr. Giancola, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

D. Rhode Island Avenue Interim Parking

Mrs. Hudgins referred the Board to the request for approval of a resolution to waive the Compact Public Hearing requirement to maintain 150 long-term parking spaces at the Rhode Island Avenue Metrorail station during joint development construction and authorization to execute either an Interim Parking Agreement with the developer or eliminate all long-term parking during the Metro garage construction.

Mrs. Hudgins moved, seconded by Ms. Hewlett, approval of this resolution. This motion was unanimously approved.

Ayes: 6 - Mr. Zimmerman, Mr. Giancola, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014633

A copy of the approved Resolution (2008-31) has been made a part of the official file.

Mrs. Hudgins reported that a Jackson Graham Building Relocation Analysis was discussed as an information item by the Committee.

Report by Finance, Administration and Oversight Committee

A. FY09 Budget Approval

Mr. Benjamin referred the Board to the request to approve the proposed FY09 budget.

Mr. Zimmerman moved, seconded by Mr. Benjamin, approval of an alternate resolution specifying $1_million in as-yet unprogrammed funds for bus service improvements in Northern Virginia without changing the levels of jurisdictional subsidies. By unanimous consent, this change was incorporated into the motion. 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 (2008-32) has been made a part of the official file.

During the discussion of this item, Mrs. Hudgins requested that staff develop criteria for the determination of pilot service programs, and the evaluation of those pilot service programs for designation as regional service. Mr. Zimmerman stated he would not limit the development of a policy to pilot service, but rather for all service.

B. Approval of District of Columbia One Card Program

Mr. Benjamin referred the Board to the request for approval to authorize the General Manager to negotiate and execute the One Card Agreement with the District of Columbia, a program fully reimbursable by the District.

Mr. Moneme moved, seconded by Mr. Benjamin, approval of this resolution. This motion was unanimously approved.

Ayes: 6 - Mr. Zimmerman, Mr. Giancola, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014634

A copy of the approved Resolution (2008-33) has been made a part of the official file.

C. Diesel Swap Authorization

Mr. Benjamin referred the Board to the request for authorization to execute fuel swaps in FY09 and FY10. The transaction will only be carried out if the price is below budget.

Mr. Benjamin moved, seconded by Ms. Hewlett, approval of this resolution. 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 (2008-34) has been made a part of the official file.

Mr. Benjamin moved, seconded by Ms. Hewlett, approval of Items D-I en bloc. This motion was unanimously approved.

Ayes: 6 - Mr. Zimmerman, Mr. Giancola, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

D. Approval to Initiate & Award a Contract for IT Data Security Assessment, Plan and Phase I Implementation

Approval to initiate and award new competitive contracts and/or modifications to existing contracts for implementing a comprehensive IT Security program for WMATA.

E. Approval to Initiate & Award a Contract for Enterprise Geographic Information System (GIS) and Upgrade the WMATA Internet & Intranet Websites

Approval to initiate and award contracts to implement and develop an Enterprise Geographic Information System (GIS) and to upgrade WMATA's internet and intranet websites.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014635

F. Approval to Initiate & Award a Contract for Desktop Support Technicians

Approval to initiate and award a competitive procurement to provide computer specialist technicians to provide desktop support throughout WMATA.

G. Approval to Initiate & Award a Contract for Consulting Services for Major Applications

Approval to initiate and award a new competitive procurement for consultant services and/or modifications to existing contracts for critical consultant resources in support of major applications including PeopleSoft, Maximo and Trapeze.

H. Approval to Initiate & Award a Contract for Enterprise Architecture Business Analyst

Approval to initiate and award a competitive procurement to provide consulting services in support of the Enterprise Architecture program, including staffing the oversight of the Metro Channel.

I. Approval to Initiate & Award Contracts for Basic Ordering Agreements to Provide Information Technology Services in Support of Major IT Initiatives

Approval to initiate and award one or more basic ordering agreements for providing Information Technology services in support of major IT capital initiatives.

J. Approval to Initiate & Award Contracts for On-Call Technical Consultant Services for Collective Bargaining

Approval to initiate and award multiple contracts for on-call technical consultant services in labor negotiations and expert witness services for ongoing collective bargaining and any possible interest arbitration contingencies in FY09 and FY10.

Mr. Benjamin moved, seconded by Mr. Giancola, approval of this action. This motion was unanimously approved.

Ayes: 6 - Mr. Zimmerman, Mr. Giancola, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014636

Report by Customer Service, Operations and Safety Committee

Mr. Linton reported that Operational Performance, a status report on WMATA communication initiatives, a Crime Report and Safety Performance Indicators were discussed as information items by the Committee.

Administrative Actions

Mr. Benjamin moved, seconded by Mr. Giancola, that the Board approve, en bloc, Administrative Items numbered XI.1 through 9 and XI.11 through 13. This motion was unanimously approved.

Ayes: 6 - Mr. Zimmerman, Mr. Giancola, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

1. Approval to Initiate & Award a Contract for the Procurement of Dell Personal Computers (PCs), Servers, Laptops and Related Components for Use in WMATA Facilities

Approval to initiate and award a requirements-type contract to Dell Computer Corporation.

2. Approval to Initiate & Award a Contract for FY09 Insurance Program Renewal

Approval to negotiate, execute and implement the FY09 Authority-wide operating insurance program under the existing Insurance Brokerage Services contract.

3. Approval to Initiate & Award a Contract for Door Control Unit Maintenance Program

Approval to initiate and award a sole source contract to IFE North America, LLC for a Door Control Unit Maintenance Program for the 2000, 3000 and 6000 series rail cars.

4. Approval to Initiate & Award a Contract for Ultrasonic Rail Flaw Testing
Approval to initiate and award a competitive procurement for ultrasonic rail flaw testing services.

5. Approval to Initiate & Award a Contract to Lease a Rail Grinder

Approval to initiate and award a contract to lease a rail grinder with operators.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014637

6. Approval to Initiate & Award a Contract for Rail Car Communications Control Panels

Approval to initiate and award a contract to design, furnish, install, integrate, test and commission new communications control panels and associated radio equipment in the 1000 through 5000 series rail cars.

7. Approval of FY09 Project Development Program

Approval for the projects included in the FY09 Project Development Program.

A copy of the approved Resolution (2008-35) has been made a part of the official file.

8. Approval to Increase Largo Extension Budget

Approval of a resolution to increase the Largo Extension Project budget to fund the legal fees related to the Appeal of LGS, ASBCA No. 55361 in the amount of $132,169.

A copy of the approved Resolution (2008-36) has been made a part of the official file.

9. Approval to Modify Contract for Close-out of Metro Matters Contract at Greenbelt and Shady Grove Yards

Approval for contract modifications for the close-out of Metro Matters Yards Contract FN5008.

11. Approval of Fraternal Order of Police (FOP) Labor Contract

Approval of a resolution for the negotiated Tentative Agreement for the period January 1, 2008 through September 30, 2010.

A copy of the approved Resolution (2008-37) has been made a part of the official file.

12. Ratify Tax Advantaged Lease Emergency Procurement

Ratification of the General Manager's approval to issue a sole source emergency procurement for legal services in connection with the required replacement of the financial instrument provider on several tax advantaged leases as required under the terms of those leases.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014638

13. Ratify Actions for Reduced Fares

Approval of a resolution for the ratification of temporary fare reductions insituted by the General Manager during June 2008 in accordance with the provisions of the Authority Tariff.

A copy of the approved Resolution (2008-38) has been made a part of the official file.

10. Approval to Enter into an Agreement with the United States Mint for Acceptance of the Dollar Coin

Approval to authorize the General Manager to negotiate and execute a cooperative agreement with the United States Mint to advance the circulation of the dollar coin, approve a sole source action to Cubic Transportation Systems for software changes, and authorize an interim funding source as a financial backstop until receipt of funds from the Mint.

A discussion ensued regarding Item XI.10, Approval to Enter into an Agreement with the United States Mint for Acceptance of the Dollar Coin. Mr. Benjamin moved, seconded by Mrs. Hudgins, amendment of the resolution to read:

Resolved, That the Board of Directors authorized the General Manager to negotiate and execute a cooperative agreement with the United States Mint to advance the circulation of the dollar coin in the Metrorail system, *an amount of at least $750,000*, and be it further

Resolved, That the Board of Directors approves a sole source action to Cubic Transportation Systems for software changes; and be it further

Resolved, That the Board of Directors authorizes an interim funding source utilizing $750,000 from the Services SmarCard account in the FY09 operating budget as a financial backstop until receipt of funds from the United States Mint...

This resolution was unanimously approved.

Ayes: 6 – Mr. Zimmerman, Mr. Giancola, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

A copy of the approved Resolution (2008-39) has been made a part of the official file.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014639

Report by D.C.: None

Report by WSTC: None

Report by NVTC: None

Executive Session

Mr. Zimmerman moved, seconded by Mr. Benjamin, that the Board meet in Executive session immediately following the meeting to discuss legal issues with respect to Monument vs. WMATA consistent with Board procedure VI.B, contractual issues with respect to SmarTrip® contract operations consistent with Board Procedure VI.D, and safety and security matters consistent with Board Procedure VI.F. This motion was unanimously approved.

Ayes: 6 - Mr. Zimmerman, Mr. Giancola, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

The meeting was suspended to enter Executive session at 12:33 p.m.

Reconvene

At 1:50 p.m. Mr. Zimmerman reconvened the public session. Present were:

Directors
Mr. Chris Zimmerman
Mr. Peter Benjamin
Mrs. Catherine Hudgins
Mr. Emeka Moneme
Ms. Elizabeth Hewlett

Alternate Directors
Mr. Anthony Giancola

Staff
Mr. John Catoe
Mr. Ray Griswold
Ms. Helen Lew
Ms. Carol O'Keeffe
Mr. Chuck Woodruff
Mrs. Leen'da Chambliss

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014640

Mr. Zimmerman moved, seconded by Mr. Benjamin, to certify that at the just-concluded executive session, only such matters identified in the motion by which the Executive session was convened, were heard, discussed or considered by the Board. This motion was unanimously approved.

Ayes: 6 - Mr. Zimmerman, Mr. Giancola, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

Mr. Zimmerman moved, seconded by Mr. Moneme, approval of a resolution authorizing settlement of Monument v. WMATA. 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 (2008-40) has been made a part of the official file.

Mr. Zimmerman moved, seconded by Mr. Benjamin, approval to authorize the exercise of the first option year to Contract C05034 ERG Transit Systems (USA) Inc. for continued operation of the Regional Customer Service Center, to initiate a competitive contract for SmarTrip® program support, and to extend the contract with nMomentum for an amount not to exceed $100,000. This motion was unanimously approved.

Ayes: 6 - Mr. Zimmerman, Mr. Giancola, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

Adjournment:

The meeting was adjourned at 1:53 p.m.

Loyda Sequeira-Castillo, Board Secretary

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014641

From the Washington Business Journal
:http://www.bizjournals.com/washington/stories/2008/06/23/daily58.html

Metro picks Banneker to develop Florida Avenue site

Washington Business Journal by Melissa Castro, Staff Reporter

Date: Thursday, June 26, 2008, 4:43pm EDT

Related:

Residential Real Estate

After more than an hour of closed-door negotiations and another half-hour of tart exchanges, Metro board officials agreed to enter into exclusive negotiations with a local developer for a Metro-owned site on Florida Avenue NW.

The Washington Metropolitan Area Transit Authority board selected Banneker Ventures LLCâ€™s bid from three final offers that were submitted last October. Initial offers were solicited in spring 2007.

Under a 60-year ground lease, Banneker proposes building 104 apartments and 11,750 square feet of ground-floor retail and arts space. The 28,892-square-foot parcel sits on Florida Avenue between Seventh and Ninth streets, according to Metro documents.

District Development Group LLC and Metropolis Development Co. LLC are also part of the Banneker-led development team. Metropolis previously developed the Langston Lofts in a joint development project with Metro at 14th and V streets NW.

Banneker submitted a â€œbetter financial offer than its closest competitor,â€ and the third competitorâ€™s offer did not meet appraisal benchmarks, according to Metro documents.

No Metro facilities will be displaced, and lease revenue from the project will be deposited into the transit infrastructure investment fund, according to Metro documents.

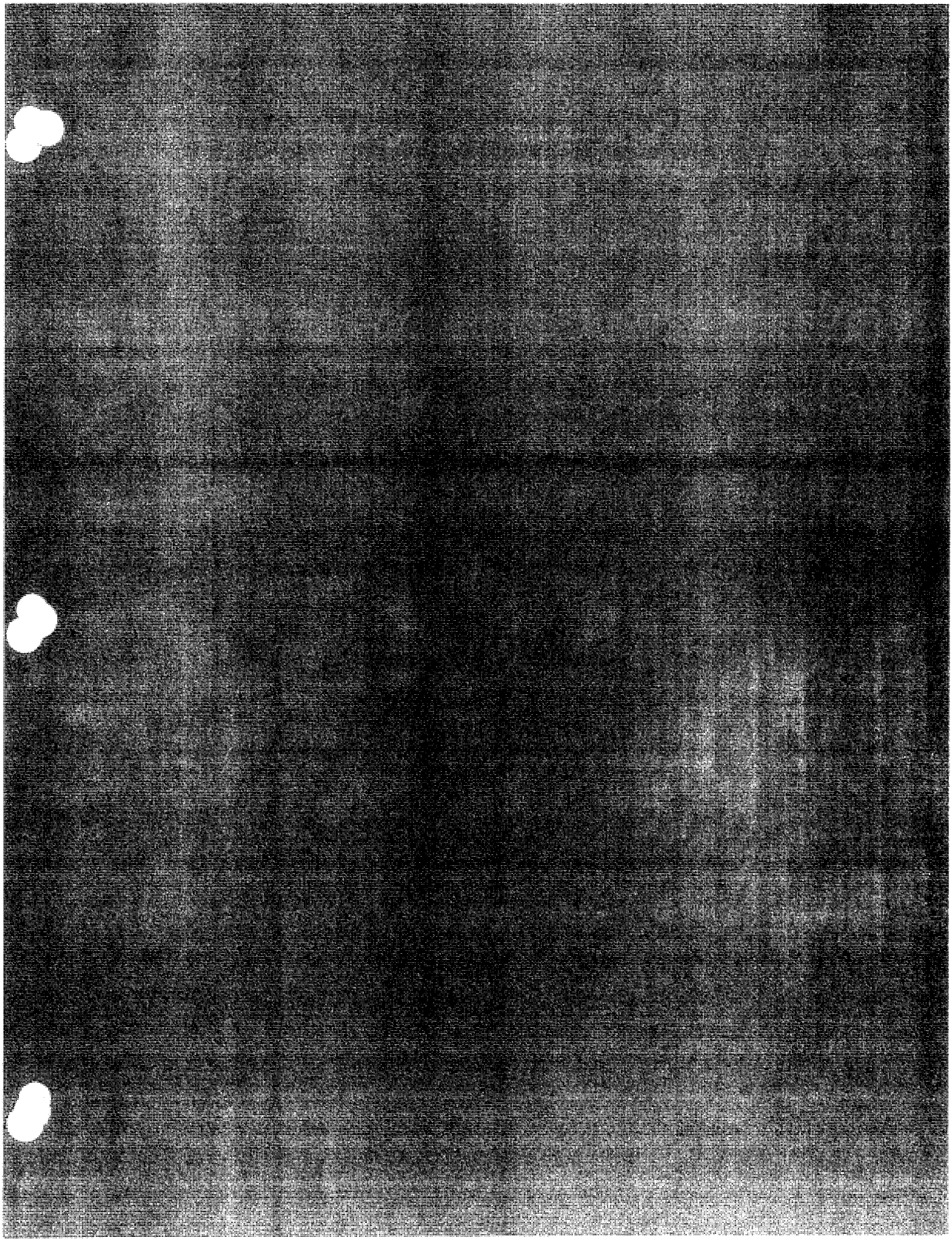
D.C. Councilman Jim Graham, the Metro boardâ€™s vice chair, voted in favor of Banneker after first raising concerns about the developerâ€™s experience and the proposalâ€™s unclear affordable housing commitment.

Charging that â€œthere is a serious question as to whether this deal is financially viable,â€ Graham moved unsuccessfully to require an updated appraisal, noting his concern that Banneker offered to pay far more than the property would appraise for today.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014643

The other board members declined to attach Grahamâ€™s conditions to the resolution selecting Banneker. The board did adopt Grahamâ€™s proposal to require a clear affordable housing commitment as part of any final deal, as well as his proposal to require a report clarifying the roles and responsibilities of the development team members.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014644



From the Washington Business Journal
:http://www.bizjournals.com/washington/stories/2008/07/14/story15.html

Inner Loop

Jim Graham takes on Warren Williams

Premium content from Washington Business Journal

Date: Monday, July 14, 2008, 12:00am EDT

Related:

Health Care, Commercial Real Estate, Economic Snapshot

Warren Williams Jr. is making headlines these days — too many, for some members of the D.C. Council.

In December, his Banneker Ventures LLC was part of a group tapped to redevelop the Sursum Corda housing project Northwest One, part of the city's New Communities program. Later, Banneker was the winning bidder — OK, the only bidder — to redevelop the Strand Theatre in Northeast. And just recently, Banneker was selected by the Metro board to develop an agency-owned lot on Florida Avenue NW.

But that's not why Williams has been in the papers so much lately. He and his wife, Alaka Williams, are the couple behind the company embroiled in controversy over the contract to run the D.C. Lottery, as The Washington Post reported. Mayor Adrian Fenty and Chief Financial Officer Natwar Gandhi favor a proposal from their company, W2I, over the existing operator, LTE. But the mayor, facing a skeptical council and accusations of cronyism, recently withdrew the proposal, meaning the council won't consider it until September at the earliest.

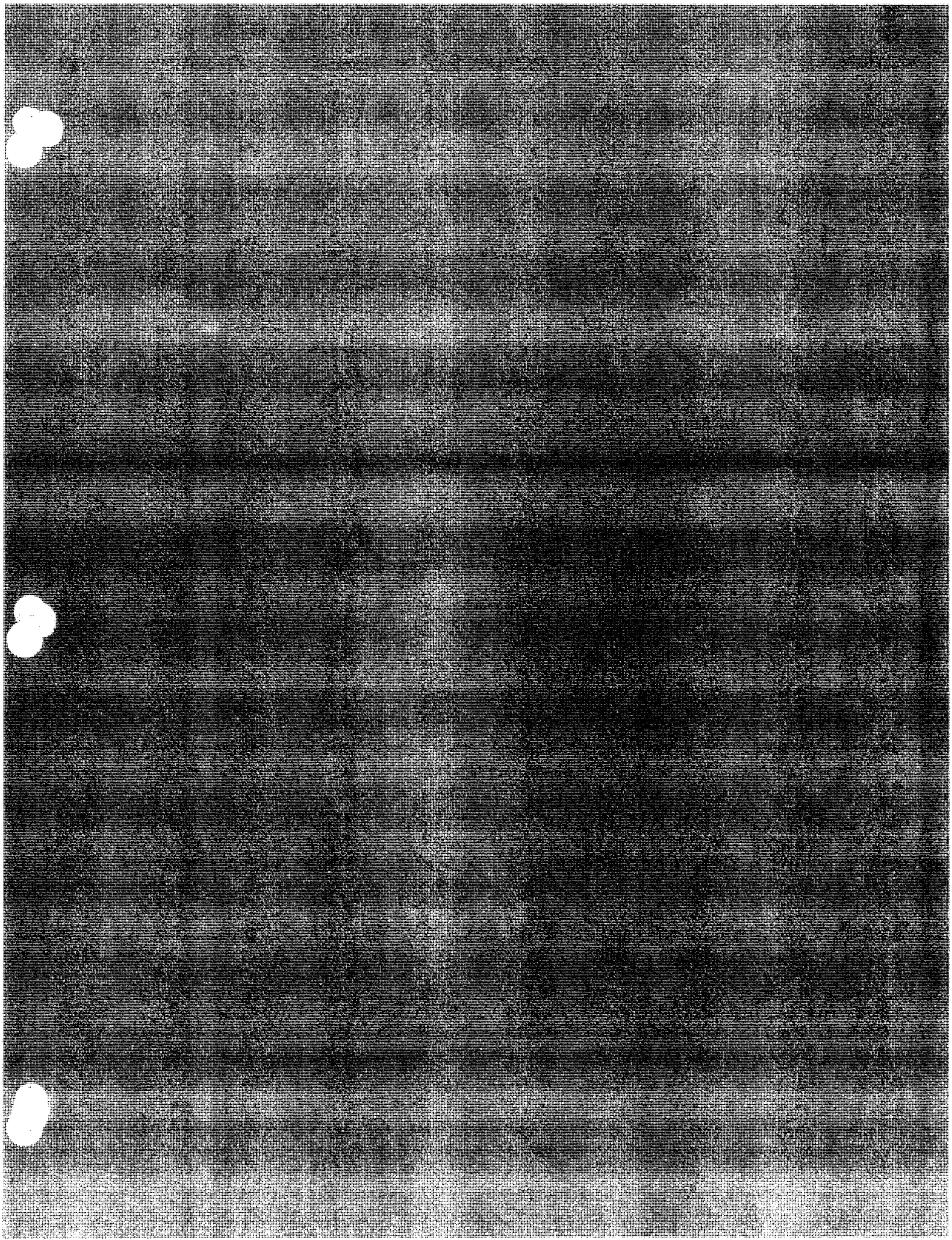
Some council members, including Jim Graham, D-Ward 1, are upset about Williams' past. He co-owned Club U — a hip-hop club in leased space inside D.C.'s Franklin D. Reeves Municipal Center at 14th and U streets NW — that closed in 2005 after a fatal stabbing on the premises.

Graham, a member of Metro's board, was so wary of Williams that he tried to derail efforts to award to him the Florida Avenue lot. While the original solicitation includes a provision allowing the board to fire Banneker if its integrity is questioned, the board went further, directing staff to develop "business ethics" guidelines for selecting future development partners. He voted to approve Banneker.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014646

Metro officials said they would specify what those guidelines are by September. No word from Williams about the whole brouhaha.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014647



Omar Karim

From: Merrick Malone <malone@metropolis-dc.com>
nt: Friday, July 11, 2008 5:12 PM
To: Warrick, Xzaquoinett (EOM)
Cc: Omar A. Karim
Subject: RE:

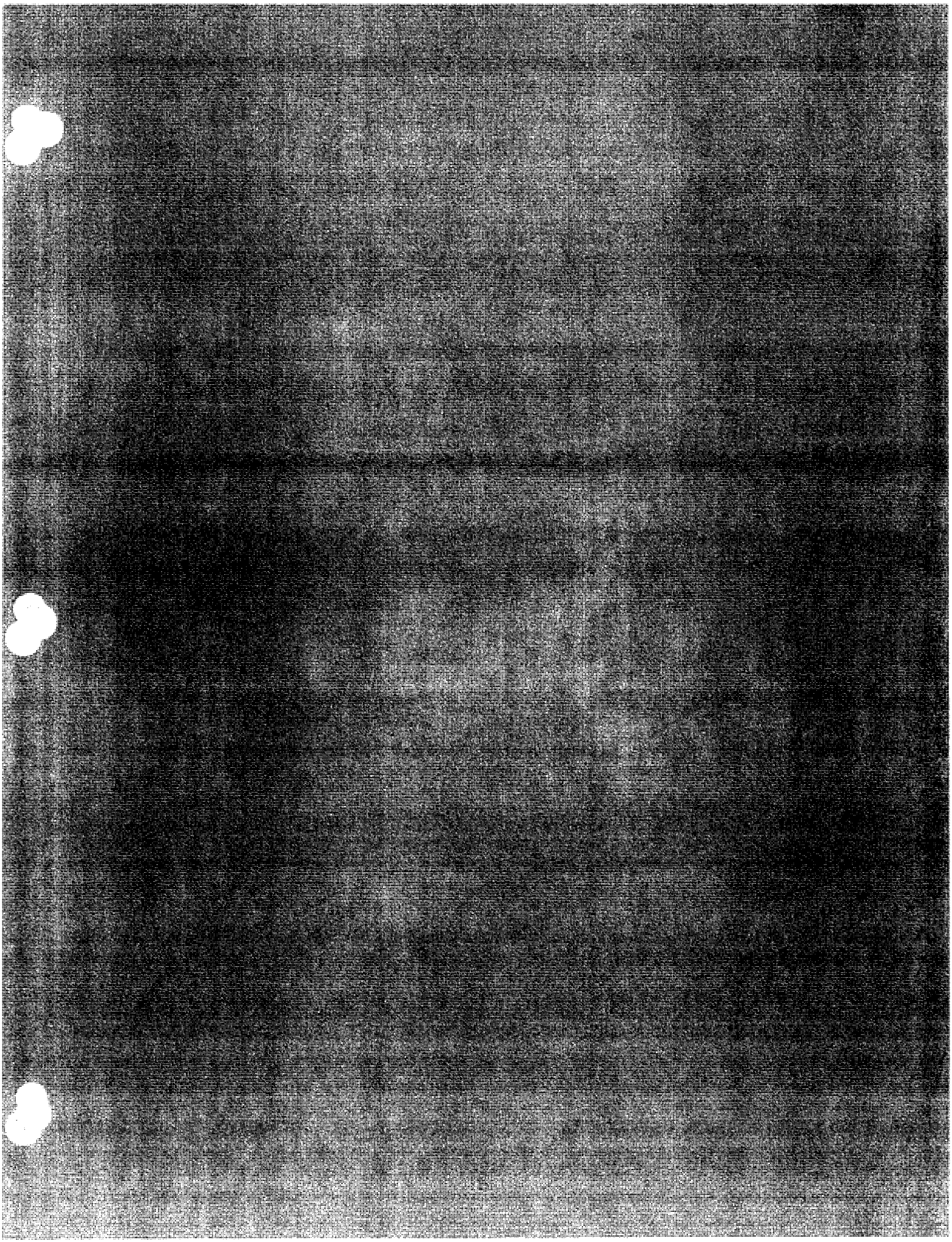
Quoinett

I will make myself available although I have a potential development partner coming from out of the City to look at a project. Hopefully we will be finished with our meeting and if not I will just step away to attend the meeting with Neil and Omar.

M

Merrick T. Malone
Principal & Executive Vice Presiden
Metropolis Development Company
CTI/DC, Concrete, Inc. DC CBE
1327 14th Street NW, Suite 200
Washington, DC 20005
(o) 202.588.1438
(f) 202.588.1977
malone@metropolis-dc.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014649



Omar Karim

From: Josh Adler <josh@lakritzadler.com>
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED
Attachments: image001.gif; 1920 8th NPV at 80 per ft.xls

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

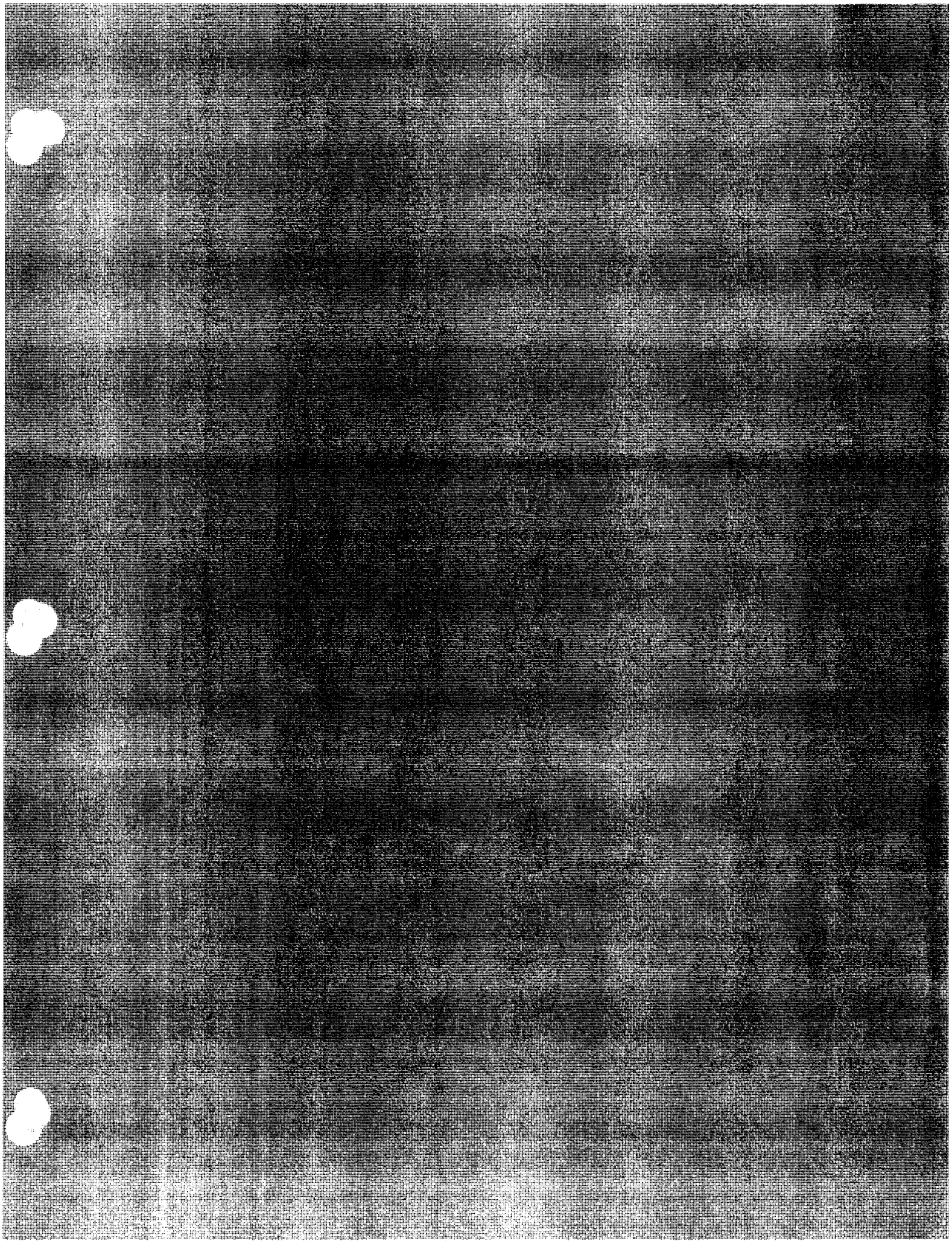
Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

FOIA CONFIDENTIAL TREATMENT REQUESTED



July 17, 2008

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

Dear Mr. Karim:

I am pleased to inform you that on June 26, 2008 the Washington Metropolitan Area Transit Authority Board of Directors selected the Banneker Ventures team as developer of the Shaw-Howard/Florida Avenue joint development sites, approved the term sheet that we mutually agreed upon, and authorized my office to negotiate a joint development agreement (JDA) with you.

Congratulations!

I have enclosed a copy of the term sheet with two signature pages, which I have executed. Please return a copy of the term sheet executed by yourself along with a check for the $100,000 option fee before or at the JDA kickoff meeting which I understand is scheduled for the morning of Friday, July 25.

Sincerely,

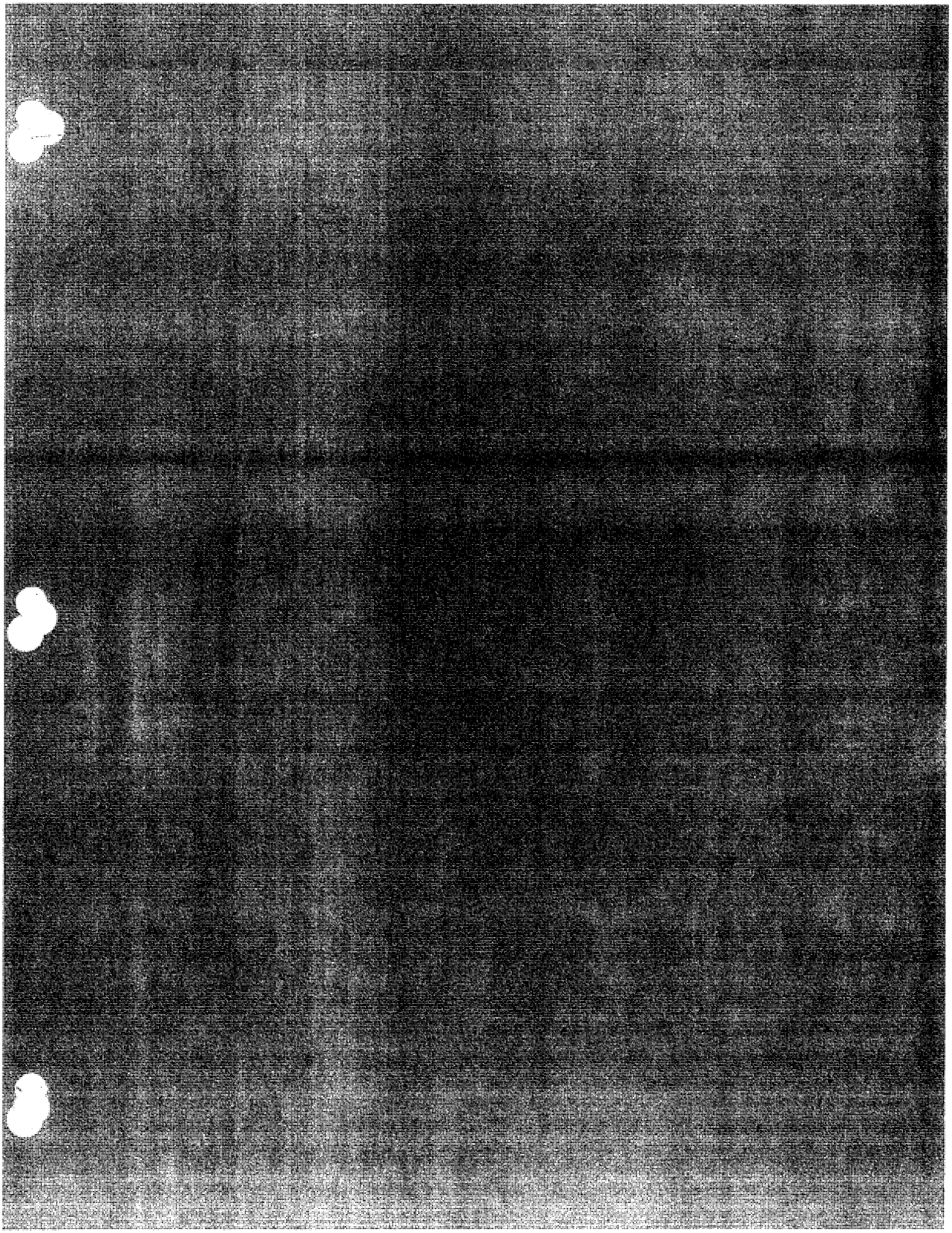
Joel R. Washington
Director of Station Area Planning and Asset Management
Office of Planning and Joint Development

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



Omar Karim

From: Rosalyn Doggett <rdoggett@wmata.com>
nt: Thursday, July 24, 2008 2:55 PM
To: Omar A. Karim
Cc: warren@bannekerventures.com; guy.flynn@dlapiper.com; seth.bryant@dlapiper.com; Joel R. Washington; Marc E. Biondi
Subject: RE: Howard-Shaw/Florida Avenue Kick-Off Meeting
Attachments: ROE draft - FLAve.rtf

and, now, here is the attachment

>>> "Omar A. Karim" <okarim@bannekerventures.com> 7/24/2008 2:28 PM
>>>
Rosalyn,

We have executed the Term Sheet and will bring an original to the meeting along with the $100k Option Fee. Just wanted to make sure we put it on the Agenda to get the signed doc and fee to you all.

As for the ROE Permit, can you resend the document that you sent earlier in MS Word format. We don't have Word Perfect on our systems.
Also, does the document reflect our comments sent over a few weeks ago?
Not sure if you got them. We believe you may have still been out of town. Finally, would we be receiving a draft of the JDA and Lease tomorrow?

Thanks.

Omar

-----Original Message-----
From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Thursday, July 24, 2008 1:29 PM
To: Omar A. Karim
Cc: Joel R. Washington; Marc E. Biondi
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,

FOIA CONFIDENTIAL TREATMENT REQUESTED

Below please find a draft of what we hope to discuss tomorrow:

Providing Executed Term Sheet & Option Fee

II. Overview of Project Schedule

III. Right of Entry Permit

a. Comments

b. Insurance requirements

IV. Development Agreement and Lease

a. Draft

b. Negotiations

Major issues

V. Project Design

a. Development Plan

b. Engineering Issues, etc.

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?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014657

Looking forward to seeing you tomorrow.

Omar

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

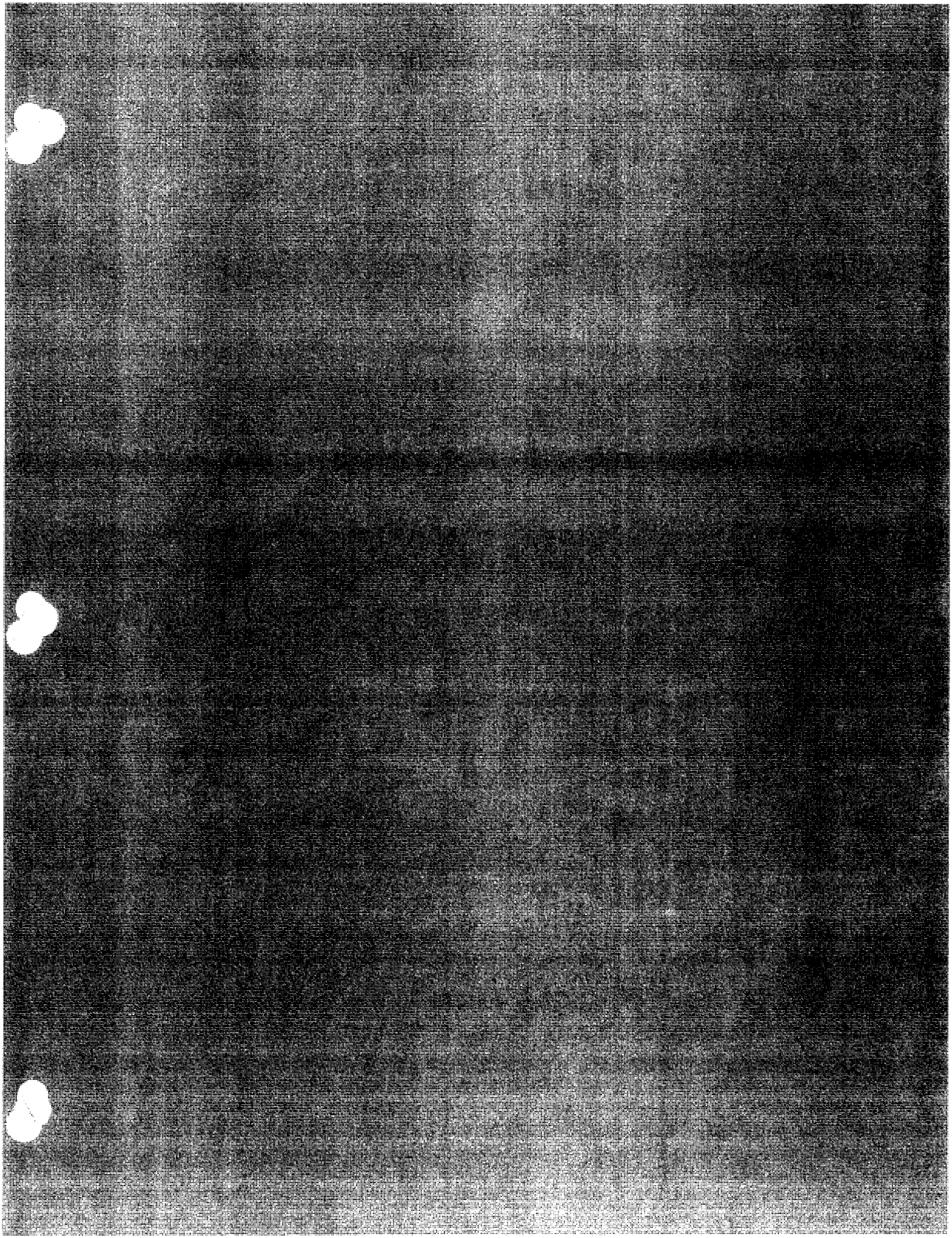
Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014658



Mtg w/ WMATA re: FI Ave 7/25/08

Notes:

① JDA / Lease - Intend to send draft by 8/2
- Nov. 1st - Finalized / Dec board mtg
~~ROE Permit~~
- 6 wk from finalized docs to bd mtg.

② Issues: (Term Sheet)
Capital Participation

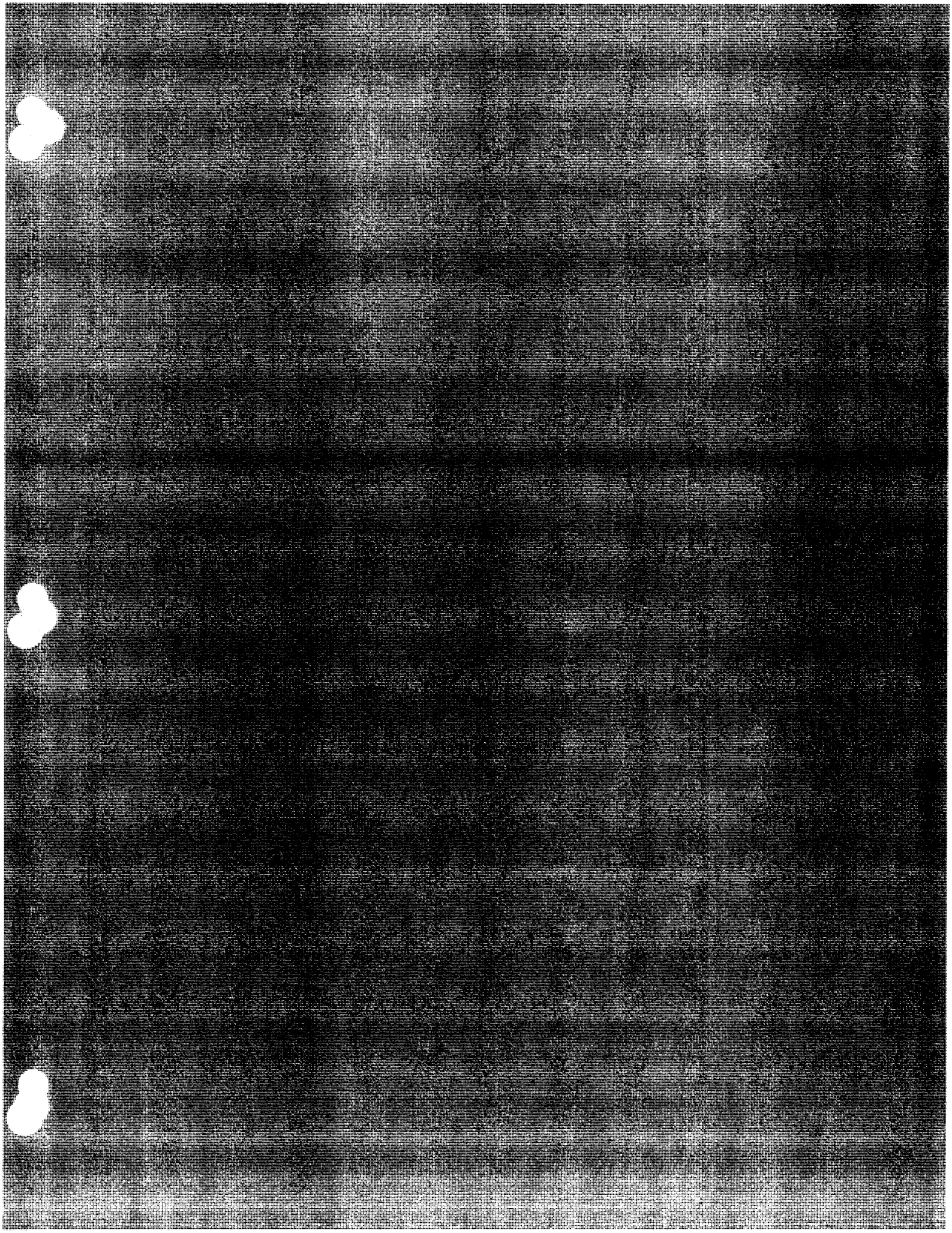
③ ROE
- Review timing for Work - Clear work plans
- Insurance
Navy Yard Work Plan
that Donohoe works with

④ JDA
* LEED Bldg Act of 2006
* Leasing to instrumentality of District, must do LEED Silver prior to receipt of permit.
* Impact could be 5%
* Partners

FTA approval

⑤ Affordable Housing - Speak w/ Jim/Cathy.

Mayra



Omar Karim

n: Josh Adler <josh@lakritzadler.com>
ent: Monday, August 11, 2008 12:17 PM
To: okarim@bannekerventures.com
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
'ashington, DC 20005
.02) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Hello Omar,

Here is where we are on your proposal:

We can accept your price of $1.5 million for the ground lease.

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

est regards,

Josh Adler

FOIA CONFIDENTIAL TREATMENT REQUESTED

m: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

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FOIA CONFIDENTIAL TREATMENT REQUESTED

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Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

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We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

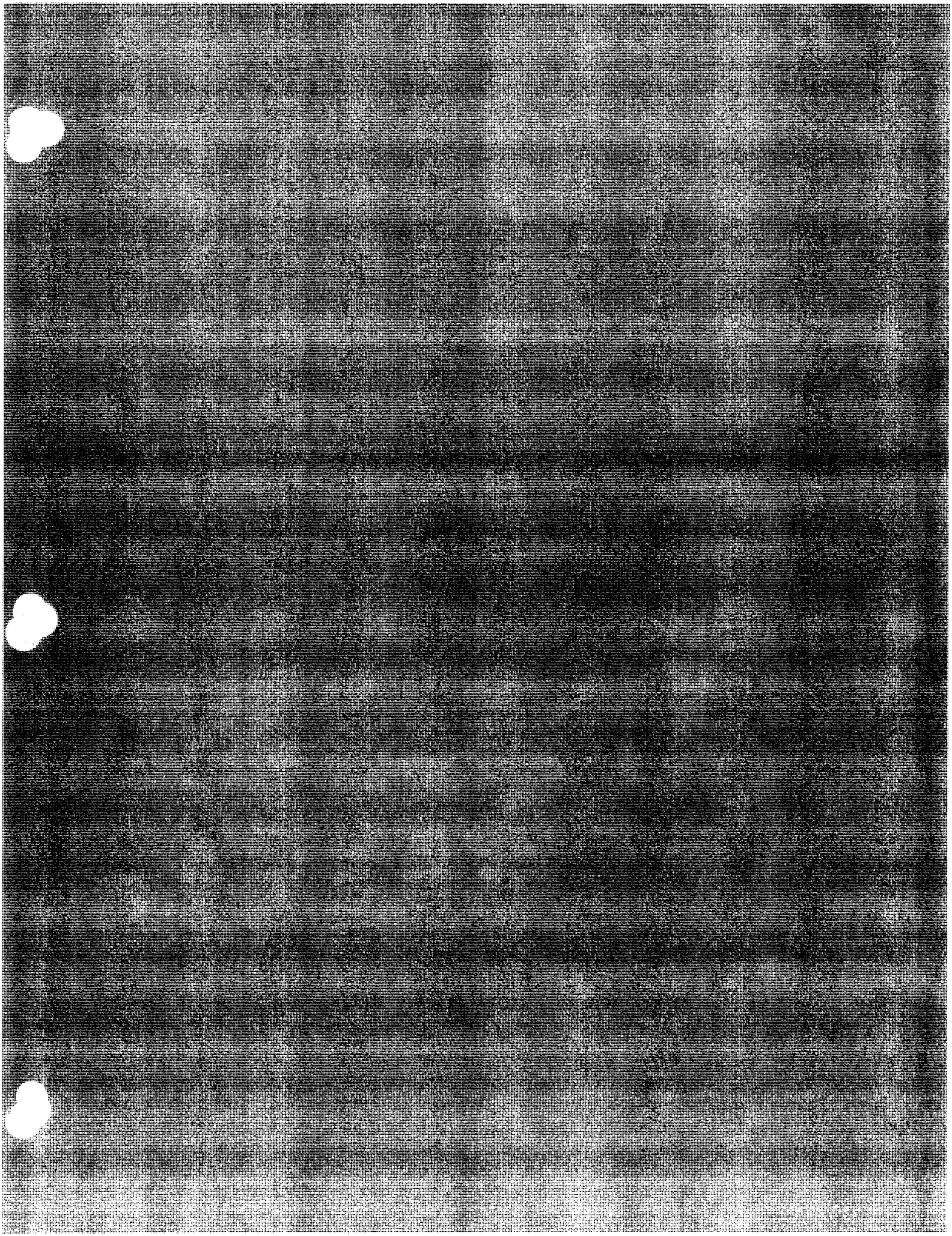
Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

[x] _____

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014664



Omar Karim

From: Logan, Myra (COUNCIL) <MLogan@DCCOUNCIL.US>
Sent: Tuesday, August 12, 2008 9:50 AM
To: Omar A. Karim
Subject: RE: Mtg with Councilman Jim Graham week of August 25th

Good Morning:
I will email the Councilmember and see what day that he will start taking meeting and get back to you soon.
Thanks

Myra D. Logan
Councilmember Jim Graham, Ward 1
Special Assistant for Scheduling
1350 Pennsylvania Avenue, NW, Suite 105
Washington, DC 20004
mlogan@dccouncil.us
www.grahamwone.com

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, August 11, 2008 12:35 PM
To: Logan, Myra (COUNCIL)
Subject: Mtg with Councilman Jim Graham week of August 25th

Ms. Logan,

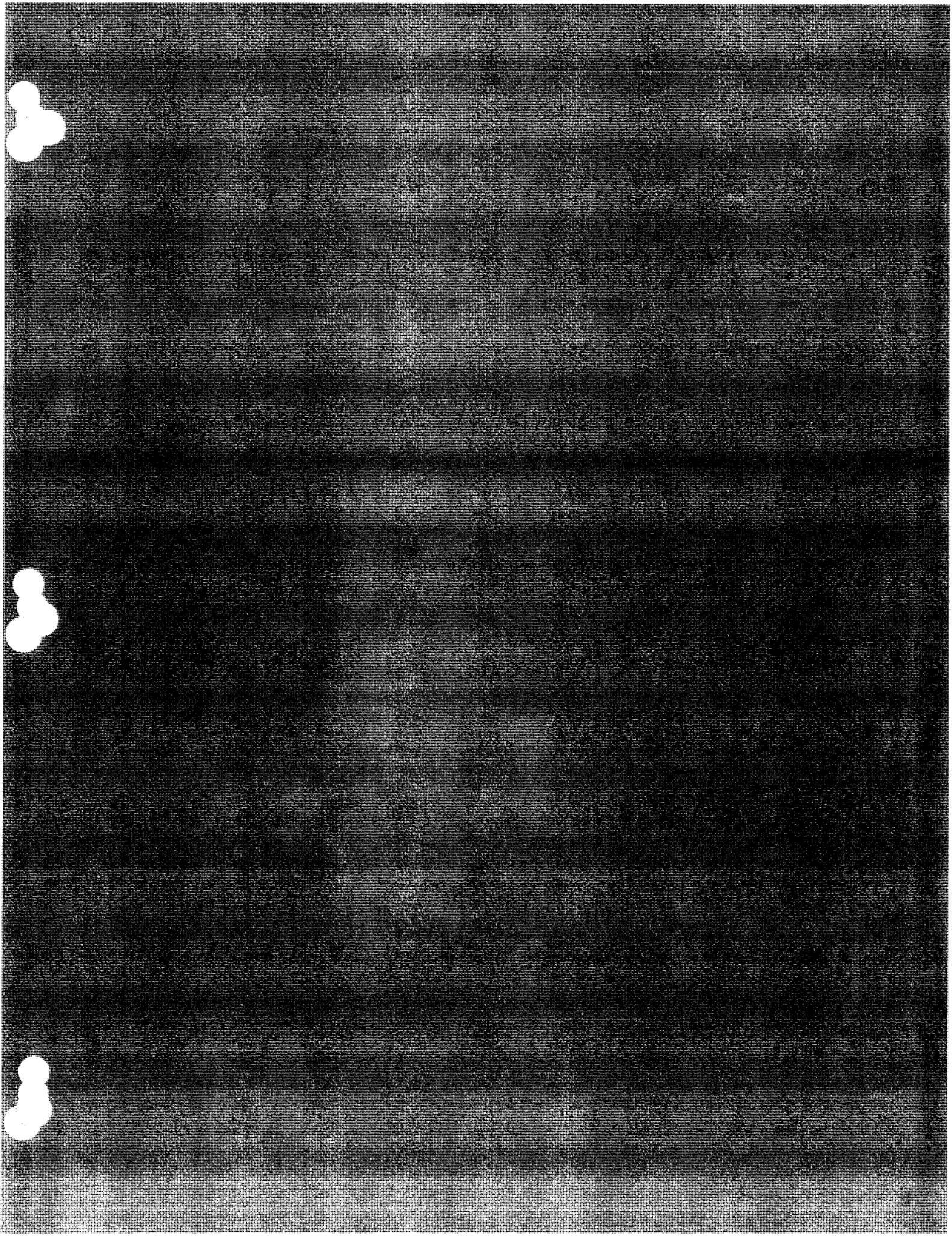
I am writing to request a meeting with Councilmember Graham the week of August 25th to discuss the affordable housing component in our Metro project located on the 700 and 800 blocks of Florida Avenue, NW.

Thank you in advance.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014666



Omar Karim

n: Josh Adler <josh@lakritzadler.com>
...t: Thursday, August 28, 2008 4:16 PM
To: okarim@bannekerventures.com
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

I'm back and will work on this. I hope to have an LOI drafted for you by end of next week.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Saturday, August 23, 2008 1:19 AM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Tried to put something together in your absence but b/c we don't have privy to the agreement that you all signed with Dr. Medhane, we were not able to get a doc done. Can you all draft something for our review?

Thanks.

Omar

...mar A. Karim
...nneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Mon, 11 Aug 2008 12:16:51 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

...mar

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
shington, DC 20005
202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Hello Omar,

Here is where we are on your proposal:

We can accept your price of $1.5 million for the ground lease.

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014669

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014670

3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

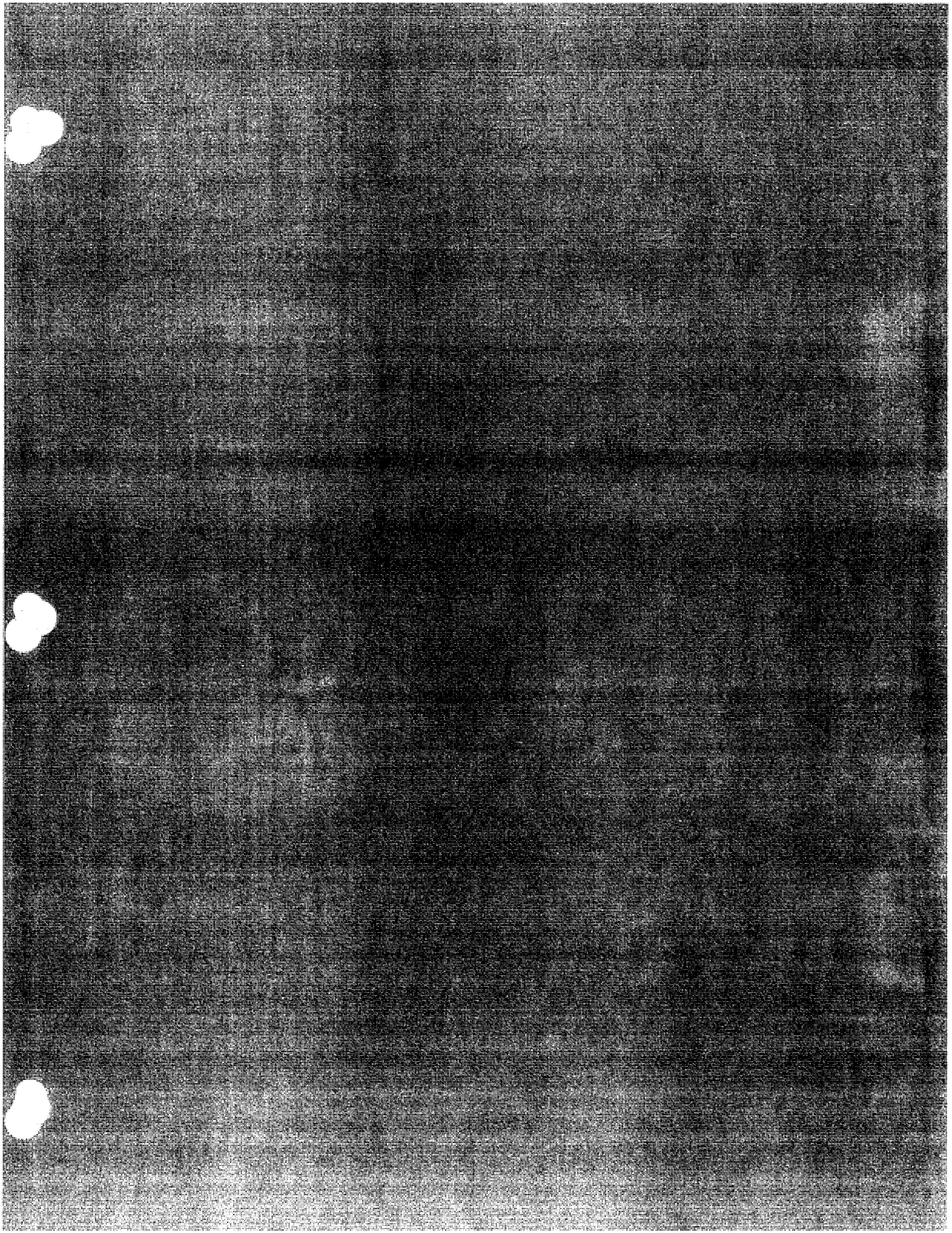
We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

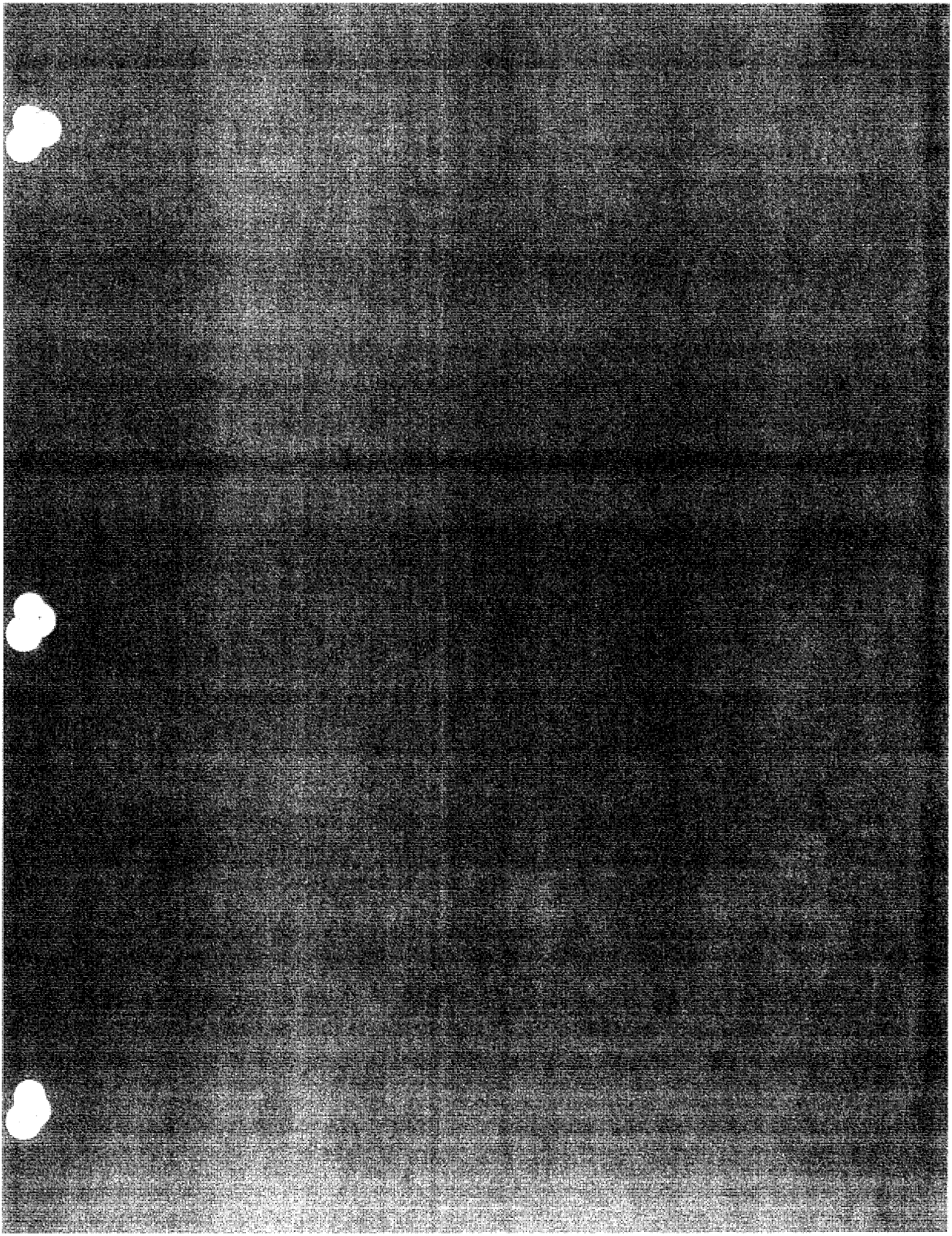
FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

Subject:	FLORIDA AVE
Location:	Room JGB 5B Land Conference Room
Start:	Fri 8/29/2008 9:30 AM
End:	Fri 8/29/2008 10:30 AM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Rosalyn Doggett
Resources:	Room JGB 5B Land Conference Room.CP4.RTRDOM@wmata.com

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

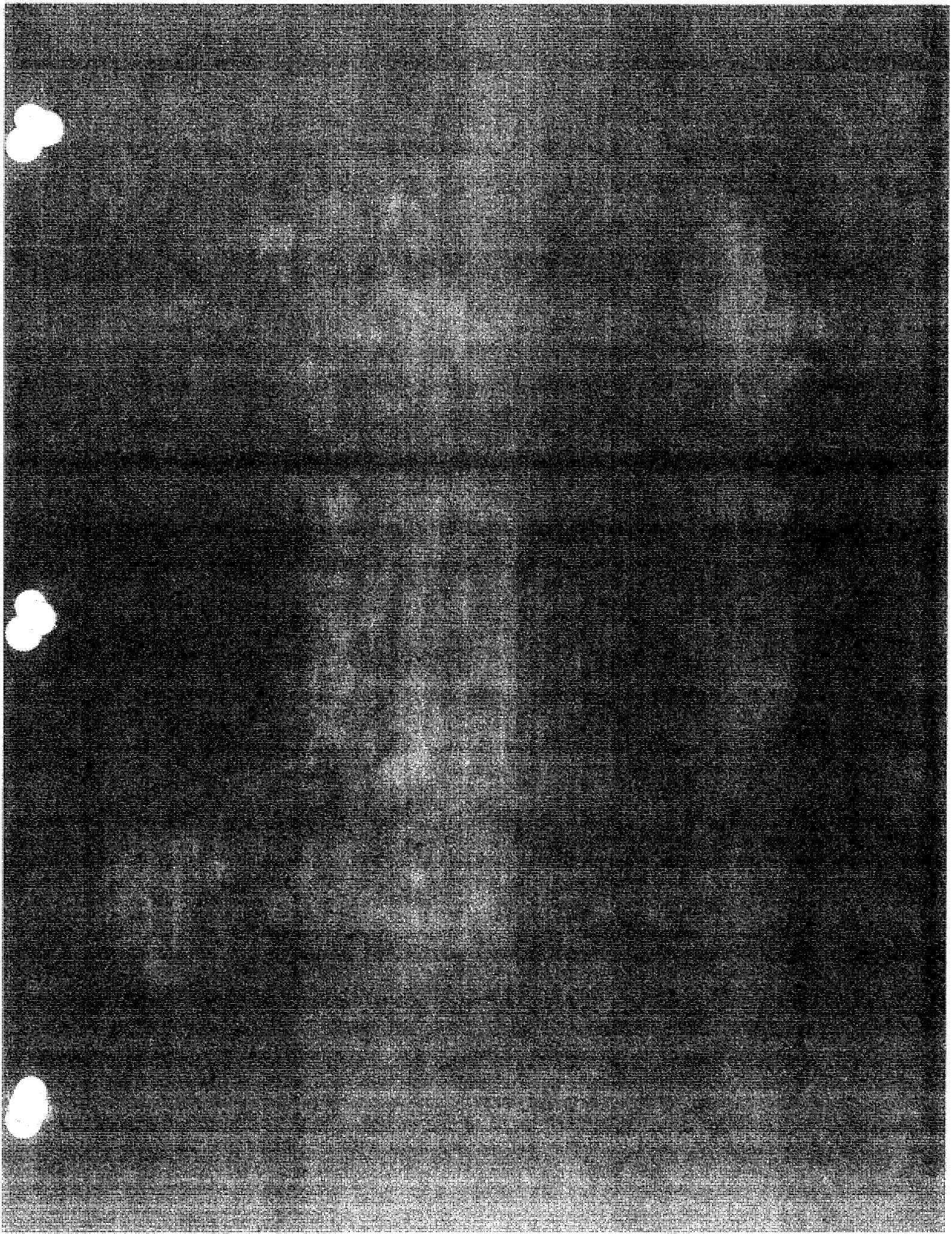
Subject:	CONFIRMED - (EricJ) Meeting with Merrick Malone and Omar Karim re: Florida Avenue Metro project
Location:	(NEW LOCATION) Wilson Building, Suite 317/325
Start:	Tue 8/26/2008 11:00 AM
End:	Tue 8/26/2008 11:30 AM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Albert, Neil (EOM)

When: Tuesday, August 26, 2008 11:00 AM-11:30 AM (GMT-05:00) Eastern Time (US & Canada).

Where: (NEW LOCATION) Wilson Building, Suite 317/325

~~*~*~*~*~*~*~*~*~*

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

ı: Josh Adler <josh@lakritzadler.com>
ent: Friday, September 05, 2008 12:46 PM
To: okarim@bannekerventures.com
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Attachments: 1920 8th Amended and Restated Ground Lease.pdf; Banneker 1920 8th Street LOI 9-5-08.pdf

Hello Omar,

Attached is the proposed Letter of Intent, and a scan of the ratified Ground Lease and purchase option on 1920 8th Street. Please review the LOI, and if it is acceptable to you, sign and return a copy. We will then draw up a contract on this basis.

We look forward to reaching an agreement with you.

Josh Adler

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, September 04, 2008 2:35 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

eat.

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Thu, 4 Sep 2008 14:24:35 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
We're doing a quick legal review of the LOI draft – I should have it for you tomorrow.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, September 03, 2008 6:48 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Any word on when we should expect the doc?

Thanks.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014677

Omar

r A. Karim
anneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Thu, 28 Aug 2008 16:16:11 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
I'm back and will work on this. I hope to have an LOI drafted for you by end of next week.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Saturday, August 23, 2008 1:19 AM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Tried to put something together in your absence but b/c we don't have privy to the agreement that you all signed
h Dr. Medhane, we were not able to get a doc done. Can you all draft something for our review?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Mon, 11 Aug 2008 12:16:51 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
ent: Thursday, August 07, 2008 3:11 PM
: Josh Adler
ubject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

FOIA CONFIDENTIAL TREATMENT REQUESTED

Josh,

Thank you for your email. Can you draft something up for us to review?

mar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Hello Omar,

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Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

mar

FOIA CONFIDENTIAL TREATMENT REQUESTED

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
›karim@bannekerventures.com
ubject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

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As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

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4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA ·rcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that ges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) rough August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 014680**

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

ua Adler
Managing Member
920 8th Street LLC

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

LAKRITZ | ADLER
real estate development

September 5, 2008

NON-BINDING LETTER OF INTENT

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

Dear Omar:

This non-binding Letter of Intent is an outline of the general terms and conditions to be more particularly described and detailed in a formal Purchase and Sale Agreement by and between **Banneker Ventures, LLC** hereinafter referred to as **"Purchaser"** and the owners of the membership interests in **1920 8th Street, LLC,** hereinafter collectively referred to as **"Seller"** whereby Purchaser shall agree to buy and Seller shall agree to sell 100% of the membership interests in 1920 8th Street, LLC, hereinafter referred to as the **"Property"**.

1. Seller:

The Seller of the Property shall be the owners of 100% of the membership interests in 1920 8th Street, LLC, a Delaware Limited Liability Company.

2. Purchaser:

The Purchaser of the Property is Banneker Ventures, LLC, a _____ Limited Liability Company.

3. Property Description:

The property is a Delaware Limited Liability Company known as 1920 8th Street, LLC (the "Tenant"), which holds a ground lease and purchase option ("Ground Lease") to an approximately 11,320 square foot vacant lot known as Square 393, Lot 46, also known as 1916-1930 8th Street, NW, Washington, DC, zoned C-2-B Arts Overlay.

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

FOIA CONFIDENTIAL TREATMENT REQUESTED

The Ground Lease contains the following essential terms:

- Medal, Inc., as Landlord and 1920 8th Street, LLC, as Tenant.
- 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% at the beginning of 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 at the end of the last renewal term (that is, on August 3, 2017) shall be $3,419,256.20.
- A one time fee of $175,000 payable to Landlord for resubordination of Landlord's fee interest in land to Tenant's permanent financing lender (if such lender is different from Tenant's construction lender), to be paid upon the sooner of: 1) resubordination of Landlord fee interest to new lender following substantial completion of project, or 2) upon exercise of purchase option.
- Landlord is obliged under the ground lease to subordinate its unencumbered fee interest in the Property to Tenant's Lender, meaning that Tenant has full use of the land value of the Property as collateral to secure its construction financing and any other financing through the end of the final renewal term.
- Ground Lease is freely assignable by Tenant without consent of Landlord.

A copy of the complete Ground Lease follows this LOI.

4. Purchase Price:

One Million Five Hundred Thousand Dollars ($1,500,000), payable all cash at the Settlement.

5. Deposit:

Upon execution of a Purchase and Sale Agreement, Purchaser shall deposit Fifty Thousand Dollars ($50,000) to be held in escrow by Regional Title Corp., Washington, DC, or another mutually acceptable title company ("Escrow Agent"), in an interest bearing account ("Deposit"). Any and all deposit monies shall be credited against the Purchase Price at closing. Upon removal of the General Due Diligence Period by Purchaser, Deposit shall be deemed nonrefundable and earned by Seller and shall be released by Escrow Agent to Seller.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014683

6. General Due Diligence Period:

Purchaser shall have a period of Thirty (30) days following the date of execution of the Purchase and Sale Agreement ("General Due Diligence Period") to perform its due diligence investigation of the Property and the Ground Lease. If, prior to the expiration of the Due Diligence Period, Purchaser determines in its sole discretion not to purchase the Property, then Purchaser shall have the right to terminate the Purchase Agreement, whereupon the Deposit shall be promptly returned to Purchaser, and Purchaser shall provide to Seller copies and assignment of all due diligence related reports obtained by Purchaser. No later than five (5) business days after the execution of the Purchase Agreement, Seller will provide to Purchaser (or make available for inspection by Buyer) copies of all materials in Seller's possession with respect to the Property and the Ground Lease (including, without limitation, any and all documents; environmental studies and reports; title commitments, reports and/or policies; surveys; plans and specifications; architectural and engineering documents and data; and reports, permits, licenses, and zoning documents) (collectively, the "Due Diligence Materials").

7. Settlement:

Settlement shall occur not later than December 31, 2009, time of the essence, or a sooner date with the mutual consent of the Purchaser and Seller. Any cost to Seller of delay of Settlement by fault of the Purchaser shall be reimbursed concurrently by Purchaser to Seller, including any ground rent and other carry costs paid or incurred by Tenant during the period between the original Settlement date and the actual date of Settlement, in addition to any other rights and remedies available to Seller as a result of such default.

8. Ground Lease Carry Cost:

Purchaser shall be responsible for all Ground Rent and property taxes payable by Tenant under the Ground Lease from the date that the General Due Diligence Period is removed by Purchaser until Settlement occurs, commencing retroactively to the first day of the month in which the General Due Diligence Period is removed by Purchaser ("Contract Period"). During Contract Period, Purchaser shall make any and all payments due by Tenant under Ground Lease to Escrow Agent when such payments are due under the Ground Lease, time of the essence, and Escrow Agent shall immediately disburse such payments to Landlord, with prompt written notice to Seller of such disbursements. If Purchaser fails to make any payment required by Ground Lease during the Contract Period by the close of business on the date such payment is due, Seller shall have the right to cure any anticipated default on Ground Lease by making payment to Escrow Agent or directly to Landlord (in addition to any other rights and remedies available to Seller as a result of such default), and Purchaser shall be deemed in default and shall have no further right or claim with respect to the property in law or equity.

FOIA CONFIDENTIAL TREATMENT REQUESTED

9. Purchaser Default:

In addition to customary Purchaser default conditions for a commercial real estate purchase contract in Washington, D.C., the Purchase Agreement shall include the following conditions under which Purchaser shall be called immediately in default, with no further right or claim by Purchaser on the Property:

a. Purchaser fails to make timely payment of Ground Lease carry costs, per its obligation under Paragraph 8.

b. Purchaser is notified by Washington Metropolitan Area Transit Authority (WMATA) that Purchaser (or an affiliate or subsidiary of Purchaser or substantially controlled by Omar Karim and or Warren Williams) is no longer the "designated developer" with respect to WMATA Parcel Square 393 Lot 45 adjacent to the Property. Purchaser shall have an affirmative obligation to notify Seller of any such notice from WMATA, oral or written.

10. Additional Representations of Seller:

The Property is sold, and the Purchaser shall accept the Ground Lease As-Is, Where-Is. Seller represents and warrants that as of the date of the Purchaser's removal of the General Due Diligence Period, Tenant shall be in good standing with respect to Ground Lease, and Ground Lease shall be in full force and effect.

11. Additional Obligations of Purchaser:

Purchaser shall promptly inform Seller of any material change, favorable or unfavorable, with respect to Purchaser's negotiations with WMATA for acquisition and development of the WMATA parcel adjacent to the Property, including material developments pertaining to current or potential joint venture partners and equity and debt financing sources for the proposed project on the WMATA parcel.

12. Broker Commission:

Neither Buyer nor Seller is represented by a broker.

13. Assignment:

The Purchase Agreement shall not be assigned without consent of Seller in its sole discretion, except to an entity substantially controlled by Banneker Ventures, LLC, or Omar Karim and/or Warren Williams individually.

FOIA CONFIDENTIAL TREATMENT REQUESTED

14. Confidentiality:

Unless and until Settlement shall occur, Purchaser agrees to keep the existence of and terms and conditions of this Letter of Intent, the Purchase Agreement and all Due Diligence Materials, confidential to themselves and their affiliates, and will not disclose the same except to its attorneys, accountants, lenders and prospective lenders, agents, consultants and advisors involved in the transaction and architects, engineers and other professionals or independent contractors who or which may be engaged to assist in or perform due diligence activities with respect to the Property (who shall abide by the confidentiality restrictions). If the Purchase Agreement is not entered into or is terminated, Purchaser agrees to return a copy of all Due Diligence Materials to Seller and shall provide the Seller with any Due Diligence Materials created by Purchaser or its agents, at no cost to the Seller. This Paragraph shall survive any termination or expiration of this Letter of Intent and the Purchase Agreement.

This offer will be held open until close of business on September 19, 2008. If the terms of this Letter of Intent are satisfactory to Purchaser, we request that you execute a copy of this Letter of Intent in the appropriate space provided below and return a signed copy to us by such date. Following execution of this Letter of Intent, Seller will immediately commence drafting of the Purchase Agreement for delivery to Purchaser within ten business days.

Sincerely,

Joshua Adler
Co-Managing Member

AGREED AND ACCEPTED:

Banneker Ventures, LLC	**1920 8th Street Venture, LLC**
By:_____	**By:**_____
Its:_____	**Its:**_____
Date:_____	**Date:**_____

10575.02.000000.0898

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4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

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The Ground Lease contains the following essential terms:

- Medal, Inc., as Landlord and 1920 8th Street, LLC, as Tenant.
- 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% at the beginning of 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 at the end of the last renewal term (that is, on August 3, 2017) shall be $3,419,256.20.
- A one time fee of $175,000 payable to Landlord for resubordination of Landlord's fee interest in land to Tenant's permanent financing lender (if such lender is different from Tenant's construction lender), to be paid upon the sooner of: 1) resubordination of Landlord fee interest to new lender following substantial completion of project, or 2) upon exercise of purchase option.
- Landlord is obliged under the ground lease to subordinate its unencumbered fee interest in the Property to Tenant's Lender, meaning that Tenant has full use of the land value of the Property as collateral to secure its construction financing and any other financing through the end of the final renewal term.
- Ground Lease is freely assignable by Tenant without consent of Landlord.

A copy of the complete Ground Lease follows this LOI.

4. Purchase Price:

One Million Five Hundred Thousand Dollars ($1,500,000), less the Deposit and Ground Lease Carry Costs, payable all cash at the Settlement.

5. Deposit:

Upon execution of a Purchase and Sale Agreement, Purchaser shall deposit Fifty Thousand Dollars ($50,000) to be held in escrow by ~~Regional Title Corp., Washington, DC, or another mutually acceptable title company~~_____ ("Escrow Agent"), in an escrow ~~interest bearing~~ account ("Deposit"). Any and all deposit monies shall be credited against the Purchase Price at closing. Upon removal of the General Due Diligence Period by Purchaser, Deposit shall be deemed nonrefundable and earned by Seller and shall be released by Escrow Agent to Seller.

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6. General Due Diligence Period:

Purchaser shall have a period of ~~Thirty~~ Ninety (~~3~~90) days following the date of execution of the Purchase and Sale Agreement ("General Due Diligence Period") to perform its due diligence investigation of the Company, Property and ~~the~~ Ground Lease, and secure approval of an execute a Joint Development Agreement and Lease between Purchaser and the Washington Metropolitan Area Transit Authority's ("WMATA") Board of Directors. If, prior to the expiration of the Due Diligence Period, Purchaser determines in its sole discretion not to purchase the ~~Property~~Company, then Purchaser shall have the right to terminate the Purchase Agreement, whereupon the Deposit shall be promptly returned to Purchaser, and Purchaser shall provide to Seller copies and assignment of all due diligence related reports obtained by Purchaser. No later than five (5) business days after the execution of the Purchase Agreement, Seller will provide to Purchaser (or make available for inspection by Buyer) copies of all materials in Seller's possession with respect to the Property, Company and the Ground Lease (including, without limitation, any and all documents; environmental studies and reports; title commitments, reports and/or policies; surveys; plans and specifications; architectural and engineering documents and data; and reports, permits, licenses, and zoning documents) (collectively, the "Due Diligence Materials").

7. Settlement:

Settlement shall occur not later than May ~~December~~ 31, 201009, ~~time of the essence, or a sooner date with the mutual consent of the Purchaser and Seller. Any cost to Seller of delay of Settlement by fault of the Purchaser shall be reimbursed concurrently by Purchaser to Seller, including any ground rent and other carry costs paid or incurred by Tenant during the period between the original Settlement date and the actual date of Settlement, in addition to any other rights and remedies available to Seller as a result of such default.~~

8. Ground Lease Carry Cost:

Purchaser shall be responsible for all Ground Rent and property taxes payable by Tenant under the Ground Lease from the date that the General Due Diligence Period is removed by Purchaser until Settlement occurs~~, commencing retroactively to the first day of the month in which the General Due Diligence Period is removed by Purchaser~~ ("Contract Period"). During Contract Period, Purchaser shall make any and all payments due by Tenant under Ground Lease to Escrow Agent when such payments are due under the Ground Lease, time of the essence, and Escrow Agent shall immediately disburse such payments to Landlord, with prompt written notice to Seller of such disbursements. If Purchaser fails to make any payment required by Ground Lease during the Contract Period by the close of business on the date such payment is due, Seller shall have the

FOIA CONFIDENTIAL TREATMENT REQUESTED

right to cure any anticipated default on Ground Lease by making payment to Escrow Agent or directly to Landlord~~(in addition to any other rights and remedies available to Seller as a result of such default), and Purchaser shall be deemed in default and shall have no further right or claim with respect to the property in law or equity~~.

~~9. Purchaser Default:~~

~~In addition to customary Purchaser default conditions for a commercial real estate purchase contract in Washington, D.C., the Purchase Agreement shall include the following conditions under which Purchaser shall be called immediately in default, with no further right or claim by Purchaser on the Property:~~

~~a. Purchaser fails to make timely payment of Ground Lease carry costs, per its obligation under Paragraph 8.~~

~~b. Purchaser is notified by Washington Metropolitan Area Transit Authority (WMATA) that Purchaser (or an affiliate or subsidiary of Purchaser or substantially controlled by Omar Karim and or Warren Williams) is no longer the "designated developer" with respect to WMATA Parcel Square 393 Lot 45 adjacent to the Property. Purchaser shall have an affirmative obligation to notify Seller of any such notice from WMATA, oral or written.~~

10. Additional Representations of Seller:

The Company~~Property~~ is sold, and the Purchaser shall accept the Ground Lease As-Is, Where-Is????????????. Seller represents and warrants that as of the date of the Purchaser's removal of the General Due Diligence Period, Tenant shall be in good standing with respect to Ground Lease, and Ground Lease shall be in full force and effect.

11. Additional Obligations of Purchaser:

Purchaser shall promptly inform Seller of any material change, favorable or unfavorable, with respect to Purchaser's negotiations with WMATA for acquisition and development of the WMATA parcel adjacent to the Property~~, including material developments pertaining to current or potential joint venture partners and equity and debt financing sources for the proposed project on the WMATA parcel~~.

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Neither Buyer nor Seller is represented by a broker.

13. Assignment:

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14. Confidentiality:

Unless and until Settlement shall occur, Purchaser agrees to keep the existence of and terms and conditions of this Letter of Intent, the Purchase Agreement and all Due Diligence Materials, confidential to themselves and their affiliates, and will not disclose the same except to its attorneys, accountants, lenders and prospective lenders, agents, consultants and advisors involved in the transaction and architects, engineers and other professionals or independent contractors who or which may be engaged to assist in or perform due diligence activities with respect to the Company~~Property~~ (who shall abide by the confidentiality restrictions). If the Purchase Agreement is not entered into or is terminated, Purchaser agrees to return a copy of all Due Diligence Materials to Seller and shall provide the Seller with any Due Diligence Materials created by Purchaser or its agents, at no cost to the Seller. This Paragraph shall survive any termination or expiration of this Letter of Intent and the Purchase Agreement.

This offer will be held open until close of business on September 19, 2008. If the terms of this Letter of Intent are satisfactory to Purchaser, we request that you execute a copy of this Letter of Intent in the appropriate space provided below and return a signed copy to us by such date. Following execution of this Letter of Intent, Seller will immediately commence drafting of the Purchase Agreement for delivery to Purchaser within ten business days.

Sincerely,

Joshua Adler
Co-Managing Member

AGREED AND ACCEPTED:

Banneker Ventures, LLC	**1920 8th Street Venture, LLC**
By:_____	**By:**_____
Its:_____	**Its:**_____

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4326 8th Street, NW • Washington, DC 20011
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FOIA CONFIDENTIAL TREATMENT REQUESTED

Date:_____	**Date:**_____

10575.02.000000.0898

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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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

(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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014694

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014697

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014698

(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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014709

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.

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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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014715

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 014716

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:_____
Title:_____

By:_____
Name:_____
Title:_____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014717

EXHIBIT A

Depiction of the Premises

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014718

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014719

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 014720

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 014721

EXHIBIT "A"

LEGAL DESCRIPTION

FOIA CONFIDENTIAL TREATMENT REQUESTED

EXHIBIT "B"

TENANTS

SEE ATTACHED RENT ROLL

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014723

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

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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

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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:

_____

4796469_v9

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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,

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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

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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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014733

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,

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014734

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014735

(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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014736

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 014737

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 014738

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 014739

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

FOIA CONFIDENTIAL TREATMENT REQUESTED

EXHIBIT B

PERMITTED EXCEPTIONS

4796382_v6

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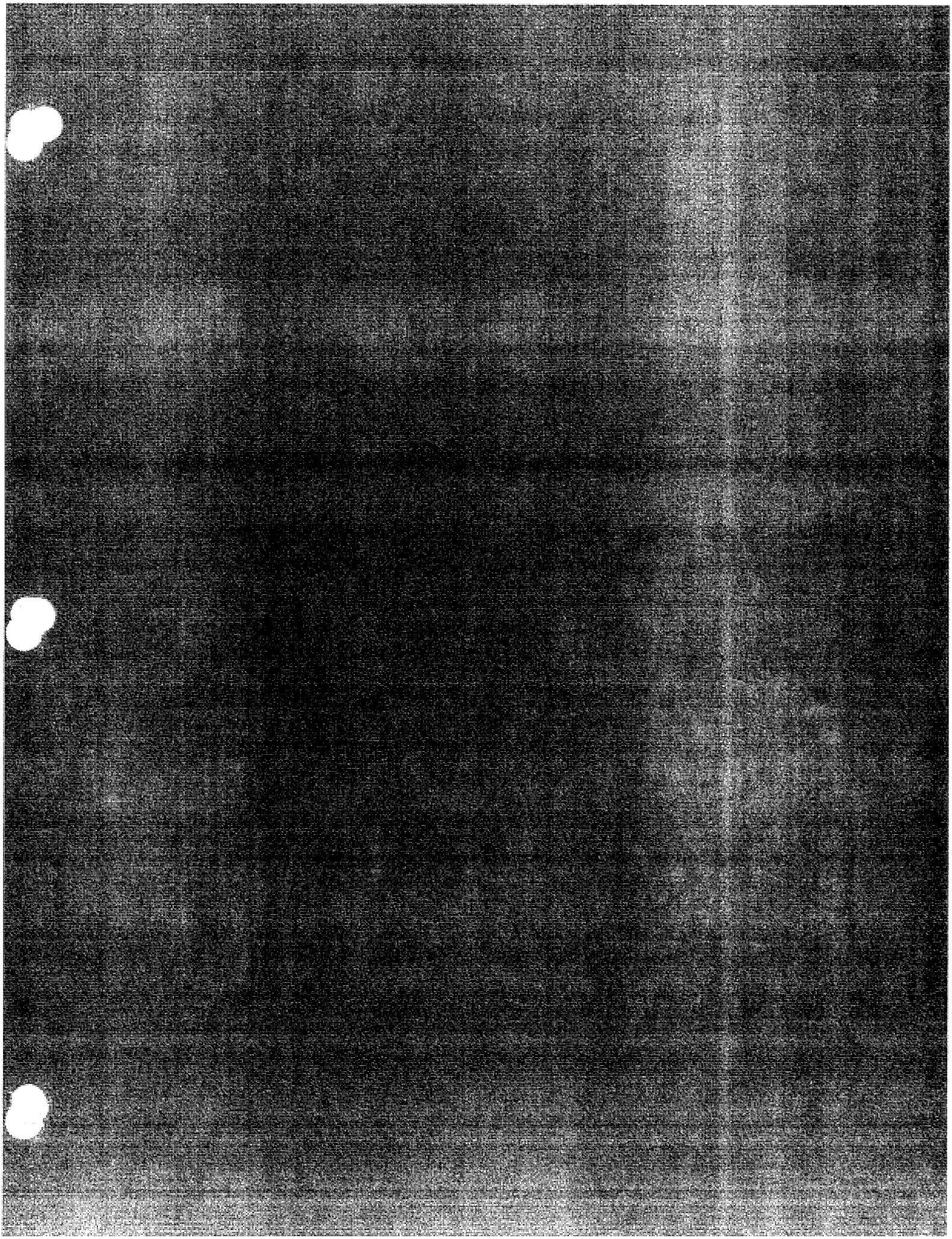

To DO:

9/15/08

(1) Prepare memo & updated budget for 814 - DHCA
(2) Edit T&S agreement for Lakota
(3) Email contact list to participants.
(4)

- Surety Bond - Guarantee that we have funds and know how that we will perform job w/in timeframe.

Payment Bonds - Ensure subs are paid.

Penal Sum - Max surety will have to pay

George Kreis 848-2524 / Tompkins

Guarantees performance to entity we have contract to.
- Perform all obligations under contract
- Make all payments under contract

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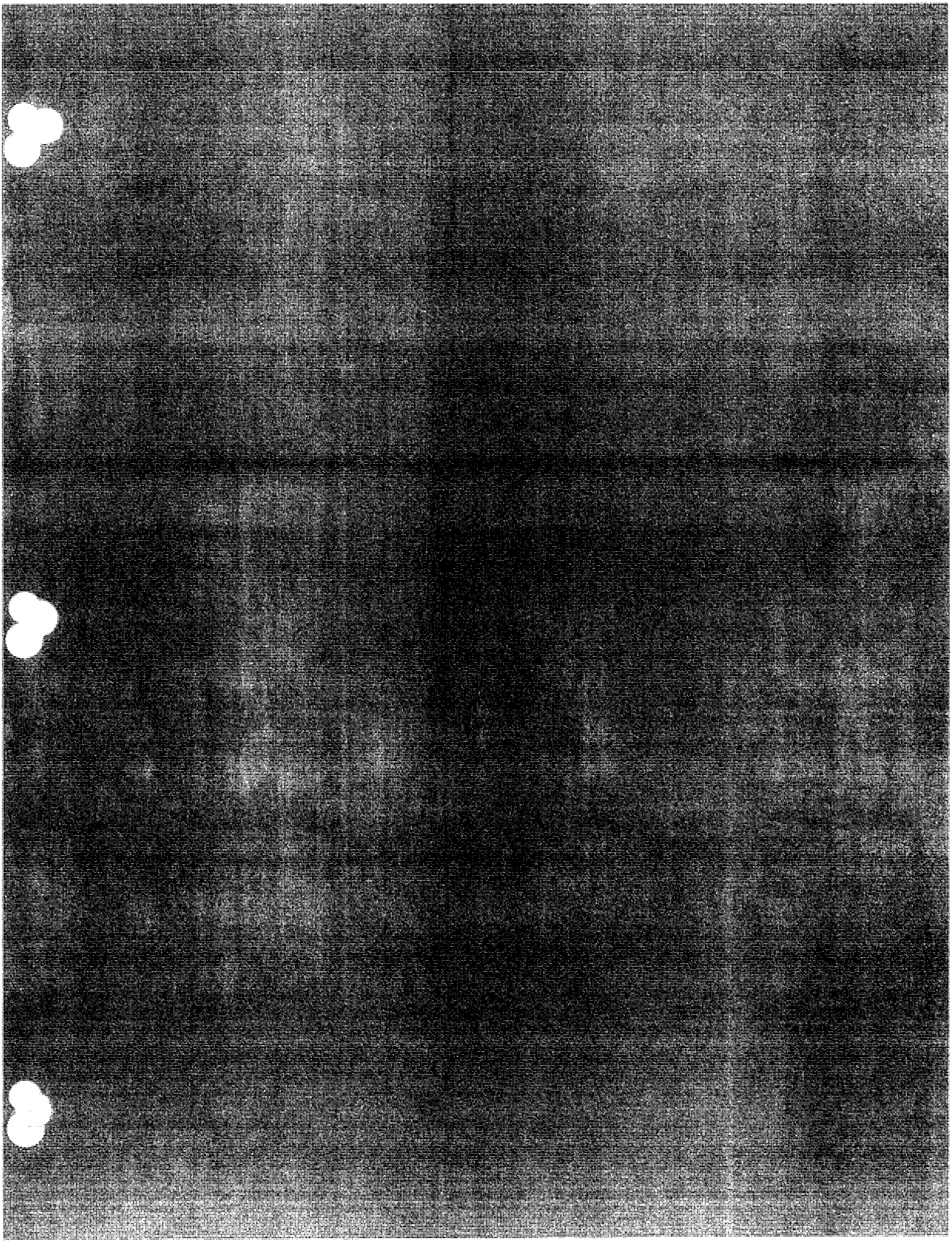

Omar Karim

n: Josh Adler <josh@lakritzadler.com>
ent: Wednesday, September 17, 2008 2:30 PM
To: 'Omar A. Karim'
Subject: Progress?
Attachments: image001.gif

How is LOI review going?

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

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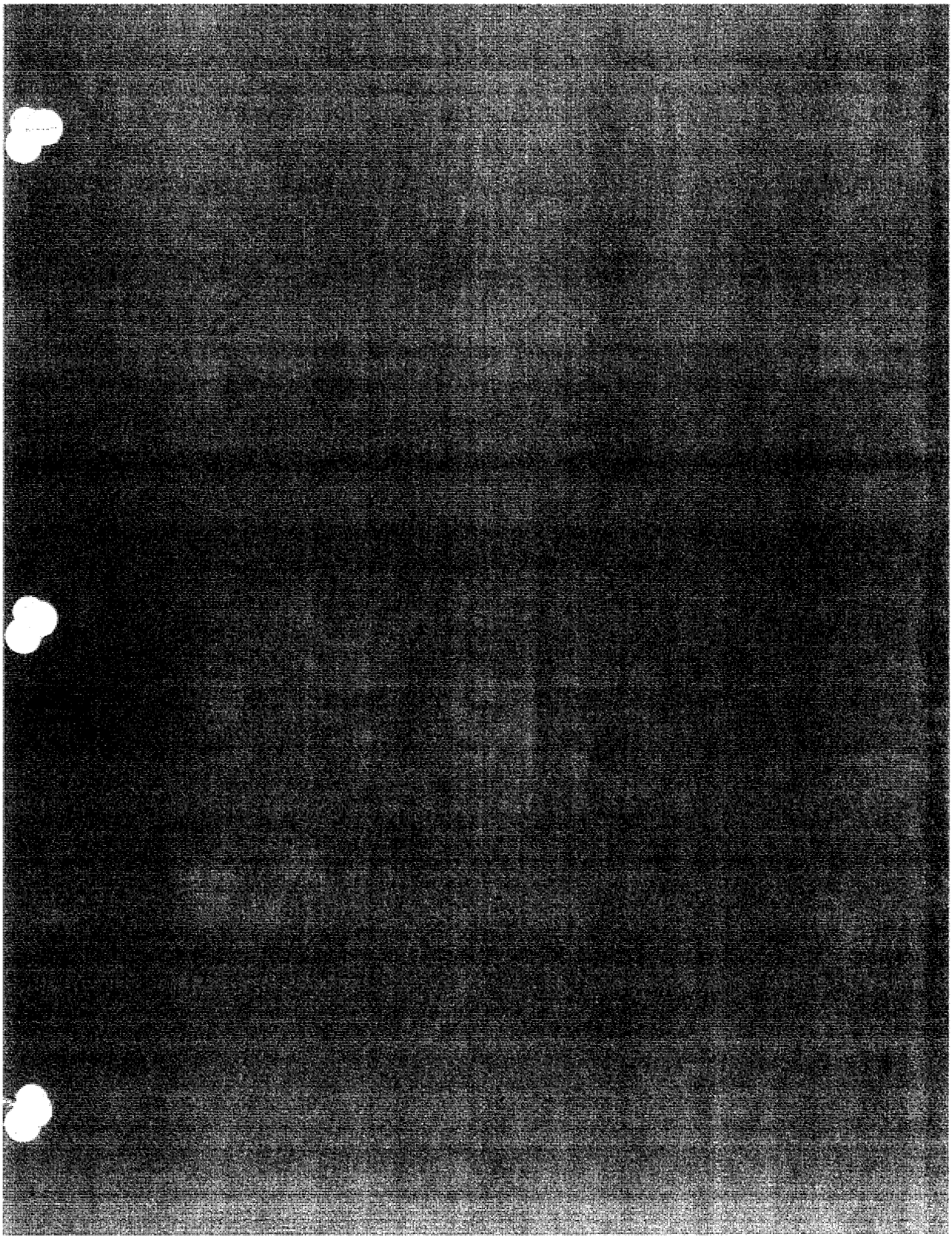

Omar Karim

From: Omar A. Karim <okarim@bannekerventures.com>
Sent: Friday, September 19, 2008 3:12 PM
To: 'Joshua Kern'
Subject: RE: wbj article

Thanks. Saw it today. In fact, Graham mentioned it to me when we met a few weeks ago. He asked if we would be interested in joining the BID. Without speaking with anyone, of course I could not commit us. He said that it would cost about the price of a table at one of these events. Thought that would be $1k or so. According to the article, might cost $40k—per year!!! Ouch. We aren't on U Street anyway. LOL!

From: Joshua Kern [mailto:joshuakern@districtdevelopmentgroup.com]
Sent: Friday, September 19, 2008 1:26 PM
To: okarim@bannekerventures.com
Cc: phinisjones@comcast.net
Subject: wbj article

omar:

thought this might be of interest.

still planning to get you our comments today. talk to you soon.

josh

Friday, September 19, 2008

U Street improvement district planned

Washington Business Journal - by Jonathan O'Connell Staff Reporter
[http://washington.bizjournals.com/washington/stories/2008/09/22/story5.html?ana=e_ph]

Property owners along U Street, a center of night life in Northwest D.C., want to create a business improvement district to enhance the area's appeal to shoppers and diners.

The boundaries would be along U and 14th streets, from Seventh to 17th streets east to west and from S to Clifton streets north to south.

An initial board of directors includes Chris Donatelli, president of Donatelli Development Co., and representatives from businesses including PN Hoffman Inc., Jair Lynch Cos. and Ben's Chili Bowl.

In forming a BID, commercial property owners vote to tax themselves for services such as street cleanup, safety measures, marketing and other improvements.

There are currently eight BIDs in D.C., and Councilman Marion Barry, D-Ward 8, has proposed legislation that would create another in Anacostia, along Martin Luther King Jr. Avenue SE.

The U Street organizers sent a letter to property owners in the area on Aug. 14 proposing a tax of 8 cents per $100 of assessed property value.

Under the formula, Donatelli, who owns The Ellington Apartments, guessed he would pay about $30,000 annually, and Dante Ferrando, owner of the Black Cat club, said he would pay about $4,000.

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The estimated total budget would be about $400,000.

Organizers need signatures from at least 51 percent of the assessed value of the BID area and one-quarter of the properties included in BID.

There is still agreement among a lot of people who say that this neighborhood should be safer, it should be cleaner," Donatelli said at a Sept. 16 meeting of the MidCity Business Association on the proposal.

Some small businesses owners, however, voiced concern about new fees on top of increased commercial property taxes.

"Our No. 1 priority right now is to take care of the tax situation. The commercial property tax rates are really just way too high," said Natalie Avery, executive director of the association, in an interview. She said the BID's boundaries should be reconsidered because the boundary at S Street would awkwardly split the 14th street commercial strip.

Others concerned about the new costs are Go Mama Go! homewares, Logan Hardware, Rice Restaurant and Urban Essentials furniture. Why should business owners create a new tax "to have services that they should already have?" asked Rick Lee, owner of Lee's Flowers & Card Shop.

But Councilman Jim Graham, D-Ward 1, urged business owners to take advantage of the opportunity.

"I think this is a very important thing for this neighborhood to do," he said.

Graham pointed to Adams Morgan, where he said the BID hired extra police officers on weekends and set up bus shuttles.

E-mail: joconnell @ bizjournals.com Phone: 703/258-0835

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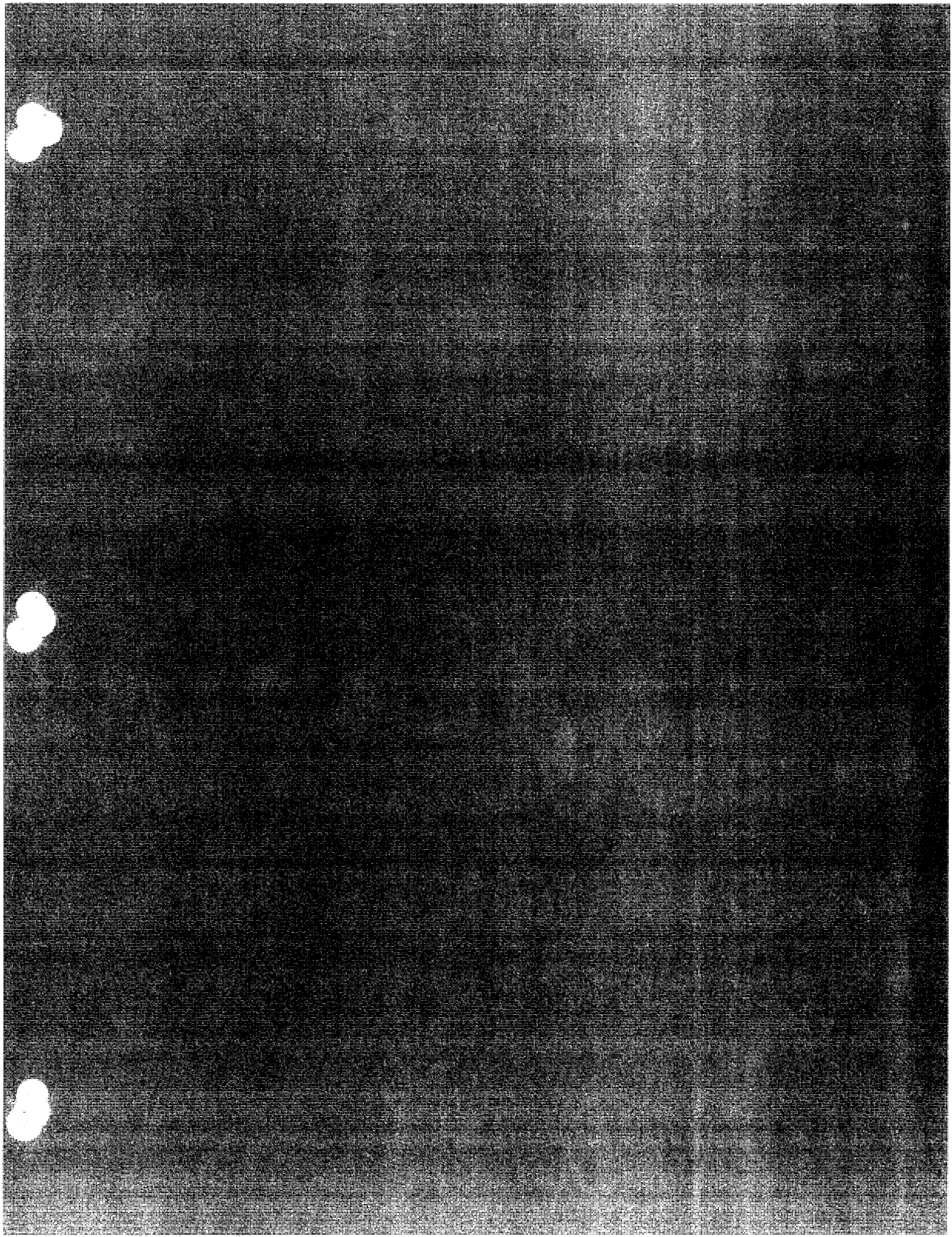

Omar Karim

ı:	Lewin, Devorah <Devorah.Lewin@dlapiper.com>
ɜnt:	Thursday, September 25, 2008 12:49 PM
To:	okarim@bannekerventures.com
Cc:	Bryant, Seth; Flynn, Guy
Subject:	Letter of Intent - 1920 8th Street, LLC (revised)
Attachments:	#42173345v4_EAST_ - Banneker Letter of Intent.DOC; DV_Comparison_Banneker LOI initial draft-#42173345v4_EAST_ - Banneker Letter of Intent.doc

Omar,

Per our conference call yesterday, attached is a clean and marked version of the Letter of Intent for purchase of the membership interests in 1920 8th Street, LLC. The marked version shows all changes made to the initial draft of the Letter of Intent which you received from the Seller.

Best,

Devorah

ɐvorah M. Lewin

_A Piper US LLP

The Marbury Building

6225 Smith Avenue

Baltimore, MD 21209-3600

410.580.4397 T
410.580.3397 F
devorah.lewin@dlapiper.com

www.dlapiper.com

Admitted in New York and Maryland.

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destroy all copies of the original message. To contact our email administrator directly, send to postmaster@dlapiper.com

ık you.

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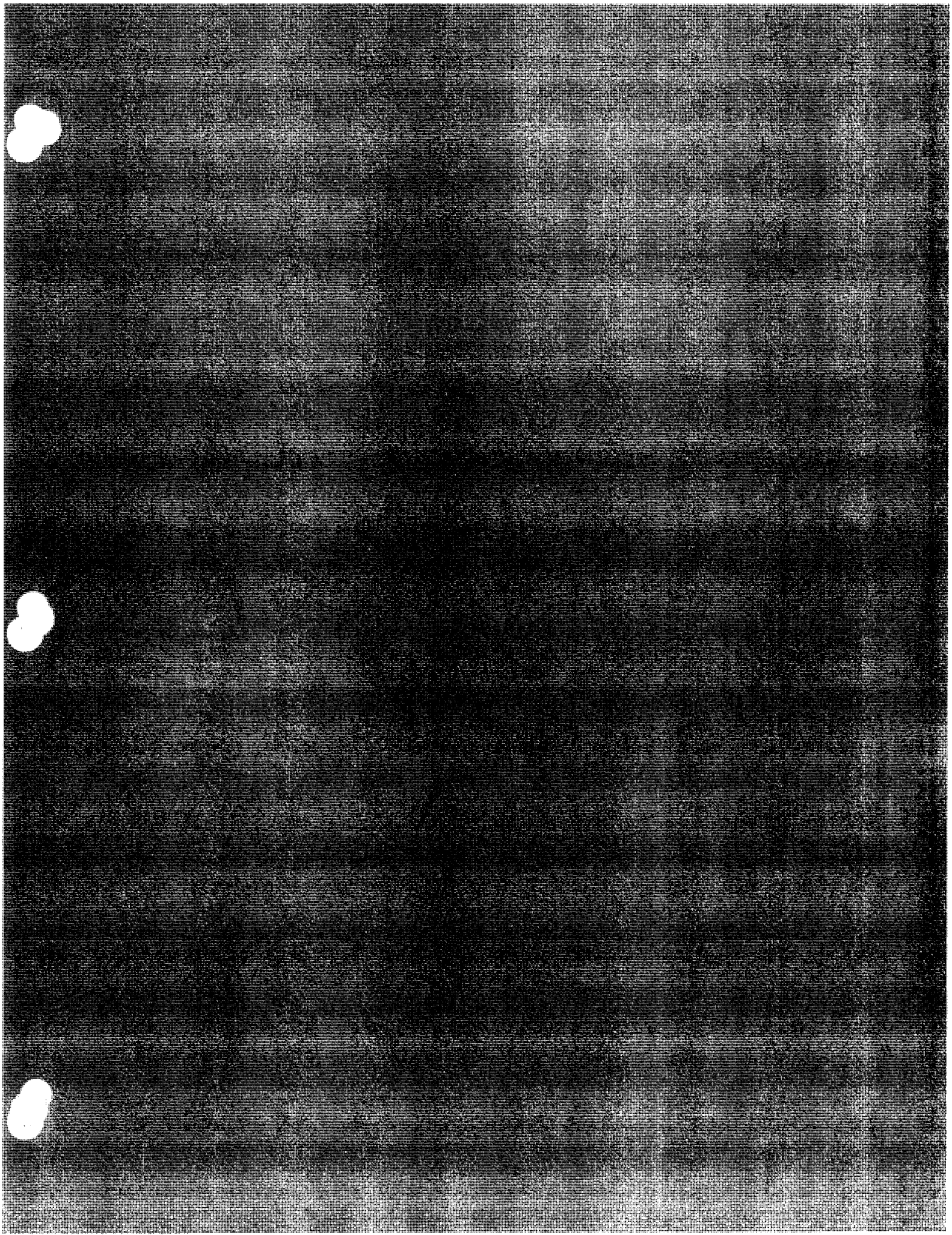


Omar Karim

From: Omar A. Karim <okarim@bannekerventures.com>
nt: Friday, September 26, 2008 4:51 PM
To: 'Josh Adler'
Subject: Letter of Intent w/ BV comments- 1920 8th Street, LLC
Attachments: 1920 8th Street LOI with BV comments.doc

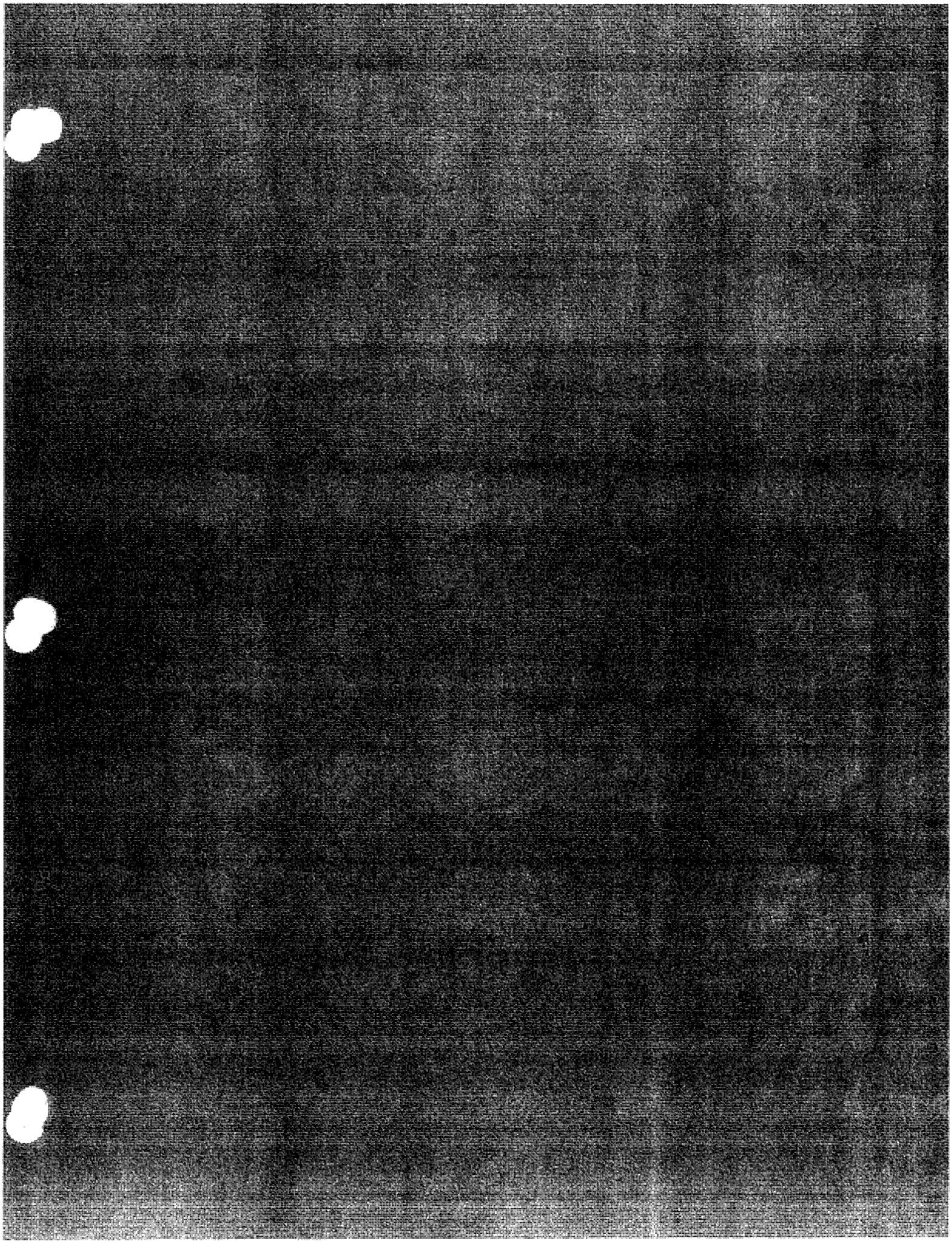
Josh,

Attached is a clean and marked version of the Letter of Intent for the purchase of the membership interests in 1920 8th Street, LLC. Because of the credit markets, we will not be able to use the property as equity and instead would have to purchase it at the start of construction, and as such the economics of the deal have greatly changed. As a result, the maximum we would be able to pay for the lease option is $1M. Lets catch up next week.

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



Omar Karim

From: Joshua W. Montague <jwmontague@wmata.com>
nt: Tuesday, October 07, 2008 10:49 AM
To: okarim@bannekerventures.com
Cc: Devorah.Lewin@dlapiper.com; Rosalyn Doggett
Subject: Florida Avenue: Draft of the JDA / Lease
Attachments: Shaw-Howard Joint Development Agreement - Draft 100708.doc; Shaw-Howard Lease - Draft 100708.DOC

Hi Omar,

Here is the draft of the Joint Development Agreement and Lease for the development of the Florida Avenue properties.

Please do not hesitate to contact me with any questions or comments.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
/ashington, DC 20001
phone: (202) 962-1275

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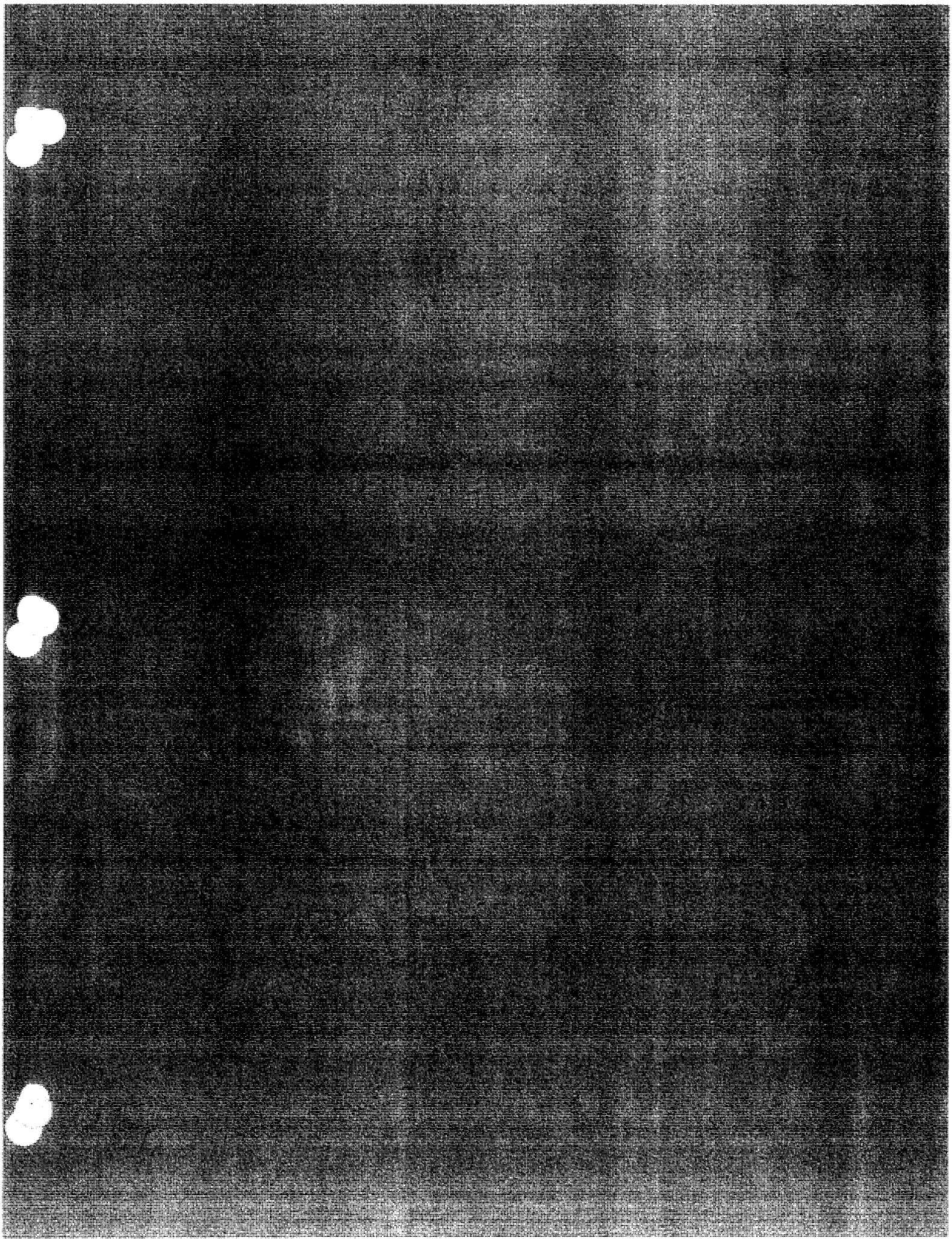

Omar Karim

Subject:	Shaw Howard Florida Avenue JDA and Lease Form
Location:	5B Land Conference Room
Start:	Thu 10/16/2008 12:33 PM
End:	Thu 10/16/2008 2:33 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Rosalyn Doggett
Resources:	Room JGB 5B Land Conference Room@wmata.com

Omar, if you can have your attorneys provide a red line of the documents, it would be helpful. Please let me know.

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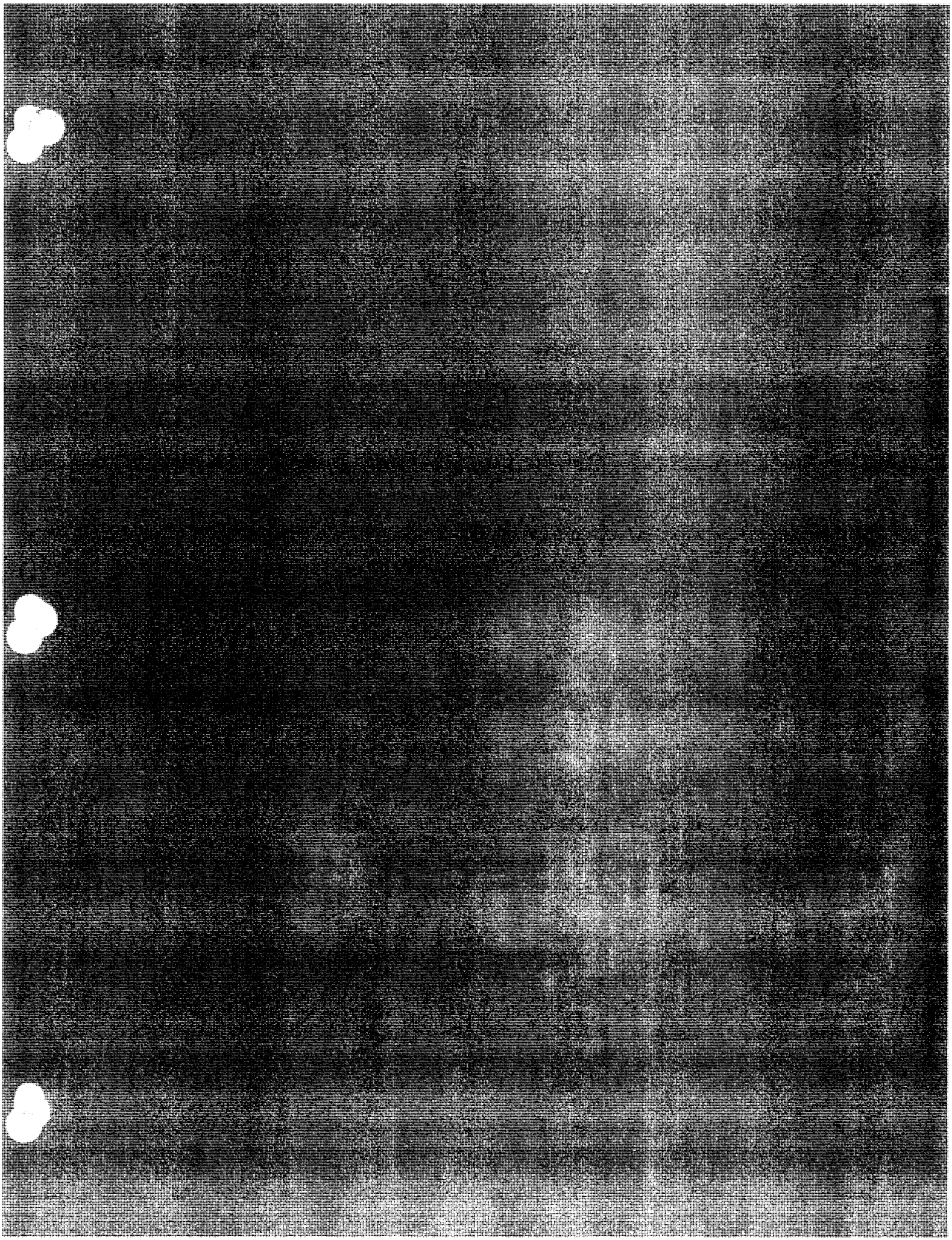

Omar Karim

From: Joshua W. Montague <jwmontague@wmata.com>
nt: Friday, October 10, 2008 4:24 PM
ro: okarim@bannekerventures.com
Cc: Devorah.Lewin@dlapiper.com; Seth Bryant; Rosalyn Doggett
Subject: Re: Florida Avenue: Draft of the JDA / Lease

Hi Omar,

This email is being sent to confirm that the Term Sheet's provisions relating to exclusive negotiation time period is being extended for one month, as discussed with Devorah Lewin this morning.

Hopefully everything will go so smoothly that we won't need it.

Hope you have a good weekend.

Sincerely,

Josh Montague

ssistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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>>> "Omar A. Karim" <okarim@bannekerventures.com> 10/7/2008 5:50 PM >>>
Josh,

Please confirm that since there was a delay in getting the docs to us that the time period for getting this done (as per the Term Sheet) is extended.

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC

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700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

-----Original Message-----
From: "Joshua W. Montague" <jwmontague@wmata.com>

Date: Tue, 07 Oct 2008 10:49:26
To: <okarim@bannekerventures.com>
Cc: <Devorah.Lewin@dlapiper.com>; Rosalyn Doggett<rdoggett@wmata.com>
Subject: Florida Avenue: Draft of the JDA / Lease

Hi Omar,

Here is the draft of the Joint Development Agreement and Lease for the development of the Florida Avenue properties.

Please do not hesitate to contact me with any questions or 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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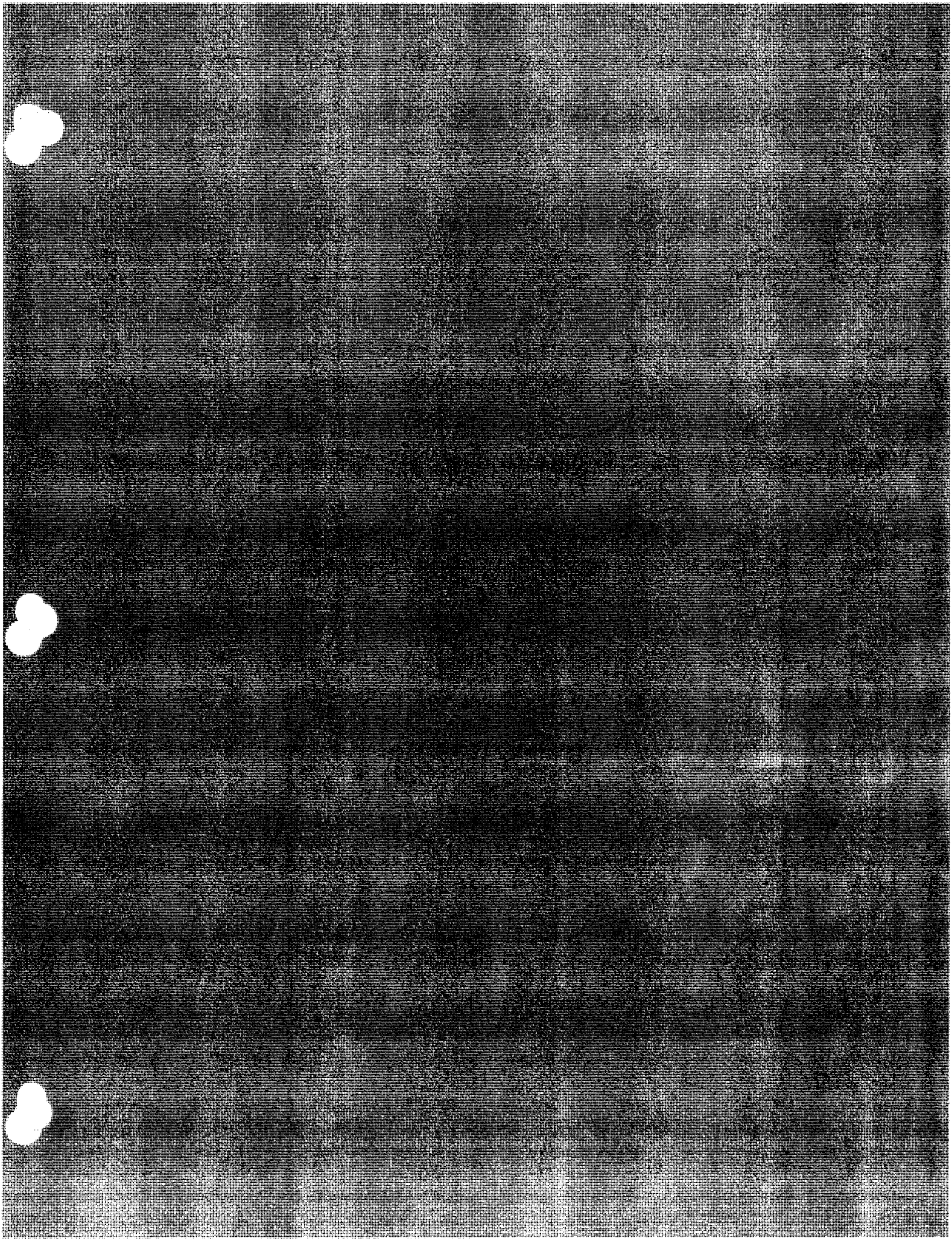

Omar Karim

From: eric.smart@bolansmart.com
Sent: Monday, October 27, 2008 11:11 AM
To: unlisted-recipients:; no To-header on input
Cc: Rosalyn Doggett
Subject: Re: Jazz Pro Forma
Attachments: Jazz_-_Afford_Analysis_(6_0FAR_w_20%_afford)_as_of_10-16-08_(Autosaved) (IRR question).pdf

Omar

I believe we met briefly during the interviews for this project. Ms.
Doggett has asked Bolan Smart to assist in reviewing the proposed changes in the deal structure. Since it is obviously very helpful to work with an actual proforma, our first task is to be sure we understand the components of the model. For this reason Roz requested we contact you regarding the questions she posed last week.

1) Attached is a copy of the IRR page of the proforma model with a couple of notes, which hopefully are self explanatory.

2) As we understand your explanation of the proforma model, the sponsor gets the interim Net Cash Flow and the equity does not get paid until the project is sold. Thanks for the explanation. Three questions thereof:

(a) If the sponsor is paid $3,735,381 out of net cash flow, who how does the $2,061,196 Available Proceeds After Pref Paid get applied?

) While you may have patient equity, would it not be cheaper if the equity was paid down in part as Net Cash Flow was available, rather than continuing to have the preferred accrue at 17%?

(c) Finally, along these lines, it might help if you would briefly explain the nature, rational and amount of sponsor income.

Hope that it is easy enough to track our questions. Please feel free to
call with any follow up, or email is good too.

Eric

> Ms. Doggett,
>
> Thank you for your email. Below are our responses:
>
> 1. The Net Cash Flow to Equity is correct. The Equity fets its return
> upon sale or refinance. The net cash flow goes to the
> sponsor/development team.
>
> 2. Our calcs show an accurate IRR. If you all disagree, please advise
how.
>

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> 3. Will have to adjust that. Its not that much principal though.
>
> Omar
>

> ------Original Message------
> From: Rosslyn Doggett
> Sender:
> To: Omar A. Karim
> Cc: Joel Washington
> Cc: Joshua W. Montague
> Sent: Oct 23, 2008 4:43 PM
> Subject: Pro Forma
>
> We found some glitches in your model, see below. If you agree once
> you look into it, please correct.
>
> 1) It appears that the Net Cash Flow to Equity may not be propertly
> recognized for years 2013 to 2016.
>
> 2) Related to the above, if the total preferred return to equity is
> 17%,
> as indicated on the Summary page, realizing an actual IRR of 20.16% is
>
> incorrect.
>
> 3) There seems to be no account for five years of paid down principal
>
> the debt payment schedule.
>
> While addressing these needed corrections you also should
> conform the spreadsheets to the summary PDF pages presented
> earlier, in particular using a $1.20 psf rent for the affordables, the
>
> annual WMATA lease payment and the prior project construction costs.
>
>
> Thanks, Rosalyn
>
>
>
>
>
>
>
>
>
> Sent from my BlackBerryÂ® smartphone with SprintSpeed
>
>

ic Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037

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202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com

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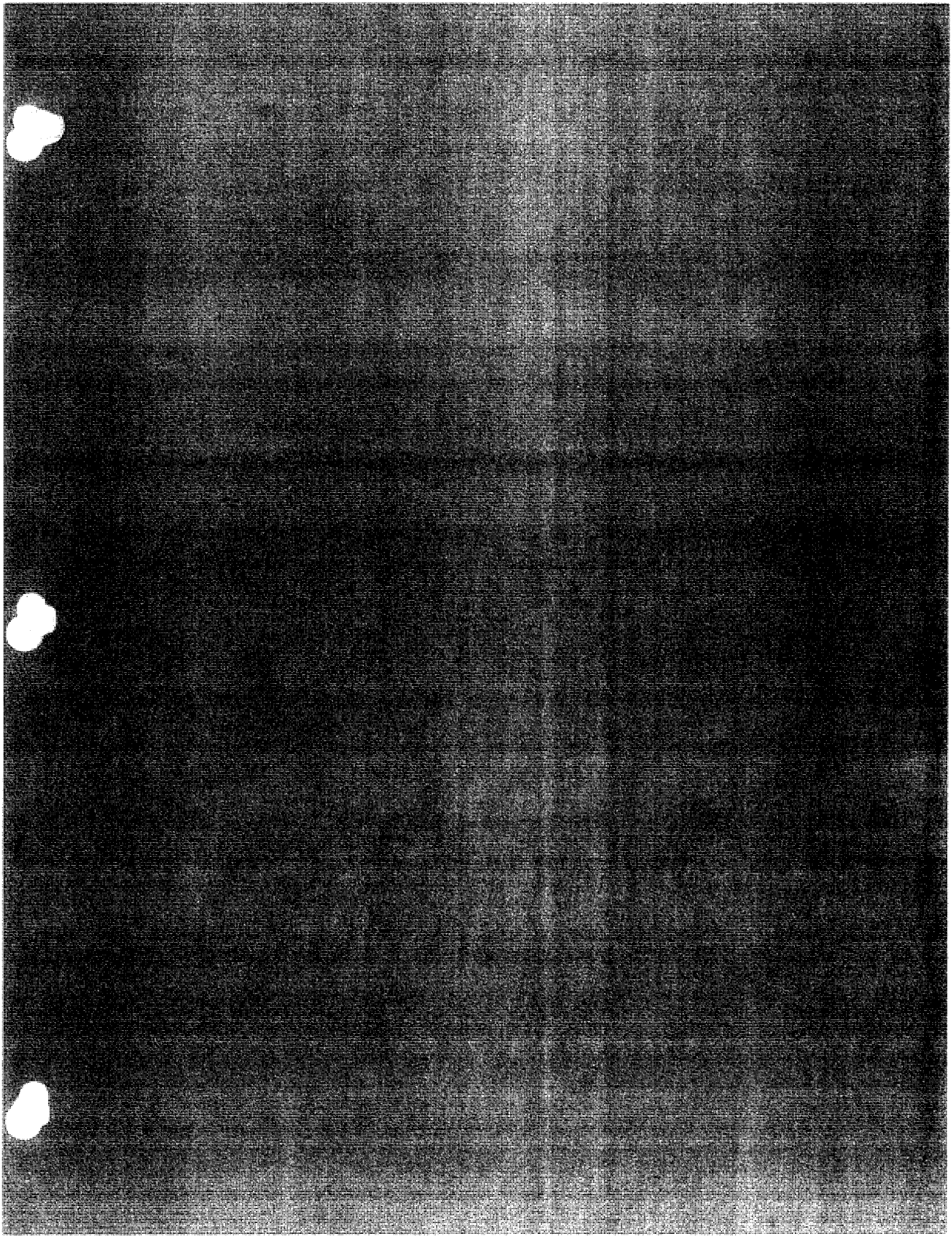

Omar Karim

From: Lewin, Devorah <Devorah.Lewin@dlapiper.com>
Sent: Tuesday, November 04, 2008 9:28 AM
To: Joshua W. Montague
Cc: Omar A. Karim; Flynn, Guy; Bryant, Seth
Subject: Banneker/WMATA Joint Development Agreement and Ground Lease (comments)
Attachments: #42197999v3_EAST_ - Development Agreement (Banneke.DOC; DV_Comparison_#42197999v1_EAST_ - Development Agreement (Banneke-#42197999v3_EAST_ - Development Agreement (Banneke.doc; #42202491v2_EAST_ - Banneker_WMATA Ground Lease (G.DOC; DV_Comparison_#42209240v1_EAST_ - Ground Lease [WMATA FORM]-#42202491v2_EAST_ - Banneker_WMATA Ground Lease (G.doc

Josh,

Attached for your review are clean and redlined versions of the Joint Development Agreement and Ground Lease with our comments.

Once you have had a chance to review the drafts, please give us a call to discuss.

Thanks.

Devorah

Devorah M. Lewin

DLA Piper US LLP

The Marbury Building

6225 Smith Avenue

Baltimore, MD 21209-3600

410.580.4397 T
410.580.3397 F
devorah.lewin@dlapiper.com

www.dlapiper.com

Admitted in New York and Maryland.

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JOINT DEVELOPMENT AGREEMENT

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WMATA

and

THE JAZZ @ FLORIDA AVENUE, LLC

Developer

Dated as of _____, 2009

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014769

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**").

RECITALS

WHEREAS, WMATA holds legal title to one or more certain tracts of land comprising approximately 28,892 square feet located at the intersection of 8th Street and Florida 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, 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 has agreed to construct a mixed use Project on the Lease Premises on the terms and conditions set forth herein;

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 WMATA-INV 014770

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 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 the Lease Premises from WMATA and develop the Lease 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 _____, 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 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.

2.2 **Project**. Developer will construct improvements on the Lease Premises (the "**Project**") on the terms and conditions set forth in this Agreement, the Lease, and the Transaction Documents. The Project will consist of:

2.2.1 *Developer Improvements.* The Developer's improvements (the "**Developer Improvements**") shall be a minimum 130,014 FAR gross square feet, including

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014771

not less than 104 dwelling units, 11,750 gross square feet of retail arts space, plus associated residential and retail parking.

2.2.2 The Developer Improvements will include an affordable housing component consisting of twenty percent (20%) of the dwelling units at fifty percent (50%) AMI.

2.2.3 The Developer Improvements will be built in a single phase on the Lease Premises.

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

2.3 **Pre-Stabilization Period.**

2.3.1 The "**Pre-Stabilization Period**" shall commence upon the Effective Date and continue until the earlier of:

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 Period shall entail the Project's design, government approval, 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. On the expiration or termination of the Lease (by lapse of time or otherwise), sole ownership of the Lease Premises subject to such Lease, and the right to possess and use the same, shall automatically pass to and be vested in WMATA. Likewise, Developer's, or any tenant's, ownership in improvements on the Lease Premises (including, but not limited to, Developer Improvements) that is the subject of the Lease shall also automatically terminate, and WMATA shall thereafter be the sole owner of such improvements.

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

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

2.6.1 This Agreement shall be deemed to be in the nature of a personal services contract and Developer acknowledges that WMATA has entered into this Lease on the basis of its trust and special confidence in Banneker Ventures, LLC, a District of

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Columbia limited liability company and Bank of America Community Development Corporation, a North Carolina corporation ("**Developer Members**"). Developer represents, warrants and covenants that the Developer Members have, and shall continue to maintain until satisfaction of all Construction Related Obligations, 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 the Developer Members.

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 Approved Design and Construction Documents and the Project Schedule.

2.6.4 The above inducements and agreements are confirmed herein as material obligations of Developer.

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 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

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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, in the amount of Two Hundred Fifty Thousand Dollars ($250,000), to WMATA 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. 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 within twenty (20) Business Days of WMATA's receipt of a copy of the final 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 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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014774

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 terminated.

3.1.6 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.

3.2 **Pre-Stabilization Period Payments.** Pre-Stabilization payments shall begin upon the Effective Date and continue throughout the Pre-Stabilization Period, as consideration for WMATA granting the Developer the exclusive right to develop the Lease Premises pursuant to this Agreement (the "**Pre-Stabilization Period Payments**").

3.2.1 Pre-Stabilization Period Payments shall be due in the annual amount of Two Hundred Thousand Dollars ($200,000.00). All Pre-Stabilization Period Payments shall be paid in immediately available funds and shall be non-refundable. [OPEN]

3.2.2 Pre-Stabilization Period Payments shall be paid in equal quarterly installments of $50,000.00, due each January 1st, April 1st, July 1st, and September 1st. [OPEN]

3.2.3 The Developer shall pay the first Pre-Stabilization 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 Period Payment shall be pro-rated to cover the period beginning on the Effective Date through the next quarterly due date.

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 agreement. 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 the ROE, Developer and certain of its 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 (the "**Study Period Termination Notice**") to that effect to WMATA on or before 5:00 p.m. Eastern Time on the sixtieth (60th) day after the Effective Date (the "**Study Period Termination Deadline**").

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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 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.

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

4.5 **No Mechanic's or Materialman's Liens.** Developer shall not permit any mechanic's or materialman's liens or any other liens to attach to the Property by reason of the performance of any work or the purchase of any materials by Developer or any other Person related to or engaged by or on behalf of Developer, including, without limitation, in 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 (10) days following the date of such attachment. If Developer fails to cause the same to be removed of record or bonded off within ten (10) 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, accruing at the Default Rate of Interest, on demand. Nothing in this Section 4.5 shall be construed as conferring on Developer or any other Person any right to conduct construction or non-construction activities on the Property.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014776

purpose of consummating the transaction contemplated by this Agreement, including Developer's attorneys and representatives, prospective lenders and engineers.

4.7 **No Liability of WMATA.** WMATA shall not be required to incur any liability, cost or expense or, 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.

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) days of Notice of a Default, termination of this Agreement, or failure to consummate Closing.

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) all applicable Laws and governmental rules and regulations including, but not limited to, the Zoning Ordinance; (iii) those items listed as exceptions to title in the Title Commitment (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.

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(s) 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.

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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 (the "**Financing Contingency Cut Off Date**") a written commitment from an Institutional Lender for Lease Premises Financing, Developer shall give Notice to WMATA (the "**Financing Termination Notice**") on or before 5:00 p.m. Eastern Time on the applicable Financing Contingency Cut Off Date and shall state in such Financing Termination Notice whether Developer is terminating this Agreement on such basis.

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

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

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

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

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

6.3.3 Nothing in this 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.

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

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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 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) months after the Effective Date. 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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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 of their 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 Premises and construction of improvements thereon consistent in all respects with the Approved Development Plan, including, but not limited to, all of the Approvals necessary for the 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 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.

7.2.2 **Developer's Obligations Applicable to Entire Project.** Developer shall seek and secure the Approvals, including, 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 Conditionally Approved Development Plan. 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.

7.3 **Approval List.** Within ten (10) Days from the Effective Date, Developer shall submit to WMATA a written report containing a listing of anticipated required Approvals, a 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 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**").

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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. 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.

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 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) any applications for the Approvals; 2) the development plans described under Section 7.8; and 3) any submissions 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 authority.

7.6.3 **Compliance of Developer's Submissions.** 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 respects; and

7.6.3.2 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

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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.** 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, in writing to Developer. In no event will WMATA's delay or failure to respond be deemed an approval of the Developer's submissions.

7.6.4.1 WMATA's thirty (30) Day review deadline shall not begin to toll unless and until the Submission is complete and 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 (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 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 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

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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.

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

7.8.1 **Proposed Development Plan.** Not later than thirty (30) days after the Effective Date (the "**Development Plan Submission Deadline**"), Developer shall prepare in consultation with WMATA a detailed plan for the development of and construction of the Project, including (i) the proposed locations and configurations of all of the improvements that will comprise the Project; (ii) the applicable uses for such improvements; (iii) the number of square feet for each such improvement; and (iv) detailed descriptions and drawings of all components of the Project, including but not limited to all architectural, civil, electrical, mechanical, and structural components of the Project (the "**Proposed Development Plan**"). 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 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 requirements for the WMATA Reserved Areas and Interests. 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 Project as a whole; and (ii) the 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 changes that WMATA may direct or approve in writing.

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) accompanied by reasonably detailed and, to the extent then practicable, objective information concerning their feasibility, including the feasibility of obtaining the proposed

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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 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 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 _____, 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 to the District of Columbia Office of Zoning for approvals required to develop the Project.

7.8.3.3 **Final Approved Development Plan**. Upon final approval of the Conditionally Approved Development Plan by the District of Columbia Office of Zoning, 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, 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 _____, and incorporated herein. The date, if any, on which WMATA gives Developer Notice that it

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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 changes to the Approved Development Plan without WMATA's prior written approval, which approval shall not be unreasonably withheld, except such approvals that would affect WMATA's Unconditional Approval Matters in which case such approval may be granted or withheld in WMATA's sole and absolute discretion. WMATA shall have no right to make or require changes to the Approved Development Plan, except changes that 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 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 apply to alterations that would 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 interim covenants, conditions and restrictions consistent with Section 11.10. 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.

7.9 **WMATA Compact Public Hearing.** It is not anticipated that this 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.

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

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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 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.

7.11 **Project Representatives.** 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. The WMATA Project Representative and the Developer 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

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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.

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

7.12.1 Subject to Subsection 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 7 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 a day for day basis, for the number of days of such delay by WMATA.

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**

8.1.1 The Closing Date shall occur on or before twenty (20) months following the Effective Date (the "**Closing Date**"). Developer may elect to close prior to the Closing Date, but must give WMATA sixty (60) Days Notice.

8.1.2 Closing shall take place in the offices of Developer's _____, if in the Washington, D.C. metropolitan area, or at such other place as the parties shall mutually agree. Developer agrees to conduct closing through a pre-closing escrow or other arrangement reasonably requested by WMATA to facilitate closing mechanics and to reduce or eliminate the need for WMATA and its attorneys to be physically present at the Closing.

8.1.3 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: Developer shall be responsible for all

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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 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.

8.1.3.2 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.

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 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

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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 of Exhibit _____ hereto, executed by WMATA.

8.2.1.2 The Covenants, Conditions and Restrictions in the form of Exhibit _____ attached hereto, executed by WMATA.

8.2.1.3 A closing statement executed by WMATA.

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 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.

8.2.1.5 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, 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 _____ hereto, executed by Developer.

8.2.2.3 The Covenants, Conditions and Restrictions in the form of Exhibit _____ attached hereto, 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, and Guaranties required under the Lease.

8.2.2.6 The Approved Development Plan.

8.2.2.7 Final approval by the appropriate governmental or quasi-governmental authority of all Approvals on the Approvals List.

8.2.2.8 The Project Schedule.

8.2.2.9 The Approved Design and Construction Documents.

8.2.2.10 The Developer's articles of organization, operating agreement, and certificate of good standing.

8.2.2.11 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.

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. 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;

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9.1.3 WMATA owns fee title to the Property, subject to 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 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 or for WMATA to fulfill WMATA's other obligations subject to and in conformity with the terms and conditions of this Agreement;

9.1.6 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;

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

9.2 **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 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

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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 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 date of such representation). In the event that WMATA breaches any representation contained in Section 9.1 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 WMATA 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 Project Representative any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such WMATA Project Representative any individual personal liability, which Developer hereby waives.

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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 under the laws of the District of Columbia.

9.8.2 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.

9.8.3 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.

9.8.4 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.

9.8.5 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.

9.8.6 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 rezoning is feasible. WMATA has made no representations to Developer regarding

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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, 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 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).

9.9 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 Project Representative 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 Developer Project Representative any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such Developer 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.

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;

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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 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;

10.1.8 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.

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

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

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

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

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

10.2.3 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 the Lease, as applicable, shall have made delivery or payment and satisfaction in full of any and all then accrued and outstanding Guaranty obligations;

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 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;

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

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

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

10.2.10 There shall have occurred no Change of Control of Developer;

10.2.11 Developer shall have delivered the Payment and Performance Bond to WMATA and approved by 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, which with notice or the lapse of time could constitute a breach or default thereunder; and

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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.

ARTICLE 11
DEVELOPMENT RIGHTS AND OBLIGATIONS

11.1 **Project Schedule.** Developer, within fifteen (15) days following the Development Plan Approval Date, shall prepare and submit to WMATA a project schedule for the Project in compliance with the following requirements ("**Project Schedule**"). The Project Schedule shall be subject to WMATA's approval within thirty (30) Days of submission, 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. 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. 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. 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 Project Schedule by WMATA), Developer shall achieve Substantial Completion and Final Completion not later than the dates shown or prescribed in the 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.

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11.2 **Design and Construction Documents Preparation.** Promptly following the Development Plan Approval Date, 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 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 of any portion of the Metro Facilities.

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. 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, 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, WMATA Adjacent Construction Manual or WMATA Design Criteria.

11.4 **Submission to and Approval by WMATA of Design and Construction Documents**. Within thirty (30) Days of the Development Plan Approval Date, and prior to the formal submission of any Design and Construction Documents to any governmental authority for Approvals, Developer shall submit the Design and Construction Documents to WMATA for WMATA's review and approval pursuant to the Submissions Approval Procedure.

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 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 requirements into the Design and

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Construction Documents. The Design and Construction Documents as finally approved by WMATA shall constitute the "**Approved Design and Construction Documents**".

11.6 **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 and non-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 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 **Progress Submissions.** Updated Design and Construction Documents shall also be submitted to WMATA representing approximately 35%, 65% and 100% completion of the Project.

11.7.1 WMATA shall review and provide the Developer with written notification of its approval or disapproval of these submissions pursuant to the Submissions Approval Procedure.

11.7.2 If WMATA gives notice disapproving such a resubmission and requires one or more further re-submissions after a prior resubmission, the procedures

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specified in this Section 11.7 shall continue to be applied until WMATA has approved the latest resubmission.

11.8 **Failure to Submit**. Developer's failure to make the submissions required under this Article 11 shall constitute an Event of Default.

11.9 **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 Covenants, Conditions, and Restrictions. A condition precedent to Developer's rights to develop and construct improvements on the Lease Premises shall be the creation and recordation of covenants, conditions, and restrictions. After WMATA's approval of the Design and Construction Documents and prior to commencement of any construction, Developer shall prepare and deliver to WMATA proposed covenants, conditions and restrictions to be recorded against the Property. WMATA shall review and approve pursuant to the Submissions Approval Procedure, which approval shall not be unreasonably withheld 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 Project Schedule, 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, 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 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 (iv) shall reaffirm all covenants and restrictions contained in this Agreement and the Lease and (v) shall be consistent with requirements imposed by the District of Columbia. 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 thereafter be deemed to comprise a part of the Approved Development Plan, shall be recorded against the

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Property at the expense of Developer and shall be senior to all other matters of record. Subject to such applicable requirements of the District of Columbia, WMATA 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 improvements, WMATA's Reserved Areas and Interests, and the Metro Facilities, provided that, Developer 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, 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.

11.11 **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 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 Date concurrently with the execution and delivery of this Agreement. Nothing contained in this Section 11.11 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.

11.12 **Payment Bond, Performance Bond, and Restoration Bond.**

11.12.1 Developer shall furnish separate payment, performance, and restoration 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.

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11.12.1.1 A payment bond in a penal sum equal to one hundred percent (100%) of the "Contract Price" of the Developer Improvements as reflected in the Approved Design and Construction Documents. Such bond may be in the form of a dual obligee bond, naming both the Project lender and WMATA as obligees thereof. The proceeds of such bond shall be applied to Final Completion of the Project.

11.12.1.2 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. Such bond may be in the form of a dual obligee bond, naming both the Project lender and WMATA as obligees thereof. The proceeds of such bond shall be applied to Final Completion of the Project.

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 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 Developer shall deliver the required bonds to WMATA at least thirty (30) Days prior to Closing.

11.12.3 The Developer shall require any 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.

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

11.12.5 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 of any default by Developer under the construction contract(s) or construction loan documents.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014802

11.13 **Signage**. The existence, content and location of all signs proposed to be placed and 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 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 **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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014803

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 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 (or to the extent required by FTA regulations or other applicable Laws) within reasonable proximity thereof. The terms "Transit-Oriented Development" and "Continuing Transit Orientation" mean respectively, as applicable to design and construction of the Project and as to its subsequent maintenance and operation, satisfaction of each of the following, each as reasonably determined by WMATA: (a) provision of convenient pedestrian and vehicular access to a transit station; (b) incorporation of private investment and office, commercial or residential development; (c) design which enhances the effectiveness of a mass transit project and is physically or functionally related to the mass transit project; and (d) creation of non-vehicular capital improvements that are designed to result in increased transit usage.

13.2 FTA Project Approval. WMATA and Developer acknowledge that the Project is subject to approval by the FTA ("**FTA Project Approval**"). WMATA will apply for FTA Project Approval within thirty (30) days following the Effective Date. WMATA will provide evidence of receipt of FTA Project Approval to Developer. In the event FTA Project Approval is denied, and all possible appeals exhausted, this Agreement will 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014804

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, ("**ADA**") and any regulations promulgated thereunder, 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 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.

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 Developer Responsibility for Taxes; 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. 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, 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.

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

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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 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 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 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 of the Project, this Agreement shall not be assignable by the Developer or the Guarantor.

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14.1.2 After Final Completion, neither this Agreement nor any rights or interests conferred hereunder shall be assigned or assignable, delegated or transferred in any manner by Developer or Guarantor, without WMATA's prior written approval in WMATA's sole discretion and any purported assignment delegation or transfer in violation of this provision shall be null and void. No assignment shall relieve or release Developer or Guarantor from any of their respective obligations under this Agreement or the Guaranty, as applicable, and without limitation. WMATA shall not be required to consent to any assignment that would adversely affect WMATA's rights, expectations and requirements under 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.

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 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.

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 this Agreement.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014807

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 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. 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, right of entry, 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 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.

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

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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. 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 Covenants, Conditions and Restrictions.

ARTICLE 18
DEFAULTS AND REMEDIES

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014809

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 the terms of this Agreement), or, with the prior written consent of WMATA, proceed to cure WMATA's default.

18.3 **Developer's Default.**

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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; or

18.3.1.2 If Developer fails to comply with or adhere to any obligations under Article 3 and such failure is not cured within five (5) Business Days after receipt of Notice from WMATA or if Developer fails to comply with Section 4.5; or

18.3.1.3 If Developer fails to comply with or adhere to any obligations under any Article 14 (Assignment of Agreement) and such failure is not cured within five (5) Business Days after receipt of Notice from WMATA; or

18.3.1.4 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 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 (5) Business Days after receipt of Notice from WMATA; or

18.3.1.6 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; or

18.3.1.7 If Guarantor shall breach any covenant of Guarantor contained in the Guaranty, or any other Transaction Document to which Guarantor is a party or by which Guarantor is bound, if any, and such breach continues beyond the expiration of any applicable notice and cure period specified in the Guaranty or such other Transaction Document; or

18.3.1.8 If Developer makes any material misrepresentation in this Agreement or any of the other Transaction Documents, or if Guarantor makes any material misrepresentation in the Guaranty,

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or if any of them make any material 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 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 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 If Developer shall breach any other material covenant of Developer contained in this Agreement, any of the Transaction Documents, 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 (20) 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

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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 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.

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. WMATA shall not, in any event, be obligated to effect any repair, replacement or restoration.

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ARTICLE 20
EMINENT DOMAIN

20.1 Total Taking. If prior to the Closing, there should be a Taking of the entire Lease Premises, such Taking shall be deemed to have caused this Agreement to terminate and expire as of the date of such Taking, the full amount of the Deposit, subject to the terms of Article 3 shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement. Each Taking contemplated by this subsection 20.1 shall be deemed to be and shall be referred to in this Agreement as a "Total Taking".

20.2 **Partial Taking.**

20.2.1 If, prior to the Closing, there should be a Taking of less than the entirety of the Lease Premises, and the remaining portions of the Lease Premises cannot reasonably be adequately developed in the context of the exercise by Developer of Commercially Reasonable Best Efforts to do so as a project of commercially reasonable usefulness, design, construction, and economic feasibility, then Developer or WMATA shall have the right to terminate this Agreement as to the Lease Premises that is the subject of such partial Taking, as applicable, upon Notice to the other within ninety (90) days after the date of the Taking of the Lease Premises Such Notice shall state the date of termination, which shall not be later than the date of the Taking.

20.2.2 **Reserved**.

20.2.3 If 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. 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.** 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.

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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' Project Representatives shall proceed diligently and in good faith in an effort to resolve the dispute to their mutual satisfaction. If the parties fail to resolve the dispute prior to the expiration of the fifteen (15)-day period, then upon the written request of the Aggrieved Party to the other party (the "**Alternative Dispute Notice**"), the following provisions with respect to non-binding, alternative resolution of the dispute shall govern:

21.1.1 If the Dispute Notice specifies a monetary amount less than $500,000, then (a) within three (3) Days after receipt of the Alternative Dispute Notice, each party shall appoint a representative (meeting the qualifications of Section 21.1.3); provided that, if a party shall fail to timely appoint its representative, the other party may appoint such representative; (b) within three (3) Days after their collective selection, the two (2) representatives selected shall select a third (3rd) representative (meeting such standards); and, (c) the three representatives (the "Dispute Review Panel") shall meet 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, 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"). 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

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expenses incurred by, the arbitrators in connection with the dispute resolution shall be borne equally by both parties.

21.1.3 The representatives or arbitrators selected in accordance with this Section shall not be related by blood, marriage or professional affiliation to the parties or the principals of the parties, and must be professionals or persons with at least ten (10) years' experience in the substantive area in which the dispute has arisen.

21.2 **Discovery**. Notwithstanding any provision in the AAA Rules to the contrary, in any arbitration proceeding, the parties each, prior to the arbitration hearing, shall be entitled to take limited discovery in the form of the right to request documents, the right to serve not more than thirty (30) interrogatories and the right to take not more than four (4) depositions, with respect to each other party and may, in addition, for good cause shown, be permitted additional discovery in the discretion of the arbitrators; and (c) at the arbitration hearing, shall be entitled to present evidence and to cross-examine witnesses.

21.3 **Binding Effect.** The decision and award of the Dispute Review Panel or the arbitration panel, as the case may be, shall be non-binding and shall only be enforceable against either party in any court of competent jurisdiction pursuant to a separate agreement to make such decision binding, which agreement shall be in each party's sole and absolute discretion.

ARTICLE 22
MISCELLANEOUS

22.1 Recitals, Exhibits and Schedules. All Recitals, Exhibits and Schedules annexed hereto are incorporated herein and made a part of this Agreement for all purposes.

22.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of WMATA and Developer, and their respective successors, heirs and permitted assigns.

22.3 Captions. The captions, headings and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

22.4 Number And Gender Of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

22.5 **Notices**

22.5.1 All notices, demands, requests and other communications required pursuant to or in connection with the provisions of this Agreement ("Notice") shall be in writing and shall be deemed to have been properly given or served for all purposes (i) if sent by Federal Express or other nationally recognized

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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
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:_____

22.5.2 Any of the parties may designate a change of address by Notice in writing to the other parties in conformity with this Section. Whenever in this Agreement the giving of Notice by mail or otherwise is required, the giving of such Notice may be waived in writing by the person or persons entitled to receive such Notice.

22.6 **Governing Law and Venue.** The laws of the District of Columbia shall exclusively govern the validity, construction, enforcement and interpretation of this Agreement,

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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.

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**. 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 **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

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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 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.

22.15 **Time Of The Essence.** The parties agree that time is of the essence under this Agreement.

22.16 **Cumulative Remedies and Waiver.** Except as otherwise provided in this Agreement, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any right or power or be construed as a waiver thereof, but any such right and power may be exercised from time to time and as often as deemed expedient. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

22.17 **Litigation Expenses.** In the event either party hereto commences litigation against the other to enforce its rights hereunder, the prevailing party in such litigation shall be entitled to recover from the other party its reasonable attorneys' fees and expenses incidental to such litigation.

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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.

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: _____

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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

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GROUND LEASE AGREEMENT

BETWEEN

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WMATA

AND

THE JAZZ @ FLORIDA AVENUE, LLC

Developer

FOIA CONFIDENTIAL TREATMENT REQUESTED

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014824

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

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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

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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 _____. 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

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 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 Injury and Property Damage Liability: $5,000,000 Combined Single Limit Each Occurrence.

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

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 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.

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.

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 than $5,000,000 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.

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 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.

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 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.

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 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; 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.

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, 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 "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 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.**

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 **Change of Control.** There shall be no Change of Control in either the Developer or the Guarantor prior to the Final Completion of the Project. 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 this Lease Agreement.

17.3 **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.

17.4 **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.

17.5 **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.

17.6 **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.

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ARTICLE 18
LEASEHOLD MORTGAGES

18.1 **Leasehold Mortgage.** Provided that there shall not exist any Default under this Lease by Developer (or circumstances, which with notice or the lapse of time could constitute a Default by Developer), Developer shall have the right, without WMATA's prior consent, to mortgage its interest in this Lease and any Sublease(s) pursuant to one or more Leasehold Mortgage(s) at any given time, and to assign this Lease and any sublease(s) as collateral security for such Leasehold Mortgage(s). No Leasehold Mortgage shall extend to or affect the 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

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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 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

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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.

18.4 **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;

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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 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

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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 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;

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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;

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

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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 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.

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19.2.5 WMATA may re-enter the Lease Premises and relet the Lease Premises and Developer Improvements, or any part thereof, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) for such rent, on such conditions (which may include concessions or free rent) and for such uses as WMATA, in its reasonable business judgment, may determine; and WMATA shall collect and receive any rents payable by reason of such reletting. The rents received on such reletting shall be applied (A) first to the expenses of such reletting and collection, including necessary renovation and alterations of the Lease Premises, reasonable and actual attorneys' fees and any reasonable and actual real estate commissions paid, and (B) thereafter toward payment of all sums due or to become due WMATA hereunder. If a sufficient amount to pay such expenses and sums shall not be realized or secured, then Developer shall pay WMATA any such deficiency monthly, and WMATA may, but shall not be required to, bring an action therefor as such monthly deficiency shall arise. WMATA shall not, in any event, be required to pay Developer any sums received by WMATA on a reletting of the Lease Premises in excess of the Rent provided in this Lease, but such excess shall reduce any accrued present or future obligations of Developer hereunder. WMATA's re-entry and reletting of the Lease Premises without termination of this Lease shall not preclude WMATA from subsequently terminating this Lease as set forth in Section 19.2.4. Developer agrees to pay WMATA, as Additional Rent, immediately upon demand, all reasonable expenses incurred by WMATA in obtaining possession and in reletting any of the Lease Premises, including, without limitation, fees and commissions of attorneys, architects, agents and brokers. WMATA shall in no way be responsible or liable for any failure to relet the Lease Premises and Developer Improvements, or any part thereof, or for any failure to collect any rent due for any such reletting.

19.3 **No Developer Redemption Rights.** Developer hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds (except as to creditors and Subtenants to the extent expressly provided in this Lease), any right and privilege which it or any of them may have under any present or future Law to redeem any of the Leased Premises or to have a continuance of this Lease after termination of this Lease or of Developer's right of occupancy or possession pursuant to any court order or any provision hereof. The provisions of this Section are not intended in any way to diminish the rights of any Leasehold Mortgagee, Subleasehold Mortgagee or Subtenant to the extent expressly set forth under Article 18.

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.

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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 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.

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20.3 **Surrender of Lease.** Except as herein provided, no destruction or damage to the Lease Premises and/or Developer Improvements, or any part thereof, by fire or any other casualty, shall permit Developer to surrender this Lease or shall relieve Developer from its obligations under this Lease.

20.4 **Interference with Metro Facilities.** Developer shall not allow the Lease Premises and/or Developer Improvements, or any part thereof, to remain damaged so as to interfere with the safe use of Metro Facilities and/or access thereto. Should such damaged Lease Premises and/or Developer Improvements, or part thereof, adversely impact on Metro Facilities and/or access thereto, such damage shall be repaired to the extent necessary to alleviate such adverse impact within a reasonable time, considering the circumstances, after the occurrence of the damage.

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 21.3, 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 **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, it shall notify WMATA of its intention within thirty (30) days after Developer receives notice of the filing of such lien. In such case, Developer shall protect WMATA by posting a good and sufficient surety bond, or providing other reasonably satisfactory security, against such lien and any cost, liability, or damage arising out of such contest. WMATA shall not be required to make demand for such bond or security. Upon the final determination of the validity of the lien by a court of competent jurisdiction, Developer shall satisfy and discharge such lien to the extent held valid within sixty (60) days of said determination. In the event of any contest, Developer shall

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protect and indemnify WMATA against all loss, reasonable expenses and attorney's fees, and damage resulting therefrom.

21.4 **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 _____.

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 _____ _____, 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 014883

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014884

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014885

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.

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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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014887

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

Omar Karim

From: Joshua W. Montague <jwmontague@wmata.com>
Sent: Tuesday, December 02, 2008 6:23 PM
To: Omar A. Karim; Rosalyn Doggett
Cc: 'Devorah' 'Lewin'; 'Guy' 'Flynn'; 'Seth' 'Bryant'
Subject: RE: Howard/Shaw-Florida Avenue Project - JDA/Lease Comments
Attachments: Shaw-Howard Lease - Draft 120108.DOC; Shaw-Howard Joint Development Agreement - Draft 120108.doc

Here are the latest drafts of the JDA and Lease agreements. Please feel free to call/email me any questions.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
)0 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message.

>>> "Omar A. Karim" <okarim@bannekerventures.com> 12/1/2008 3:51 PM >>>
Ms. Doggett,

Any word on comments to the JDA/Lease?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
'202) 667-4110 office
,01) 523-1810 cell
okarim@bannekerventures.com

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-Original Message-----
From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Friday, November 21, 2008 4:22 PM
To: Omar A. Karim
Cc: thicks@bannekerventures.com; Devorah' 'Lewin; Guy' 'Flynn; Seth'
'Bryant; Joel R. Washington; Joshua W. Montague
Subject: Re: Howard/Shaw-Florida Avenue Project - JDA/Lease Comments

We'll do what you suggest in your last sentence. I would hope that we can get you our comments later next week and meet the following week. We will aim for that.

>>> "Omar A. Karim" <okarim@bannekerventures.com> 11/21/2008 9:35 AM >>>
Ms. Doggett,

Our counsel believes it would be best to meet after we have received the redlined version of your comments. As such, if you are able to provide them by today or early Monday, we could meet Tuesday morning. Otherwise, lets meet after Josh has received and incorporated all your comments.

Thanks.

Omar

.mar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

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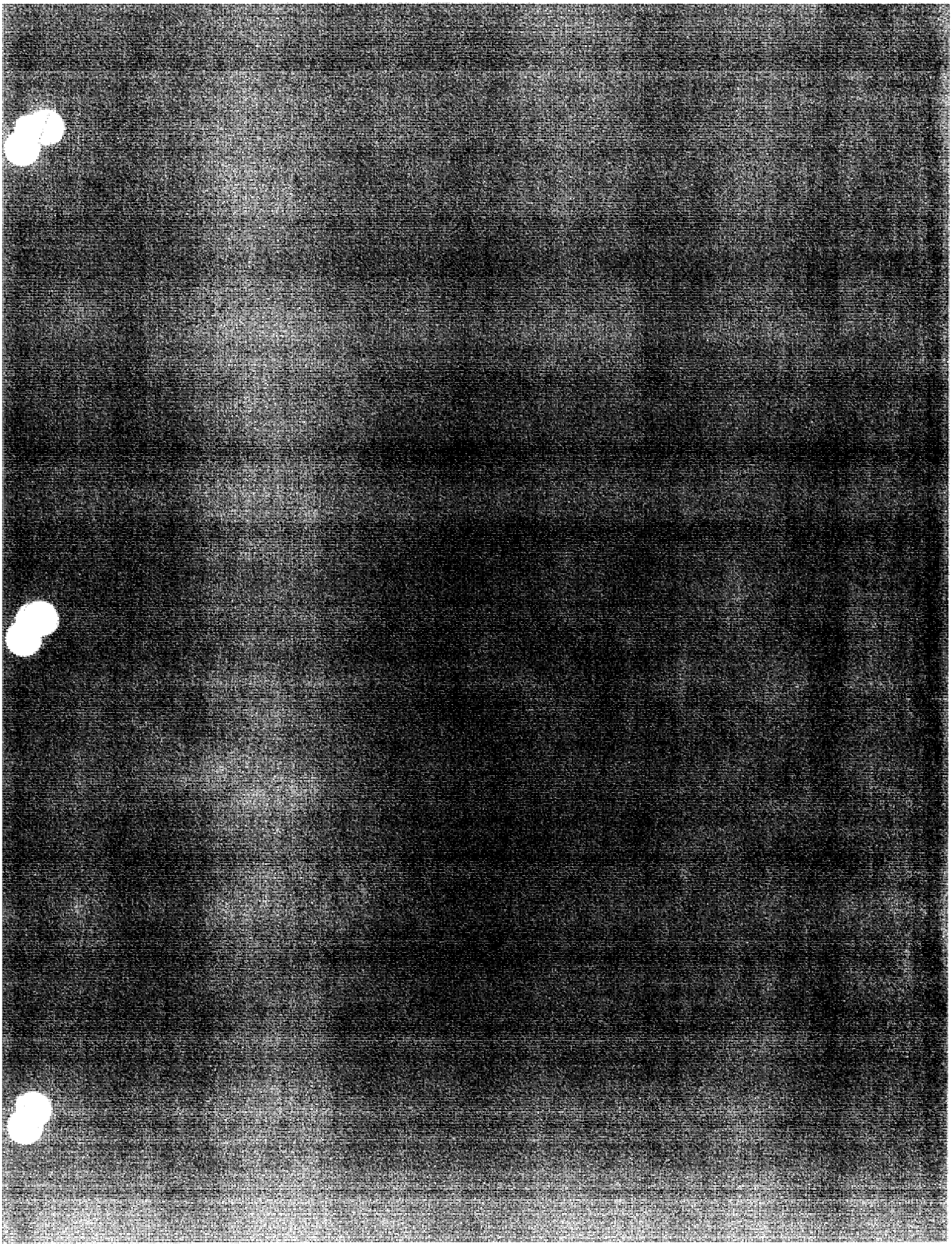

Omar Karim

n: Omar A. Karim <okarim@bannekerventures.com>
ent: Thursday, December 04, 2008 7:55 AM
To: neilalbert@yahoo.com
Subject: Talking points for mtg with WMATA

Importance: High

Neil,

Below are the talking points:

1. District wants at least 20% real affordable housing in project (this could allow us to seek HFA bond financing);
2. DUKE Plan, which governs plans for the site, calls for 20-30% affordable housing at this site; WMATA staff should have recognized this;
3. Annual lease payments to WMATA must reflect inclusion of affordable units;
4. When we were selected, WMATA told us not to assume affordable housing in project and therefore we agreed to $597,000 in annual lease payments (they assumed $3 SF rents for all units);
5. With the inclusion of affordable units at $1.10 SF in rents (at 50% of AMI), a significant gap is created if we have to pay $597k to WMATA;
6. When inclusion of affordable units in project, we have to reduce market rate rents by 15-20% (we have study done for NW1 that verifies this); thus, if the market rents are normally $2.50 SF for this site, we could probably only get $2 SF rents;
7. In order to keep the same returns to our investors (15-17%), annual lease payment must be reduced from $597,000 to **$150,000**;
8. District does not have any subsidies to provide; if it did provide subsidies, it would require at least 35% affordable housing and the subsidies wouldn't make up for the gap that would be created through the increasing of the afford units from 20% to 35%;
9. B/c economy is making it impossible to do any deals at this time, and the District wants this project to move forward, WMATA should also reduce the Security Deposit that it wants at execution of Joint Development Agreement from $250,000 to $100,000 (especially b/c of inclusion of affordable units);
10. WMATA should reduce pre-stabilization rent to reflect inclusion of affordable units; we were going to pay about $100k per year; budget only allows $50k per year;
11. WMATA should allow extension of 60 year lease (which they want us to do) to 99 years in order to get financing, especially in this tough lending environment;
12. Value of the property has probably decreased 50% in past 18 months since WMATA issued solicitation, and therefore U.S. FTA should not problem with WMATA reducing lease payments;
13. Since the selected developer (Banneker) is still prepared to move forward in light of the economy, WMATA should be as flexible as possible in getting deal done; District does not want to put site back out for another RFP

Thank you for your continued assistance!

Omar

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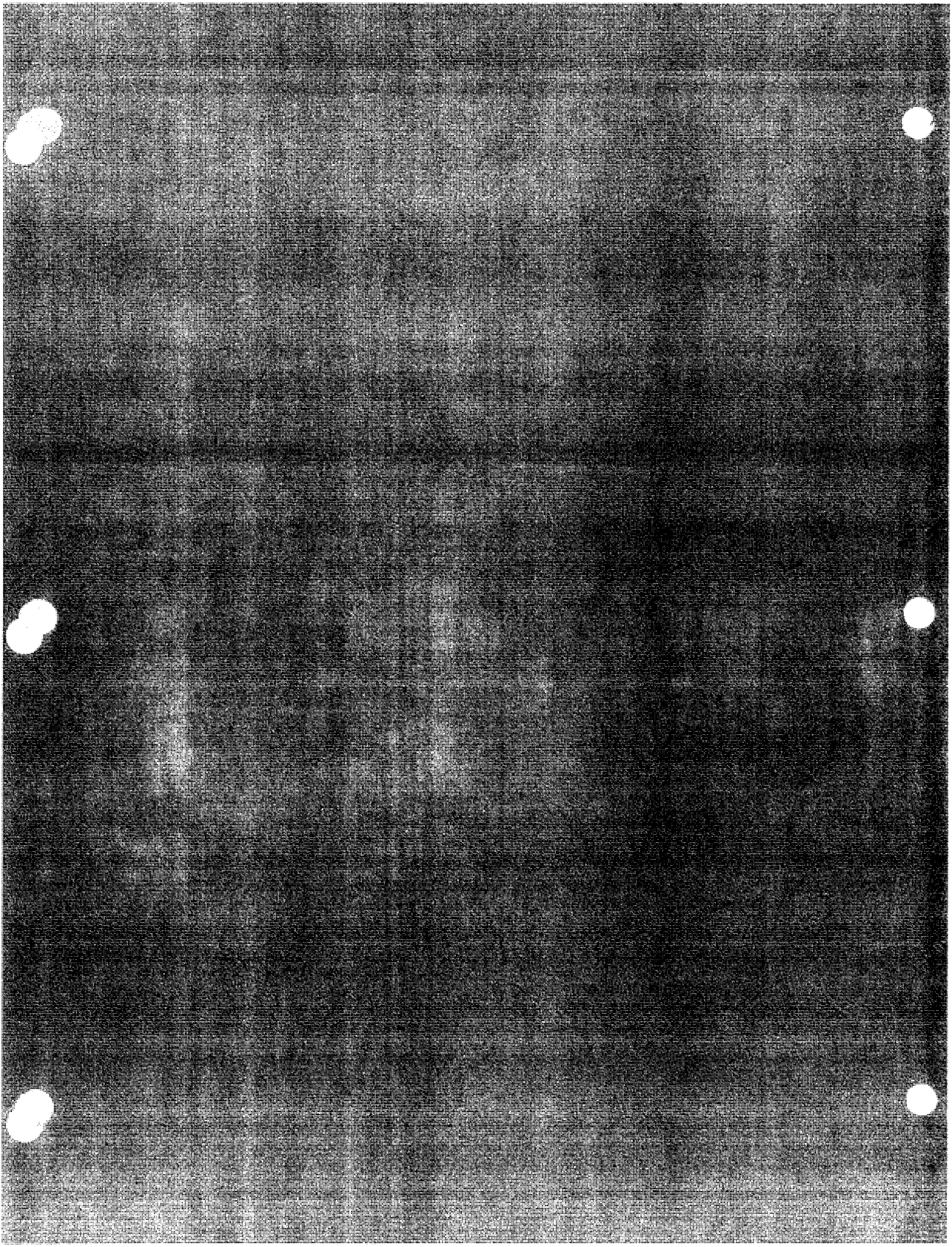

Omar Karim

m:	Omar A. Karim <okarim@bannekerventures.com>
nt:	Thursday, December 11, 2008 3:55 PM
To:	'Rosalyn Doggett'
Cc:	'Joel R. Washington'; eric.smart@bolansmart.com; thicks@bannekerventures.com; eric.smart@bolansmart.com
Subject:	Jazz @ Florida Avenue - Updated Proforma
Attachments:	Jazz - Afford Analysis (as of 12-11-08).xls

Ms. Doggett,

Based on our conversation last week and in preparation of tomorrow's 3pm meeting, we attach for your review the latest pro forma for the Jazz @ Florida Avenue project. The pro forma reflects the following:

- 20% affordable units
- 4.5 FAR
- 94% efficiency in the retail space
- $150,000 annual lease payment
- $100,000 security deposit
- $100,000 pre-lease payments

Based on the above, the actual yield for the project yield is 8.94% although the target yield is a minimum of 17%. The return is also -$11M.

We look forward to discussing with you tomorrow.

My best,

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

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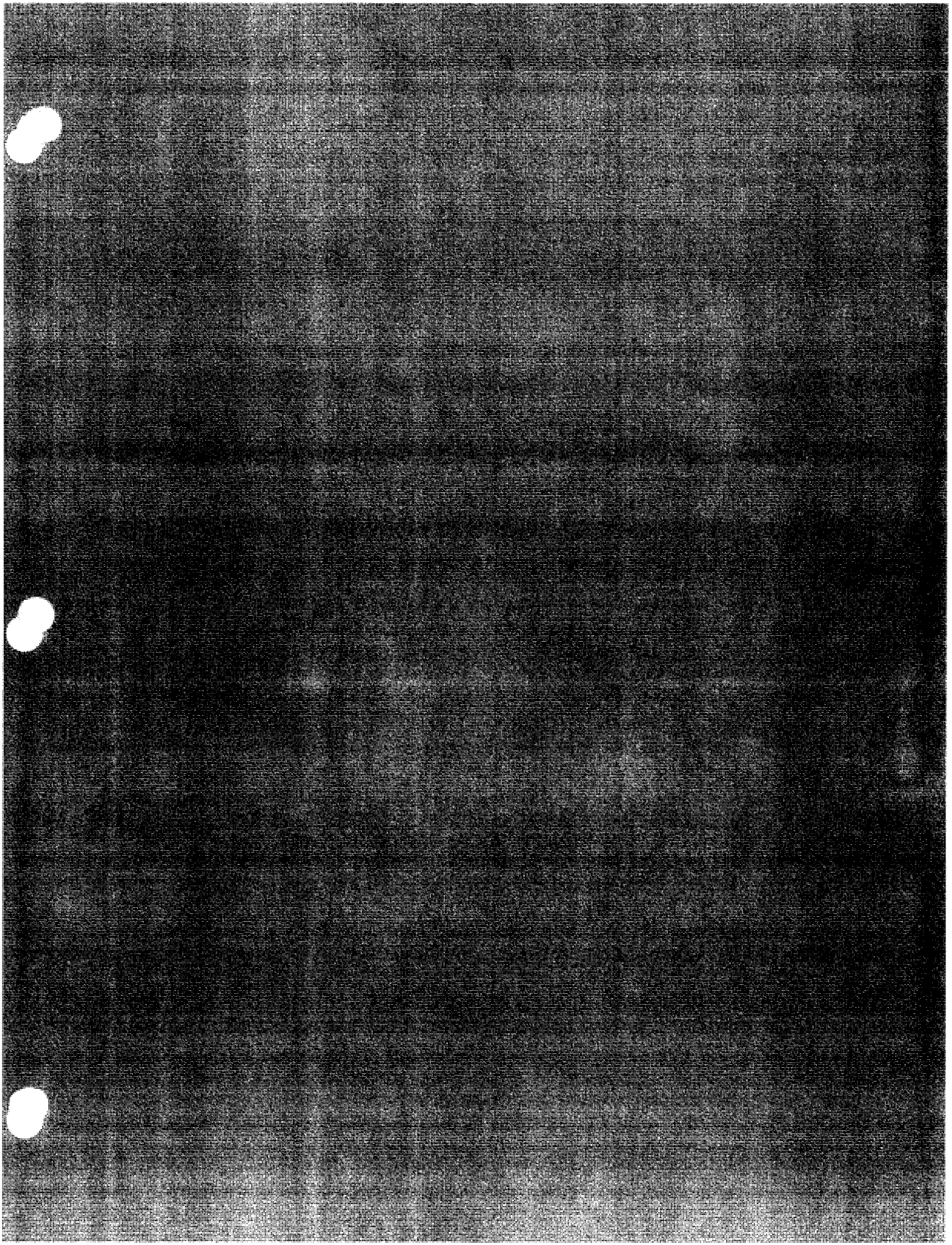

Omar Karim

From: Joel R. Washington <jrwashington@wmata.com>
Sent: Wednesday, December 17, 2008 3:24 PM
To: Omar A. Karim
Subject: Fwd: RE: lunch tomorrow

Omar,

I had lunch with Kevin Anderson from City First Homes today. After leaving the restaurant, it occured to me that City First could be another tool! I suggest you contacting Kevin to see if they could somehow assist you with the affordable housing financing issue. I could introduce you if you do not know Kevin.

Joel

>>> "Kevin Anderson" <Kevin@cfhomes.org> 12/16/2008 12:36:44 PM >>>

Noon is great. I just sent an appt. for Noon. Thx, Kevin

Kevin Anderson
Chief Executive Officer
City First Homes, Inc.
e M.A. Winter Bldg.
436 U Street, N.W., Ste. 404
Washington, D.C. 20009-3916
202-745-4480 office
202-207-7507 mobile
Kevin@CFHomes.org

From: Joel R. Washington [mailto:jrwashington@wmata.com]
Sent: Tuesday, December 16, 2008 12:34 PM
To: Kevin Anderson
Subject: Re: lunch tomorrow

Kevin,

Could we meet at 12 noon or 12:15 pm? I have a 1:30 pm meeting.

Joel

>>> "Kevin Anderson" <kevin@cfhomes.org> 12/15/2008 9:49 PM >>>
Great. Thanks Joel. Sorry for the inconvenience.

Kevin
------Original Message------
From: Washington, Joel R.

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Sender:
To: Anderson -, Kevin A.
Cc: Shariyka Johnson
Sent: Dec 15, 2008 9:17 PM
bject: Re: lunch tomorrow

That's okay with Wednesday.

Joel
-----Original Message-----
From: "Kevin Anderson" <Kevin@cfhomes.org>
To: Washington, Joel R. <jrwashington@wmata.com>

Sent: 12/15/2008 6:53:54 PM
Subject: lunch tomorrow

Joel,

I just had a last minute conference call scheduled for 1pm tomorrow afternoon. It's with our underwriters and with about 8 folks. Can you do Noon or 12:30 on Wednesday? You mentioned that you might be open all week. Let me know if/when you can.

Thanks,

Kevin

Kevin Anderson

Chief Executive Officer

City First Homes, Inc.

The M.A. Winter Bldg.

1436 U Street, N.W., Ste. 404

Washington, D.C. 20009-3916

202-745-4480 office

202-207-7507 mobile

Kevin@CFHomes.org

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Sent from my Verizon Wireless BlackBerry

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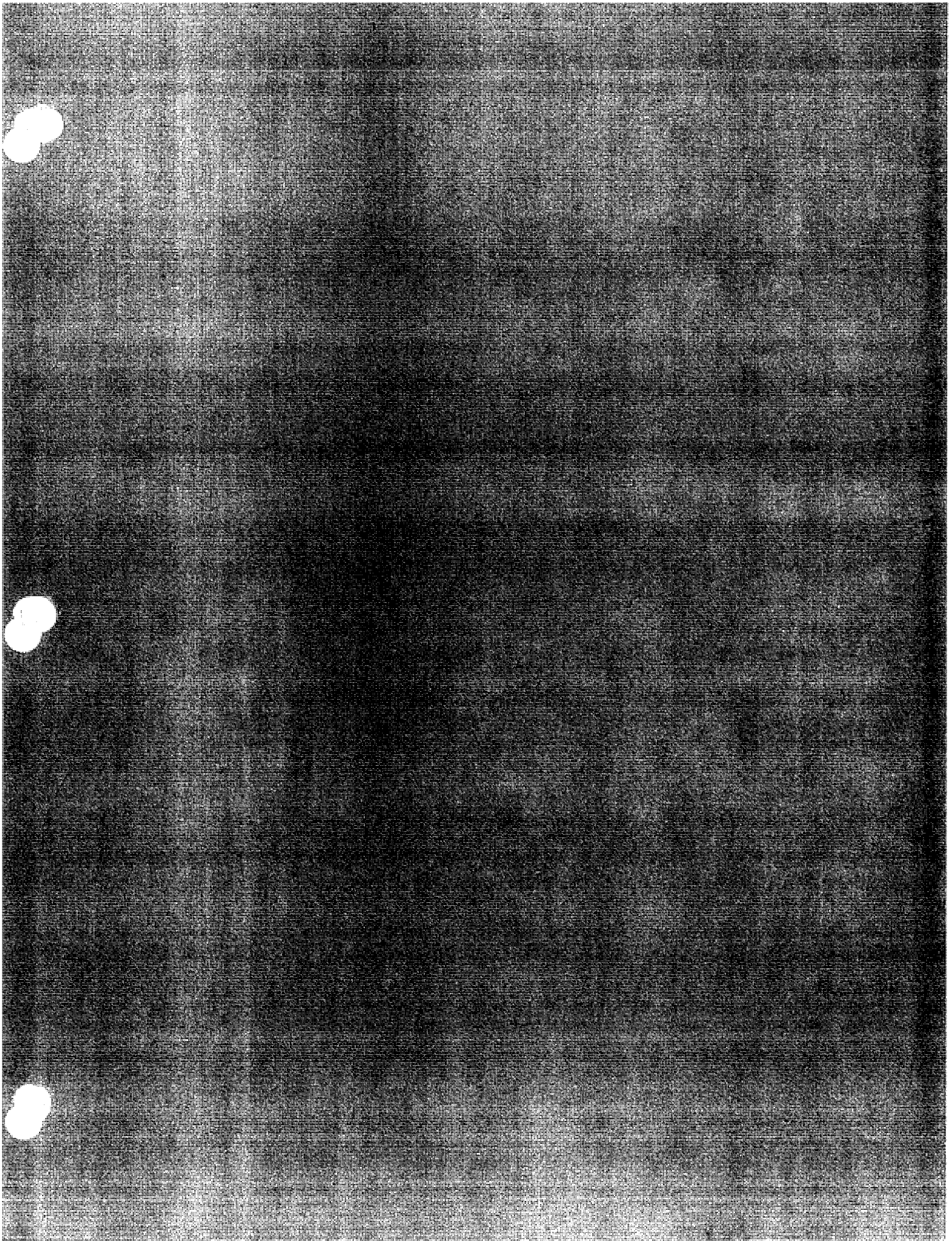


Omar Karim

›m: neilalbert@yahoo.com
›ent: Monday, December 22, 2008 8:17 AM
To: Omar Karim; Omar Karim
Subject: Fw: View 14 TIIF Application

You should explore similar support for the Jazz.
------Original Message------
From: Nat Bottigheimer
To: jim@grahamwone.com
Cc: Neil Albert
Cc: Kass, Jonathon (COUNCIL)
Cc: Marion Barry
Cc: agiancol@naco.org
Cc: Arthuro V. Lawson
Cc: Emeka Moneme
Cc: Loyda Sequeira-Castillo
Subject: View 14 TIIF Application
Sent: Dec 19, 2008 1:58 PM

Councilman Graham--

I'm writing in follow-up to your recent conversations with General Manager Catoe regarding the View 14 application for IF funds. As you have requested, we will proceed immediately to prepare materials seeking Board authorization for 500,000 in TIIF funds for transportation improvements related to the View 14 project. We will present these materials for action at the February PDRE committee.

To confirm the overall process: subsequent to Board action in February, and assuming approval, we would send the Board-approved package to the Federal Transit Administration for review and approval. Assuming approval by the FTA, we would subsequently draft an MOU between ourselves and the developers of the View 14 project governing the reimbursement by WMATA of eligible developer expenditures. This is the process we have followed in the past on similar projects, and so there are established document formats that we can follow.

If you have any questions about the process laid out in this email, please do not hesitate to ask.

Best wishes,

Nat Bottigheimer

Nat Bottigheimer
AGM, Planning and Joint Development
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001
202) 962-2730

[redacted]

FOIA CONFIDENTIAL TREATMENT REQUESTED

Sent via BlackBerry by AT&T

FOIA CONFIDENTIAL TREATMENT REQUESTED

Contributor Report

Total Records: 23

Recipient	Contributor/Contributor Type	Address	Amount	Date
Michael Brown 2012	Franco, Angela / Individual	212 New Mark Explanade Rockville MD 20850	$150.00	4/23/2012
Re-Elect Jim Graham	Franco, David / Individual	1612 U Street, NW, Suite 404 Washington DC 20009	$50.00	6/20/2002
Re-Elect Jim Graham (2006)	Franco, David / Individual	2307 15th Street, NW, PH 4 Washington DC 20009	$500.00	5/23/2006
Reelect Jim Graham 2010	Francone, Sonia / Individual	9404 Forest Haven Dr. Alexandria VA 22309	$500.00	1/27/2010
Reelect Jim Graham 2010	Franco, Steven / Individual	5944 Martin Luther King Jr. Hwy. Capitol Heights DC 20743	$500.00	7/26/2010
Reelect Jim Graham 2010	Franco, David / Individual	2303 14th St., NW. #825 Washington DC 20009	$500.00	7/26/2010
Re-Elect Kwame R. Brown	Francois, Massy / Individual	1629 K Street, NW, Ste. 300 Washington DC 20006	$25.00	10/17/2008
Ward 7 Neighbors for Mesidor	Francois, Paulette / Individual	18918 Montgomery Village Ave Montgomery Village MD 20886	$50.00	3/31/2007

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014904

Contributor Report

Total Records: 4

Recipient	Contributor/Contributor Type	Address	Amount	Date
Evans 2012	Level 2 Development / Business	2303 14th Street, NW - Suite 308 Washington DC 20009	$500.00	11/7/2011
Fenty 2006	Level 2 Development / Business	1612 U Street NW Washington DC 20009	$1,000.00	5/11/2006
Gray for Mayor	LEVEL 2 DEVELOPMENT, LLC / Business	1612 U ST. NW Washington DC 20009	$1,000.00	10/30/2010
Reelect Jim Graham 2010	Level 2 Development, LLC / Corporation	1612 U St., NW. Ste.401 Washington DC 20009	$500.00	1/20/2010

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014905

Contributor Report

Total Records: 64

Recipient	Contributor/Contributor Type	Address	Amount	Date
Mendelson For Council 2002	Rothblum, Richard / Individual	3810 Macomb Street, NW Washington DC 20016	$100.00	4/25/2002
Mendelson for Council 2006	Rothblum, Richard / Individual	3810 Macomb St. NW Washington DC 20016	$50.00	7/18/2006
Mendelson for Council 2006	Rothblum, Richard / Individual	3810 Macomb St. NW Washington DC 20016	$100.00	7/23/2006
Mendelson for Council 2006	Rothblum, Richard / Individual	3810 Macomb St. NW Washington DC 20016	$50.00	11/26/2006
Michael Brown 2012	Blum, Melvyn / Individual	6403 Vanderbilt St Houston TX 77005	$500.00	7/12/2011
Milligan for Ward 4 Committee	Blum, Daniel / Individual	807 Quintana Pl NW Washington DC 20011	$15.00	2/19/2007
Patrick Mara for Council	Blum, Maureen / Individual	2939 Van Ness Street NW #221 Washington DC 20008	$100.00	10/16/2008
Peggy Cooper Cafritz for President of Bd of Ed	Rosenblum, Elyse / Individual	3608 Quesada Street NW Washington DC 20015	$200.00	10/13/2000
Re-Elect Jim Graham	Blum, Barbara / Individual	2231 Bancroft Place, NW Washington DC 20008	$25.00	7/24/2002
Re-Elect Jim Graham	Blum, Daniel / Individual	807 Quintana Place, NW Washington DC	$5.00	4/23/2002
Re-Elect Jim Graham	Blum, Daniel / Individual	807 Quintana Place, NW Washington DC	$5.00	4/23/2002
Re-Elect Jim Graham (2006)	Blum, Jeffrey / Individual	1675 35th Street, NE Washington DC 20007	$500.00	5/23/2006
Reelect Jim Graham 2010	Blum, Bernard / Individual	7832 Laurel Leaf Dr. Potomac DC 20854	$500.00	7/26/2010
Reelect Jim Graham 2010	Blum, Carol / Individual	7832 Laurel Leaf Dr. Potomac DC 20854	$500.00	7/26/2010
Reelect Jim Graham 2010	Blum, Jeffrey / Individual	1675 35th St., NW. Washington DC 20007	$500.00	1/20/2010
Running Against Bush DC Slate	Blum, Daniel / Individual	807 Quintana Place NW Washington DC 20011	$0.00	8/27/2004
Running Against Bush DC Slate	Blum, Daniel / Individual	807 Quintana Place NW Washington DC 20011	$50.00	8/27/2004
Shapiro 2012	Rothblum, Corinne / Individual	3041 Sedgwick Street N.W. Apt 504 Washington DC 20008	$100.00	11/30/2011
Wells for Ward 6	Blumenthal, Eileen / Individual	520 Fifth Street SE Washington DC 20003	$75.00	6/9/2006

FOIA CONFIDENTIAL TREATMENT REQUESTED

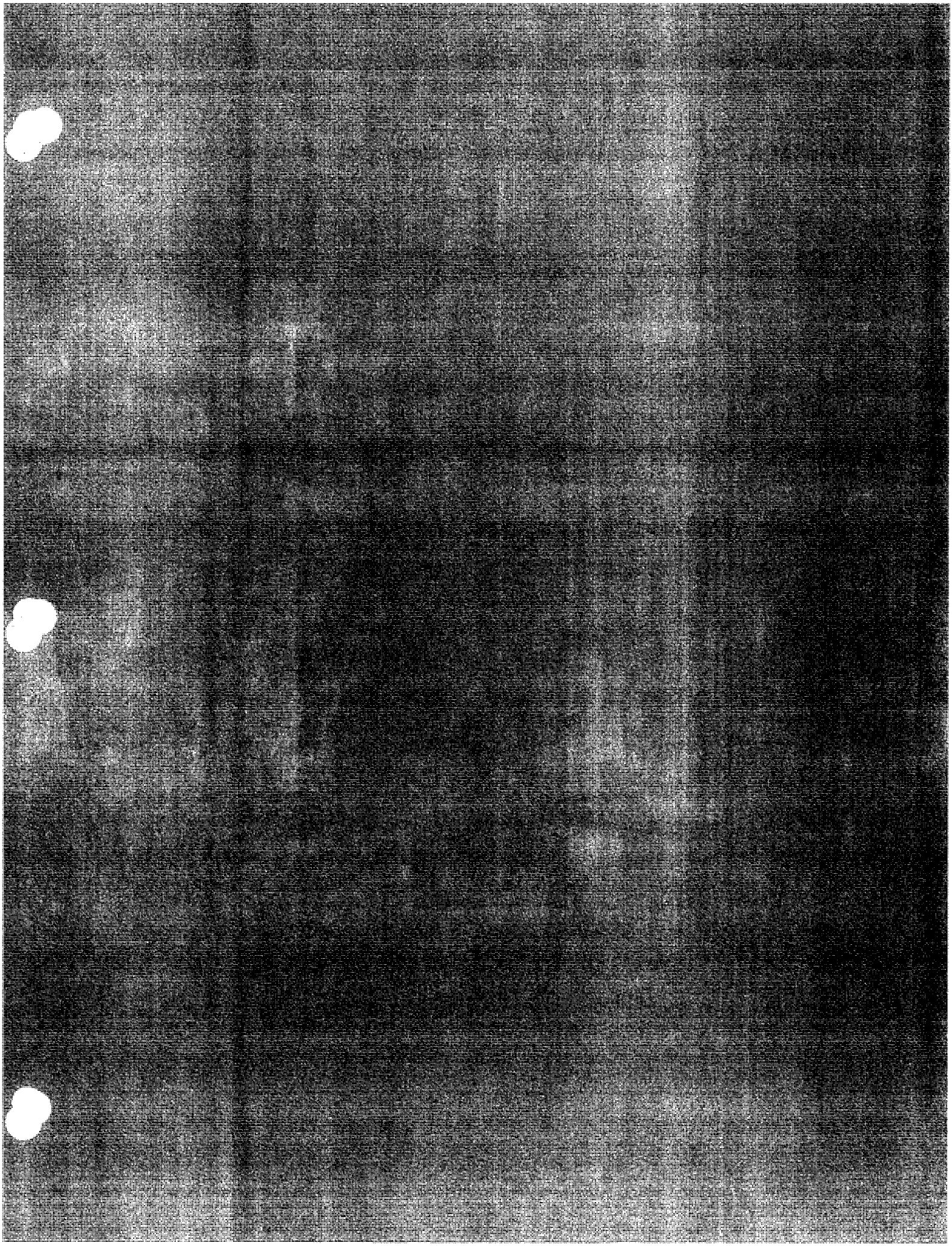
Contributor Report

Total Records: 1

Recipient	Contributor/Contributor Type	Address	Amount Date
Reelect Jim Graham 2010	Kardon, Jonathan / Individual	1390 V St., NW #216 Washington DC 20005	$500.00 7/26/2010

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014907



From the Washington Business Journal
:http://www.bizjournals.com/washington/stories/2009/01/26/daily86.html

Jim Graham elected chairman of Metro board

Washington Business Journal by Jonathan O'Connell, Staff Reporter

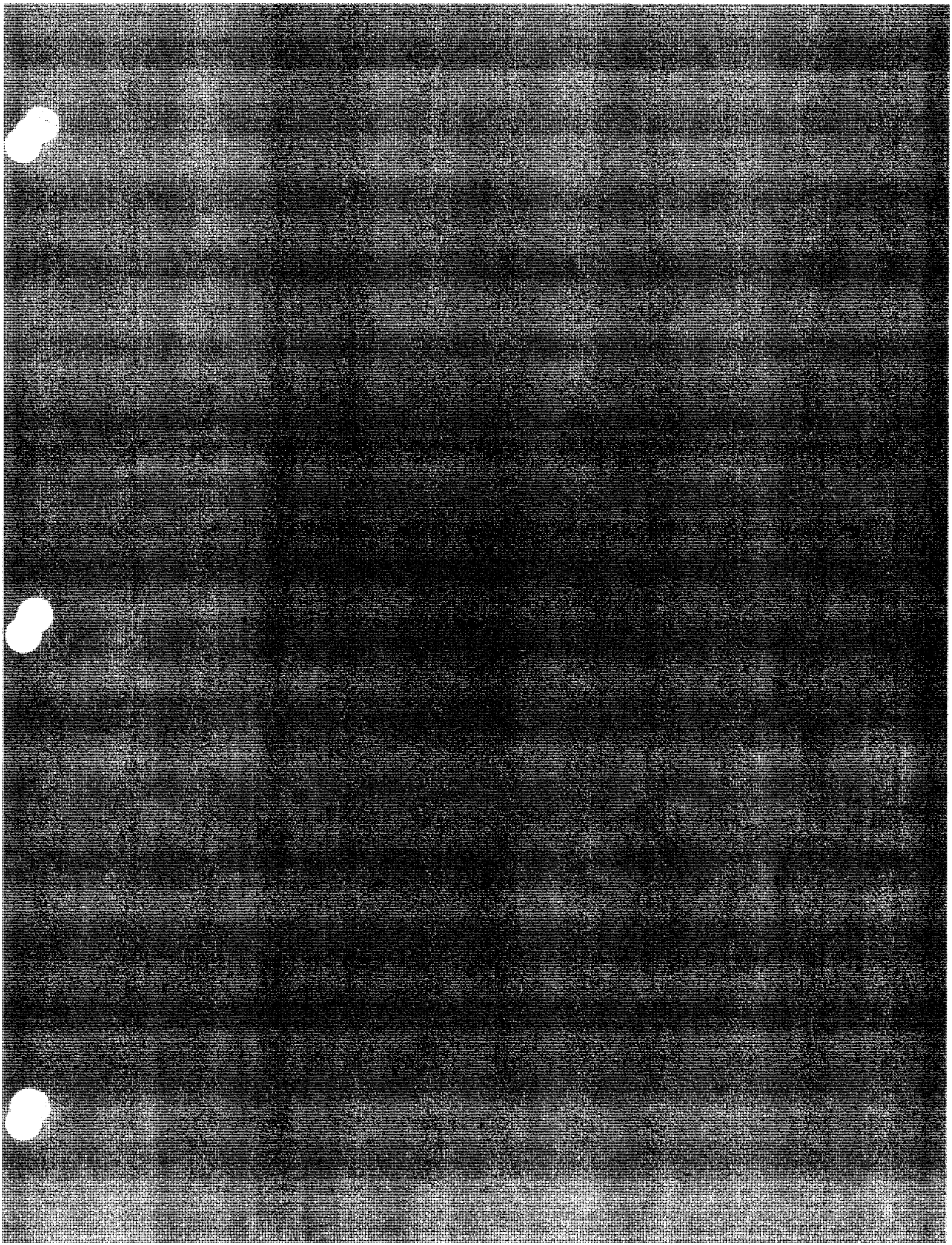
Date: Thursday, January 29, 2009, 2:29pm EST

D.C. Councilmember Jim Graham, D-Ward 1, was elected to chairman of the Metro board of directors Thursday, a position he also held in 2003. Graham has served on the Metro board since 1999 and he replaces Christopher Zimmerman of the Arlington County Board as chairman.

Graham's return to the chairmanship could add muscle to the District's effort to relocate the transportation agency's headquarters from 5th Street NW to the Anacostia Metrorail station, something Mayor Adrian Fenty said is a top priority. Also on the Metro board is Neil Albert, D.C. deputy mayor for planning and economic development.

Metro also added freshman D.C. Council member Michael Brown, I-at large, as an alternate to the board, replacing Councilman Marion Barry, D-Ward 8.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014909



Contributor Report

Total Records: 9

Recipient	Contributor/Contributor Type	Address	Amount	Date
Evans 2008	Lakritz Adler Development / Business	4326 8th St. NW. Washington DC 20011	$500.00	6/20/2008
Fenty 2006	Joshua Adler Construction Account / Business	2151 Florida Avenue NW Washington DC 20008	$1,000.00	6/6/2006
Fenty 2010	Lakritz Adler Development / Business	4326 8th Street NW Washington DC 20011	$2,000.00	1/15/2010
Mary Cheh for DC Council	Lakritz Adler Development LLC / Corporation	4326 8th St NW Washington DC 20008	$500.00	8/11/2006
Michael Brown for Mayor Committee	NADLER, PRITIKIN & MIRANELLI LLC / Business	130E RANDOLPH STE 1200 CHICAGO IL 60601	$250.00	1/27/2006
Muriel Bowser for Ward 4	Lakritz Adler Development LLC / Business	4326 8th Street NW Washington DC 20011	$500.00	2/9/2007
Reelect Jim Graham 2010	Lakritz Adler Construction, LLC. / Business	4326 8th St., NW. Washington DC 20011	$500.00	1/23/2010
Reelect Jim Graham 2010	Lakritz Adler Development, LLC. / Business	4326 8th St., NW. Washington DC 20011	$500.00	1/23/2010
Reelect Jim Graham 2010	Lakritz Adler Investments, LLC. / Business	4326 8th St., NW. Washington DC 20011	$500.00	1/23/2010

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 014911

Contributor Report

Total Records: 35

Recipient	Contributor/Contributor Type	Address	Amount	Date
Muriel Bowser for Ward 4	Sadler, Jackie & Chuck / Individual	7529 Morningside Drive NW Washington DC 20012	$125.00	4/12/2007
Muriel Bowser for Ward 4 2008	Sadler, Charles / Individual	7529 Morningside Dr NW Washington DC 20012	$100.00	4/3/2008
Re-Elect Jim Graham (2006)	Adler, Joshua / Individual	3002 13th Street, NW Washington DC 20009	$500.00	9/6/2006
Reelect Jim Graham 2010	Adler, Joshua / Individual	4326 8th St., NW. Washington DC 20011	$500.00	1/23/2010
Wells for School Board	Adler, Gary / Individual	3047 Cedarwood Lane Falls Church VA 22042	$25.00	10/12/2000

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014912

Contributor Report

Total Records: 4

Recipient	Contributor/Contributor Type	Address	Amount	Date
Citizens to Elect Linda Cropp Mayor	Lakritz, Robb / Individual	4326 - 8th St., NW Washington DC 20011	$2,000.00	6/10/2006
Fenty 2006	Lakritz, Robb / Individual	4326 8th Street NW Washington DC 20011	$776.00	8/9/2006
Re-Elect Jim Graham (2006)	Lakritz, Robb / Individual	4326 8th Street, NW Washington DC 20011	$500.00	9/6/2006
Reelect Jim Graham 2010	Lakritz, Robb / Individual	4326 8th St., NW. Washington DC 20011	$500.00	1/23/2010

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014913

Omar Karim

›m: Warrick, Xzaquoinett (EOM) <Xzaquoinett.Warrick@dc.gov>
›ent: Tuesday, January 13, 2009 7:20 PM
To: okarim@bannekerventures.com
Subject: RE: Thanks and Follow-up from today's mtg

Omar -
Just touching base. I've not forgotten about you. I've reached out to Catoe's scheduler to check his availability. ASA I receive a date, I will be back in touch with you.

Q

Quoinett Warrick
202-727-6851
Quoinett.Warrick@dc.gov

-----Original Message-----
From: okarim@bannekerventures.com [mailto:okarim@bannekerventures.com]
Sent: Wednesday, January 07, 2009 2:50 PM
To: Warrick, Xzaquoinett (EOM)
Subject: Thanks and Follow-up from today's mtg

Quoinett,

,nanks sooooo much for arranging today's mtg--especially @ such short notice. You never cease to amaze me!

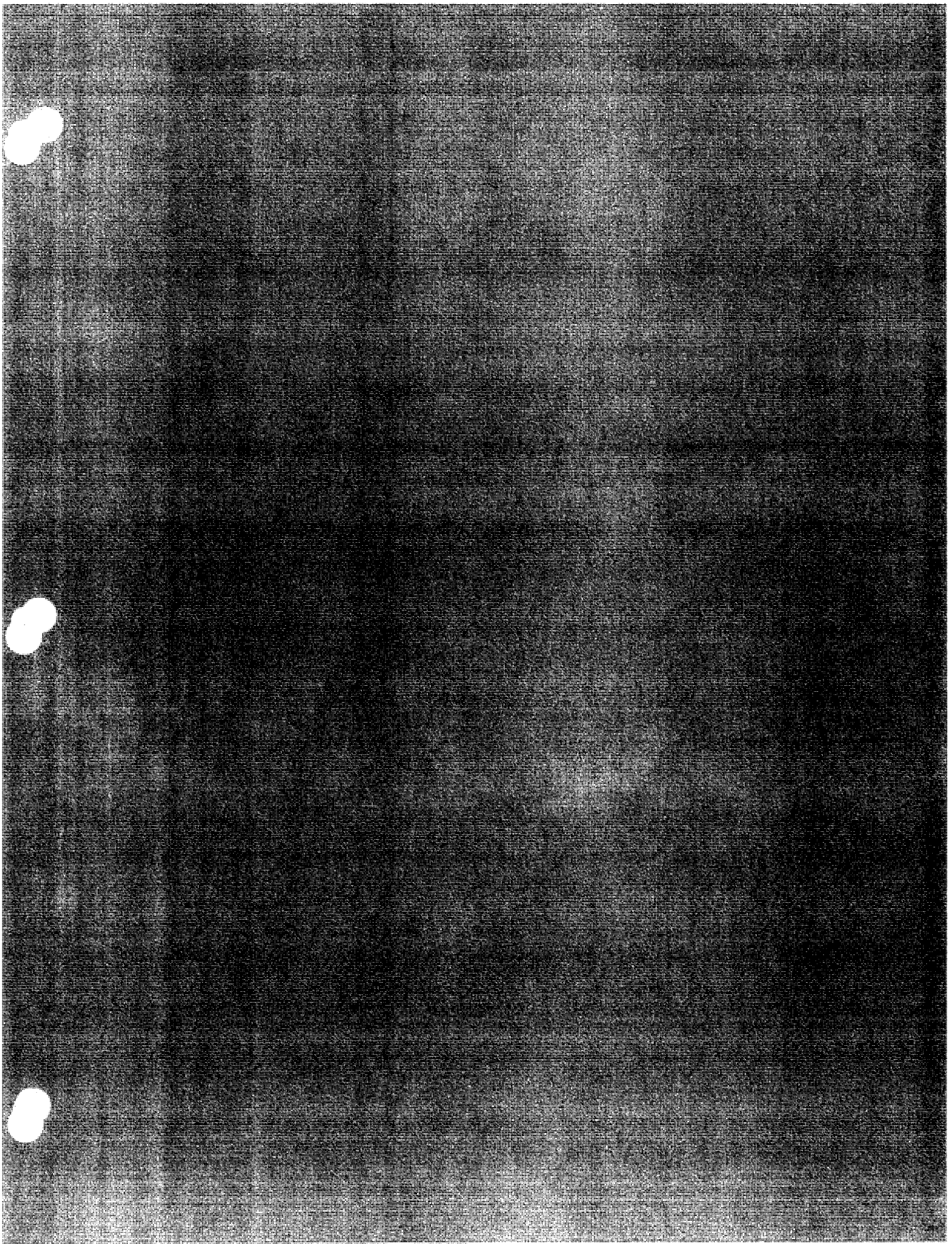
Can you arrange a mtg w WMATA's GM (Catoe), Neil and I to discuss our project w Metro on Florida Ave, NW.

Also, can you email me the contact info for the President of Congressional Bank.

Again, thanks for everything.

Omar
Omar A. Karim
Banneker Ventures, LLC
700 12th Street NW, Suite 700
Washington, DC 2005
(202) 677-4110 office
(202) 558-5157 fax
(301) 523-1810 cell
okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

n: Warrick, Xzaquoinett (EOM) <Xzaquoinett.Warrick@dc.gov>
ent: Tuesday, January 13, 2009 9:45 PM
To: okarim@bannekerventures.com
Subject: RE: Thanks and Follow-up from today's mtg

Omar -
Mr. Catoe is on travel after inauguration. I tentatively have on hold
2/5 @ 1130am-12p for a meeting after his return. I'll let you know when it's confirmed.

Q

Quoinett Warrick
202-727-6851
Quoinett.Warrick@dc.gov

-----Original Message-----
From: okarim@bannekerventures.com [mailto:okarim@bannekerventures.com]
Sent: Wednesday, January 07, 2009 2:50 PM
To: Warrick, Xzaquoinett (EOM)
Subject: Thanks and Follow-up from today's mtg

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Omar A. Karim
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700 12th Street NW, Suite 700
Washington, DC 2005
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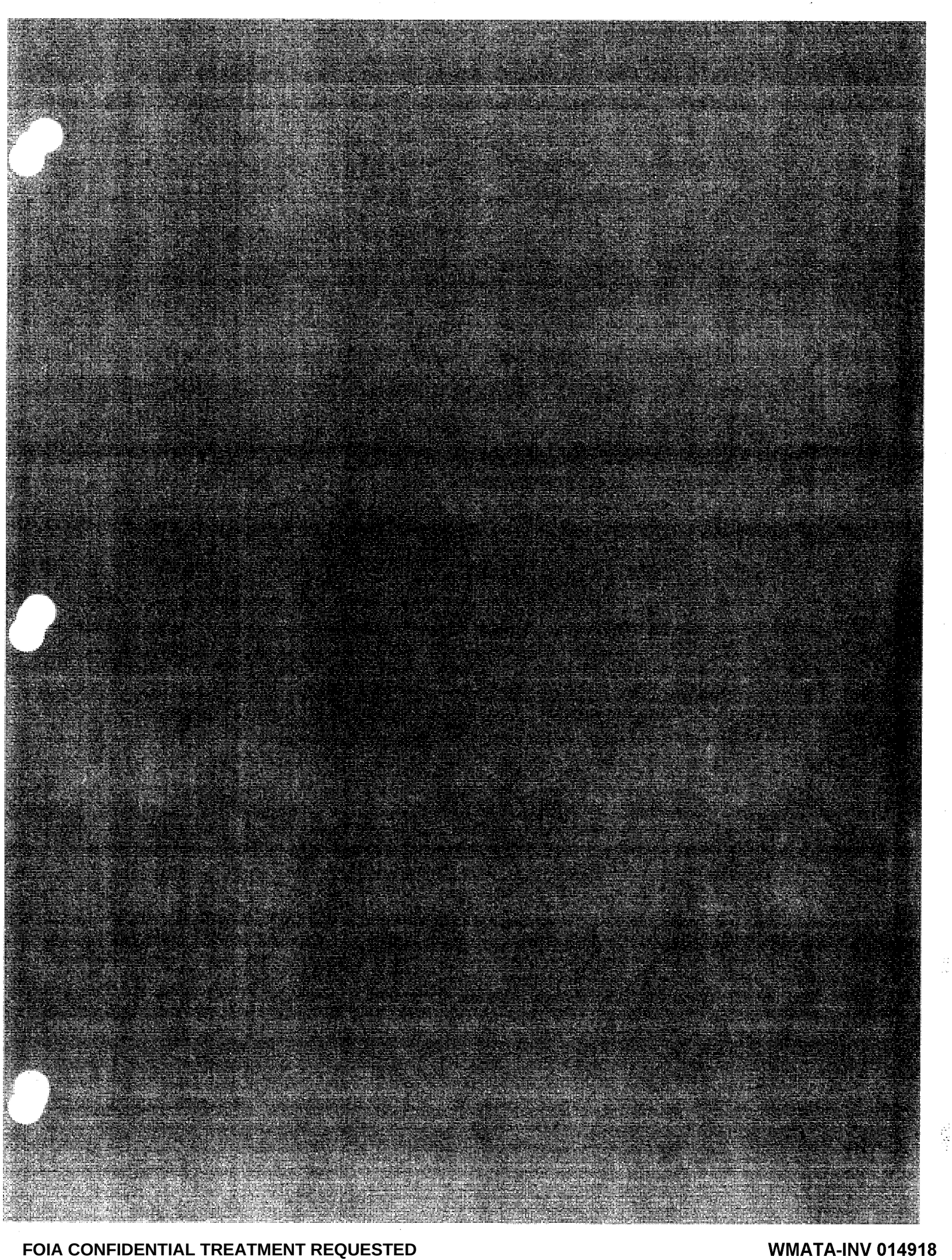
okarim@bannekerventures.com

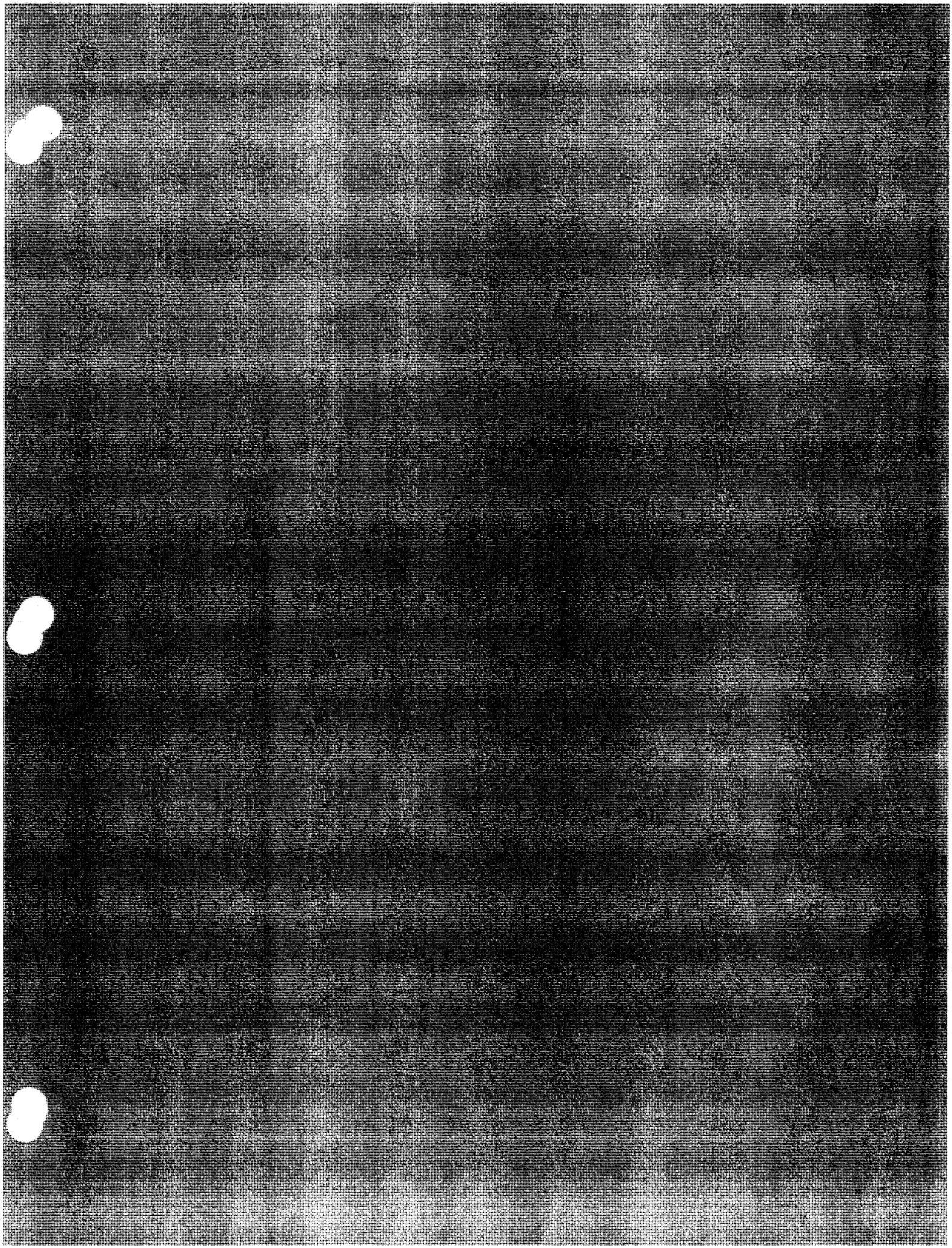
FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

›ject:	CONFIRMED - (VSY/NO JW) Meeting with John Catoe and Omar Karim re: project on metro @ Florida Avenue
Location:	Wilson Building - Suite 317
Start:	Thu 2/5/2009 11:30 AM
End:	Thu 2/5/2009 12:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Albert, Neil (EOM)

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014919



Planning, Development and Real Estate Committee

Board Action Item III-A

February 26, 2009

U Street Metrorail & 14th Street Bus
TIIF Allocation

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

◉ Action ○ Information	MEAD Number: 100258	Resolution: ◉ Yes ○ No

TITLE:

U Street Metrorail & 14th St Bus TIIF Allocation

PURPOSE:

To seek Board approval of (1) the allocation of $500,000 from the District of Columbia's portion of the TIIF to be used for pedestrian walkways, lighting, landscaping, bicycle facilities, car sharing and other infrastructure enhancements to facilitate access to and use of the Metrobus and Metrorail systems; and (2) authority to negotiate and execute a Memorandum of Understanding with the View 14 developer for the dispersal of TIIF monies in accordance with Federal Transit Administration criteria and approval.

DESCRIPTION:

The requested use of funds from the Transit Infrastructure Investment Fund (TIIF) is for transit-oriented infrastructure improvements that will improve access to and increase ridership on the Metrorail and Metrobus systems.

Level 2 Development's View 14 project is one of several new Transit Oriented Development projects proximate to the U Street/African-American Civil War Memorial/Cardozo Metrorail station and the Columbia Heights Metrorail station. It is approximately 1500-1900 feet from the U Street/African-American Civil War Memorial/Cardozo Metrorail station (depending on route) and 3000 feet from the Columbia Heights Metrorail station. Bus stops for routes going North and South are either at the property or within one block. The project is a mix of uses including retail and high-density residential, a combination that has proven to reduce resident auto usage and to increase resident transit and bus ridership when located with walking distance to transit. Its design, variety of uses, location and pedestrian links to operating rail and bus systems are intended to promote use of the nearby transit facilities.

When completed, the development will include:

- 185 apartment units in a nine-story tower fronting on 14th Street NW
- 34,000 square feet of retail space

To maximize the effects of the proposed transit-oriented design, transit use, and other revenue increasing aspects associated with this development, it is critical that the pedestrian pathways from the bus stops and rail station entrances be

well-lit, uninterrupted and attractive. Without these pedestrian infrastructure improvements, potential increased ridership and other economic opportunities for WMATA and the District of Columbia will be diminished.

The $500,000 request for the proposed transit access improvements in the area of the U Street/African-American Civil War Memorial/Cardozo Metrorail station is expected to be recaptured over time in cost savings and increased revenue from ridership associated with the Level 2 development. Additionally, the infrastructure improvements will provide enhanced access for the broader business and resident community in the immediate vicinity of the U Street station. The convenience of the U Street area will be improved, attracting shoppers, investors and new residents to a previously underperforming area of the city.

Providing wide, attractively landscaped, and well-lit sidewalks will enhance pedestrian access to the bus and rail systems and promote increased ridership. Car sharing facilities will encourage those who actively use public transit and either can not afford or choose not to have a car, reducing auto trips and the pollution associated with those trips.

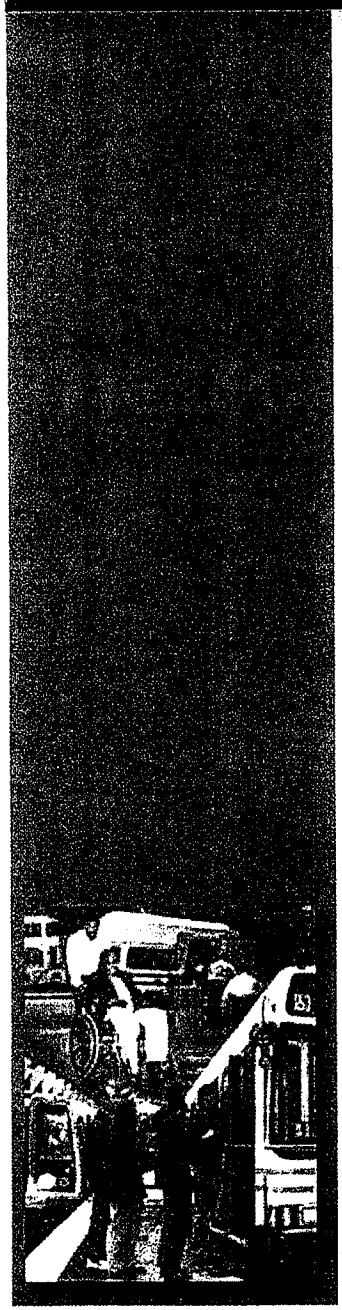
FUNDING IMPACT:

District of Columbia TIIF Balance:	$550,000
This Project:	500,000
Remaining Balance:	$ 50,000
Remarks:	Balance is as of December 2008

RECOMMENDATION:

Approval to: (1) allocate $500,000 from the District of Columbia`s portion of the TIIF to be used for pedestrian walkways, lighting, landscaping, car sharing and other infrastructure enhancements to facilitate access to and use of the Metrobus and Metrorail systems; and (2) negotiate and execute a Memorandum of Understanding with the View 14 developer for the disbursement of TIIF monies in accordance with Federal Transit Administration criteria and approval.

FOIA CONFIDENTIAL TREATMENT REQUESTED



U Street Metrorail & 14th Street Bus TIIF Allocation

Presented to the Board of Directors:

Planning, Development and Real Estate Committee

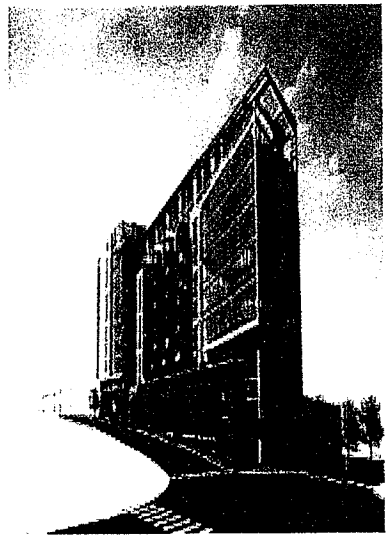
February 26, 2009

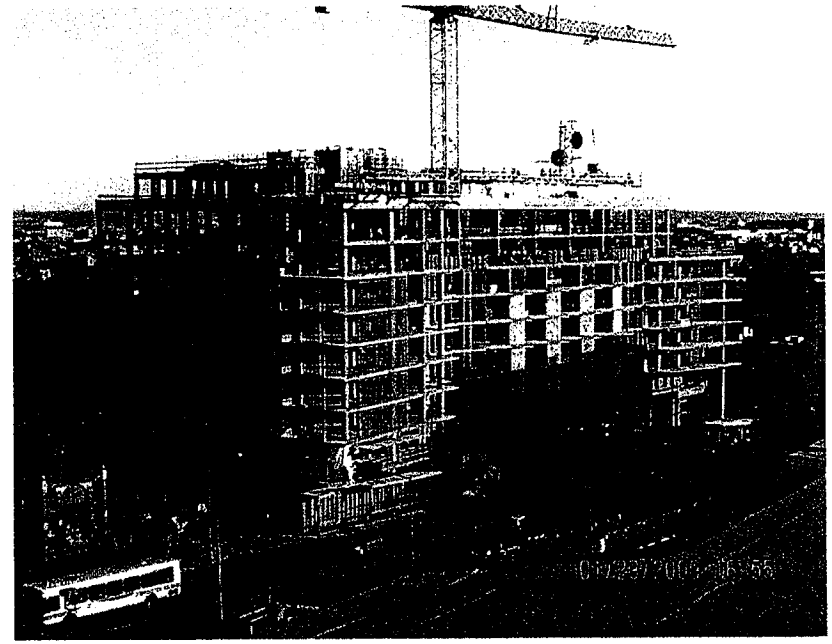
WMATA-INV 014924

FOIA CONFIDENTIAL TREATMENT REQUESTED

Purpose

Approval to allocate $500,000 from the District of Columbia portion of the Transit Infrastructure Investment Fund (TIIF) to be used for walkways, lighting, landscaping, and car sharing at the VIEW 14 project; and authority to negotiate and execute a Memorandum of Understanding (MOU) with the developer for the dispersal of funds.



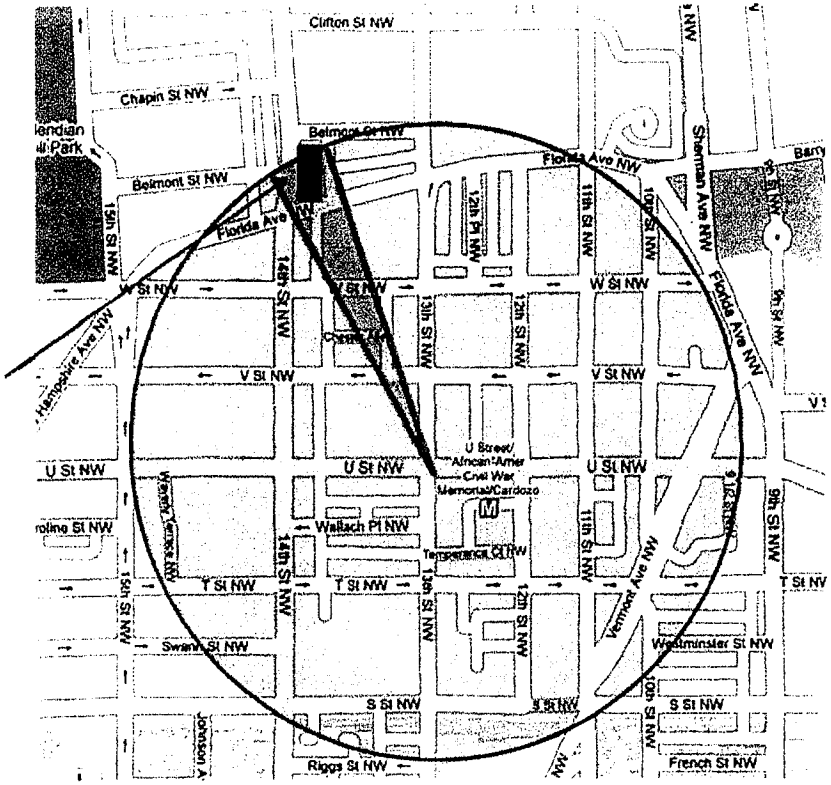


WMATA-INV 014925

FOIA CONFIDENTIAL TREATMENT REQUESTED

Rail Proximity

View 14 lies within a 1,500 ft Radius from U Street Metro Station



The project is approximately 1500-1900 feet from the U Street/African-American Civil War Memorial/ Cardozo Metrorail station, and approximately 3,000 feet from the Columbia Heights Metrorail station.

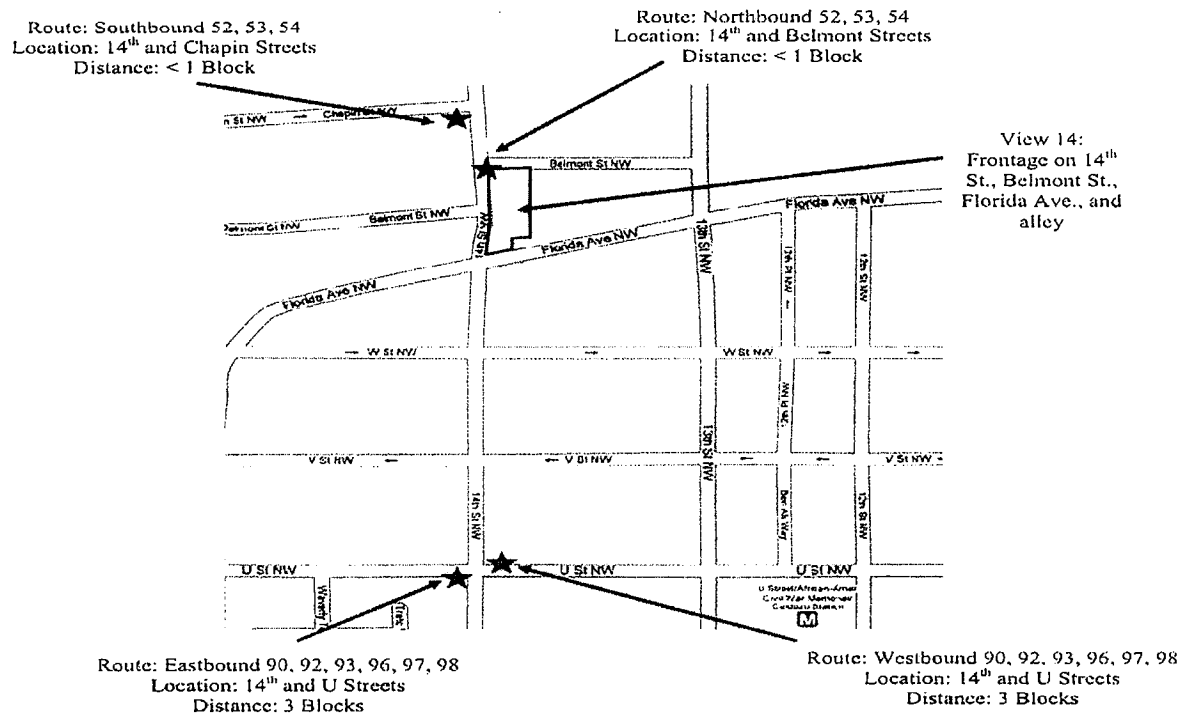
WMATA-INV 014926

FOIA CONFIDENTIAL TREATMENT REQUESTED

Bus Proximity

Bus stops for routes going north and south are either at the property or within one block.

Map of Nearby Metrobus Stops

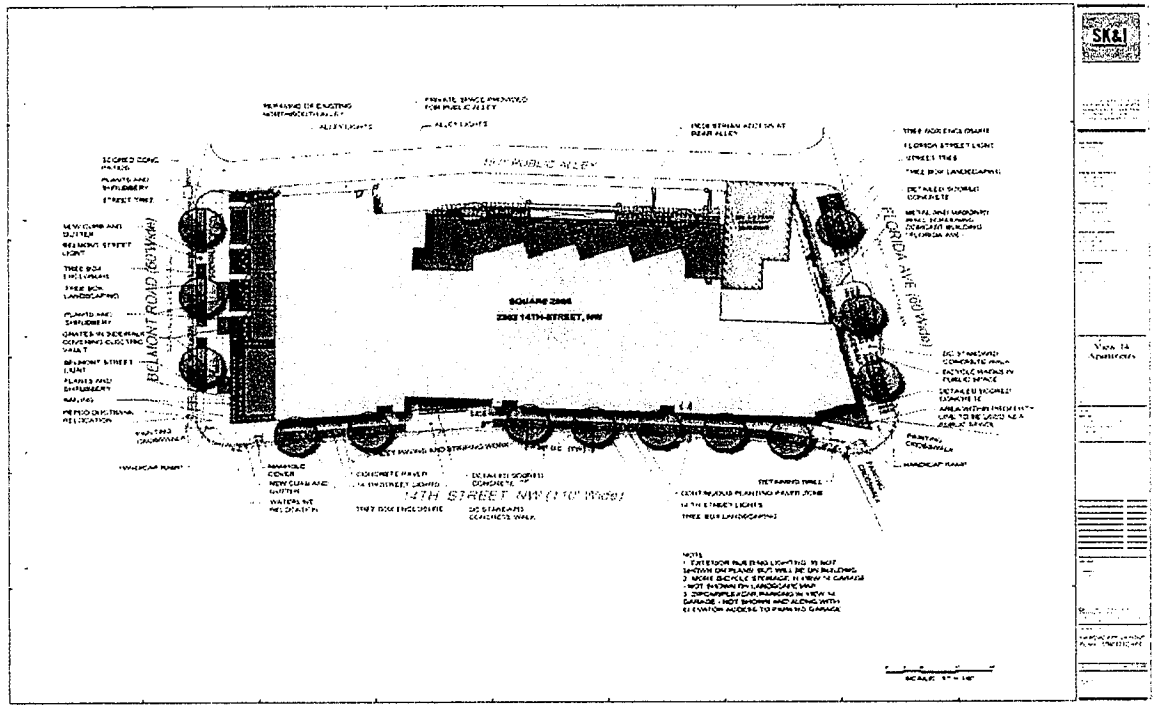


WMATA-INV 014927

FOIA CONFIDENTIAL TREATMENT REQUESTED

Improvements

Providing wide, attractively landscaped, and well-lit sidewalks will enhance pedestrian access and improve access for persons with disabilities to the bus and rail systems and promote increased ridership. Car-sharing facilities will: encourage those who cannot afford or choose not to have a car to use transit; reduce unnecessary auto trips and the pollution associated with those trips; and essentially increase parking capacity, as one shared vehicle is used by as many as 40 people.



WMATA-INV 014928

FOIA CONFIDENTIAL TREATMENT REQUESTED

Recommendation

That the Planning and Joint Development Committee recommend the Board of Directors approve—

- The allocation of $500,000 from the District of Columbia's portion of the TIIF to be used for pedestrian, walkways, lighting, landscaping, car sharing and other infrastructure enhancements to facilitate access to and use of the Metrobus and Metrorail systems

- Authority to negotiate and execute a Memorandum of Understanding with the View 14 developer for the dispersal to TIIF funds in accordance with FTA criteria and approval

WMATA-INV 014929

SUBJECT: APPROVAL OF USE OF $500,000 FROM THE TIIF (DISTRICT OF COLUMBIA) FOR ACCESS IMPROVEMENTS TO U STREET/AFRICAN-AMERICAN CIVIL WAR MEMORIAL/CARDOZO METRORAIL STATION AND 14TH STREET BUS CORRIDOR

PROPOSED
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, Level 2 Development's (the "Developer") View 14 Project (the "Development") is one of several new transit-oriented development projects proximate to the U Street/African-American Civil War Memorial/Cardozo Metrorail station and the Columbia Heights Metrorail station; and

WHEREAS, The Development is approximately 1500-1900 feet from the U Street/African-American Civil War Memorial/Cardozo Metrorail station, 3000 feet from the Columbia Heights Metrorail station, and within one block or less of bus stops located along 14th Street; and

WHEREAS, When completed, the Development will include 185 apartment units in a nine-story tower fronting 14th Street, NW and 34,000 square feet of retail space; and

WHEREAS, The Development is a mix of uses that has proven to reduce auto usage and to increase transit and bus ridership when located within walking distance to transit; and

WHEREAS, The Development's design, variety of uses, location and pedestrian links to operating rail and bus systems, including pedestrian walkways, lighting, landscaping, car sharing and other infrastructure improvements (the "Infrastructure Improvements"), will facilitate access to and use of the Metrobus and Metrorail systems, and reduce car trips; and

WHEREAS, To maximize the effects of the proposed transit-oriented design, transit use, and other revenue increasing aspects associated with the Development, it is critical that the pedestrian pathways from the bus stops and rail station entrances be well-lighted, uninterrupted and attractive; and

WHEREAS, Without the Infrastructure Improvements, potential increased ridership and other economic opportunities for Metro and the District of Columbia will be diminished; and

WHEREAS, By letter dated July 29, 2008 (attached hereto as Attachment A), Board Chairman Jim Graham formally requested that Metro disburse TIIF funds allocated to the District of Columbia to Developer for construction of the Infrastructure Improvements; now, therefore, be it

RESOLVED, That the Board of Directors approves the use of TIIF funds in the not-to-exceed amount of $500,000 for Developer's construction of transit-oriented Infrastructure Improvements and authorizes staff to negotiate and execute a Memorandum of Understanding with Developer for dispersal of the TIIF funds, subject, however, to any required Federal Transit Administration approval; and be it further

RESOLVED, That the $500,000 be made immediately available for construction of the Infrastructure Improvements subject to the completion of the following conditions: 1) available funds in the TIIF; 2) receipt of any required Federal Transit Administration approval; and 3) execution of a Memorandum of Understanding between Metro and the Developer governing dispersal of the TIIF funds to Developer; 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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014931

ATTACHMENT A

JIM GRAHAM
COUNCILMEMBER, WARD ONE
COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

1350 Pennsylvania Avenue, NW
Suite 105
Washington, D.C. 20004

202-724-8181
202-724-8109 fax

jgraham@dccouncil.us
jim@grahamvote.com
www.grahamvote.com

Chairperson,
Committee on
Public Works and the Environment

Voting Member
Board of Directors, Washington
Metropolitan Area Transit Authority

July 29, 2008

RECEIVED
AUG 4 2008
Office of the Chief of Staff

John B. Catoe, Jr., General Manger
Washington Metropolitan Area Transit Authority
600 5th Street NW
Washington, DC 20001

RE: WMATA TIIF Funding Request for View 14

Dear Mr. Catoe:

I request that the Washington Metropolitan Area Transit Authority (WMATA) Board of Directors consider View 14, a project being developed by Level 2 Development, as a candidate for funding from the Transit Infrastructure Investment Fund (TIIF).

View 14 is a transit oriented development located between the U Street and Columbia Heights neighborhoods at 2303 14th Street NW, Washington, DC, 20009. This nine-story mixed-use development will include 185 residential units and approximately 34,000 square feet of retail. Construction of View 14 began in the fourth quarter of 2007, and delivery is expected in the fourth quarter of 2009.

View 14 meets the goals of the Transit Infrastructure Investment Fund by achieving the following:

1. Increase access and ridership of WMATA Metrobus and Metrorail transportation;
2. Integrate the design of the project with the transit system and the community; and
3. Promote complements to mass transit use, such as bicycling, walking, and carsharing

Please find the attached materials which provide further details on the project.

If you have any comments or questions, please contact me or Jonathon Kass of my staff at 202-724-8152.

Sincerely,

JG/jjk

Cc: Emeka Moneme, WMATA Boardmember

Encl.

FOIA CONFIDENTIAL TREATMENT REQUESTED

level 2
DEVELOPMENT

July 23, 2008

Councilmember Jim Graham
1350 Pennsylvania Avenue, NW, Suite 105
Washington, DC 20004

RE: WMATA TIIF Funding Request for View 14

Dear Mr. Graham:

On behalf of Level 2 Development, I am writing to request that the Washington Metropolitan Area Transit Authority (WMATA) Board of Directors consider View 14 as a candidate for funding from the Transit Infrastructure Investment Fund (TIIF). Level 2 Development estimates that approximately $1,305,408 in View 14 project costs are related to improvements achieving TIIF goals.

View 14 is a transit oriented development located in between the U Street and Columbia Heights neighborhoods at 2303 14th Street NW, Washington, DC, 20009. The mixed-use, nine-story site will be comprised of 185 residential units and approximately 34,000 square feet of retail. Construction of View 14 began in the fourth quarter of 2007, and delivery is expected in the fourth quarter of 2009.

View 14 meets the goals of the Transit Infrastructure Investment Fund by achieving the following:

1. Increase access and ridership of WMATA Metrobus and Metrorail transportation
2. Integrate the design of the project with the transit system and the community
3. Promote complements to mass transit use, such as bicycling, walking, and carsharing

Attached to this letter you will find the following supportive information:

1. **EXHIBIT A** - Cost estimate of View 14 site public space infrastructure improvements that promote WMATA ridership
2. **EXHIBIT B** – View 14 Hardscape Layout Drawing
3. **EXHIBIT C** - Map of nearby Metrobus stops
4. **EXHIBIT D** - Maps of nearby Green and Yellow Line Metrorail Stations
5. **EXHIBIT E** - Rendering of View 14
6. **EXHIBIT F** - Former site condition photographs

Thank you for your consideration of View 14 as a candidate for funding from the TIIF. If you have any comments or questions, please contact me at (202) 483-1110 or dfranco@level2development.com.

Sincerely,

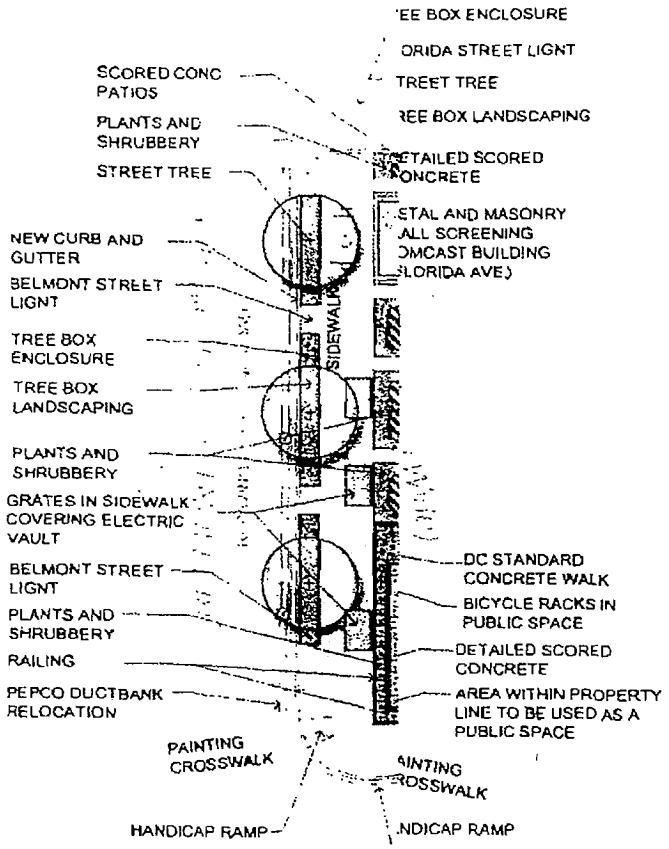
L2CP, LLC c/o Level 2 Development, LLC

By: _____
David Franco, Managing Member

EXHIBIT A - Cost Estimate of View 14 Public Space Infrastructure Improvements

Item / Location	Qty	Unit	Unit Price	Total
Landscaping				
Street Trees	13	ea	472.50	6,142.50
Tree Box Landscaping	13	ea	956.25	12,431.25
Continuous Planting Paver Zones	1	sl	29,856.25	29,856.25
Tree Box Enclosure	13	ea	926.25	12,041.25
Plants, Shrubbery, Irrigation, Other Landscaping Details	1	ea	17,618.75	17,618.75
14th St., Florida Ave., Belmont St. Sidewalk Improvements				
Curb and Gutter	470	lf	143.75	67,555.31
Public Sidewalk (Precast Bands, Concrete Pavers), Including Belmont St. Sidewalk Widening	4,074	sf	16.88	68 748.75
Detailed Scored Concrete	4,857	sf	8.75	42,498.75
Exterior Building Lighting	1	ea	56,250.00	56,250.00
Handicap Ramps	500	ea	3.75	1,875 00
Retaining Wall (at 14th and Florida Corner)	1	lf	3,750.00	3,750.00
Grates in Sidewalk Covering Electric Vaults and Vault Covering	63	sf	1,875.00	118,743.75
Manhole Covers	1	ea	1,875.00	1,875.00
Railing	1	lf	8,500.00	8,500.00
Ground Floor Metal Awning	1	lf	43,750.00	43,750 00
14th St., Florida Ave., Belmont St. Road Improvements				
Painting Crosswalks	4	ea	312.50	1,250.00
Street Paving Work	4,800	sf	6.25	30,000 00
Street Lane Striping	1	ea	3,125.00	3,125.00
Utility Improvements				
Waterline Relocation on 14th Street	1	ea	231,250 00	221,250.00
Pepco Ductbank Relocation on Belmont Street	1	ea	143,750.00	143,750.00
Streetlights				
14th Street Lights	2	ea	12,291.25	24,582.50
Florica and Belmont Street Lights	3	ea	12,291.25	36,873.75
Comcast Building (Florida Ave)				
Metal and Masonry Wall to Screen Comcast Building from Public View from Sidewalk	1	ea	50,000.00	50,000 00
Improvements to Alley system				
Repaving of Existing North/South Alley	8,000	sf	11.25	90,000.00
Alley Lighting	1	ea	18,750.00	18.750.00
Zipcar/Flex Car parking spaces				
2 Parking spaces in View 14 Garage	2	ea	47,500.00	95.000.00
Elevator Access to parking garage	3	ea	12,500.00	37,500.00
Bicycle Storage Racks				
Bicycle Storage Racks in Public Space	8	ea	482.50	3,860.00
Bicycle Storage Racks in View 14 Garage	24	ea	482.50	11,580.00
Misc.				
Pedestrian Access at Rear Alley	1	ea	5,000.00	5,000 00
Area within Property Line to be used as Public Space	1	ea	31,250.00	31,250.00

$ 1,305,408



SK&I

View 14
Apartments

HARDSCAPE LAYOUT
PLAN - STREETSCAPE

FOIA CONFIDENTIAL TREATMENT REQUESTED

EXHIBIT C

Map of Nearby Metrobus Stops

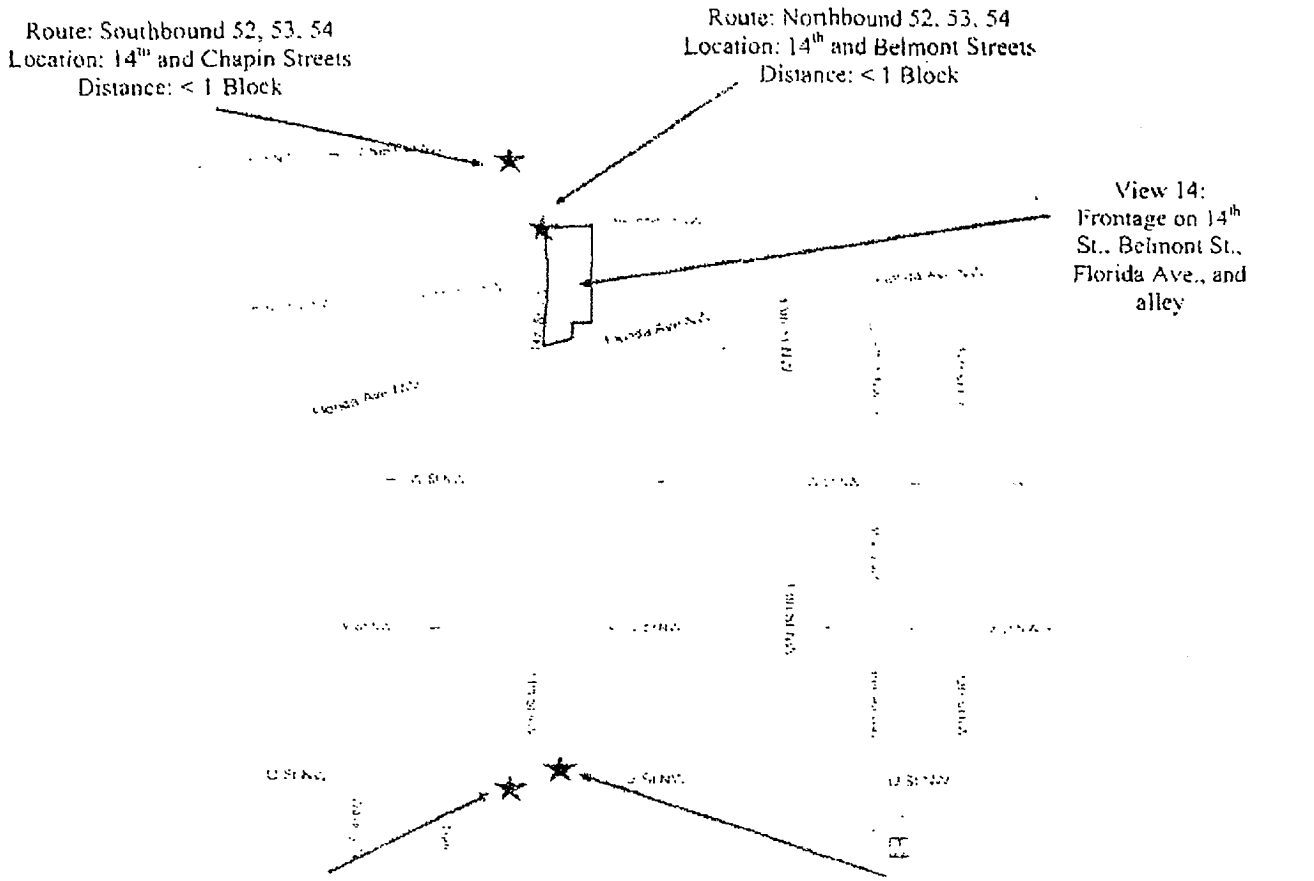
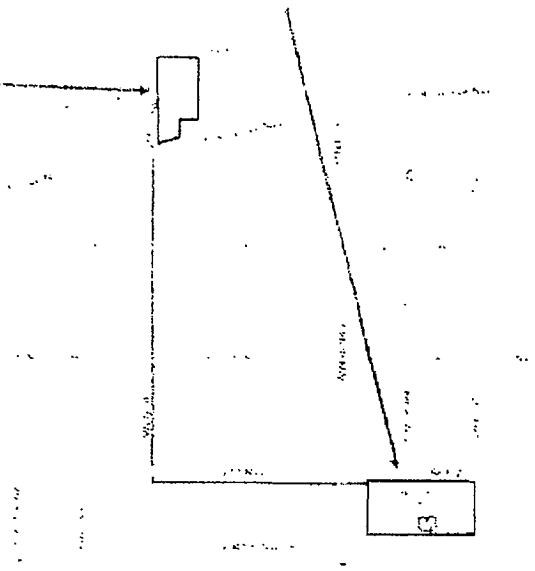


EXHIBIT D

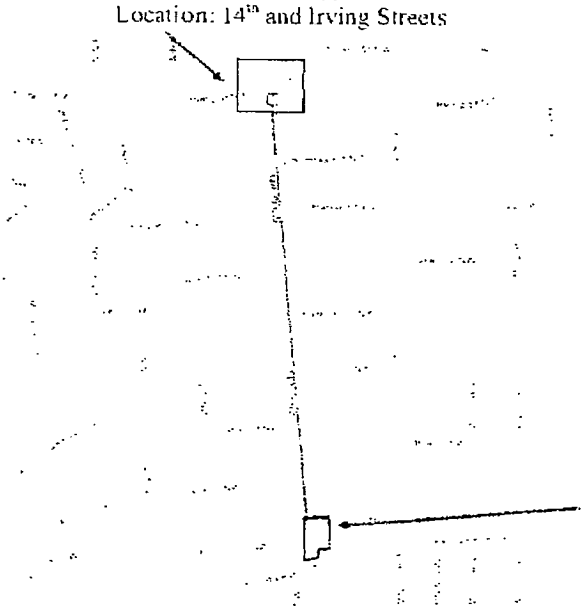
Maps of Nearby Green & Yellow Line Metrorail Stations

U Street / Cardozo Shaw Metrorail Station
Distance: 4 Blocks, Approx. 1,900 ft
Location: 13th and U Streets

View 14:
Frontage on 14th St., Belmont St., Florida Ave., and alley

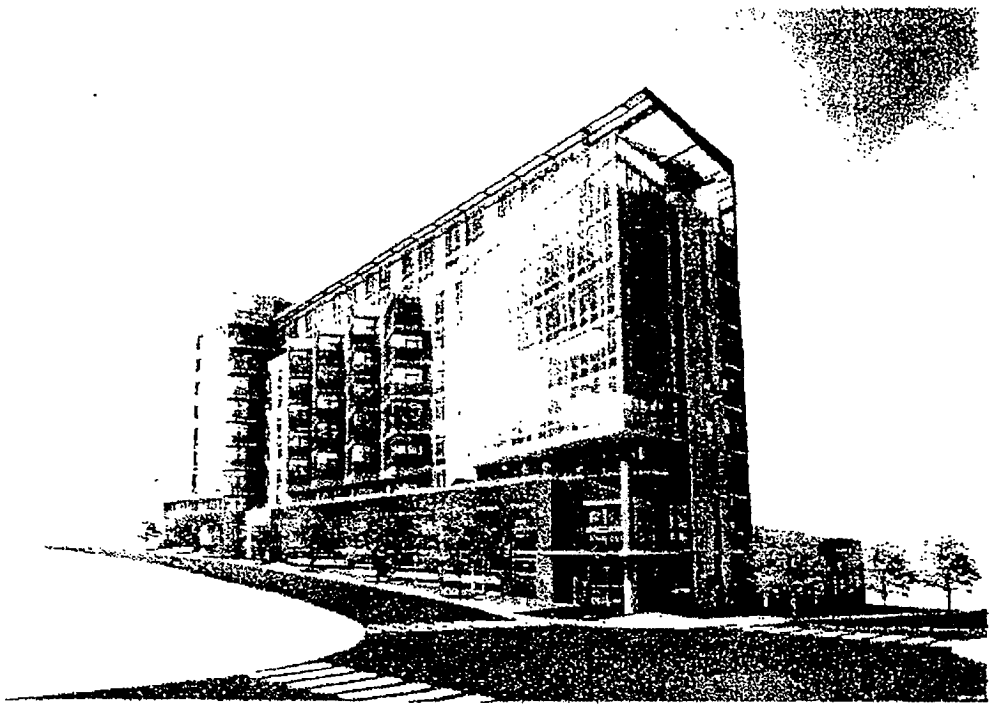


Columbia Heights Metrorail Station
Distance: 6 Blocks, Approx. 3000 ft
Location: 14th and Irving Streets



View 14:
Frontage on 14th St., Belmont St., Florida Ave., and alley

EXHIBIT E - View 14 Rendering



Perspective from the southwest corner of 14th St and Florida Ave., looking northeast

*Note: Landscape and streetscape plan not accurately rendered in image

EXHIBIT F - Former Site Condition Photographs

Image 1: 2300 Block of 14th St., NW

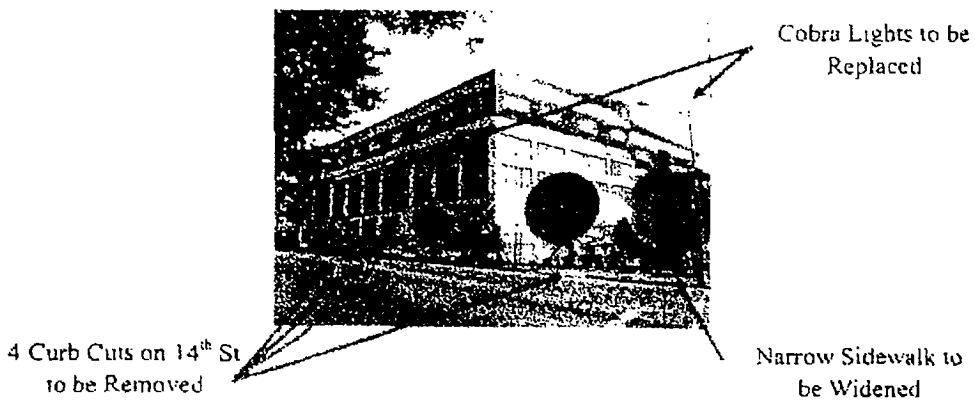


Image 2: Corner of 14th Street and Florida Ave., NW

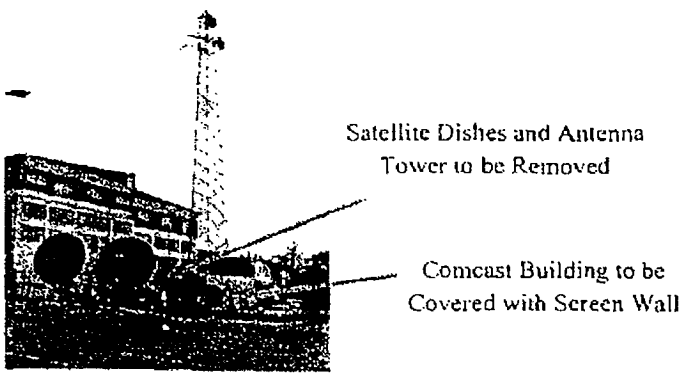
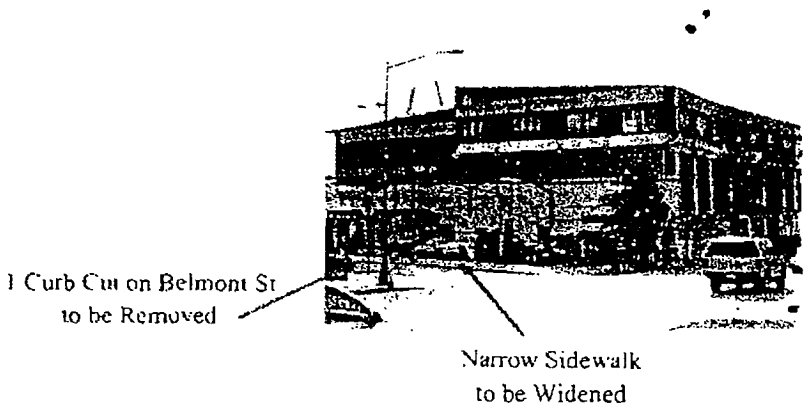


Image 3: 1300 Block of Belmont St., NW



Omar Karim

·m:	Emeka Moneme <emoneme@wmata.com>
·it:	Friday, February 27, 2009 2:04 PM
To:	Omar A. Karim
Cc:	Maurice' 'Perry; 'thicks'; Nat Bottigheimer
Subject:	RE: Jazz @ Florida Avenue

Thanks Omar. I will discuss with Nat and be back in touch next week.

Emeka Moneme
Chief Administrative Officer
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001
==========

Office: (202) 962-1900
Cell: (202) 236-7911
e-mail: emoneme@wmata.com
==========

>>> "Omar A. Karim" <okarim@bannekerventures.com> 02/27/09 1:11 PM >>>
Emeka,

·r potential JV partner, Banc of America CDC, is currently reviewing the latest budget and pro forma that Banneker and BoA have been working on for the past few months. The pro forma along with the terms of the deal between our two companies has gone to BoA's credit committee for approval.
Following yesterday's call with the credit committee, we made some changes to the financial model which were then re-sent to BoA's credit folks. In light of the changes, which were necessary to make the deal work, it will take BoA another week to get through their approval process. As you and I discussed, we thought things would be finalized by this week. Unfortunately, as I'm sure you understand, this is a complicated deal and BoA is no small shop. When we get approval (which should be by the end of next week), we will forward you a copy of the information on our new development partner (Banc of America CDC), along with the term sheet between our companies.

In the interim, below please find the other information that you requested:

- 20% (or 24) of the housing units in the project will be affordable at 50% of Area Median Income (AMI).

- Based on our discussions with the District, they have informed us that our project will not receive any financial assistance from the District to help pay for the affordable housing units.

We hope that this information is sufficient and look forward to wrapping up our negotiations with WMATA as soon as possible and bringing another WMATA Joint Development Project to the District.

My best,

·mar

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

-----Original Message-----
From: Emeka Moneme [mailto:emoneme@wmata.com]
Sent: Wednesday, February 18, 2009 6:56 PM
To: Omar A. Karim
Cc: Nat Bottigheimer
Subject: Re: Jazz @ Florida Avenue

Omar,

Thanks for keeping me updated. We look forward to recieving these documents from you.

Cheers.

Emeka

Emeka Moneme
Chief Administrative Officer
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001
==========

Office: (202) 962-1900
Cell: (202) 236-7911
e-mail: emoneme@wmata.com
==========

>>> "Omar A. Karim" <okarim@bannekerventures.com> 02/18/09 3:05 PM >>>
Emeka,

As a follow-up to our call last week, wanted to let you know that by the end of next week we will be forwarding to you the following:

- Information on our JV partner for the Jazz @ Florida Avenue project;

- An executed term sheet between the JV partner and Banneker;

- Description of the number of affordable units we will be

FOIA CONFIDENTIAL TREATMENT REQUESTED

developing on the WMATA parcels along with the AMI for the units; and

- A statement about our inability to get financial assistance from the District for the affordable housing component of the project

Should you require any additional information, please let me know.

My best,

Omar

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

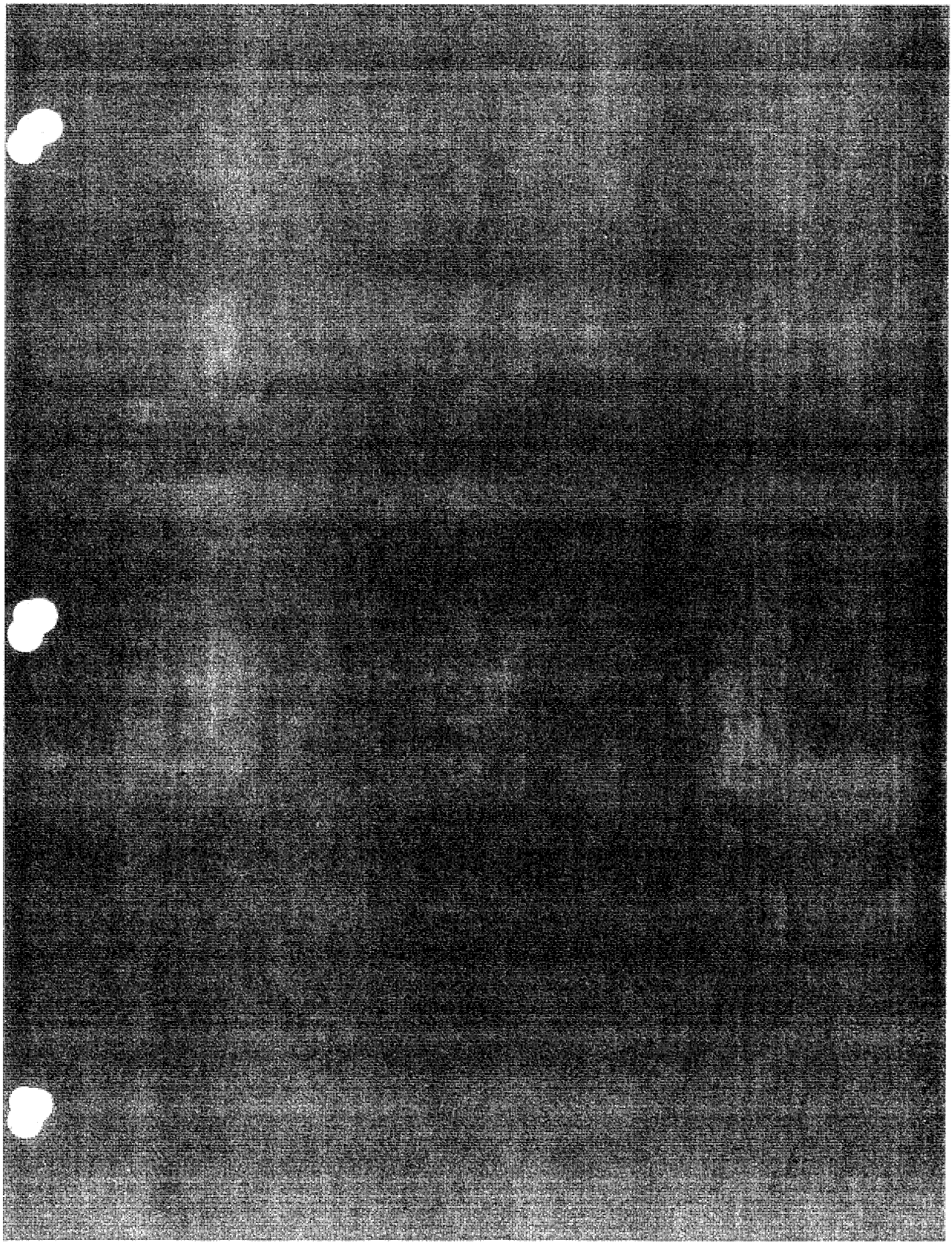
Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

›m: neilalbert@yahoo.com
›ent: Friday, February 27, 2009 9:34 PM
To: Omar Karim
Subject: Re: Jazz @ Florida Avenue

Cool
Sent via BlackBerry by AT&T

-----Original Message-----
From: okarim@bannekerventures.com

Date: Sat, 28 Feb 2009 01:59:42
To: Neil Albert<neilalbert@yahoo.com>
Subject: Fw: Jazz @ Florida Avenue

Neil,

FYI. We should have a deal wrapped up with BoA by end of next week.

Omar

›mar A. Karim
Banneker Ventures, LLC
700 12th Street NW, Suite 700
Washington, DC 2005
(202) 667-4110 office
(202) 558-5157 fax
(301) 523-1810 cell
okarim@bannekerventures.com

-----Original Message-----
From: "Emeka Moneme" <emoneme@wmata.com>

Date: Fri, 27 Feb 2009 14:04:19
To: Omar A. Karim<okarim@bannekerventures.com>
Cc: Maurice' 'Perry<maurice.perry@bankofamerica.com>; 'thicks'<thicks@bannekerventures.com>; Nat Bottigheimer<nbottigheimer@wmata.com>
Subject: RE: Jazz @ Florida Avenue

Thanks Omar. I will discuss with Nat and be back in touch next week.

Emeka Moneme
›hief Administrative Officer
›Washington Metropolitan Area Transit Authority
600 5th Street, NW

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington, DC 20001
==========

ice: (202) 962-1900
il: (202) 236-7911
e-mail: emoneme@wmata.com
==========

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My best,

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
karim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED

-----Original Message-----
From: Emeka Moneme [mailto:emoneme@wmata.com]
Sent: Wednesday, February 18, 2009 6:56 PM
· Omar A. Karim
: Nat Bottigheimer
Subject: Re: Jazz @ Florida Avenue

Omar,

Thanks for keeping me updated. We look forward to recieving these documents from you.

Cheers.

Emeka

Emeka Moneme
Chief Administrative Officer
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001
==========

Office: (202) 962-1900
Cell: (202) 236-7911
e-mail: emoneme@wmata.com
==========

>>> "Omar A. Karim" <okarim@bannekerventures.com> 02/18/09 3:05 PM >>>
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- Information on our JV partner for the Jazz @ Florida Avenue project;

- An executed term sheet between the JV partner and Banneker;

- Description of the number of affordable units we will be developing on the WMATA parcels along with the AMI for the units; and

- A statement about our inability to get financial assistance from the District for the affordable housing component of the project

Should you require any additional information, please let me know.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014948

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014949

Bank of America

Community Development Banking

March 6, 2009

Mr. Omar A. Karim
Banneker Ventures, LLC
700 12th Street NW, Suite 700
Washington, DC 2005

RE: The Jazz @ Florida Avenue
Washington, DC

Dear Omar:

I am writing to confirm the interest of Banc of America Community Development Corporation ("BACDC") in working with Banneker Ventures, LLC ("BVLLC") or an affiliate of Banneker Ventures, LLC ("Banneker") to become a Co-Developer of and provide direct equity investment into the proposed development known as The Jazz @ Florida Avenue, situated along the 700 and 800 blocks of Florida Avenue in Northwest, Washington, DC. We have been working with you through refinements to the development program and further due diligence and we retain a high level of interest in structuring a partnership that allows for BACDC to become a partner and provide equity investment for gap funding as well as other technical and financial support for the project.

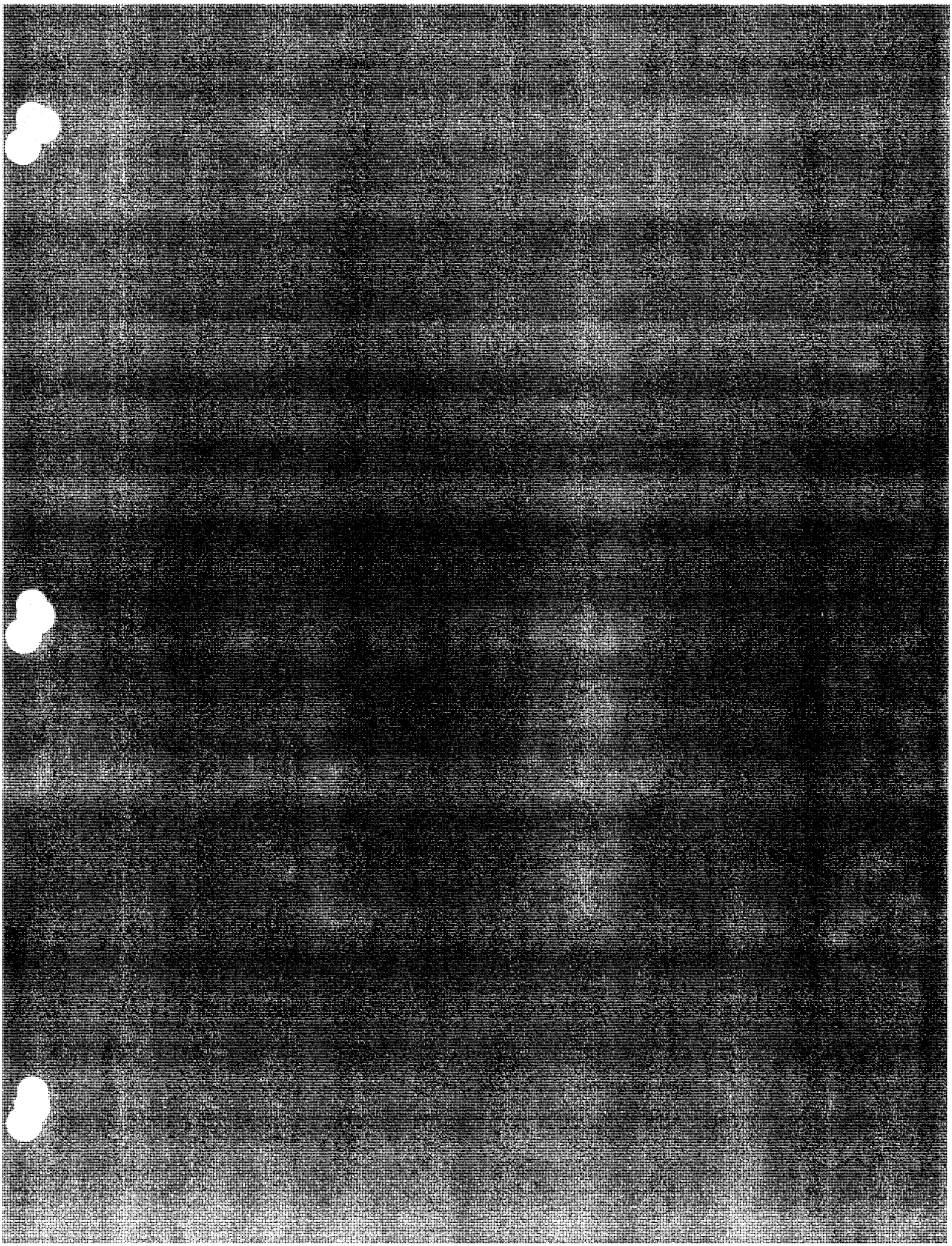
We understand that the proposed development program is a mixed-use community consisting of 153,770 gross square foot of residential and retail space. A total of 20% of the units will be affordable to persons who earn 60% of the area median income. Total development costs for this project are approximately $40,124,371 and BACDC would have interest in providing gap funding via a direct equity investment through a partnership agreement with BVLLC or an affiliate. We intend to work closely with our colleagues at Bank of America to provide a complete financing package that could potentially include both debt and equity syndication, if needed.

Banc of America CDC is the nation's first and most productive Bank-owned community development corporation. We have a broad range of experience on projects similar to The Jazz @ Florida Avenue and in creative equity partnerships. We look forward to working with you on this project and providing support for the continued revitalization of this historic neighborhood.

Sincerely,

Maurice Perry
Vice President
Banc of America CDC

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014950



OUTLINE OF OPERATING AGREEMENT BETWEEN
BANNEKER VENTURES, LLC AND BANC OF AMERICA CDC

The following outlines the terms of an operating agreement between BANNEKER VENTURES, LLC or an affiliate thereof ("Banneker") and BANC OF AMERICA CDC or an affiliate thereof ("BoA") (collectively, the "Members") for the purpose of leasing through a long term lease Lots 44 and 45 in Square 393 and Lot 31 in Square 416 in the District of Columbia (collectively, the "WMATA Sites") from the Washington Metropolitan Area Transit Authority ("WMATA"), and purchasing three adjacent properties located at 1920 8th Street, NW, 1931 9th Street, NW and 1933-1935 9th Street, NW in the District of Columbia (the "Adjacent Sites"), and developing and operating a to-be-built mixed-use residential and retail project (the "Project").

The venture will be called The Jazz @ Florida Avenue, LLC (the "Company") or some other name as the Members decide. This outline contains the terms and conditions which, if successfully concluded, will result in a definitive operating agreement between the Members (the "Operating Agreement").

Business Plan:

The business plan for the Company calls for the negotiation and execution of a Term Sheet, Joint Development Agreement and Lease with WMATA and the completion of the planned development as described above. On July 17, 2008, a Term Sheet was executed between WMATA and Banneker. Negotiations are underway to finalize terms of a Joint Development Agreement and Lease between the Company and WMATA.

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.

Once the Joint Development Agreement and Lease 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.

Banneker will take the lead in the government approval process, working with WMATA, design issues, pre-development financing, permitting, construction management activities and operational issues. BoA will take the lead in the construction and permanent financing process, construction process and work with Banneker in all other aspects of the Project.

Marketing and leasing of the Project shall be handled by one or more firms selected by the Members and commence as soon as the Members deem necessary.

Schedule

It is anticipated that the Project will break ground in Summer 2010 and be completed in Fall 2011.

Transaction Structure:

Managing Member

Banneker, or an affiliate, will serve as the Managing Member of the Company throughout the life of the Company. BoA, or an affiliate, will serve as the Managing Member during the construction period of the Project.

Decision Making

In its role as Managing Member, Banneker shall be responsible for day-to-day decisions of the Company prior to construction and after final completion of construction. BoA shall be responsible for day-to-day decisions of the Company during the construction process. With respect to certain "Major Decisions", including: (1) terms between the general contractor for the Project and the Company; (2) the project budget; (3) changes to the project budget; (4) selection of consultants, contractors and vendors; (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 Joint Development Agreement and Lease between WMATA and the Company; (7) approval of the Project's design; 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 BoA's approval for a Major Decision and BoA rejects such Major Decision, Banneker and BoA 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, Banneker and BoA are still at an impasse, Banneker shall have the right to purchase BoA's interest in the Company at a value to be agreed upon in the Company's Operating Agreement.

Initial Estimated Sources of Funds, Joint Venture Capitalization, Economic Allocations, Services and Key Provisions to the Operating Agreement

The following is a summary of the initial estimated sources of funds, joint venture capitalization, economic allocations, services and key provisions to the Company's operating agreement.

Estimated Sources of Funds

Equity	$11.0M	100.0%
Debt	$43.0M	100.0%
Total Sources	$54.0M	100.0%

Investment Equity

Banneker	5.0%
BoA	25.0%
Other	70.0%
Total	100.0%

The Members shall earn 20% preferred interest in the equity that they invest in the Project. After the Members receive their return, Banneker shall receive one hundred percent ownership in the Project.

Pre-Construction Funding and Venture Capitalization

The Members will be responsible for funding pre-construction activities on the following basis:

Banneker	First $400,000, including the initial $100,000 submission letter of credit, and $100,000 deposit for the right to negotiate a Joint Development Agreement and Lease.
BoA	Balance of pre-construction expenses, excluding any pre-development sources that the Members may seek.

All pre-construction capital invested in the Company will be treated as equity and earn a preferred return of 20%.

Allocation Priority of Economics

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. what does this mean

3) Then, the balance will be distributed to Banneker.

Allocation Priority of Sale and Refinancing Proceeds.

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) Third, to WMATA (% TBD)

4) Then, once all equity capital is returned and WMATA is paid, the balance will be distributed to Banneker.

Guarantees

The Company will attempt to have any financing to be non-recourse to the Members or their affiliates. However, if any financing or other guarantees are required, BoA will provide them.

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:

- Developer Fee at 3-4% of the total costs allocated __% to Banneker and __% to BoA. Why does BoA get Dev. fee is they are funding Dev. Pre-construct Budget
- Project management at 1.25% of total costs to Banneker. How is this different from Developer fee
- Construction management at 0.85% of total costs to a construction management company. Banneker may serve in this role.

The Company intends to negotiate a commercially reasonable GMAX contract (what standard) with a general contractor to build the Project.

The fees listed above will be paid out on a pro-rata basis over the construction period. However, the project management fees will begin to be paid out upon approval of the Joint Development Agreement by WMATA.

Accounting

BoA shall keep the books and records of the Company through stabilization; Banneker shall keep the books and records of the Company after stabilization.

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.

Agreed and accepted this __ day of February, 2009.

BANNEKER VENTURES, LLC

By: _____
Name:
Title:

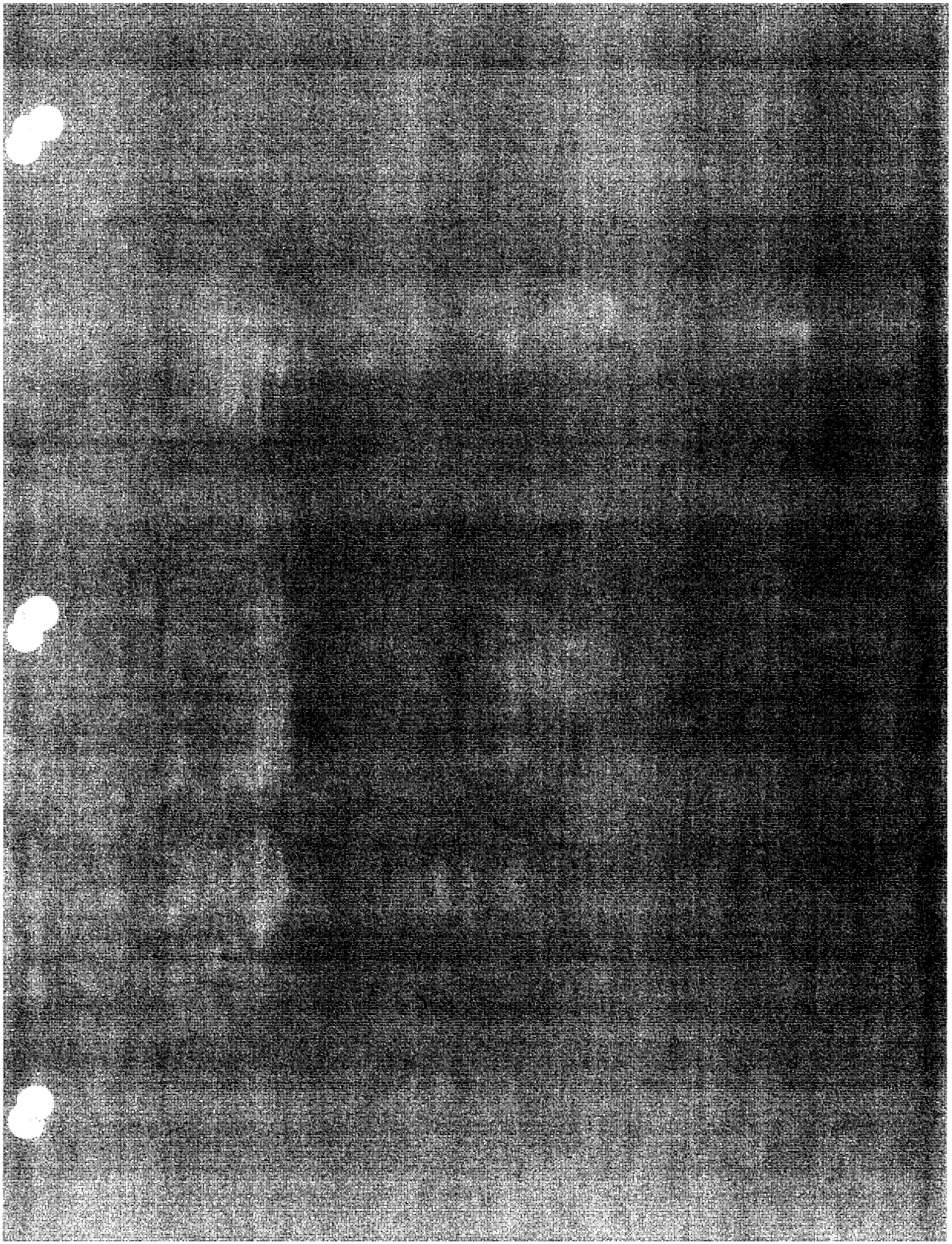
BANC OF AMERICA CDC

By: _____
Name:
Title:

PRELIMINARY TERMS OF POTENTIAL JOINT VENTURE
MIXED-USE APARTMENT AND RETAIL PROJECT AT ENTRANCE TO U STREET CORRIDOR

Project:	The Jazz @ Florida Avenue, an infill, mixed-use apartment and retail project on the 700 and 800 blocks of Florida Avenue, NW, Washington, DC
Roles:	
Banneker Oversight:	WMATA Negotiations Adjacent Parcel Negotiations Zoning/Entitlements Permits General Contractor Selection Construction/Construction Management Approvals Marketing Accounting and Control Preparation of Regular Reports Disbursements Retail Component Financing (TIF, McKinney Loan, DC DHCD Funds, Private Equity) Management Company Selection Community Outreach
Banc of America Oversight:	Guarantees (McKinney Loan, Construction and Completion Loans (if necessary), Lease-up Deficit Reserve, Tax Credit Adjuster, and WMATA) Financing (NMTC, LIHTC, Debt (HFA), Private Equity) Construction/Construction Management Contract Approvals (over $50k) Planning Support Construction Management Community Outreach Support Accounting and Control Review Disbursement Review Management Company Approval
Managing Member (life of project):	Banneker Ventures, LLC or its affiliate
Managing Member (construction period):	Banc of America CDC

Pre-Construction Costs:	Banneker Ventures (first $250,000); BACDC (balance until start of construction)
Cost Overruns:	100% BACDC, with such equity paid preferred return and paid back from balance of development fees.
Fees:	TBD
Equity Ownership:	TBD



Omar Karim

:m:	Doggett, Rosalyn <RDoggett@wmata.com>
:ent:	Monday, March 16, 2009 9:34 AM
To:	Omar A. Karim
Cc:	Washington, Joel R.
Subject:	Meeting tomorrow

I received some direction over the weekend; please bring your current business proposal to the meeting tomorrow. I don't think that I have seen it, based on a short e-mail from Emeka some weeks ago, but let me know if I err!

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar Karim

›m: Washington, Joel R. <jrwashington@wmata.com>
›ent: Monday, March 16, 2009 1:27 PM
To: Omar A. Karim; Doggett, Rosalyn
Cc: 'thicks'
Subject: RE: Meeting tomorrow

Omar,

Could you send the proposal to us today so we can read it before tomorrow's meeting?

Thanks,

Joel

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, March 16, 2009 1:23 PM
To: Doggett, Rosalyn
Cc: 'thicks'; Washington, Joel R.
Subject: RE: Meeting tomorrow

Will do. Thank you.

`mar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

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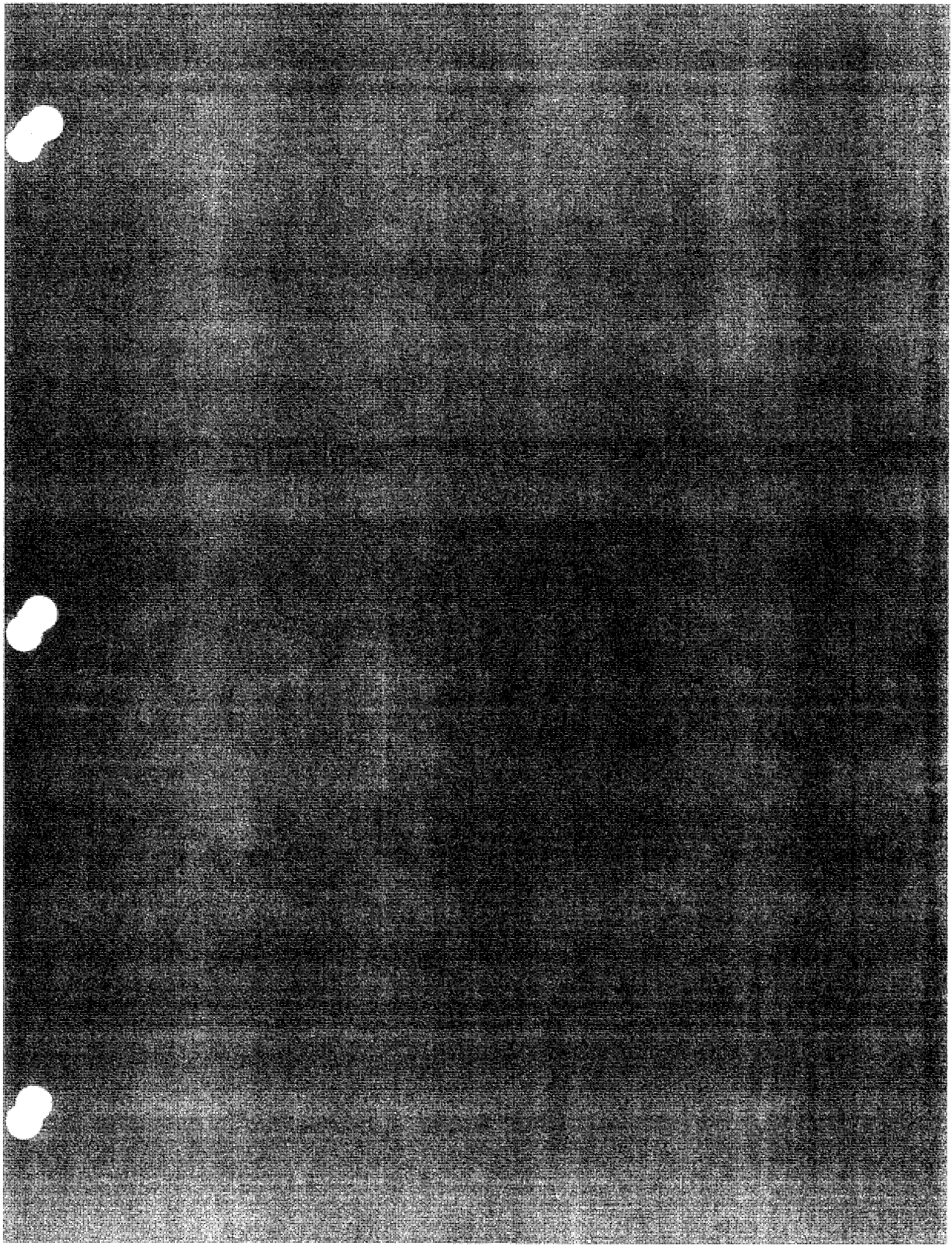


Omar Karim

m: Emeka Moneme <emoneme@wmata.com>
ent: Tuesday, March 17, 2009 6:31 AM
To: okarim@bannekerventures.com
Subject: Re: Updated proforma and Terms - Jazz @ Florida Avenue

Thanks Omar. As you know, the Board has extended the negotiation period and also asked us to do some additional analysis on affordable housing. Your efforts to move the project forward are appreciated.

Emeka

"Please excuse any errors, I am typing on the go."
-----Original Message-----
From: "Omar A. Karim" <okarim@bannekerventures.com>
Cc: Perry, Maurice <maurice.perry@bankofamerica.com>
Cc: thicks <thicks@bannekerventures.com>
Cc: <eric.smart@bolansmart.com>
To: Washington, Joel R. <jrwashington@wmata.com>
Cc: Moneme, Emeka <emoneme@wmata.com>
Cc: Bottigheimer, Nat <nbottigheimer@wmata.com>
To: Doggett, Rosalyn <rdoggett@wmata.com>

nt: 3/16/2009 7:20:00 PM
ubject: Updated proforma and Terms - Jazz @ Florida Avenue

Mr. Washington and Ms. Doggett,

As requested, attached please find the latest pro forma of the Jazz @ Florida Avenue. The basic terms that we believe would be appropriate for this project and which are included in the pro forma are as follows:

- 30% of the units would be affordable at 60% AMI

- $300,000 annual payment to WMATA beginning at stabilization;

- $200,000 pre-stabilization payment payable over the pre-construction and lease-up phase of the project;

- $100,000 deposit at execution of JDA;

- 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

In addition to the above terms, the following changes were also made in the pro forma:

- In order to close the gap caused by the inclusion of the affordable units, we changed the construction type from concrete to wood over a retail podium. By changing the construction type, we are not able to maximize the 4.5 (as of right) FAR but instead were only able to build out to 4.1 FAR. However, the savings incurred as a result of a stick building versus a concrete building ($4.5M) makes up for the loss of 0.4 FAR.

- We are assuming receipt of Low Income Housing Tax Credits and a small subsidy to cover the gap caused by the inclusion of the affordable housing units.

- Based on discussions with KLNB Retail, we increased the revenue per SF that we are expecting from the retail space from $30 per SF to $38 per SF;

- In order to further eliminate a gap created by the inclusion of the affordable units, we have agreed to reduce the avg size of the units from 950 sq. ft. to 850 sq. ft. thus enabling the project to have more units and thus more revenue;

- Although we are assuming a FHA (HUD) loan for the senior debt and HUD requires that these loans be underwritten using a 20% vacancy rate for the retail/commercial component, we left the vacancy at 5% for purposes of our discussion as the project yield would be less than the targeted yield and generate more than $1M in a loss;

- Per Eric Smart's comments at our last meeting, we reduced the property taxes from $370k to $222k during the construction phase, which helps close the gap by $150k.

We look forward to discussing the terms with you tomorrow.

Omar

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

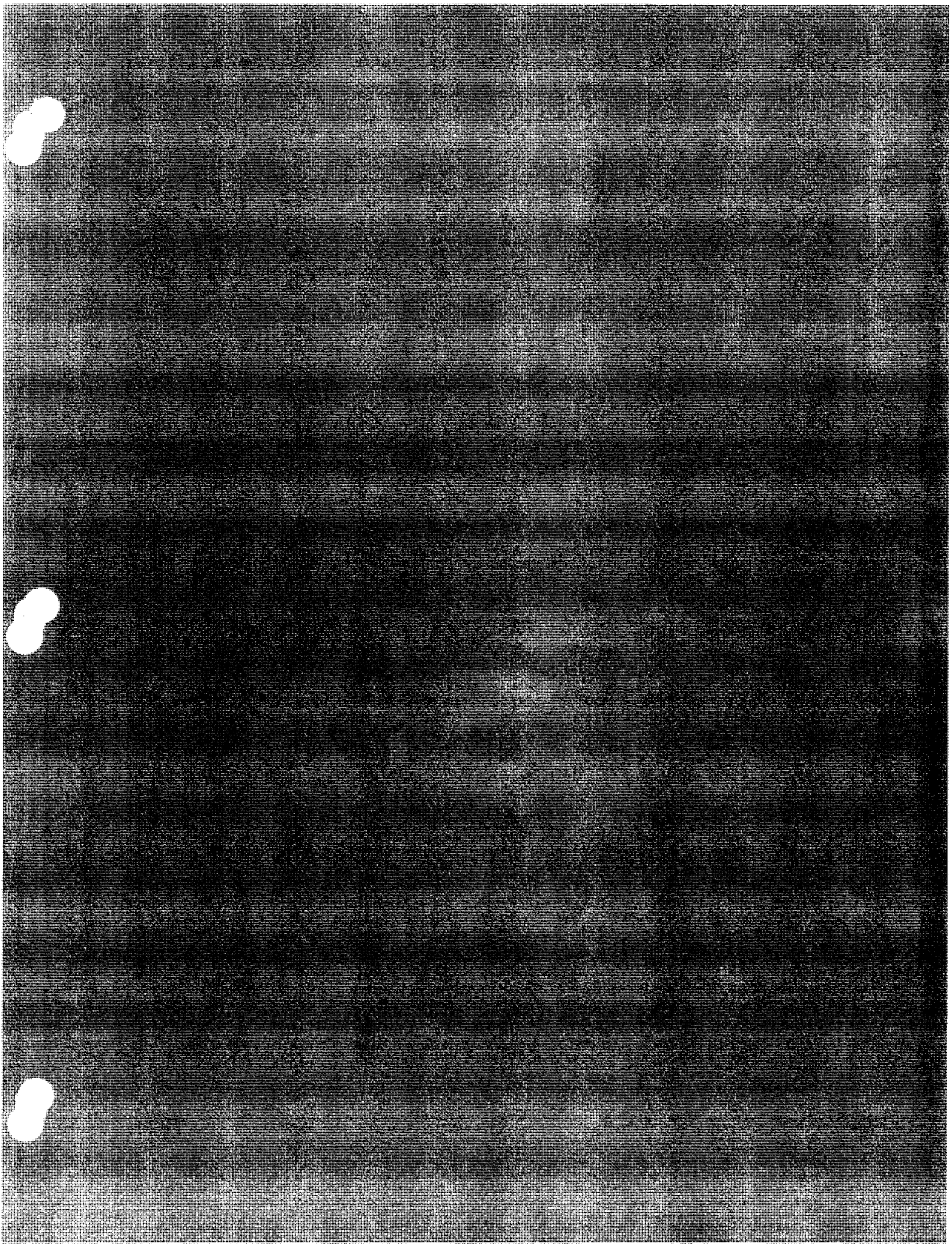
(202) 667-4110 office

FOIA CONFIDENTIAL TREATMENT REQUESTED

(301) 523-1810 cell

arim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Perry, Maurice <maurice.perry@bankofamerica.com>
Sent: Tuesday, March 17, 2009 3:36 PM
To: Doggett, Rosalyn
Cc: Washington, Joel R.; Montague, Joshua W.; Omar A. Karim
Subject: RE: Updated proforma and Terms - Jazz @ Florida Avenue

Ms. Doggett,

Banc of America Community Development Corporation (BACDC) is a 100% owned by of Bank of America N.A. (BANA). BANA is 100% owned by Bank of America Corporation (BAC).

BACDC does not produce separate audited FS for distribution to outside parties. The parent of BACDC, which is BANA, is monitored by Federal Financial Institution Examination Council, and a "Call Report" is filed on a quarterly basis. This report is accepted by the bank regulators. There are no substantial differences from this Call Report and GAAP FS per our Accounting Policy Group. The Call Report does provide much more detail with related schedules than a GAAP financial statement would require. The 10K for BAC is published as well if additional backing is required.

To view the call report, please go to FDIC website, the information is as follows:

http://www2.fdic.gov/Call_TFR_Rpts/

Then choose the first option – "Call Report and Thrift Report Data"...

Next type in "3510" in the block for FDIC Certificate Number and then submit.

You can look at each of the schedules on line by clicking on the various schedules or print individual schedules or go to the bottom where it says to download all schedules. Just click, choose PDF format.

Let me know if you need assistance in accessing the Call Reports.

I hope this information is helpful.

Regards,
Maurice

Maurice Perry
Vice President
Banc of America CDC
730 15th Street NW, 8th Floor
DC1-701-08-04
Washington, DC 20005
W: 202.442.7526
C: 202.329.7253
F: 704.683.9162

From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Tuesday, March 17, 2009 2:28 PM
To: Omar A. Karim; Perry, Maurice
Cc: Washington, Joel R.; Montague, Joshua W.
Subject: RE: Updated proforma and Terms - Jazz @ Florida Avenue

FOIA CONFIDENTIAL TREATMENT REQUESTED

Maurice, we will need to have your balance sheet, annual report, in short your currently audited financial statements. I realize that it may be late in the day today to ask you, but will need it right after the meeting if it is too late
day. Thanks.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, March 17, 2009 11:46 AM
To: Doggett, Rosalyn; Washington, Joel R.
Cc: 'Maurice' 'Perry'; 'thicks'; eric.smart@bolansmart.com; Moneme, Emeka; Bottigheimer, Nat
Subject: RE: Updated proforma and Terms - Jazz @ Florida Avenue
Importance: High

Ms. Doggett,

You are correct. Our mistake. Our business proposal (lease payments, etc.) is based on 20% of the units being affordable at 50% of AMI ($1.15 per SF for the affordable units). We made the corrections in the attached model. We appreciate your catching this.

Should WMATA's staff or Board, or the District. want more than 20% of the units as affordable, we certainly would be willing to go in this direction since the DUKE Plan, which governs land use for our site, calls for 20-30% of the residential units at this site be affordable (p. 20) and "the community's and DC Council's preference" is a minimum of 30% affordable units at rates that reach the very low income (0-30% AMI) (p. 10).

So that we can continue to keep this momentum, attached please find a draft agenda for today's meeting. Please feel free to add items as you deem appropriate.

oking forward to seeing you at 4.

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: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Tuesday, March 17, 2009 10:24 AM
To: Omar A. Karim; Washington, Joel R.
Cc: Maurice' 'Perry; 'thicks'; eric.smart@bolansmart.com
Subject: RE: Updated proforma and Terms - Jazz @ Florida Avenue

Thanks, Omar.

A first thought occurs to me. Doesn't it have to be 40% at 60% of AMI? That's how the LIHTC program works to my owledge. We can hopefully discuss the other items later today after we go through the development partnership ucture/capabilities but the % affordable is basic to the pro forma/business deal.

FOIA CONFIDENTIAL TREATMENT REQUESTED

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, March 16, 2009 7:20 PM
To: Doggett, Rosalyn; Washington, Joel R.
Maurice' 'Perry; 'thicks'; eric.smart@bolansmart.com; Moneme, Emeka; Bottigheimer, Nat
Subject: Updated proforma and Terms - Jazz @ Florida Avenue
Importance: High

Mr. Washington and Ms. Doggett,

As requested, attached please find the latest pro forma of the Jazz @ Florida Avenue. The basic terms that we believe would be appropriate for this project and which are included in the pro forma are as follows:

- 30% of the units would be affordable at 60% AMI
- $300,000 annual payment to WMATA beginning at stabilization;
- $200,000 pre-stabilization payment payable over the pre-construction and lease-up phase of the project;
- $100,000 deposit at execution of JDA;
- 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.

In addition to the above terms, the following changes were also made in the pro forma:

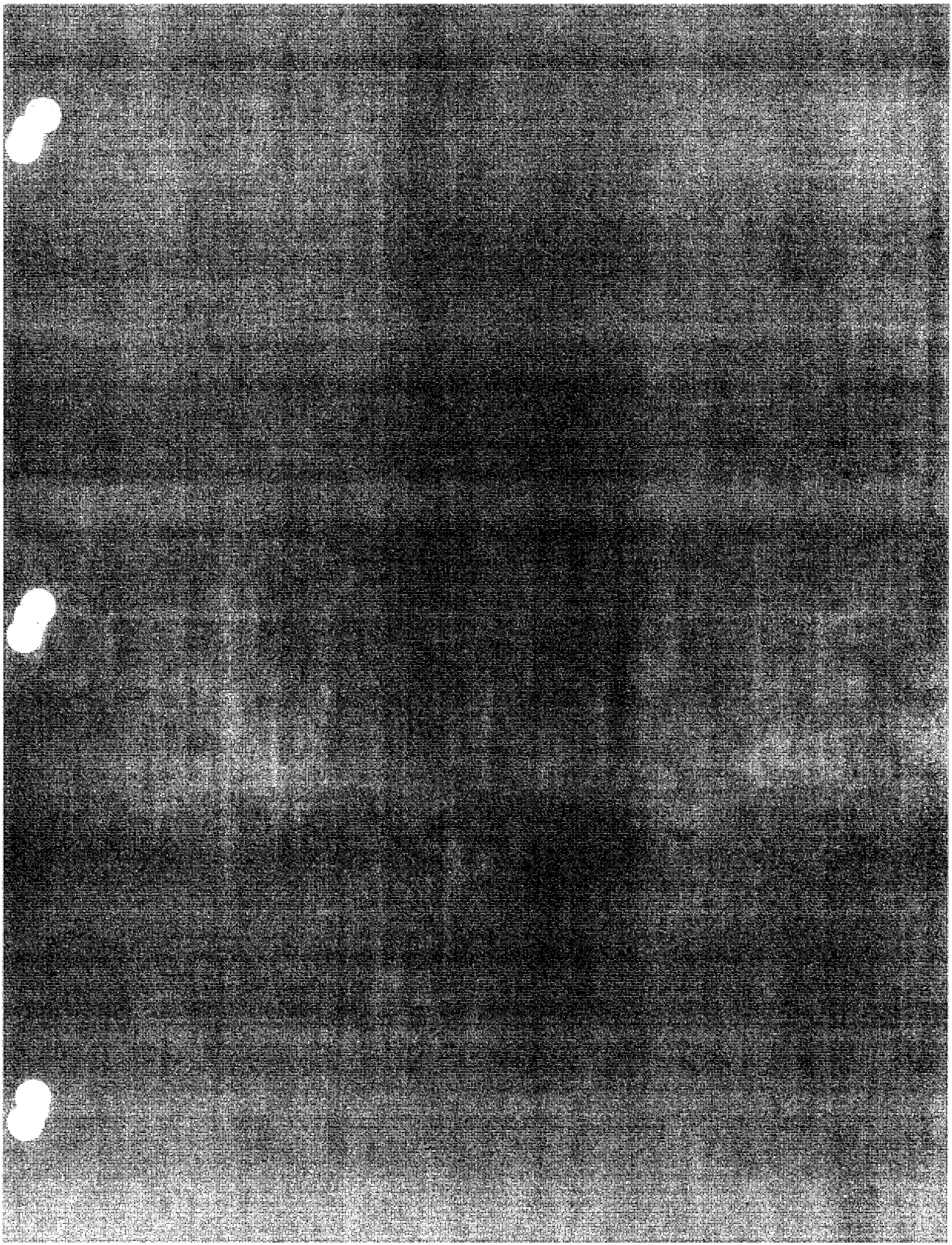
- In order to close the gap caused by the inclusion of the affordable units, we changed the construction type from concrete to wood over a retail podium. By changing the construction type, we are not able to maximize the 4.5 (as of right) FAR but instead were only able to build out to 4.1 FAR. However, the savings incurred as a result of a stick building versus a concrete building ($4.5M) makes up for the loss of 0.4 FAR.
- We are assuming receipt of Low Income Housing Tax Credits and a small subsidy to cover the gap caused by the inclusion of the affordable housing units.
- Based on discussions with KLNB Retail, we increased the revenue per SF that we are expecting from the retail space from $30 per SF to $38 per SF;
- In order to further eliminate a gap created by the inclusion of the affordable units, we have agreed to reduce the avg size of the units from 950 sq. ft. to 850 sq. ft. thus enabling the project to have more units and thus more revenue;
- Although we are assuming a FHA (HUD) loan for the senior debt and HUD requires that these loans be underwritten using a 20% vacancy rate for the retail/commercial component, we left the vacancy at 5% for purposes of our discussion as the project yield would be less than the targeted yield and generate more than $1M in a loss;
- Per Eric Smart's comments at our last meeting, we reduced the property taxes from $370k to $222k during the construction phase, which helps close the gap by $150k.

We look forward to discussing the terms with 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

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From:	Perry, Maurice <maurice.perry@bankofamerica.com>
Sent:	Wednesday, March 18, 2009 3:10 PM
To:	Doggett, Rosalyn; Washington, Joel R.
Cc:	Omar A. Karim; thicks
Subject:	Project Management Experience
Attachments:	MLPerry Project List.doc

Ms. Doggett & Mr. Washington,

It was pleasure to meet you both yesterday.

As promised, attached is a list projects that I've worked on as the Project Manager.

Should you have any questions please give me a call to discuss.

Best Regards,
Maurice

Maurice Perry
Banc of America CDC
730 15th Street, NW 8th Floor
Washington, DC 20005
P: 202.442.7526
C: 202.329.7253
704.683.9162

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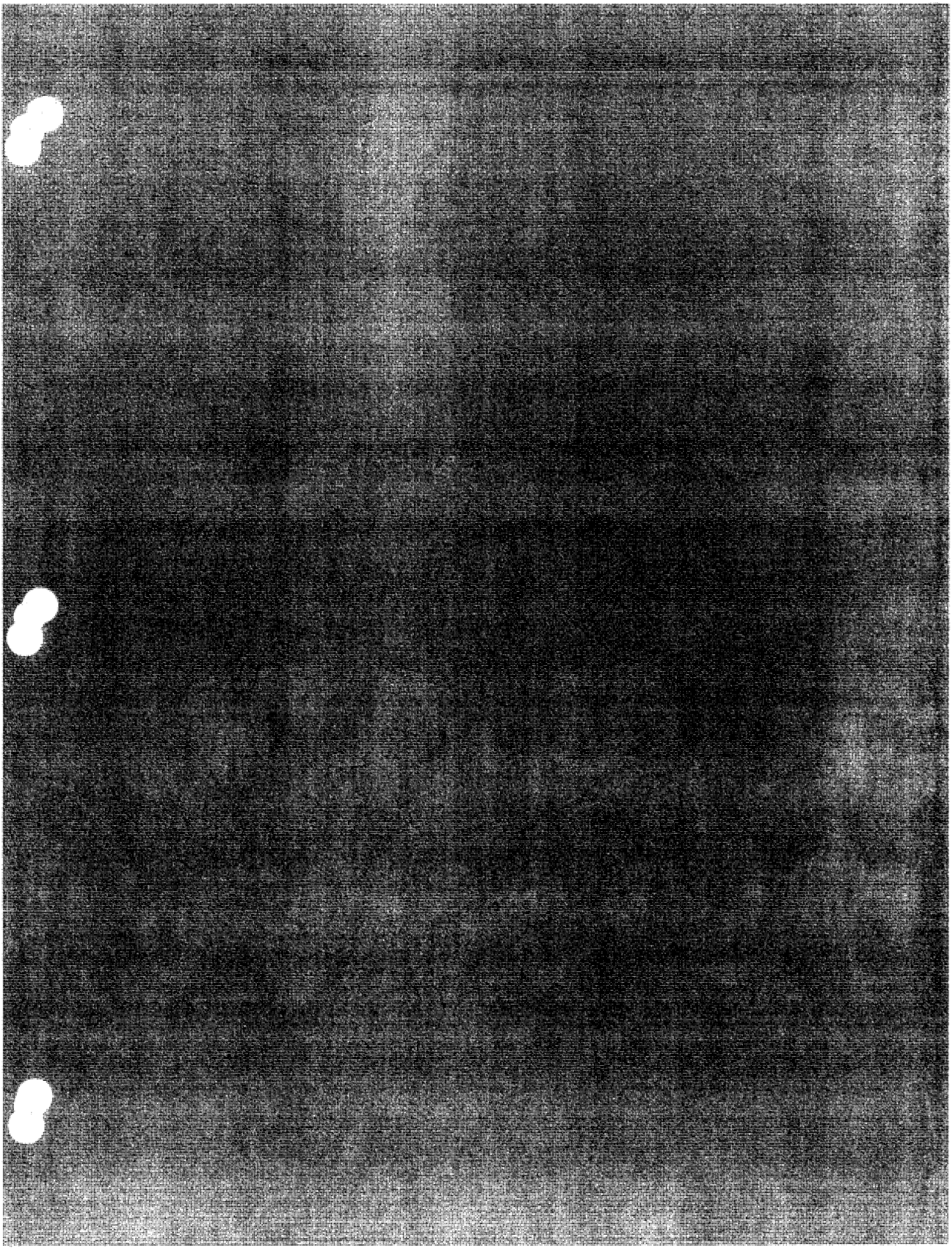

Omar Karim

bject:	Florida Ave Properties
.ocation:	Room JGB 5B Land Conference
Start:	Wed 3/25/2009 3:00 PM
End:	Wed 3/25/2009 5:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Doggett, Rosalyn
Resources:	Room JGB 5B Land Conference

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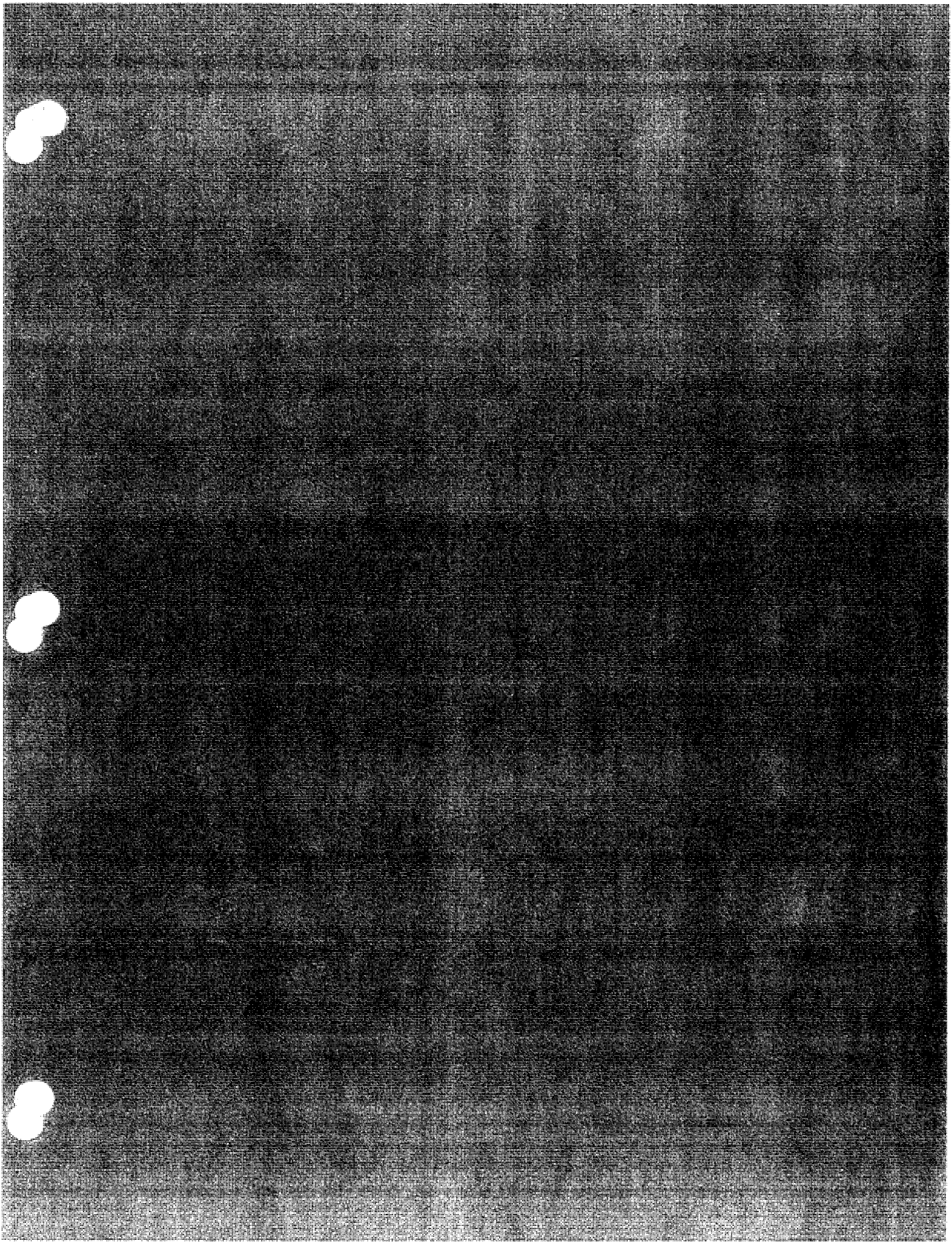

Omar Karim

om:	Montague, Joshua W. <jwmontague@wmata.com>
ent:	Friday, March 20, 2009 6:59 PM
To:	thicks
Cc:	okarim@bannekerventures.com; Doggett, Rosalyn
Subject:	RE: The Jazz @ Florida Avenue Term Sheet
Attachments:	Florida Avenue - altered terms 031709.doc

Hi Tiwana,

Here is the Comparisons Chart. This is an incomplete document that has not been fully updated to reflect information from our meetings this week, but I hope that it helps us get closer to formalizing our agreement.

Please let me know if you have any questions.

Have a good weekend,

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority 600 Fifth Street, N.W.
Washington, DC 20001
Phone: (202) 962-1275

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message.

From: thicks [mailto:thicks@bannekerventures.com]
Sent: Friday, March 20, 2009 6:06 PM
To: Montague, Joshua W.
Cc: okarim@bannekerventures.com; Doggett, Rosalyn
Subject: The Jazz @ Florida Avenue Term Sheet

Hi Josh,
Could you send me an electronic version of the Florida Avenue – Offer Comparisons Chart you created? It was extremely helpful! Thanks and have a great weekend.
Tiwana

FOIA CONFIDENTIAL TREATMENT REQUESTED

Tiwana Z. Hicks
Banneker Ventures, LLC
12th Street, NW, Suite 700
ashington, DC 20005
Office: (202) 667-4110
Fax: (301) 565-4982
Cell: (202) 486-1863
thicks@bannekerventures.com

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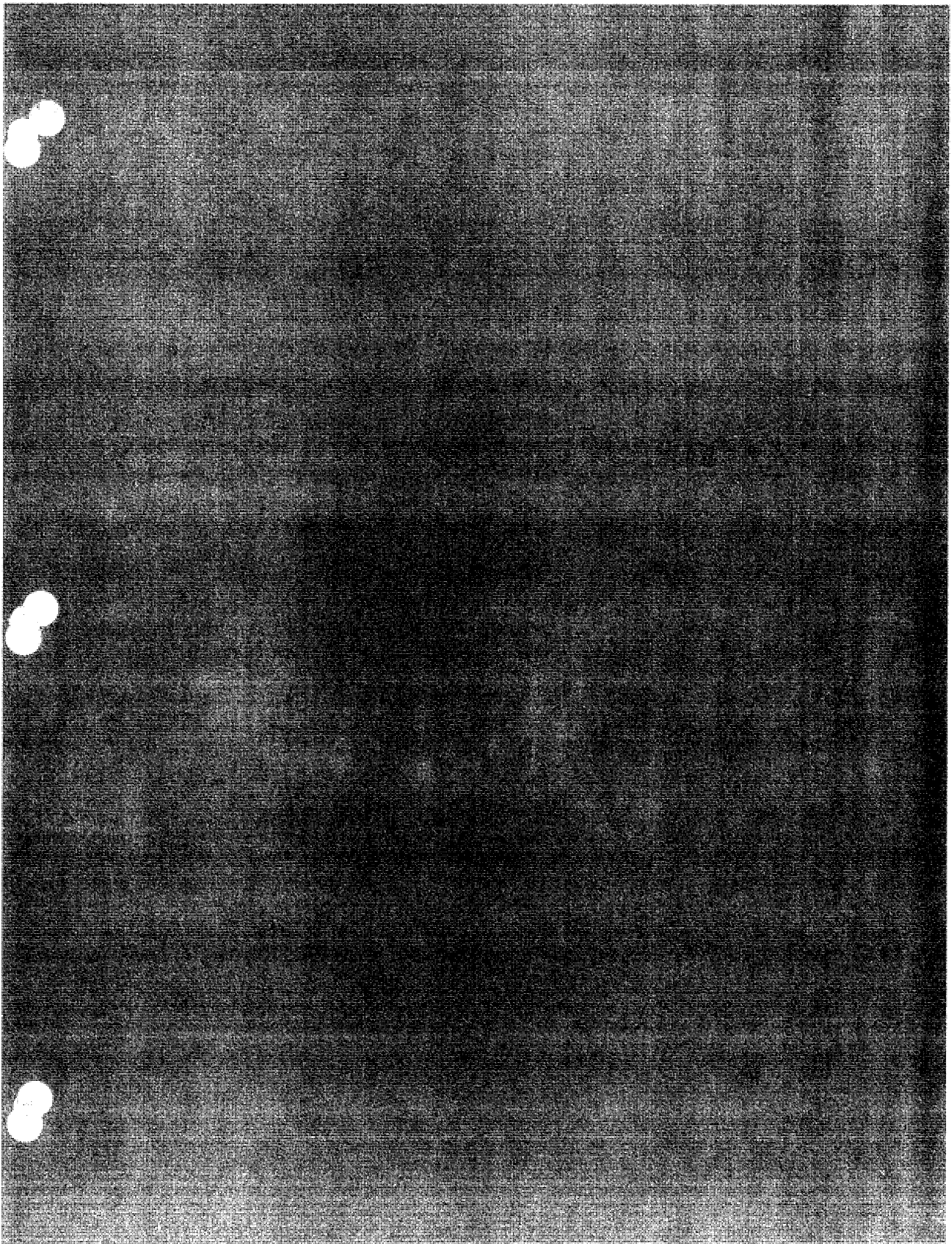

Omar Karim

m:	Doggett, Rosalyn <RDoggett@wmata.com>
ent:	Monday, March 30, 2009 10:34 AM
To:	Omar A. Karim; Washington, Joel R.
Cc:	Maurice' 'Perry; 'thicks'; Moneme, Emeka; Montague, Joshua W.; Bottigheimer, Nat
Subject:	RE: Jazz @ Florida Avenue - Updated JDA and Lease Chart

Thanks, Omar. We will review to see if we concur and will be prepared to discuss on Friday.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Friday, March 27, 2009 5:24 PM
To: Doggett, Rosalyn; Washington, Joel R.
Cc: Maurice' 'Perry; 'thicks'; Moneme, Emeka; Montague, Joshua W.; Bottigheimer, Nat
Subject: Jazz @ Florida Avenue - Updated JDA and Lease Chart
Importance: High

Ms. Doggett and Mr. Washington,

As a follow-up to our meeting this past Wednesday, and as promised, attached please find the updated Florida Avenue Offer Comparisons Chart, which shows that out of the 29 issues that Josh summarized from the JDA and Lease, 22 have been agreed upon b/t WMATA and the Developer (Banneker and Banc of America CDC), leaving just 7 issues open. We look forward to continuing to work through the few outstanding issues with you at next Friday's 2:30pm meeting at your offices. Should you have any questions prior to then, please let us know.

..ve a great weekend.

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

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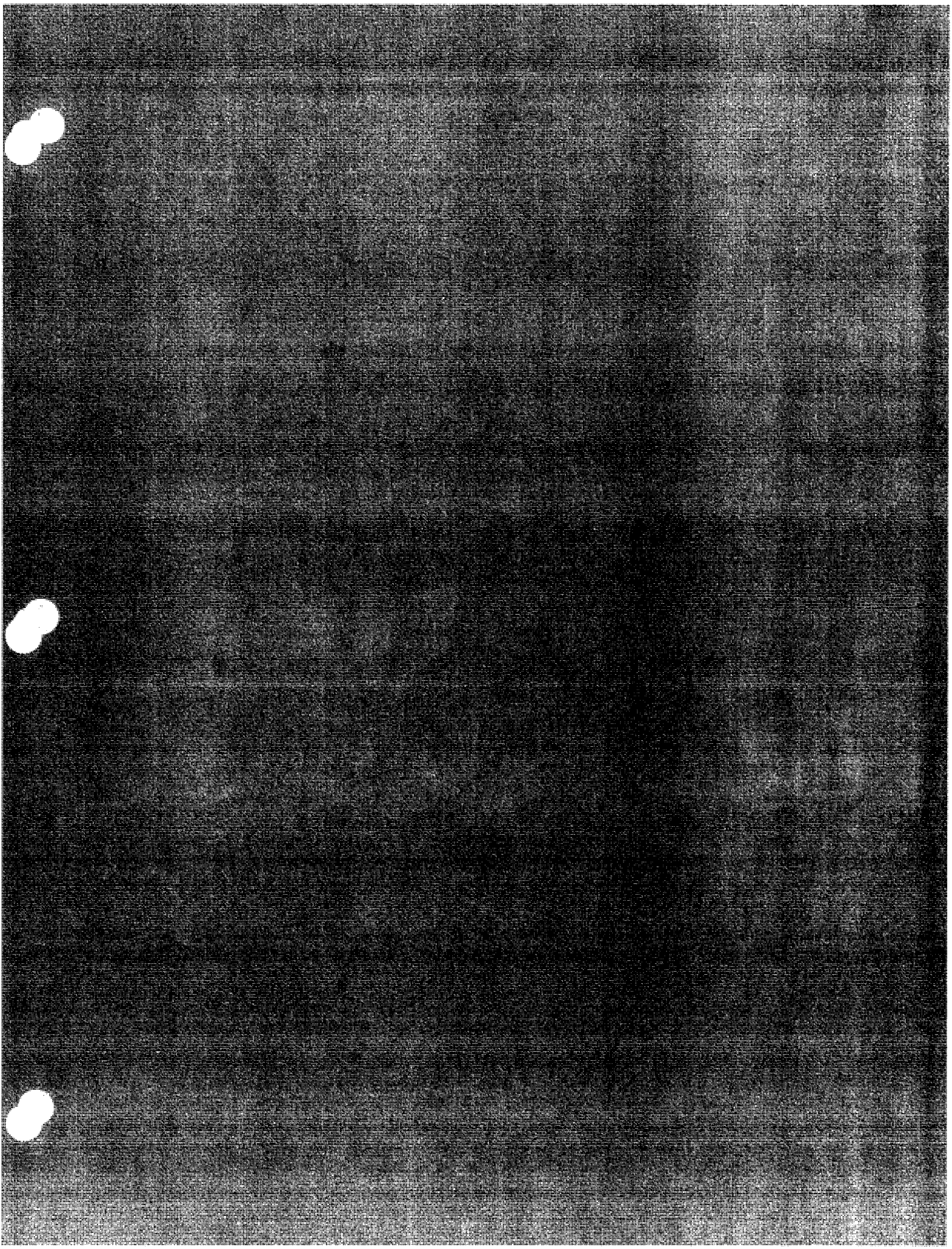


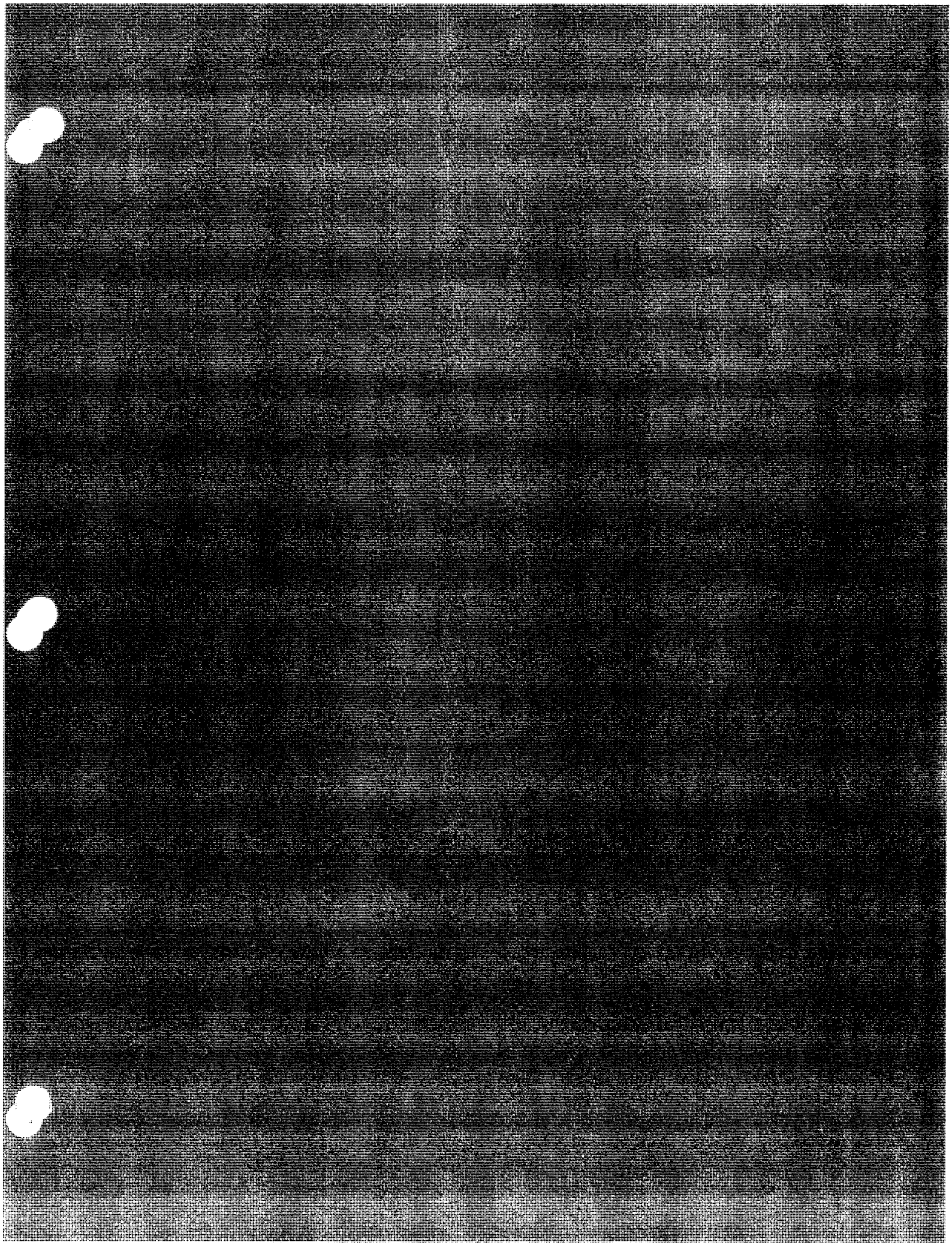
Omar Karim

From: Carol Rajaram <crajaram@bannekerventures.com>
Sent: Monday, March 30, 2009 4:59 PM
To: okarim@bannekerventures.com
Subject: Phone Call

You received a phone call from Emeka Moneme of WMATA in reference to the Jazz @ Florida Ave. His contact number is 202-962-1900.

Carol A. Rajaram
Banneker Ventures, LLC
700 12th Street NW, Suite 700
Washington, DC 2005
(202) 667-4110 office
(202) 558-5157 fax
(202) 276-4239 cell
crajaram@bannekerventures.com
www.bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

m: Carol Rajaram <crajaram@bannekerventures.com>
ent: Tuesday, March 31, 2009 4:01 PM
To: okarim@bannekerventures.com
Subject: phone call

You received a phone call from Josh Montague from WMATA in reference to Jazz @ Florida. His contact number is 202-962-1275.

Carol A. Rajaram
Banneker Ventures, LLC
700 12th Street NW, Suite 700
Washington, DC 2005
(202) 667-4110 office
(202) 558-5157 fax
(202) 276-4239 cell
crajaram@bannekerventures.com
www.bannekerventures.com

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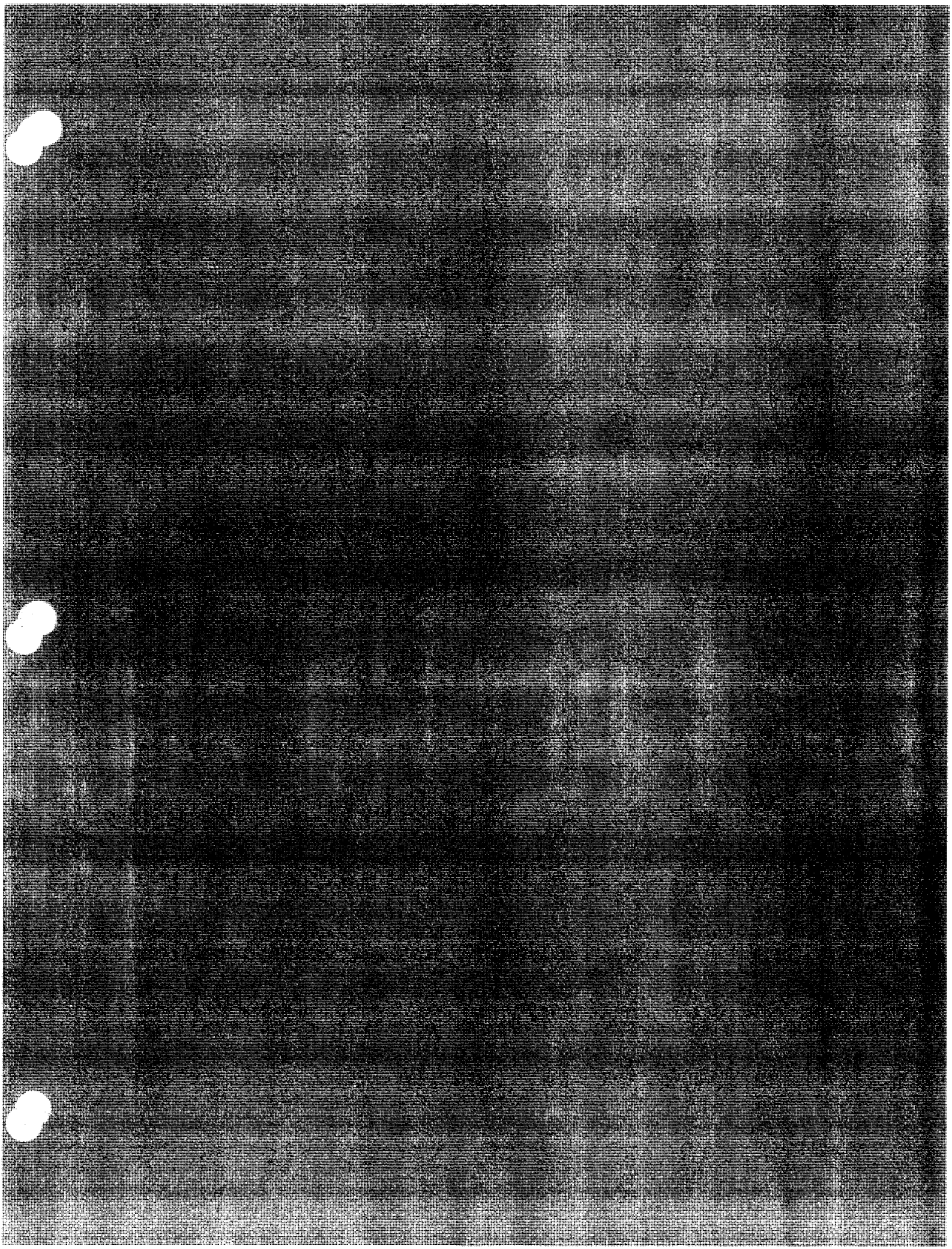

Omar Karim

ject:	FL AVE
.ation:	Room JGB 5B Land Conference
Start:	Fri 4/3/2009 2:30 PM
End:	Fri 4/3/2009 4:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Doggett, Rosalyn
Resources:	Room JGB 5B Land Conference

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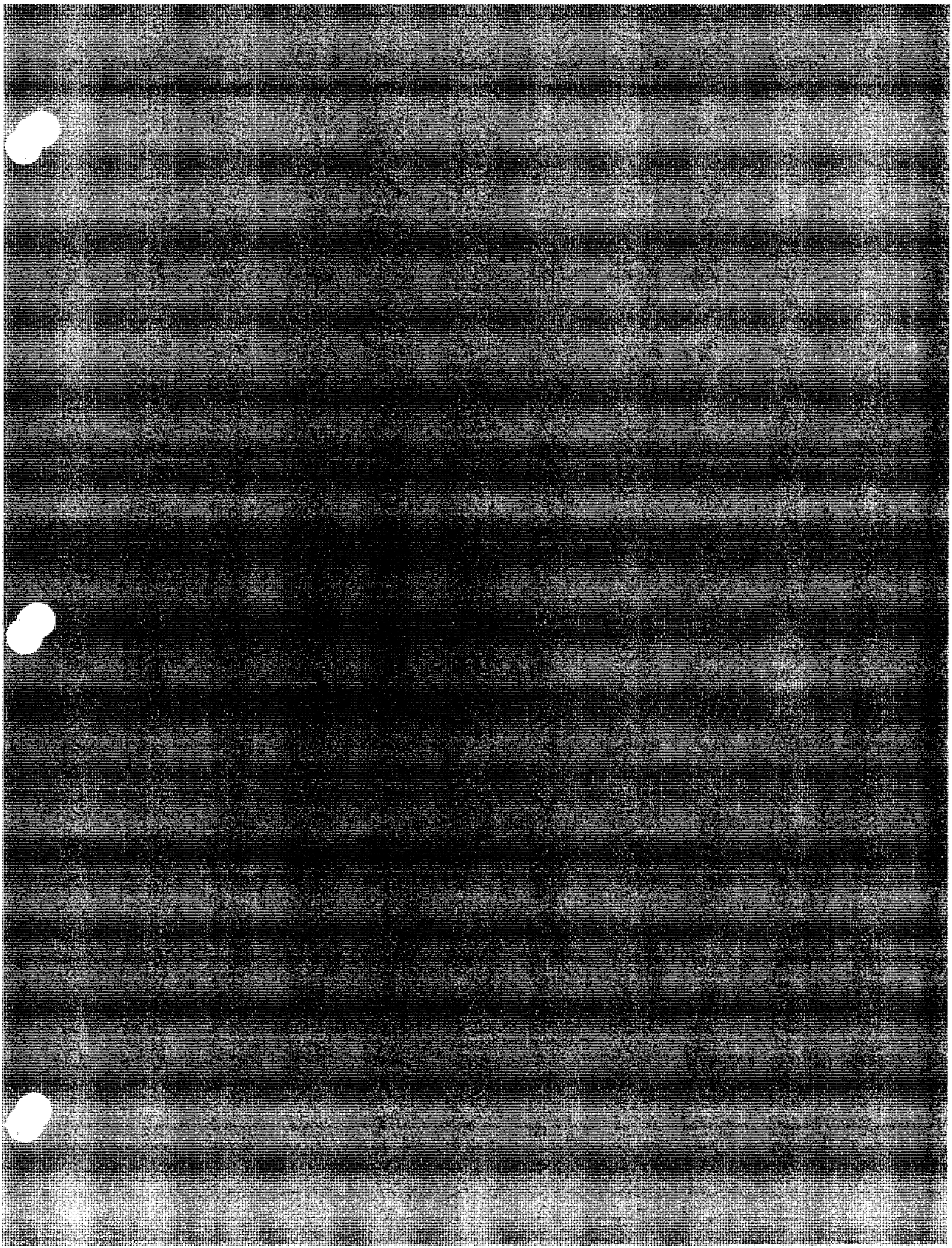

Omar Karim

Subject:	FlAve
Location:	Room JGB 5B Land Conference
Start:	Thu 4/16/2009 2:00 PM
End:	Thu 4/16/2009 4:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Doggett, Rosalyn
Resources:	Room JGB 5B Land Conference

I expect that we will go over the chart. I also understand from Eric that you may be revising your pro forma again; please send it to us tomorrow—or correct me if I am wrong.

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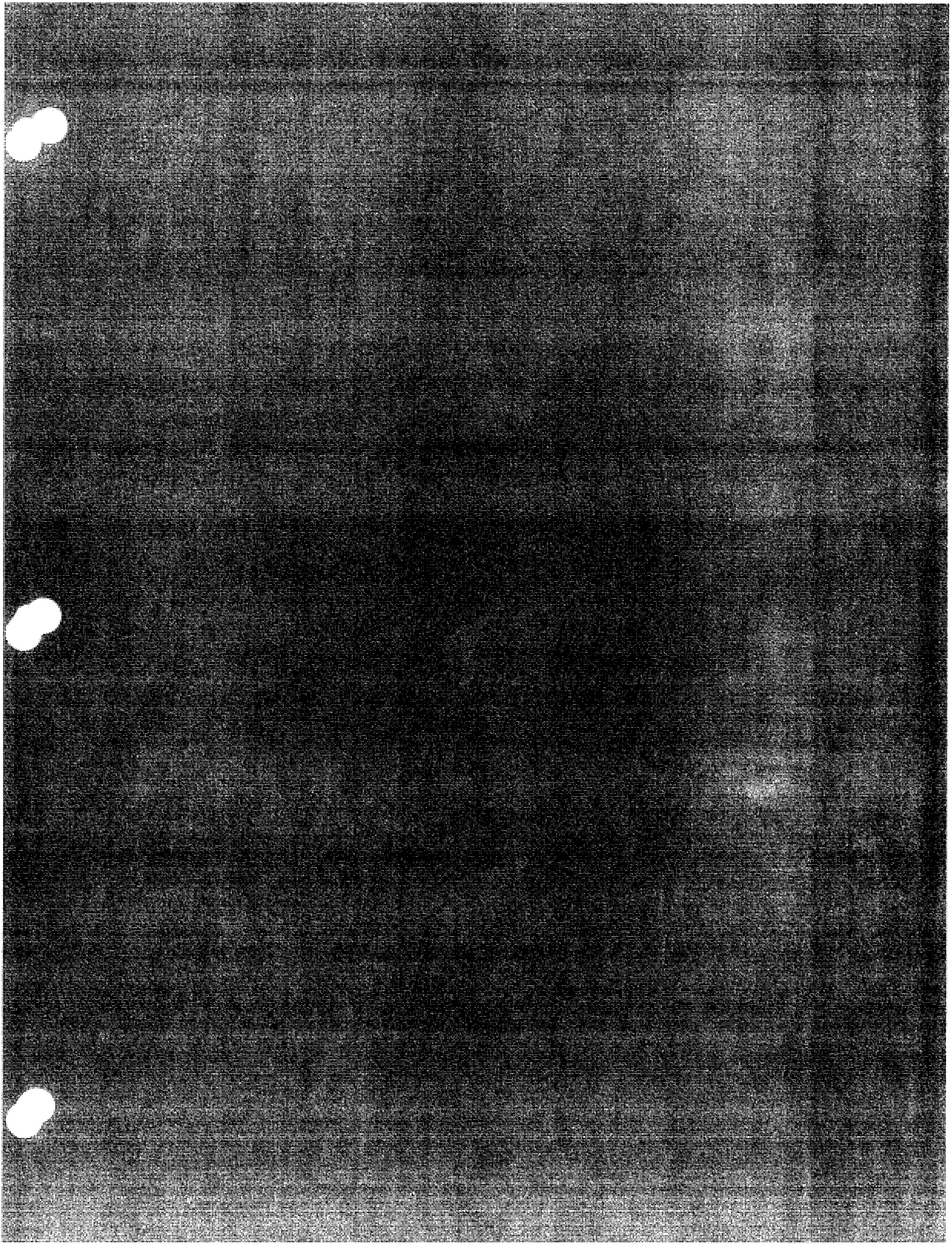


Omar Karim

rn: Bottigheimer, Nat <NBottigheimer@wmata.com>
.t: Monday, May 04, 2009 10:29 PM
To: Omar A. Karim
Cc: Maurice' 'Perry; 'thicks'; Moneme, Emeka; Doggett, Rosalyn; Bottigheimer, Nat
Subject: RE: Jazz @ Florida Avenue Project

Omar--

I wanted to confirm that I'd received your email and to agree that getting resolution on this is a high priority for us, too. I will contact counsel staff about this tomorrow (Tuesday). I will let you know what makes sense as a next step as soon as I connect with them.

Best wishes,

Nat

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Monday, May 04, 2009 7:18 PM
To: Bottigheimer, Nat
Cc: Maurice' 'Perry; 'thicks'; emeka.moneme@dc.gov; Meister, Mark K.; Doggett, Rosalyn
Subject: Jazz @ Florida Avenue Project

.t,

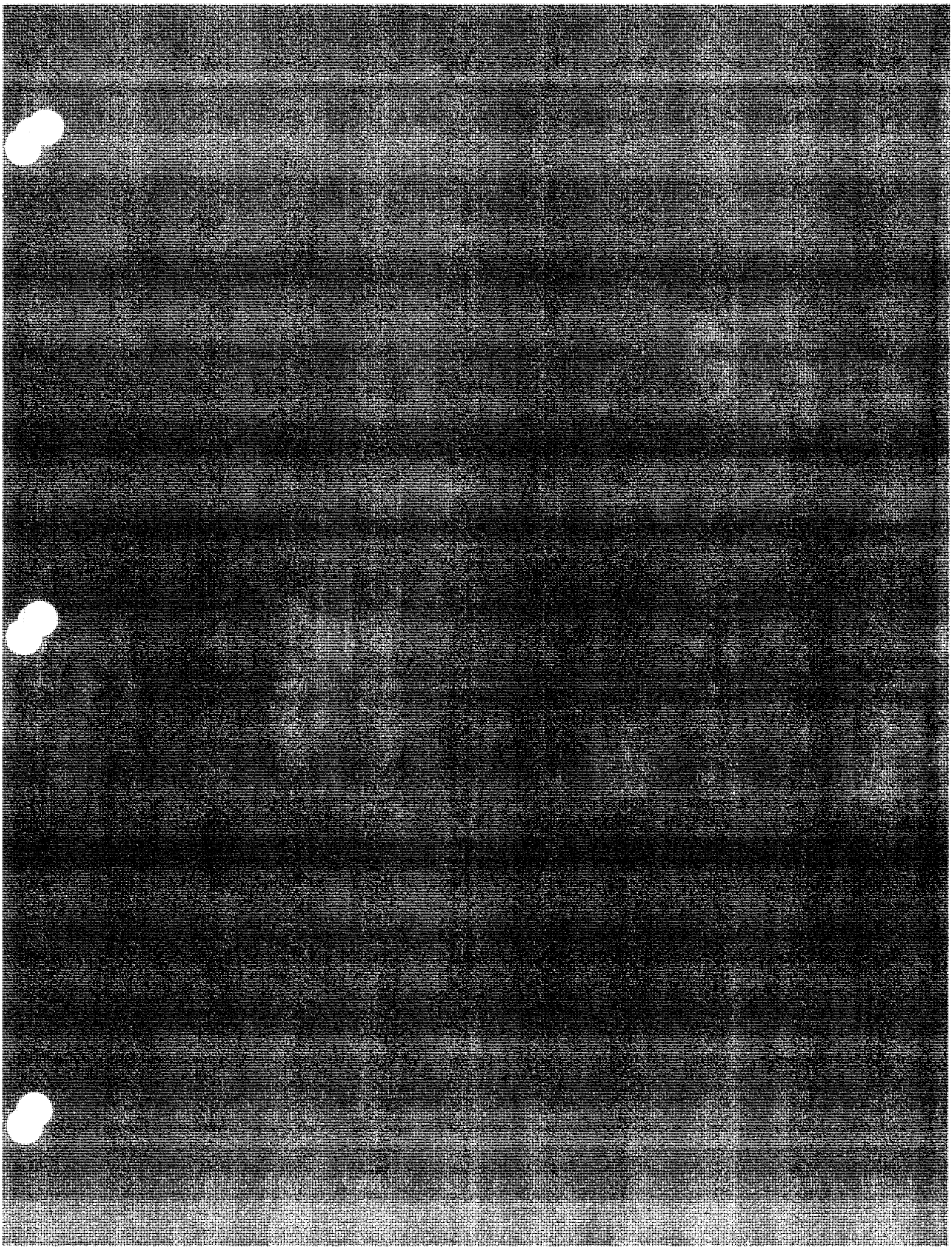
As a follow-up to my conversation with Rosalyn Doggett this afternoon regarding the status of our latest offer dealing with the annual lease payments, I wanted to reach out to you so that we can keep things on track while Rosalyn is away for the next two weeks. Rosalyn informed me that the decision on how to proceed forward rested with Bruce Heppin and Carol O'Keeffe in the General Counsel's office. In order to keep things moving (we discussed trying to get a JDA approved at the June, or at the latest, July Board meeting), can you reach out to Bruce or Carol to inquire about any issues they may have. Afterwards, we would like to schedule a conference call or in-person meeting this week in order to continue the momentum that we have gained over the past few months (we have resolved 22 of the 28 issues identified by your in-house counsel Josh Montague with the balance of the issues centering around our annual lease payments to WMATA). If this is amenable to you, can you send around some times that could work for you on Thurs or Friday and we will check our schedules to see if these work.

Thank you in advance.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
)1) 523-1810 cell
karim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

m: Bottigheimer, Nat <NBottigheimer@wmata.com>
nt: Wednesday, May 06, 2009 5:18 PM
To: 'okarim@bannekerventures.com'
Subject: Re: Jazz @ Florida Avenue Project

I'll call you tomorrow morning, Omar. Best number?

From: Omar A. Karim
To: Bottigheimer, Nat
Cc: 'Maurice' 'Perry' ; 'thicks' ; Moneme, Emeka; Doggett, Rosalyn
Sent: Wed May 06 17:13:05 2009
Subject: RE: Jazz @ Florida Avenue Project
Nat,

Any word from the counsel's office?

Omar

From: Bottigheimer, Nat [mailto:NBottigheimer@wmata.com]
Sent: Monday, May 04, 2009 10:29 PM
To: Omar A. Karim
Cc: Maurice' 'Perry; 'thicks'; Moneme, Emeka; Doggett, Rosalyn; Bottigheimer, Nat
ıbject: RE: Jazz @ Florida Avenue Project

Omar--

I wanted to confirm that I'd received your email and to agree that getting resolution on this is a high priority for us, too. I will contact counsel staff about this tomorrow (Tuesday). I will let you know what makes sense as a next step as soon as I connect with them.

Best wishes,

Nat

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Monday, May 04, 2009 7:18 PM
To: Bottigheimer, Nat
Cc: Maurice' 'Perry; 'thicks'; emeka.moneme@dc.gov; Meister, Mark K.; Doggett, Rosalyn
Subject: Jazz @ Florida Avenue Project

Nat,

As a follow-up to my conversation with Rosalyn Doggett this afternoon regarding the status of our latest offer dealing with the annual lease payments, I wanted to reach out to you so that we can keep things on track while Rosalyn is away ›r the next two weeks. Rosalyn informed me that the decision on how to proceed forward rested with Bruce Heppin ınd Carol O'Keeffe in the General Counsel's office. In order to keep things moving (we discussed trying to get a JDA approved at the June, or at the latest, July Board meeting), can you reach out to Bruce or Carol to inquire about any

FOIA CONFIDENTIAL TREATMENT REQUESTED

issues they may have. Afterwards, we would like to schedule a conference call or in-person meeting this week in order to continue the momentum that we have gained over the past few months (we have resolved 22 of the 28 issues identified by your in-house counsel Josh Montague with the balance of the issues centering around our annual lease payments to WMATA). If this is amenable to you, can you send around some times that could work for you on Thurs or Friday and we will check our schedules to see if these work.

Thank you in advance.

Omar

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okarim@bannekerventures.com

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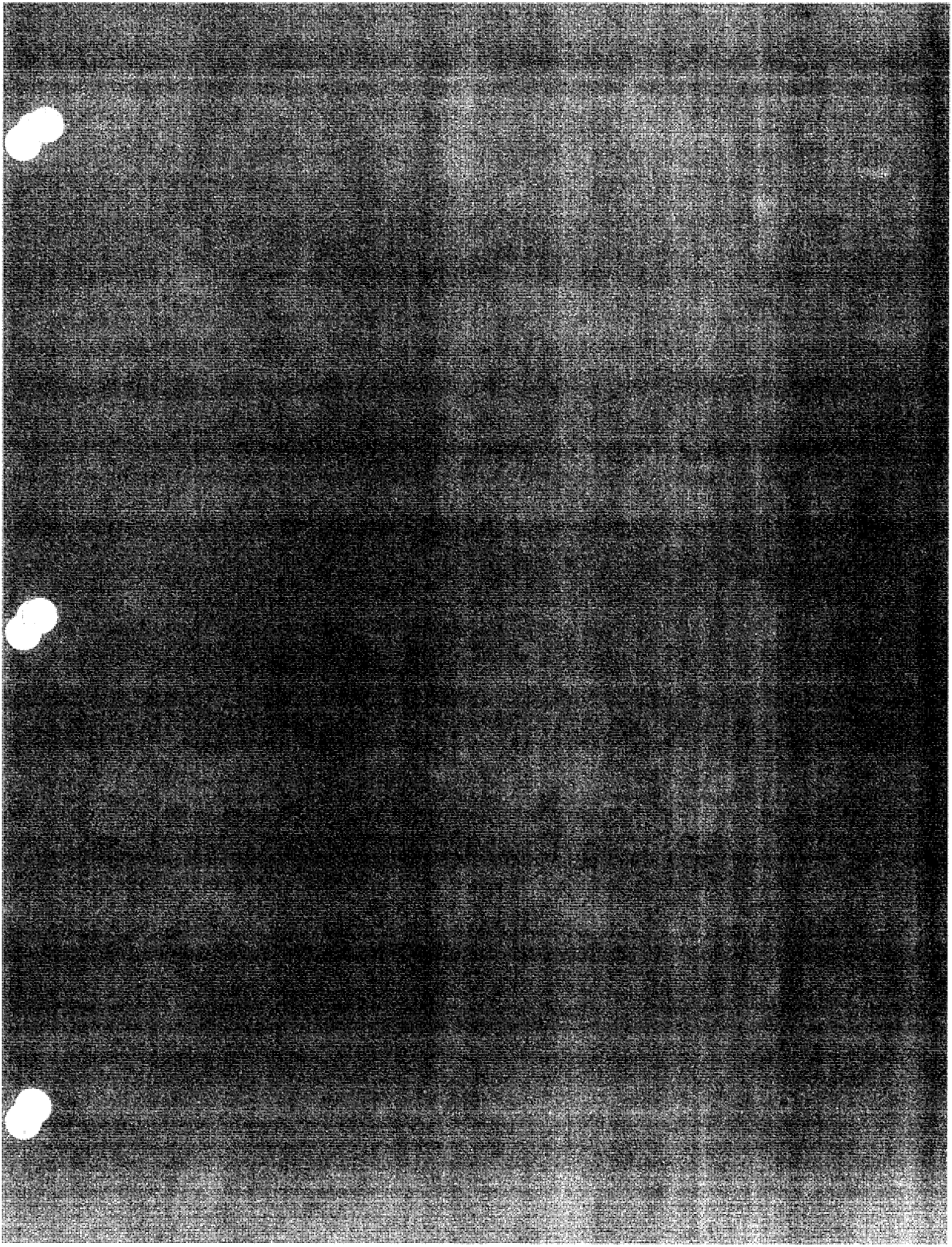


Government of the District of Columbia

Office of the Deputy Mayor
for Planning and Economic Development

May 7, 2009

The Jazz @ Florida Avenue LLC
c/o Mr. Omar A. Karim
700 12th Street NW
Suite 700
Washington, DC 20005

Re: Letter of Interest to Provide The Jazz @ Florida Avenue LLC a Great Streets Initiative Tax Increment Finance Note ("TIF Note") and/or a Payment in Lieu of Taxes ("Pilot") Not to Exceed Seven Million Twenty-Two Thousand and 00/100 Dollars ($7,022,000.00) to Support Development of The Jazz @ Florida Avenue Mixed Use Project along Florida Avenue between 7th and 9th Streets NW ("the Project")

Dear Mr. Karim:

The District of Columbia ("the District") is pleased with the progress of our discussions about the District potentially providing up to Seven Million Twenty-Two Thousand and 00/100 Dollars ($7,022,000.00) in the form of a TIF Note and PILOT to The Jazz @ Florida Avenue LLC ("**the Developer**"). Final commitment of assistance from the District is subject to further review of your revised submission and joint approval by the Office of the Chief Financial Officer and the Office of the Deputy Mayor for Planning & Economic Development of your submission.

Although this letter of interest does not represent a financial commitment from the District, the District has a strong interest in participating in the financing of the Project which will be on nearly 37,000 square feet of vacant or underutilized land near the Shaw Howard University Metro station and within the 7th Street/Georgia Avenue Great Streets corridor. As our discussions proceed toward potential issuance of a TIF Note and PILOT, you and your team should be aware of some conditions and provisions that will relate to the transaction:

I. PARTIES:

A. **District:** Government of the District of Columbia, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**DMPED**")

1350 Pennsylvania Avenue, N.W., Suite 317 • Washington, D.C. 20004 • Tel. (202) 727-6365 • Fax (202) 727-6703

FOIA CONFIDENTIAL TREATMENT REQUESTED

1350 Pennsylvania Avenue, N.W.
Suite 317
Washington, DC 20004

In conjunction with
Office of the Chief Financial Officer ("**OCFO**")
441 4th Street, N.W.
Suite 410S
Washington, DC 20001

B. **Developer:** The Jazz @ Florida Avenue LLC
c/o Mr. Omar A. Karim
700 12th Street NW
Suite 700
Washington, DC 20005

II. PROJECT & PROPERTY DESCRIPTION:

Developer proposes to construct the Project at a minimum to include 157,432 square foot, mixed used redevelopment consisting of the following uses:

- 20,200 gross square feet of new retail;
- 138,232 gross square foot of mixed income residential (at least 132 units with 20% affordable to families at 50% of area median income); and
- Approximately 70 structured parking spaces.

The Project is comprised of the following parcels in Square 0616: Lots 0031; Square 0392: Lots 0041, 0044, 0045, and 0826 ("**the Property**"). The Property is within the 7th Street/Georgia Avenue Retail Priority Area and is the "**TIF Area**" as defined in § 2-1271(15) of the District of Columbia Official Code.

III. PURPOSE - AGREEMENT TO DEDICATE INCREMENT REVENUES:

The District seeks to support the development of new, high-quality retail in city neighborhoods along the Great Streets corridors by issuing TIF Notes to support qualified development projects which meet the District's criteria and which contain no less than 10,000 square feet of retail. Pursuant to the Retail Incentive Act of 2004 ("**the Act**" (A15-0435, approved September 8, 2004, and as amended) and the terms and conditions of the Commitment, the District hereby agrees to dedicate the increment revenues from the TIF Area to the payment of debt service on a TIF Note, with the intent that the Real Property Tax Increment Revenues and the Sales Tax Increment Revenues with respect to the Property shall constitute tax increments as defined in section 490(n)(6) of the Home Rule Act. The District is also considering a PILOT payment from 100% of real property

FOIA CONFIDENTIAL TREATMENT REQUESTED

taxes to be generated on currently untaxed WMATA owned properties. Together the TIF Note and the PILOT will constitute the District's incremental contribution to the Project ("**the Increment Revenues**").

The sole source of repayment of the TIF Note shall be the Increment Revenues from the Project, and the District shall have no obligation to make payments on the TIF Note, other than through the remittance by the District of Increment Revenues in accordance with the terms of a TIF Note. Likewise, the District shall not be obligated to make any payments due to any failure of the Project to generate the projected PILOT.

IV. COMBINED TIF NOTE AND PILOT AMOUNT:

The maximum principal amount of the TIF Note and PILOT shall not exceed Seven Million Twenty-Two Thousand and 00/100 Dollars ($7,022,000.00) to be provided by the District to the Developer in keeping with the terms and conditions of the Commitment and any subsequent documents, as required by the District. Of the maximum principal amount, the District is also considering a PILOT payment not to exceed and up to Three Million Seven Hundred Seventy-Seven Thousand and 00/100 Dollars ($3,777,000.00) from 100% of real property taxes to be generated on currently untaxed WMATA owned properties. Estimated real property and sales taxes available to pay back debt on the Project is over $900,000 annually beginning in 2012—subject to completion and successful performance of the Project. It is anticipated that remittances will be issued semi-annually from the District.

V. AUTHORITY/COMPLIANCE AND ELIGIBLE COSTS:

In accordance with the Act, the Developer shall use the Incremental Revenues solely to pay for eligible "**Retail Development Costs**" for the Project including, but not limited to:

- Retail interior and exterior construction gap financing;
- Utilities upgrades related to retail servicing needs;
- Structured and/or shared parking for the retail uses;
- Permanent equipment and fixtures; and
- Architectural costs associated with design of the retail space.

Operating and financing costs are not eligible expenditures and include (i) rental assistance to tenants, (ii) maintenance expenses, and (iii) non-permanent or non-fixed equipment and fixtures.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014996

VI. DURATION OF COMMITMENT:

A Conditional Commitment Letter ("**Commitment**") will be issued by the District upon completion of our preliminary discussions. The Commitment shall become null and void at 12:00 A.M. on the first anniversary of the date of acceptance of that Commitment ("**the Commitment Period**") by both Parties unless extended by both Parties in writing. The Parties shall establish a date within the Commitment Period to fully execute documents associated with the issuance of the TIF Note and PILOT ("**the Closing Date**").

VII. TERM / PERIOD OF TIF NOTE & PILOT:

The TIF Note / PILOT term shall be for a period of up to 25 years, to be negotiated, from the date of issuance of the TIF Note.

VIII. ISSUANCE OF TIF NOTE & PILOT:

Upon satisfaction of the conditions set forth below no later than 30 days prior to the Closing Date, unless such conditions are otherwise waived by the District, the District shall, on the Closing Date, execute and deliver the TIF Note & PILOT documents:

(a) Developer shall have delivered to the District copies of retail tenant leases and/or letters of intent and the Developer's then most current sales (or sales tax) projections with respect to the Project in form reasonably satisfactory to the District;

(b) Developer shall have delivered to the District, in accordance with Section IX of the Commitment, the then most current information regarding the members of Developer, including, without limitation, the identity and ownership of each member, the amounts to be contributed to Developer by each member, that each member has financial assets that are sufficient to satisfy such contribution requirement and the member's percentage interest in the capital and profits of Developer, as the District may reasonably request;

(c) Developer shall prepare and submit to the District the then most current proposed project budget setting forth all of the costs and expenses by major category reasonably anticipated to be incurred in connection with the development and construction of the Project.

(d) Developer and the Developer's general contractor ("**the General Contractor**") shall have entered into construction contracts which shall include such reasonable and customary terms and conditions as

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014997

are consistent for construction contracts in the District or otherwise required by Developer, and shall have agreed upon a final guaranteed maximum price for the construction of the Project (the "**Final Construction GMP**"). Prior to execution, Developer will deliver the Final Construction GMP to the District for their review and approval.

(e) Developer shall have obtained debt financing ("**Debt Financing**") in an amount sufficient, together with the TIF Note Amount, PILOT and the developer's private equity investment to perform its obligations under the agreement ("**Agreement**"). Developer shall provide the loan documents, other material documents, security instruments and collateral evidencing, securing or otherwise required to be executed and delivered for such Debt Financing shall have been fully executed and copies thereof delivered to the District.

(f) Developer shall have obtained, and there shall have been fully committed (*i.e.*, in the form of an enforceable agreement), funded or contributed the Equity Investment such that the Equity Investment, together with the TIF Note, PILOT and the Debt Financing, will be sufficient for Developer to complete construction of the Project in accordance with its obligations under the Agreement; evidence of which may be in the form of a note, a letter of credit, escrow account or third-party guaranty, such assurance to be in form and substance, and from a Person, reasonably approved by the District, in their reasonable discretion. Each equity investor shall have provided financial and other business information regarding such equity investor as may be reasonably required by the District.

(g) The Completion Guaranty and the Performance and Payment Bonds shall have been fully executed and delivered by the parties and shall have been approved by the District, in their reasonable discretion.

(h) Developer shall have obtained and have delivered copies of the land use approvals and building permits necessary to construct the Project and such land use approvals and building permits shall not have been amended, modified or otherwise revised in a manner that would materially adversely affect the development of the Project.

(i) Developer shall have delivered the then most current versions of each of the following items:

(i) Copies of all organizational documents of Developer;

FOIA CONFIDENTIAL TREATMENT REQUESTED

(ii) A certificate of good standing issued within 45 days prior to the Closing Date and evidencing that Developer is in good standing and authorized to transact business in the District of Columbia;

(iii) Certificates of insurance for the commencement of the construction of the Project;

(iv) Certified copies of the executed Final Construction GMP with the General Contractor (and any amendments), and the agreements or instruments governing the Equity Investment and the Debt Financing; and

(v) Executed copies of Developer's Tax Certification Affidavit, Equal Employment Opportunity (EEO) Policy Statement, and the Nondiscrimination Certification.

(j) Developer shall provide certified, written evidence from the District's Office of Tax and Revenue (OTR) that all due and applicable Federal and local taxes affecting Developer are current as of the Closing Date.

(k) Developer shall submit a written opinion of the Developer's attorney stating that the Developer:

(i) Is validly organized, existing and authorized to do business in every jurisdiction in which the nature of its business or its properties make such qualification necessary;
(ii) Has the full authority and legal right to carry out the terms of the TIF Note, PILOT and all documentation required thereunder to be executed by the Developer; and
(iii) Has taken all actions to authorize the execution, delivery and performance of the TIF Note, PILOT and any documents required to be executed in connection with the TIF Note according to their respective terms.
(iv) The Opinion shall further state that none of the aforesaid actions, undertakings or agreements violate any restriction, term, condition or provision of the Articles of Incorporation, Partnership/Operating Agreement and/or By-laws of the Developer or any contract or agreement to which the Developer is a party or by which it is bound.

IX. CERTIFIED BUSINESS ENTERPRISE ("CBE") PARTICIPATION AND FIRST SOURCE HIRING:

(a) The Developer shall be inclusive of certified Local, Small or Disadvantage

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 014999

Business Enterprises ("**LSDBE**") equity and development participation in the Project at or above 20% LSDBE equity participation and 20% LSDBE development participation requirement. The Developer must submit the then most current binding agreement(s) with the 20% LSDBE equity and development partner(s) that at a minimum:

(i) identifies the LSDBE equity and development partner(s);

(ii) states the percentage of equity and development participation in detail of each LSDBE partner;

(iii) describes the role and scope of work in detail of each LSDBE partner; and

(iv) includes anti-dilution language regarding equity and development participation for the benefit of the LSDBE partner(s) and to be applied at all stages of the project.

(b) Prior to executing the Agreement, the Developer shall provide evidence from the District Department of Small and Local Business Development ("**DSLBD**") that the Developer satisfies the following general principles related to equity and development participation:

(i) **Minimum LSDBE Participation Requirements.** Developer acknowledges and agrees that businesses certified as **LSDBEs**, shall receive no less than twenty percent (20%) in equity participation and no less than twenty percent (20%) in development participation in the Project, in accordance with Section 2349a of the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act, D.C. Official Code § 2-218.49a.;

(ii) **Pari Passu Returns for LSDBE Equity Partner(s).** Developer agrees that all LSDBE equity partners shall receive a return on investment in the Project that is pari passu with all other sources of sponsor developer equity;

(iii) **Preservation of LSDBE Financial Interest.** Developer agrees that the LSDBE partner(s)' equity interests shall not be diluted over the course of the Project, including for failure to contribute additional capital;

(iv) **LSDBE Risk Commensurate With Equity Position.** Developer agrees that no LSDBE firm shall be expected to bear financial or

FOIA CONFIDENTIAL TREATMENT REQUESTED

execution requirements that are out of proportion with the LSDBE firm's equity position in Developer and/or the Project;

(v) **Management Control and Approval Rights.** Developer agrees that LSDBE partner(s) have management control and approval rights in line with their equity position(s), and certain major decisions should require consent of one or more LSDBE partners or require a supermajority vote;

(vi) **Inclusion and Recognition.** Developer agrees to consistently represent and include LSDBE firms as team members (e.g., through joint naming, advertising, branding, etc.).

(c) Developer shall provide the then most current description of CBE contracting participation in the project sufficient to demonstrate Developer's commitment to meet or exceed a 40% CBE contracting and procurement requirement. The Developer must have a fully executed Certified Business Enterprise Utilization and Participation Agreement with the DSLBD that outlines the specific contracting requirements and the specific efforts Developer must make to fulfill these requirements.

X. COMPETITIVE BIDDING, LABOR STANDARDS AND AFFIRMATIVE ACTION:

The Developer and General Contractor shall be subject to the following:

a. An Affirmative Action Plan ("**AAP**") must be submitted by the Developer and its General Contractor for review and approval by the DC Office of Human Rights and Local Business Development and DMPED before issuance of the TIF Note and PILOT. The AAP shall be in a form to be determined by DMPED and shall set forth, at a minimum, the following goals:

i) 35% of all construction trade jobs are to be filled by contractors / sub-contractors described in the Equal Opportunity for Local, Small and Disadvantaged Business Enterprises Act of 1992, as amended , D.C. Official Code Section 2-217.01 *et seq*. (2001 Ed.);

ii) A percentage of the work force, as *approved* under the AAP, for each construction trade job is to be filled by women.

iii) A percentage of all new construction trade jobs, as approved under the AAP, of the contractor/subcontractor whose contract amount is $100,000.00 or more shall enter into written agreements with the DC Department of Employment Services

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015001

(DOES), which specify that DOES will be used as the first source of recruitment, referral and placement of any new employees "**First Source Agreements**"; and

iv) The Developer's General Contractor, contractors and subcontractors must have an operating apprenticeship program provided and approved by the DC Apprenticeship Council.

c. Prior to the issuance of the TIF Note and PILOT, the Developer shall enter into a Certified Business Enterprise Utilization and Participation Agreement with The District of Columbia Department of Small and Local Business Development with a goal of 35% participation by Local, Small, and Disadvantaged Business Enterprises.

XI. DAVIS-BACON AND CONTRACT & SAFETY STANDARDS ACT REQUIREMENTS:

Any construction contract or any construction activity shall require compliance by the Developer with the Davis-Bacon Act, as amended (40 U.S.C. 276(a)(5) and the Contract work hours and Safety Standards Act (40 U.S.C. 327 *et seq.*).

XII. ASSIGNMENT:

Neither the Commitment, nor the TIF Note or PILOT, which are the subject matter of the Commitment, shall be assigned by the Developer without the prior written approval of the District and any attempt at such assignment shall be void.

XIII. ENVIRONMENTAL AND HISTORICAL PRESERVATION REVIEW:

The Project shall meet all applicable environmental and historic preservation review requirements including D.C. Official Code Section 8-109.01. In addition, neither the TIF Note nor PILOT will be issued until there is evidence that such have been satisfied.

The Developer agrees that, as among the parties hereto, it shall be solely responsible for and shall bear any liability resulting from the use, generation, storage or disposal by any person of any Hazardous Materials that are in violation of laws at the site of the Property. The Developer will furnish a Phase I and Phase II Environmental Site Assessment Report to the District concerning the Environmental concerns and Hazardous materials at the Property prior to the Closing Date. The Developer shall furnish to the District prompt written notice of all Environmental Liabilities, pending, threatened or anticipated Environmental Proceedings, Environmental Notices, Environmental Judgments and Orders, or Environmental Releases at, on, in under or in any way affecting the Property or

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015002

any adjacent property, and all facts, events, or conditions that could lead to any of the foregoing. The District shall have the right at any time, and for time to time, to make reasonable inquiries concerning all matters affecting or related to health, safety or the environment and the Developer will cooperate with such inquiries unless the Developer and the District are in litigation regarding the liability of the Developer and District concerning Hazardous Materials at the site of the Property.

XIV. EVENT OF DEFAULT:

The Commitment and the subsequent TIF Note and PILOT shall be null and void if there shall be filed by or against Developer in any court, pursuant to any statute of the United States, the District of Columbia, or of any State, a bona fide petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Developer's Property, or Developer shall make an assignment for the benefit of creditors, or if any governmental department, bureau, corporation or authority shall by reason of the inability of Developer to meet its obligations in due course take over the assets or property of Developer.

XV. CONFLICT OF INTEREST:

The TIF Note and PILOT are administered by the District. If any of the principals of the Developer are District employees, then the Developer shall provide the District with an opinion from the District's Office of the Attorney General that the participation of such District employee(s) in connection with the TIF Note or PILOT is not in violation or does not give the appearance of a violation of the District's conflict of interest regulations.

XVI. NO MATERIAL CHANGE:

The Commitment will be conditioned upon the absence of any material change in the financial condition or management of the Developer between the date hereof and the Closing Date. The Commitment will be based upon the Developer's Development Plan Application and Applicant Information which was submitted in response to the District's Notice of Funding Availability ("**NOFA**") for the Great Streets Neighborhood Retail Tax Increment Financing (issued January 29, 2008) and upon subsequent revisions to the Developer's Application per discussions with the District and the District's third party reviewers of the Application (collectively, "**the Application**"). The Application included the Developer's (i) proposed redevelopment project and timeline, (ii) development costs and sources and uses of funding, (iii) tax analysis, (iv) requested TIF amount, and (v) applicant information among other Application requirements per the NOFA. In the event of any changes, alterations, amendments, revisions

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015003

or modifications ("**Material Changes**") to the Developer's Application that would materially adversely affect the development of the Project, the Developer shall obtain the written approval or disapproval from the District. The District in its sole discretion reserves the right to fully reject the Material Changes and to terminate the Commitment.

XVII. ABILITY TO ISSUE NOTE:

The Commitment will also be conditioned upon the ability of the District to issue TIF Notes, PILOTs or other forms of support.

XVIII. COMPLIANCE:

The Developer shall comply with all applicable District of Columbia regulations, local laws and restrictions, and all program requirements of the Developer.

XIX. INFORMATION TO BE SUPPLIED BY DEVELOPER:

The Developer shall furnish in a timely manner to the District, all information requested in writing by the District that the District reasonably deems necessary to ensure compliance with the terms and conditions of the Commitment and subsequent TIF Note and PILOT including, but not limited to, the terms of the Commitment Letter.

XXI. FREEDOM OF INFORMATION ACT NOTIFICATION:

The District of Columbia Freedom of Information Act of 1976 (DCFOIA), Pub.L.90-614, D.C. Official Code §§ 2-531 et seq. provides for the disclosure of public information. Specifically, the law provides that any person has a right to inspect, and at his or her discretion, to copy any public record except as expressly exempted by the Act."

This serves as your notification that information/documentation submitted to the District pursuant to the Commitment and subsequent TIF Note or PILOT, or in connection with the transaction of the business of the District, is subject to public disclosure in response to a Freedom of Information Act request. Any information not specifically exempt by D.C. Code § 2-534(a) of the DCFOIA may be disclosed upon a proper request.

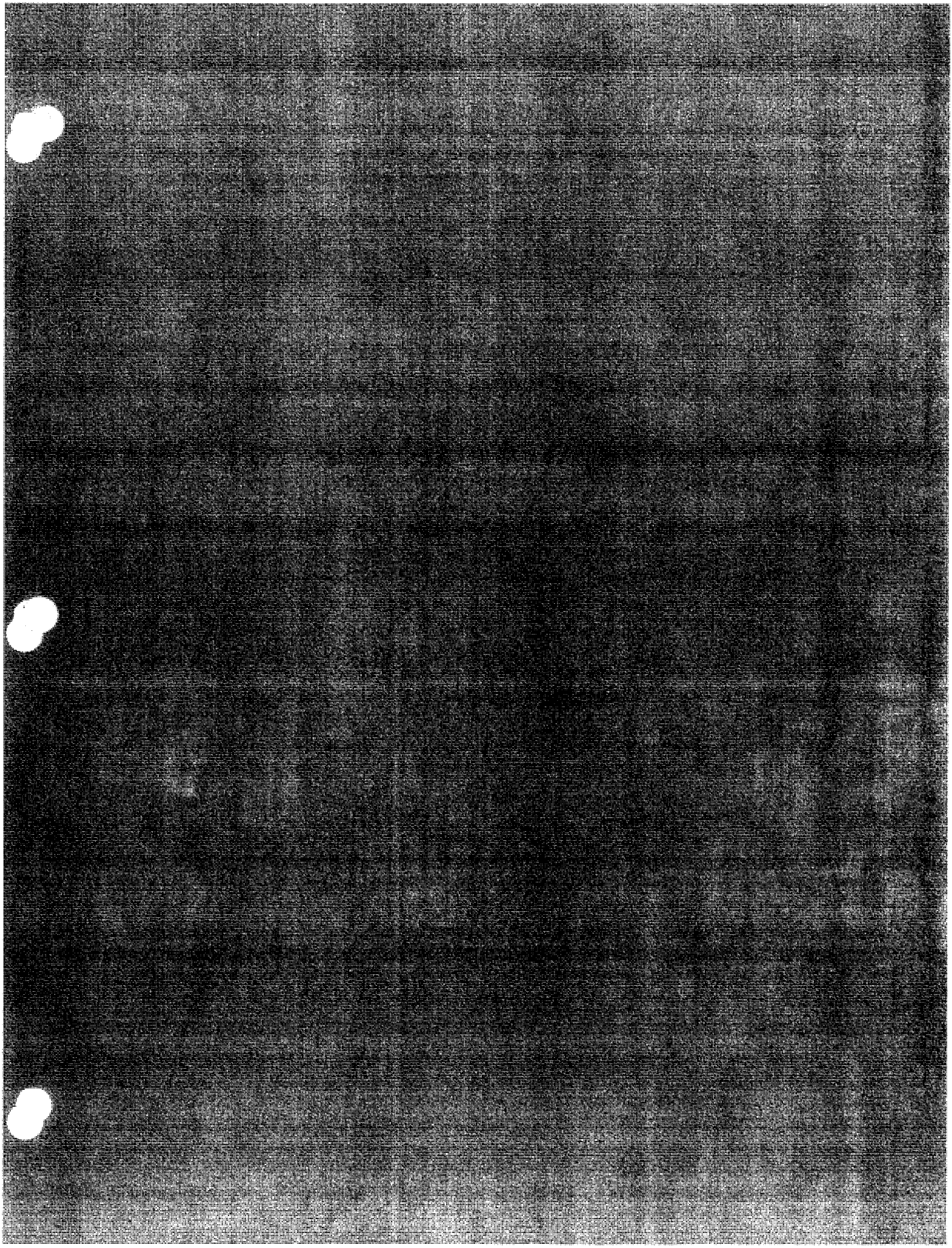
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015004

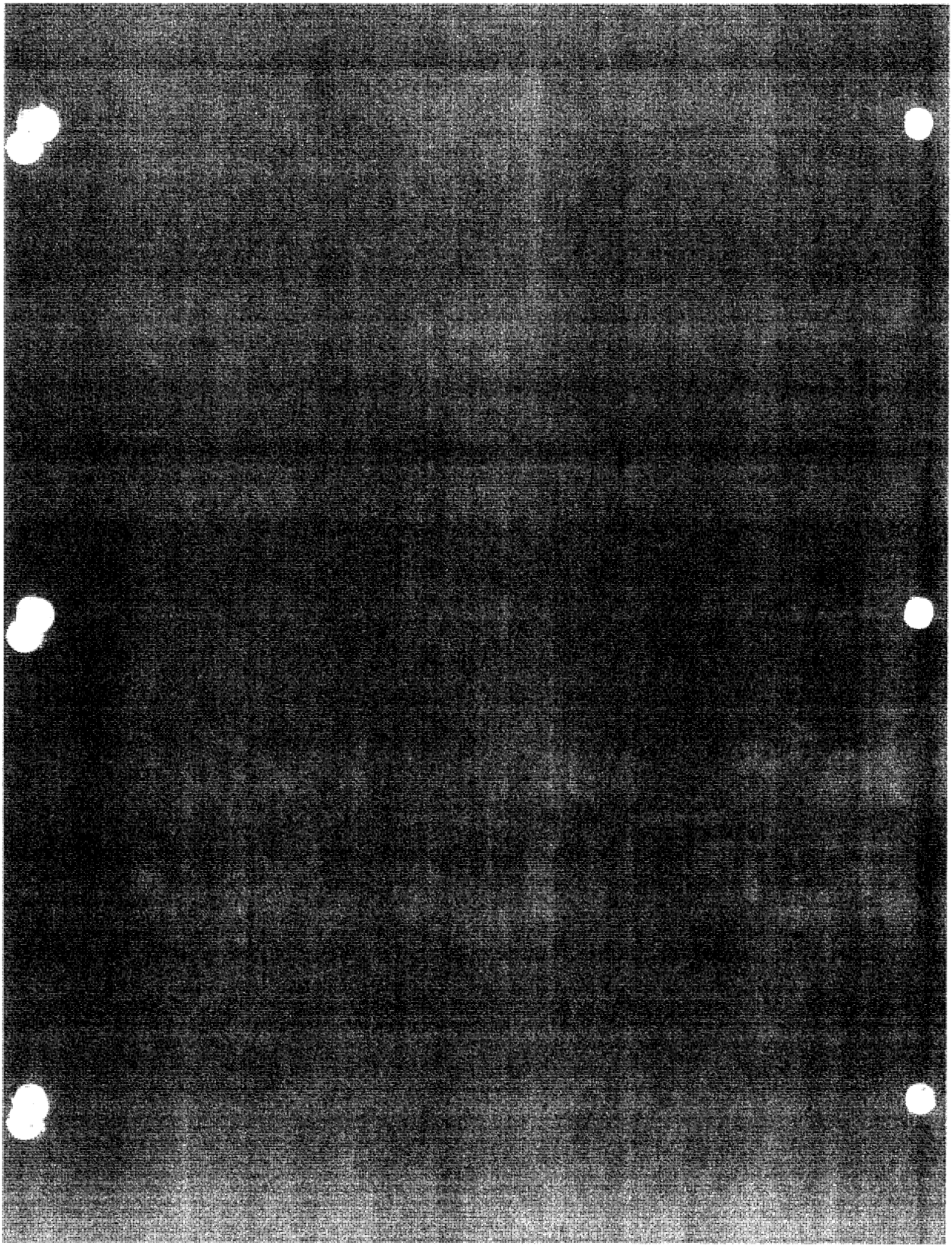
Again, we are looking forward to continuing to work with you over the coming weeks to reach full agreement about the Project, the benefits from the Project and the level of District financial participation in the Project.

Sincerely,

Neil O. Albert
Deputy Mayor for
Planning & Economic Development

FOIA CONFIDENTIAL TREATMENT REQUESTED

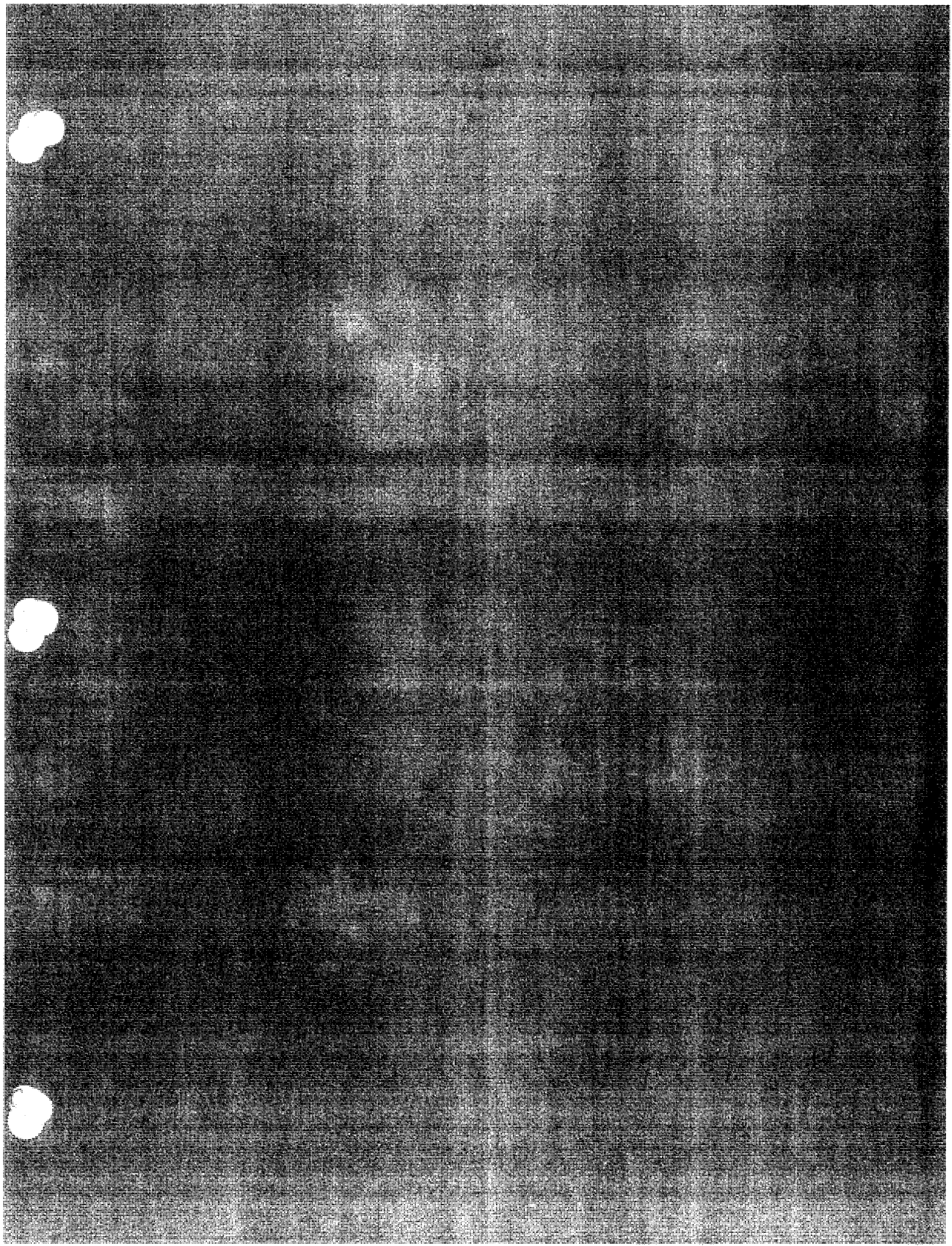




Omar Karim

bject:	CONFIRMED - Conference call w/Emeka, Omar & Nat B. re: 8th & O Streets project/"Jazz @ Florida Avenue"
Location:	Call-in #: 1-800-516-9896 Passcode: 72729277
Start:	Fri 5/8/2009 3:30 PM
End:	Fri 5/8/2009 4:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Albert, Neil (EOM)

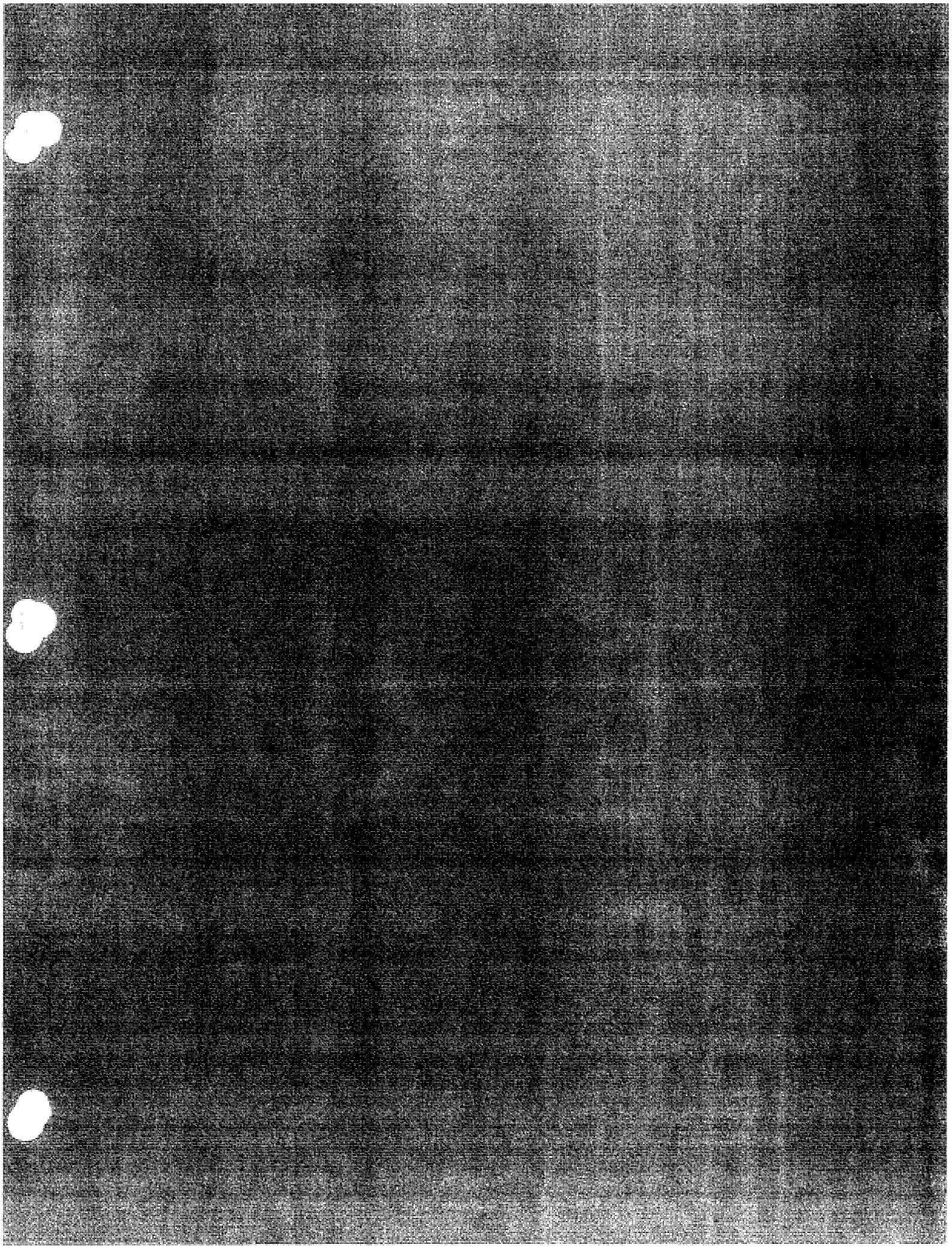
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015008



Omar Karim

Subject:	Florida Ave
Location:	Room JGB 5B Land Conference
Start:	Tue 5/26/2009 4:00 PM
End:	Tue 5/26/2009 5:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Doggett, Rosalyn
Resources:	Room JGB 5B Land Conference

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015010



Meeting 5/24/04

Florida Avenue – Offer comparisons

define

JDA	Term Sheet	WMATA draft	Developer's Latest Offer	Agreed Upon Terms or Status
Developer	Banneker, District Development, Metropolis	Banneker, District Development, Metropolis	Banneker and BACDC	**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	Last JDA removed reference to building in a single phase. Pro Forma: Gross FAR: 118,457 up to Units: 92 Retail: 12,880 Parking: 60 spaces	**Agreed:** 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	**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	Stabilization or 61 months	~~**Tentative Agreement:**~~ stabilization or 57 months
Lease closing	On or before 20 months	On or before 20 months	On or before 29 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)	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	**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	Upon receipt of $100,000 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 ~~8~~ 10 business days
Completion Bond	Not mentioned (only have performance and payment)	120% of replacement costs	100%	**Agreed:** N/A
FTA Approval	WMATA will apply for FTA approval within 30 days after	WMATA will apply for FTA approval within 30 days after	WMATA will apply for FTA approval within 30 days after	**Agreed:** WMATA will apply for FTA approval within 30

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015012

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Avenue – Offer comparisons

JDA	Term Sheet	WMATA draft	Developer's Latest Offer	Agreed Upon Terms or Status
	execution of Definitive Agreement; JDA will include appropriate termination provisions in the case FTA denies approval	execution of Definitive Agreement; Said agreement is automatically terminated if FTA denies approval and all appeals are exhausted.	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.	days after execution of Definitive Agreement; Said agreement is automatically terminated if FTA denies approval and all appeals are exhausted.
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.	**Agreed:** Prior to Final Completion -- no change of control; After Final Completion – Developer can change control freely among Developer members; Tax Credit Syndicator carve-out to be included in JDA.
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	**Developer Offer:** 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.	Developer or contractor, as applicable	**Status:** WMATA to provide alternative insurance language
Developer	See JDA	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."	Required guarantor with net worth exceeding 3 times value of project	Removed guarantor requirement	**Agreed:** Required guarantor with net worth equal to cost to complete project per approved plans and specifications.

WMATA-INV 015013

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Avenue – Offer comparisons

JDA	Term Sheet	WMATA draft	Developer's Latest Offer	Agreed Upon Terms or Status
	Q – was guaranty contemplated to be for lease also?			
Stabilization	TBD in JDA	90% occupancy	95% occupancy	**Agreed:** 92.5% ~~95% residential~~ 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.	Removed entirely.	**Agreed:** Add to base rent based on formula in Section 7.11 of term sheet. OPEN
Affordable Housing	No mention	No mention	18 Units	~~**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	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.	**Agreed:** WMATA agreed to insert "reasonableness" language
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.	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	If during construction, Developer discovers "catastrophic environ conditions", then Developer may terminate Lease	**Agreed:** Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; ~~Developer gets study period;~~ Developer takes property AS IS, WHERE IS

WMATA-INV 015014

FOIA CONFIDENTIAL TREATMENT REQUESTED

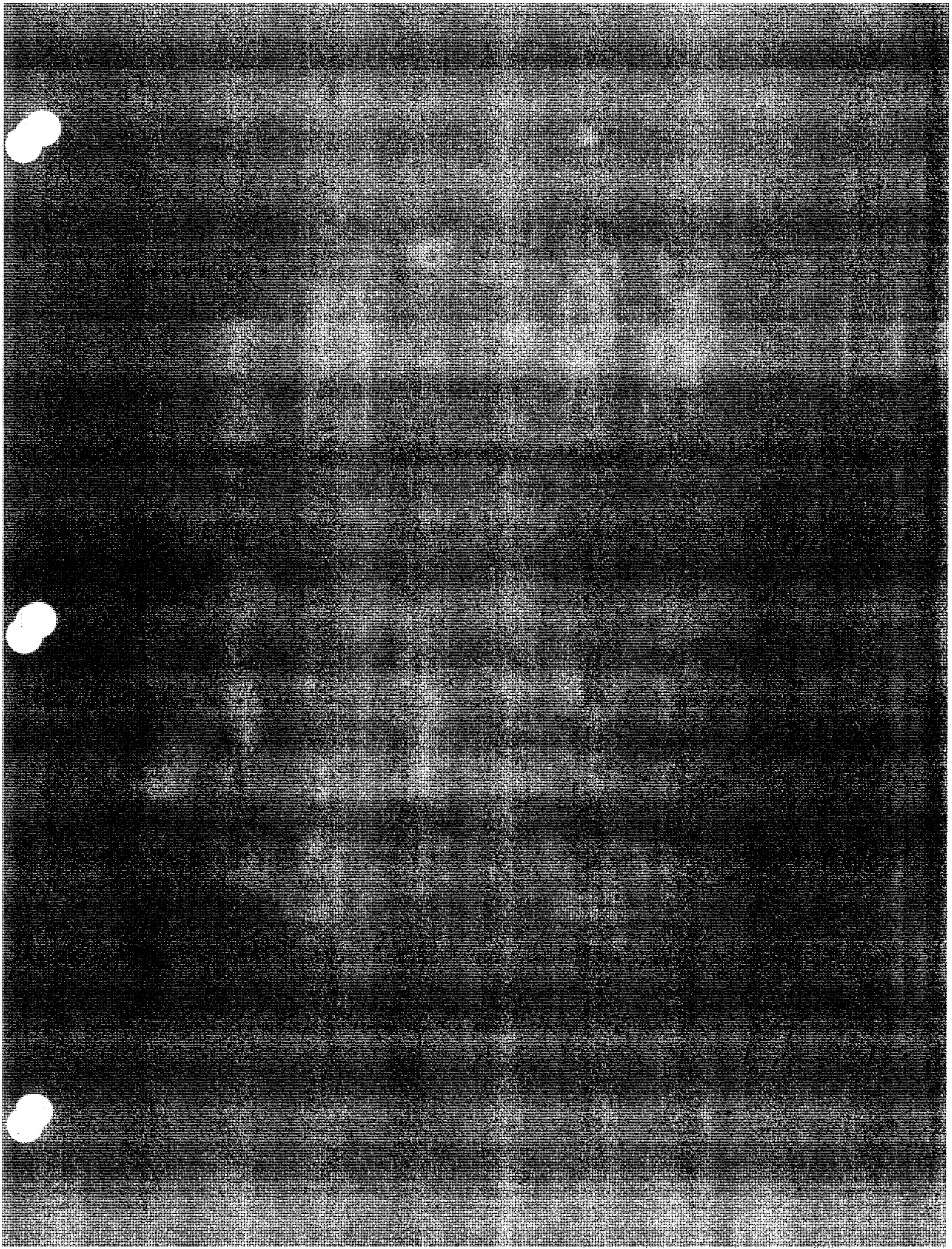
Florida Avenue – Offer comparisons

JDA	Term Sheet	WMATA draft	Developer's Latest Offer	Agreed Upon Terms or Status
Insurance	See JDA	See JDA	See JDA	**Agreed:** See JDA
Term	60 year lease	60-year lease	99-year lease	**Developer Offer:** 75-year lease
Base Rent	$597,000 in quarterly payments	$597,000 in quarterly payments	$300,000 in monthly payments	**Developer Offer:** a TBD base rent, then rent payments based on percentage of EGI See notes
Escalation (Years 1 to 10)	1.5% increase *(note: may have been typo on term sheet)*	1.5% increase	1.5% increase	N/A
Escalation (Years 11 to end)	3% increase	3% increase	1.03% increase *(this is likely related to typo mentioned above)*	N/A
Periodic Rent Revaluation	Upon Capital Event or every 10 years	Upon Capital Event or every 10 years	Removed entirely.	N/A
Capital Event Participation	10% of gross income from Capital Event	10% of gross income from Capital Event	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.	**Developer Offer:** a TBD % of gross income from Capital Event (after repayment of all debt, including member loan and related fees) Agreed
Late Charge	TBD in JDA	20% of delinquent amount	3% of delinquent amount	~~**Developer Offer:**~~ 5%
Default interest rate	Not mentioned.	15% or 10% over prime (whichever is higher)	3%	~~**Developer Offer:**~~ 4% over prime Agreed

- wmata to get back

10%.

WMATA-INV 015015



Omar Karim

m:	Doggett, Rosalyn <RDoggett@wmata.com>
t:	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

s. Doggett,

Any word on where we are with the final terms of our negotiations of the economic terms of the Florida Avenue deal?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

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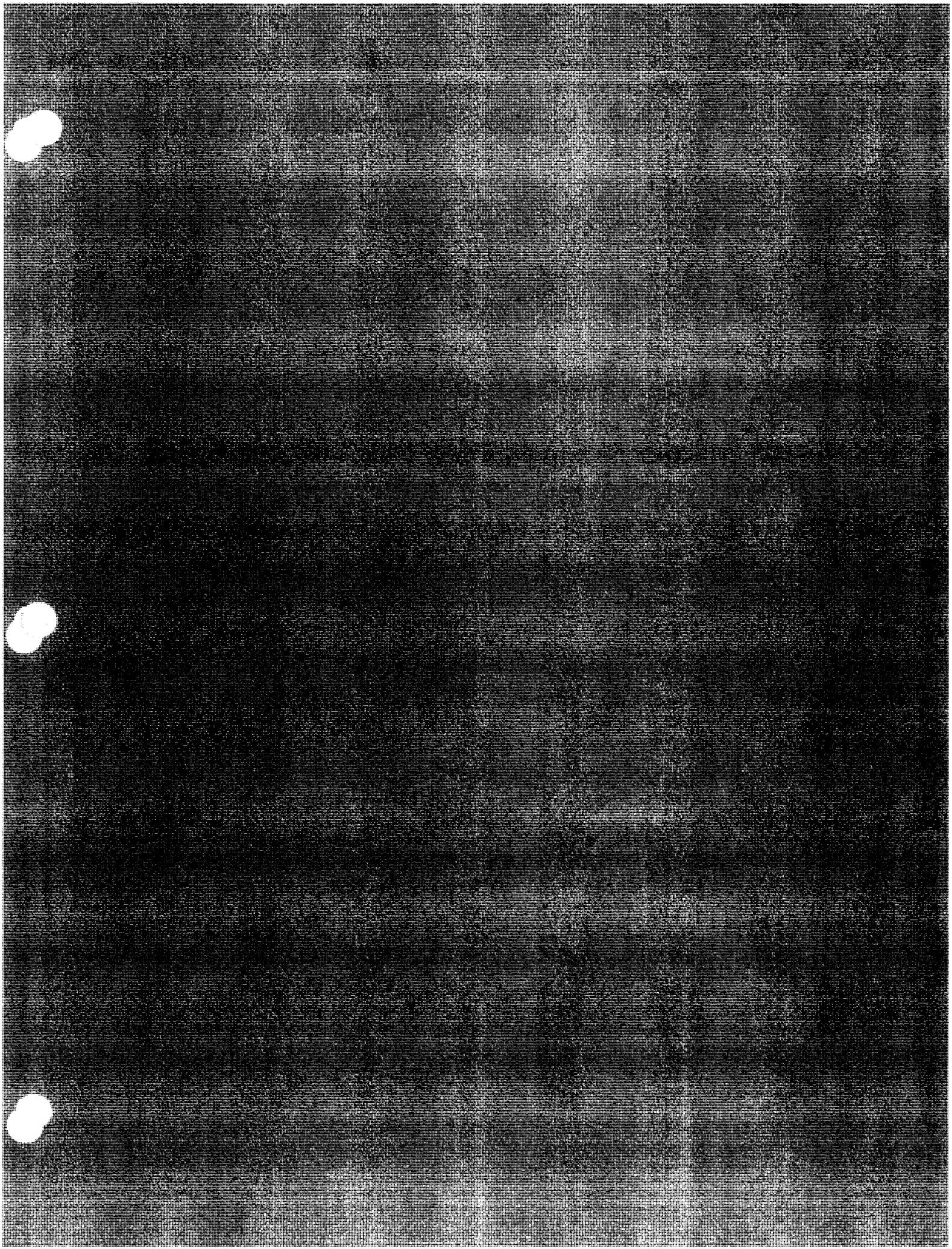

Omar Karim

›m: Doggett, Rosalyn <RDoggett@wmata.com>
.nt: Friday, May 29, 2009 5:03 PM
To: 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
Office: (202) 667-4110

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Fax: (202) 558-5157
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

iwana Z. Hicks
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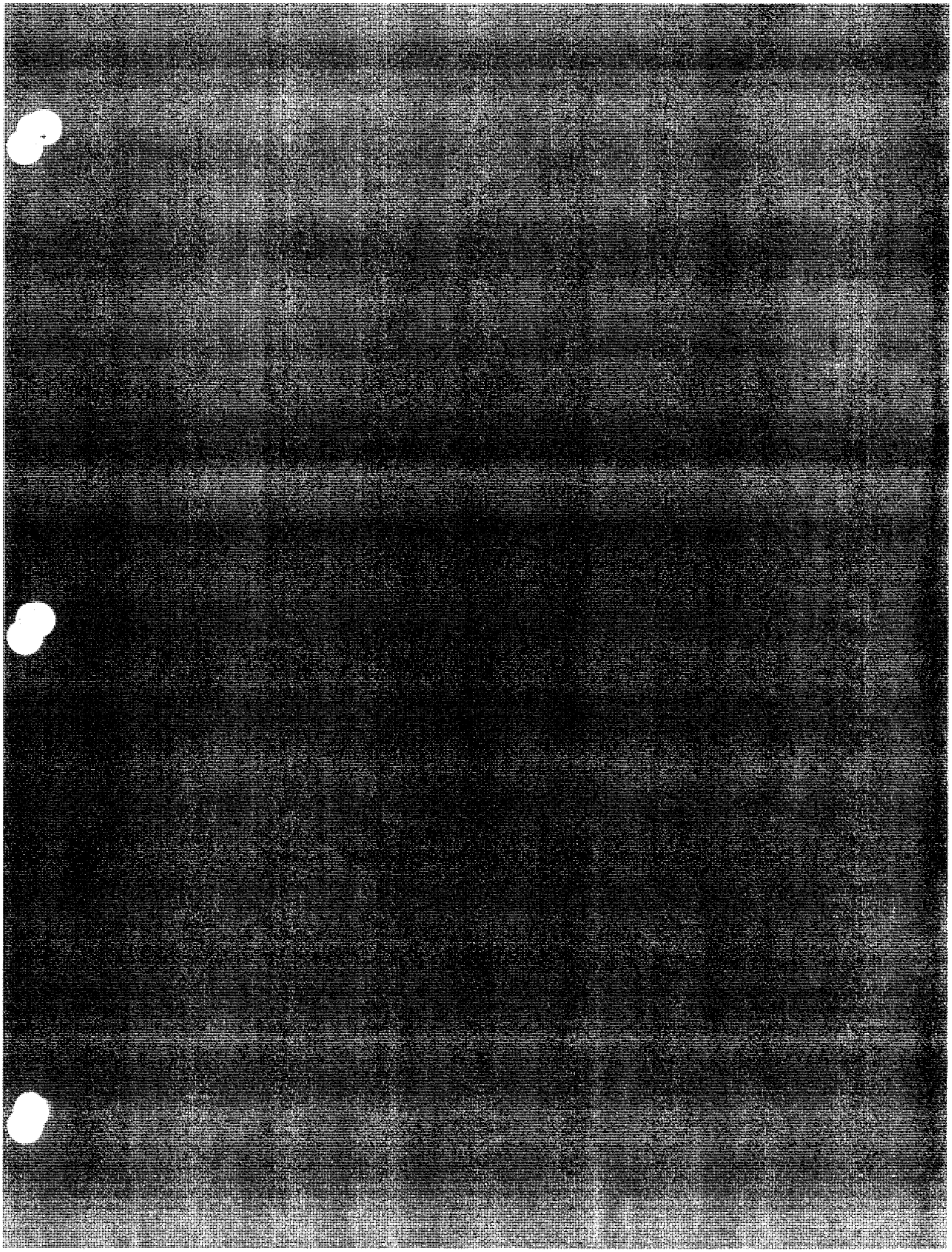
Fax: (301) 565-4982
Cell: (202) 486-1863
thicks@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015020



Omar Karim

From: thicks <thicks@bannekerventures.com>
Sent: Tuesday, June 09, 2009 1:12 PM
To: 'Doggett, Rosalyn'
Cc: jwmontague@wmata.com; MMeister@wmata.com; eric.smart@bolansmart.com; nbottigheimer@wmata.com; emoneme@wmata.com; okarim@bannekerventures.com; 'Perry, Maurice'; arashid@bannekerventures.com
Subject: The Jazz @ Florida Avenue - Economic Terms

Mrs. Doggett,

Below, please see our responses to your email sent May 29, 2009:

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.
2. FTA APPROVAL – Yes, we agree to add the language contained in the WMATA Draft Column.
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.
4. PRE-STABILIZATION PERIOD AMOUNTS – Our offer remains unchanged.
5. INSURANCE – Has Josh received a response from the Risk Management division?
   GUARANTOR – Banc of America CDC is the Guarantor.
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?
8. AFFORDABLE HOUSING – We are in agreement to delete "minimum". 20% is fine. We are in the process of reviewing the IZ regulations.
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.
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 governmental 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.

We look forward to hearing from you. Please call us with any questions you may have. Thanks in advance.
Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
0 12th Street, NW, Suite 700
Washington, DC 20005

FOIA CONFIDENTIAL TREATMENT REQUESTED

Office: (202) 667-4110
Fax: (202) 558-5157
Cell: (202) 486-1863
_ks@bannekerventures.com

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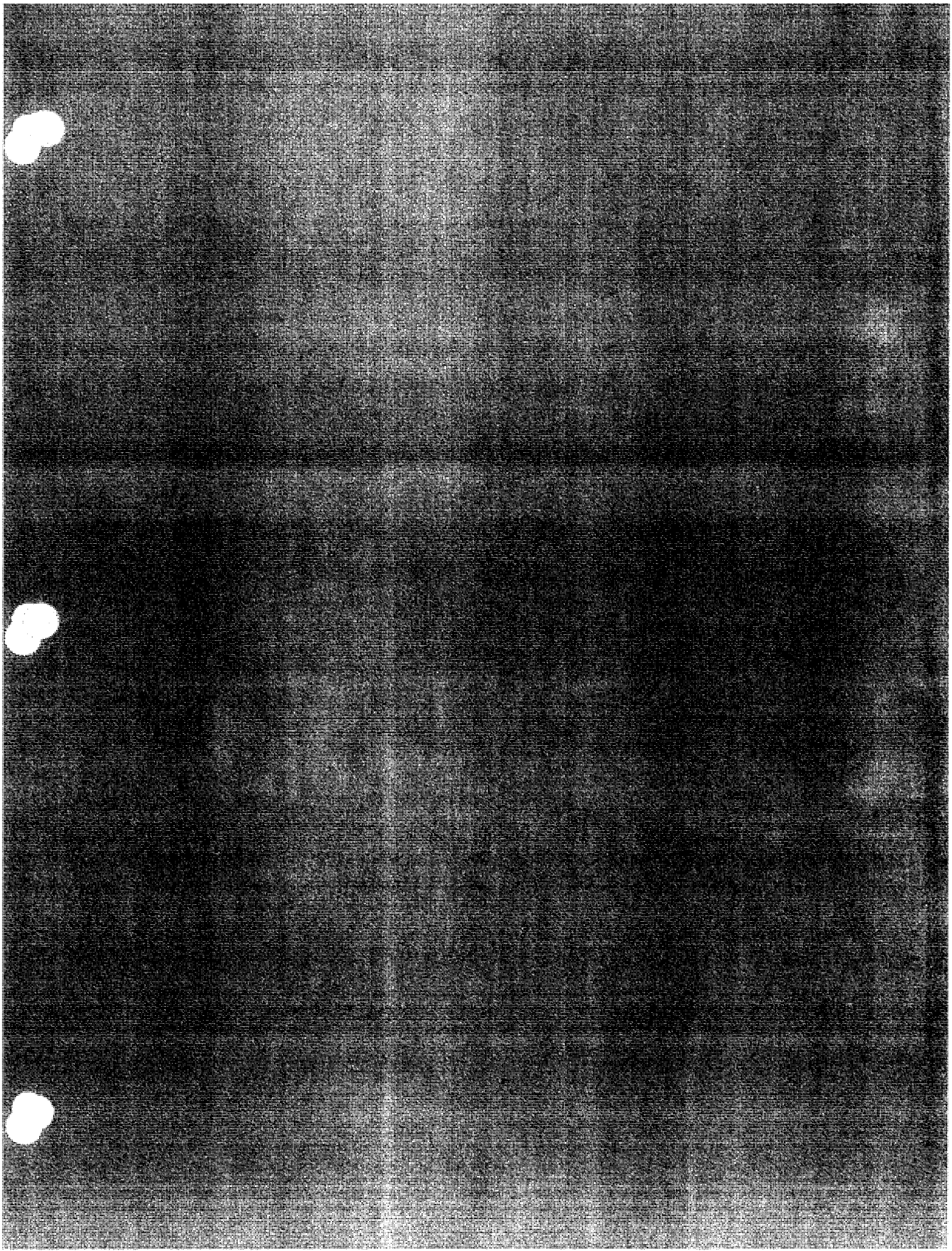

Omar Karim

bject:	The Jazz Economic Terms
cation:	Dial-in
Start:	Tue 6/23/2009 4:00 PM
End:	Tue 6/23/2009 5:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	thicks

The agenda for this call will entail the remaining Economic Terms as outlined in the attached email. Please see the dial-in information below.

<<...>>

Conference Call information:

- Dial-in Number: (712) 432-0800

  Host Access Code: 1056801*

- Participant Access Code: 1056801#

The Jazz @ Florida Avenue - Ec...

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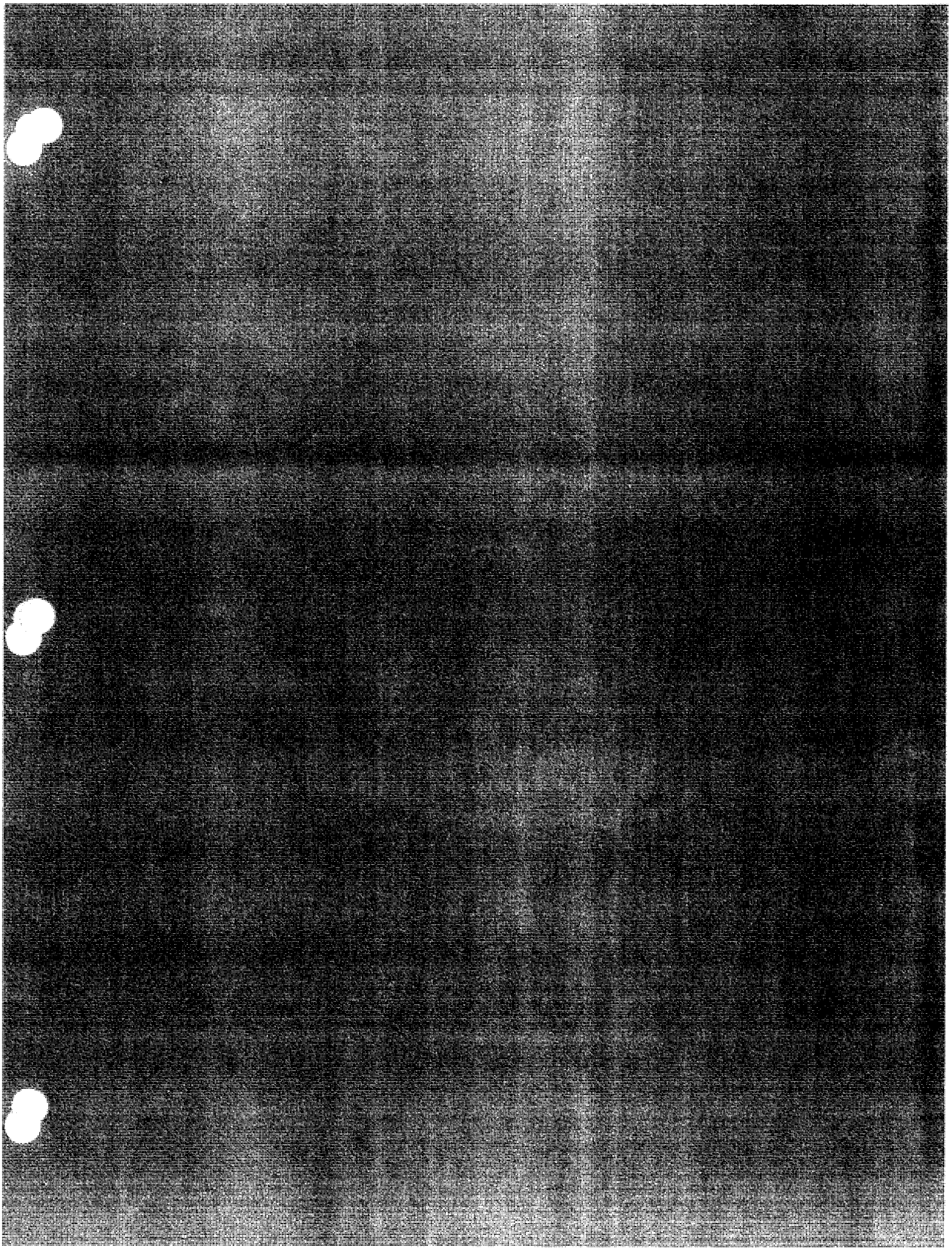

Omar Karim

From:	thicks <thicks@bannekerventures.com>
Sent:	Thursday, June 25, 2009 1:51 PM
To:	'Doggett, Rosalyn'
Cc:	jwmontague@wmata.com; MMeister@wmata.com; eric.smart@bolansmart.com; nbottigheimer@wmata.com; emoneme@wmata.com; okarim@bannekerventures.com; 'Perry, Maurice'; arashid@bannekerventures.com
Subject:	The Jazz Economic Terms (as of June 23, 2009)
Importance:	High

Mrs. Doggett,
As a follow-up to our conference call on June 23, 2009, below please find a status update for each item in red font.

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 , 2009.
2. FTA APPROVAL – Yes, we agree to add the language contained in the WMATA Draft Column. Parties are in agreement. Issue resolved.
3. CHANGE OF CONTROL – We agree that there shall be no Change of Control prior to execution of the Lease Agreement. After execution of the Lease Agreement there shall be no Change of Control without WMATA's prior written approval, which shall not be unreasonably withheld. Parties are in agreement. Issue resolved.
4. PRE-STABILIZATION PERIOD AMOUNTS – Our offer remains unchanged. Issue remains contingent upon results of Appraisal.
5. INSURANCE – Has Josh received a response from the Risk Management division? WMATA to provide response to Developer's comments by July 2, 2009.
6. GUARANTOR – Banc of America CDC is the Guarantor. BoA CDC to provide updated financial information to WMATA by July 2, 2009.
7. STABILIZATION – Please explain how the results of the outside appraisal will affect Stabilization? Has the new appraisal been ordered? Does the appraisal company have experience doing appraisals that include affordable housing? When do you expect to have the results of the new appraisal? Pursuant to WMATA, issue remains contingent upon results of Appraisal.
8. AFFORDABLE HOUSING – We are in agreement to delete "minimum". 20% is fine. We are in the process of reviewing the IZ regulations. Based on our preliminary review of the IZ regulations, the regulations will apply to 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.
). 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

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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.

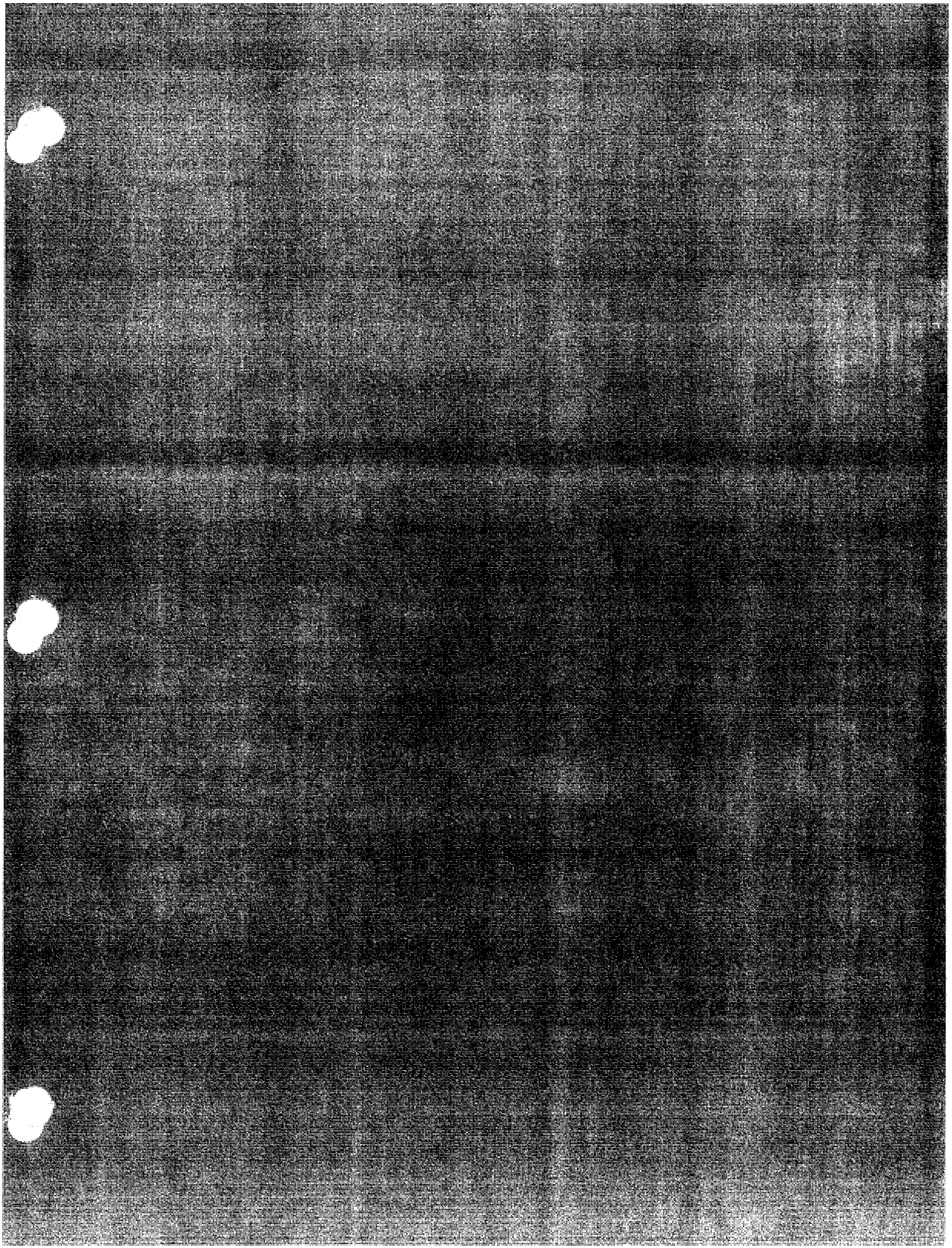
10. BASE RENT – See response to #9 above. Developer agrees to WMATA's offer of 99 year lease with the land ng revalued after 60 years and Developer paying 5% of the land value in lease payments.

. 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 015028



Omar Karim

›m: neilalbert@yahoo.com
ɔent: Saturday, June 27, 2009 9:21 PM
To: Omar Karim
Subject: Re: New Appraisal for Florida Avenue parcels

Remind me monday to step in.

Sent via BlackBerry by AT&T

From: "Omar Karim"
Date: Fri, 26 Jun 2009 20:05:36 +0000
To: Neil Albert<neilalbert@yahoo.com>
Subject: Fw: New Appraisal for Florida Avenue parcels
This is crazy. They have no motivation! Can u help?

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: "Doggett, Rosalyn"
Date: Fri, 26 Jun 2009 15:42:02 -0400
To: Omar A. Karim<okarim@bannekerventures.com>
Subject: RE: New Appraisal for Florida Avenue parcels
EARLY this a.m. I once again pressed to get this contract done. I later forwarded your email. I don't have an answer for you right now but will check with our appraiser when he returns to his office. I believe that he is still here.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Friday, June 26, 2009 11:47 AM
To: Doggett, Rosalyn
Subject: New Appraisal for Florida Avenue parcels
Importance: High

Ms. Doggett,

When we spoke last week and this past Tuesday, you mentioned that the appraiser that you all wanted to do the new appraisal for the WMATA parcels on Florida Avenue was out of town and had not signed the contract with WMATA or began working on the appraisal. Do you know if he has returned, executed the contract or began working on the new appraisal?

Thanks.

Omar

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Omar A. Karim
`nneker Ventures, LLC
_9 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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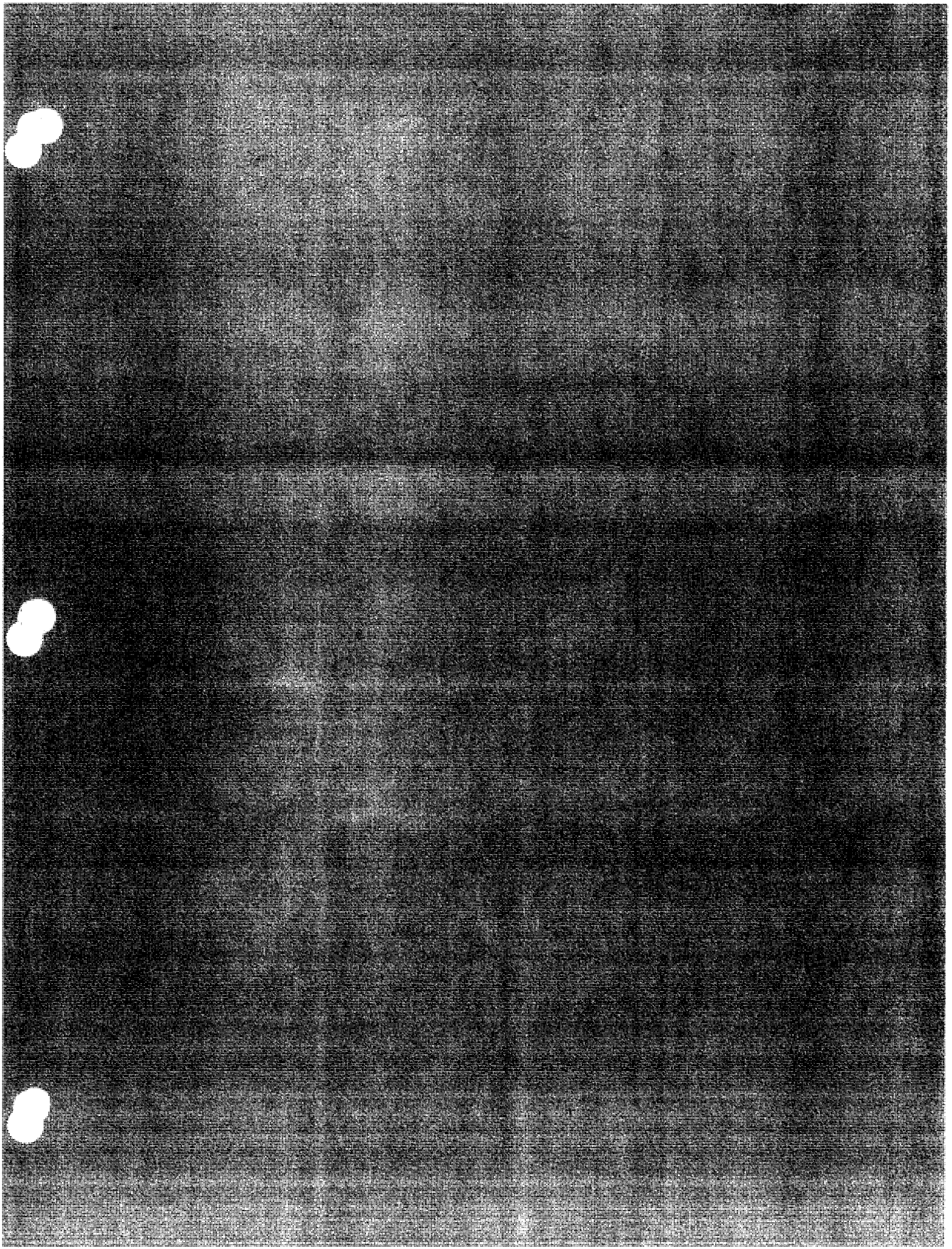

Omar Karim

ɔm: Perry, Maurice <maurice.perry@bankofamerica.com>
ɹnt: Wednesday, July 08, 2009 12:07 PM
ſo: Doggett, Rosalyn
Cc: okarim@bannekerventures.com; thicks
Subject: Jazz: BACDC Construction Guaranty
Attachments: BACDC Guaranty.pdf

Ms. Doggett,

As requested, attached is the form of the Unconditional Construction Completion Guaranty BACDC typically provides its lenders and development partners.

Should you require any additional information concerning this matter please give me call to discuss.

Best,
Maurice

Maurice Perry
Banc of America CDC
730 15th Street, NW 8th Floor
Washington, DC 20005
P: 202.442.7526
C: 202.329.7253
F: 704.683.9162

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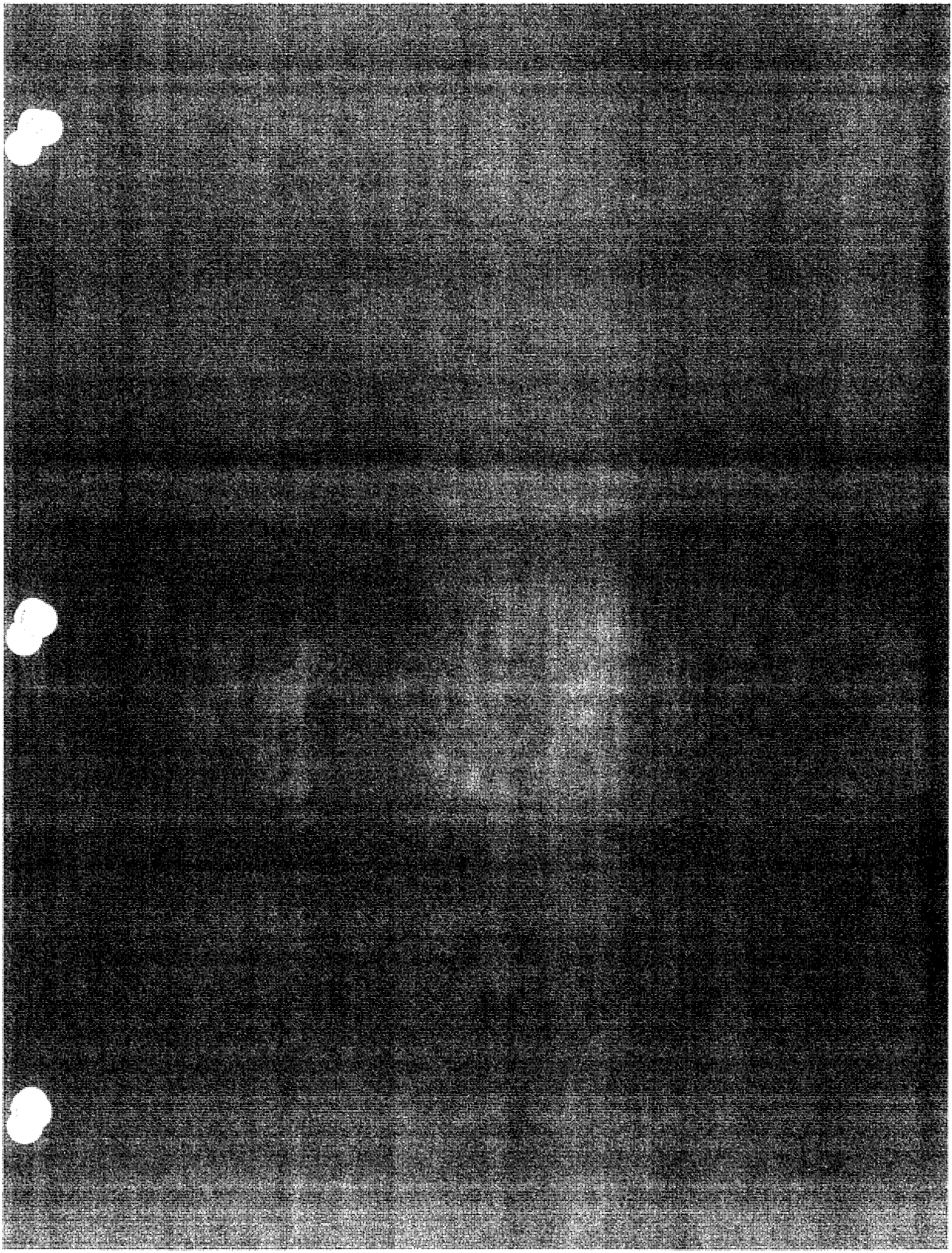

Omar Karim

›m: Moneme, Emeka <EMoneme@wmata.com>
›ent: Monday, July 13, 2009 9:48 AM
To: okarim@bannekerventures.com
Cc: Valerie (EOM) SantosYoung; Bottigheimer, Nat; Catoe, John B.
Subject: RE: Jazz @ Florida Avenue - Method and Schedule for Moving Forward

Omar,

Thanks for keeping me in the loop on this project, I have been following both your emails and getting updates from my team as well.

My understanding is that we did run into some delays in bring on board an appropriate appraiser for the reappraisal, but they are on board we now have a clear schedule:

- Draft appraisal by the end of July 2009
- 2 weeks for review and finalizing of the appraisal
- The goal is have the appraisal finalized by the middle of August

Please let me know if this differs from your understanding and expectation of this process, and do not hesitate to call if you have any other questions.

Emeka

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, July 09, 2009 4:42 PM
To: Montague, Joshua W.; Doggett, Rosalyn
Cc: Maurice Perry; Adam Rashid; Tiwana Hicks; Eric Smart; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
Subject: Re: Jazz @ Florida Avenue - Method and Schedule for Moving Forward

Josh,

Thanks for the update. We appreciate it.

As we were reviewing the JDA and Lease this week, we realized that many of the issues that have not been part of the chart or recent issues resolved in the emails that have been going back and forth are basically deal terms re convenience, timing of communication, etc. As such, its prob better to get your comments prior to the 24th so that we can stay on schedule. Any way we can get them back by next Fri, July 17th? This way we can get 2 wks to review and comment. Afterwards, we can get in a room and go page by page on issues that we may not still agree on and come to a resolution. Thoughts?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office

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(301) 523-1810 cell
okarim@bannekerventures.com

From: "Montague, Joshua W."
Date: Thu, 9 Jul 2009 10:23:14 -0400
To: okarim@bannekerventures.com<okarim@bannekerventures.com>; Doggett, Rosalyn<RDoggett@wmata.com>
Subject: RE: Jazz @ Florida Avenue - Method and Schedule for Moving Forward

Rosalyn has been out of the office at a conference. I spoke to her and she will be back tomorrow.

I have been working to simplify and update our draft documents that we were working with last year. We can have drafts for you to review by the 24th, and then we can maintain your proposed schedule (where you would return to us with comments by the 5th, etc.).

Please let me know if that works.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message.

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, July 08, 2009 11:40 AM
To: Doggett, Rosalyn
Cc: Maurice Perry; Adam Rashid; Tiwana Hicks; Eric Smart; Montague, Joshua W.; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
Subject: Jazz @ Florida Avenue - Method and Schedule for Moving Forward

Ms. Doggett,

As a follow-up to the many meetings that we have had over the past year, and in particularly the past four months, where we have agreed to what we believe to be 90% or more of the material terms of the JDA and Lease (as identified by WMATA, Banneker and BoA), we would like to begin memorializing our agreement in more formal way (other than the chart we have been working with and the latest round of emails). As such, we would like to agree to a method and timetable for agreeing to a final resolution on all issues in the JDA and Lease and for presenting the docs to senior WMATA staff and the Board for approval. As we have discussed on numerous occasions, our team has expended significant funds (now more than $500,000) in direct costs since

being selected by WMATA last spring, including more than $150,000 in legal fees. In order for us to get approval to expend any more costs, we will have to finalize terms with WMATA in the next month or so.

While we wait for your updated appraisal which you indicated would be back by end of this month, we think it would be an ideal time to wrap up everything we can.

As for method, since we have a draft of the JDA and Lease with your latest (albeit dated--last fall) comments, we would like to take a first step at updating these documents incorporating the terms we have agreed to and making additional comments we deem necessary for the financing plan we are planning to undertake. We could then meet in person with the individuals authorized to make changes to or agreement on terms in the document.

As for a timeline, if we can push to have you comments by the 24th and you all can have comments to us by the 5th, we can meet the week of the 10th to finalize all comments (even if we have to block out half a day or two half days to get things done). By this time, you should have received the updated appraisal and be able to agree to things. This would give us plenty of time to get the docs approved at the next Board meeting.

Please let us know if this method and timetable are acceptable.

Thank you in advance.

Omar

Omar A. Karim
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700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

From: "thicks"
Date: Mon, 6 Jul 2009 18:40:56 -0400
To: 'Doggett, Rosalyn'<RDoggett@wmata.com>
Subject: FW: The Jazz Economic Terms (as of June 23, 2009)

Mrs. Doggett,
We are following up with regards to items #1, 5, and 11 below. Please advise us as to the status of each. Thanks kindly.
Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
Office: (202) 393-5460
Fax: (202) 347-9047
Cell: (202) 486-1863
thicks@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED

From: thicks [mailto:thicks@bannekerventures.com]
Sent: Thursday, June 25, 2009 1:51 PM
To: 'Doggett, Rosalyn'
'jwmontague@wmata.com'; 'MMeister@wmata.com'; 'eric.smart@bolansmart.com'; 'nbottigheimer@wmata.com'; 'oneme@wmata.com'; 'okarim@bannekerventures.com'; 'Perry, Maurice'; 'arashid@bannekerventures.com'
Subject: The Jazz Economic Terms (as of June 23, 2009)
Importance: High

Mrs. Doggett,
As a follow-up to our conference call on June 23, 2009, below please find a status update for each item in red font.

1. PROJECT - For purposes of accounting for revenue/rent, the base rent of $250,000 that we are agreeing to pay WMATA remains unchanged. The 1.5% of EGI generated by the improvements on the WMATA parcels (which is about 79% of the total project improvements) excludes any EGI generated by the improvements on the adjacent properties. We are in the process of consulting with legal counsel on how to structure a financial scenario to account for the adjacent parcels in the event of a default on the mortgage and will get back with you soon. WMATA is waiting on the results of Appraisal due in July. Developer has requested abstract of Appraisal. WMATA will advise Developer if abstract of Appraisal will be shown to Developer. Developer would like to be informed of this decision by July 2, 2009. Developer to provide formalized financial scenario regarding adjacent parcels by July 9, 2009.
2. FTA APPROVAL – Yes, we agree to add the language contained in the WMATA Draft Column. Parties are in agreement. Issue resolved.
3. CHANGE OF CONTROL – We agree that there shall be no Change of Control prior to execution of the Lease Agreement. After execution of the Lease Agreement there shall be no Change of Control without WMATA's prior written approval, which shall not be unreasonably withheld. Parties are in agreement. Issue resolved.

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

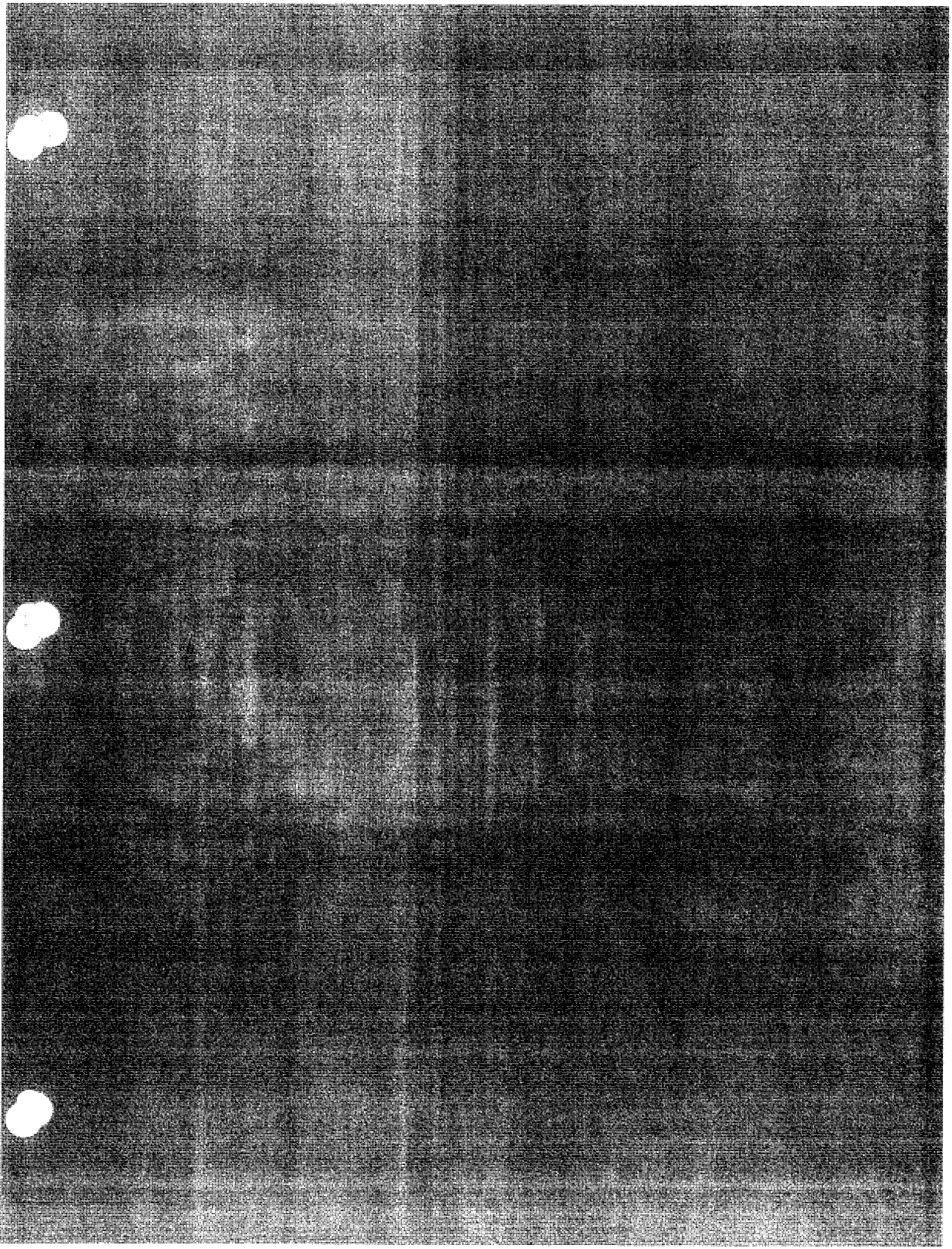
FOIA CONFIDENTIAL TREATMENT REQUESTED

transaction costs. Parties in agreement with (a), (b) and (d). WMATA to provide any comments to (c) by July 2, 2009.

ase confirm receipt of this email. We look forward to speaking with you soon. Thanks.
.wana

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 015039



Omar Karim

›m: Montague, Joshua W. <jwmontague@wmata.com>
›ent: Tuesday, July 14, 2009 9:36 AM
To: okarim@bannekerventures.com; Doggett, Rosalyn
Cc: Maurice Perry; Adam Rashid; Tiwana Hicks; Eric Smart; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
Subject: RE: Jazz @ Florida Avenue - Method and Schedule for Moving Forward

Omar,

We will do our best to get them to you ahead of the 24th.

If we can get acceptable drafts, we can send you conditional drafts that still may need minor comments from our side.

I will keep you up to date as soon as I can get a closer idea of when we will have drafts for you.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message.

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, July 09, 2009 4:42 PM
To: Montague, Joshua W.; Doggett, Rosalyn
Cc: Maurice Perry; Adam Rashid; Tiwana Hicks; Eric Smart; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
Subject: Re: Jazz @ Florida Avenue - Method and Schedule for Moving Forward

Josh,

Thanks for the update. We appreciate it.

As we were reviewing the JDA and Lease this week, we realized that many of the issues that have not been part of the chart or recent issues resolved in the emails that have been going back and forth are basically deal terms re convenience, timing of communication, etc. As such, its prob better to get your comments prior to the 24th so that we can stay on schedule. Any way we can get them back by next Fri, July 17th? This way we can get 2 wks

FOIA CONFIDENTIAL TREATMENT REQUESTED

to review and comment. Afterwards, we can get in a room and go page by page on issues that we may not still agree on and come to a resolution. Thoughts?

ıar

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: "Montague, Joshua W."
Date: Thu, 9 Jul 2009 10:23:14 -0400
To: okarim@bannekerventures.com<okarim@bannekerventures.com>; Doggett, Rosalyn<RDoggett@wmata.com>
Subject: RE: Jazz @ Florida Avenue - Method and Schedule for Moving Forward

Rosalyn has been out of the office at a conference. I spoke to her and she will be back tomorrow.

I have been working to simplify and update our draft documents that we were working with last year. We can have drafts for you to review by the 24th, and then we can maintain your proposed schedule (where you would return to us with comments by the 5th, etc.).

Please let me know if that works.

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 Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, July 08, 2009 11:40 AM
To: Doggett, Rosalyn
Cc: Maurice Perry; Adam Rashid; Tiwana Hicks; Eric Smart; Montague, Joshua W.; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
Subject: Jazz @ Florida Avenue - Method and Schedule for Moving Forward

FOIA CONFIDENTIAL TREATMENT REQUESTED

Ms. Doggett,

a follow-up to the many meetings that we have had over the past year, and in particularly the past four months, where we have agreed to what we believe to be 90% or more of the material terms of the JDA and Lease (as identified by WMATA, Banneker and BoA), we would like to begin memorializing our agreement in a more formal way (other than the chart we have been working with and the latest round of emails). As such, we would like to agree to a method and timetable for agreeing to a final resolution on all issues in the JDA and Lease and for presenting the docs to senior WMATA staff and the Board for approval. As we have discussed on numerous occasions, our team has expended significant funds (now more than $500,000) in direct costs since being selected by WMATA last spring, including more than $150,000 in legal fees. In order for us to get approval to expend any more costs, we will have to finalize terms with WMATA in the next month or so.

While we wait for your updated appraisal which you indicated would be back by end of this month, we think this would be an ideal time to wrap up everything we can.

As for method, since we have a draft of the JDA and Lease with your latest (albeit dated--last fall) comments, we would like to take a first step at updating these documents incorporating the terms we have agreed to and making additional comments we deem necessary for the financing plan we are planning to undertake. We could then meet in person with the individuals authorized to make changes to or agreement on terms in the document.

As for a timeline, if we can push to have you comments by the 24th and you all can have comments to us by the 5th, we can meet the week of the 10th to finalize all comments (even if we have to block out half a day or two half days to get things done). By this time, you should have received the updated appraisal and be able to agree to things. This would give us plenty of time to get the docs approved at the next Board meeting.

Please let us know if this method and timetable are acceptable.

Thank you in advance.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

From: "thicks"
Date: Mon, 6 Jul 2009 18:40:56 -0400
To: 'Doggett, Rosalyn'<RDoggett@wmata.com>
Subject: FW: The Jazz Economic Terms (as of June 23, 2009)

Mrs. Doggett,
We are following up with regards to items #1, 5, and 11 below. Please advise us as to the status of each. Thanks kindly.
Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC

FOIA CONFIDENTIAL TREATMENT REQUESTED

700 12th Street, NW, Suite 700
Washington, DC 20005
Office: (202) 393-5460
Fax: (202) 347-9047
Cell: (202) 486-1863
thicks@bannekerventures.com

From: thicks [mailto:thicks@bannekerventures.com]
Sent: Thursday, June 25, 2009 1:51 PM
To: 'Doggett, Rosalyn'
Cc: 'jwmontague@wmata.com'; 'MMeister@wmata.com'; 'eric.smart@bolansmart.com'; 'nbottigheimer@wmata.com'; 'emoneme@wmata.com'; 'okarim@bannekerventures.com'; 'Perry, Maurice'; 'arashid@bannekerventures.com'
Subject: The Jazz Economic Terms (as of June 23, 2009)
Importance: High

Mrs. Doggett,
As a follow-up to our conference call on June 23, 2009, below please find a status update for each item in red font.

1. PROJECT - For purposes of accounting for revenue/rent, the base rent of $250,000 that we are agreeing to pay WMATA remains unchanged. The 1.5% of EGI generated by the improvements on the WMATA parcels (which is about 79% of the total project improvements) excludes any EGI generated by the improvements on the adjacent properties. We are in the process of consulting with legal counsel on how to structure a financial scenario to account for the adjacent parcels in the event of a default on the mortgage and will get back with you soon. WMATA is waiting on the results of Appraisal due in July. Developer has requested abstract of Appraisal. WMATA will advise Developer if abstract of Appraisal will be shown to Developer. Developer would like to be informed of this decision by July 2, 2009. Developer to provide formalized financial scenario regarding adjacent parcels by July 9, 2009.
2. FTA APPROVAL – Yes, we agree to add the language contained in the WMATA Draft Column. Parties are in agreement. Issue resolved.
3. CHANGE OF CONTROL – We agree that there shall be no Change of Control prior to execution of the Lease Agreement. After execution of the Lease Agreement there shall be no Change of Control without WMATA's prior written approval, which shall not be unreasonably withheld. Parties are in agreement. Issue resolved.
4. PRE-STABILIZATION PERIOD AMOUNTS – Our offer remains unchanged. Issue remains contingent upon results of Appraisal.
5. INSURANCE – Has Josh received a response from the Risk Management division? WMATA to provide response to Developer's comments by July 2, 2009.
6. GUARANTOR – Banc of America CDC is the Guarantor. BoA CDC to provide updated financial information to WMATA by July 2, 2009.
7. STABILIZATION – Please explain how the results of the outside appraisal will affect Stabilization? Has the new appraisal been ordered? Does the appraisal company have experience doing appraisals that include affordable housing? When do you expect to have the results of the new appraisal? Pursuant to WMATA, issue remains contingent upon results of Appraisal.
8. AFFORDABLE HOUSING – We are in agreement to delete "minimum". 20% is fine. We are in the process of reviewing the IZ regulations. Based on our preliminary review of the IZ regulations, the regulations will apply to 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.

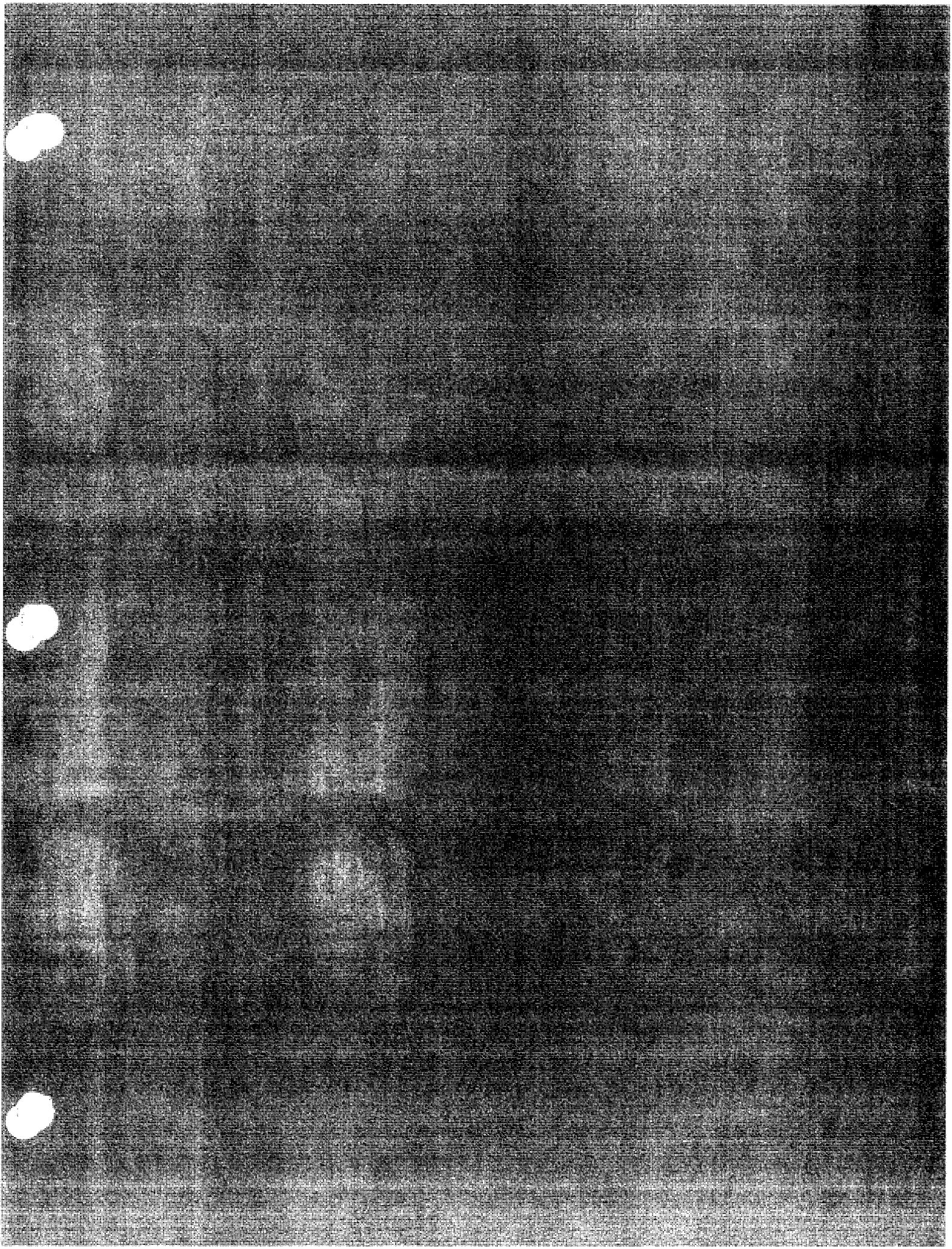
- TERM – We will agree to a 99 year lease term with the land being revalued as if vacant after 60 years. After 60 ars, the base lease rate will be 5% of the land value. Also, after the first 60 years, we could agree to pay an annual escalation of 1.5%. Following the first 99 years, we would like an option 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
ell: (202) 486-1863
thicks@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015045



Omar Karim

›m:	neilalbert@yahoo.com
ɔent:	Sunday, July 19, 2009 8:42 PM
To:	Omar Karim
Subject:	Fw: Jazz @ Florida Avenue - Method and Schedule for Moving Forward

Let me know if I need to do anything else on this issue.
------Original Message------
From: Valerie Santos
To: Neil Albert
Subject: Fw: Jazz @ Florida Avenue - Method and Schedule for Moving Forward
Sent: Jul 13, 2009 9:47 AM

Fyi - here is update from wmata re schedule ------Original Message------
From: Emeka Moneme
To: Omar Karim
Cc: Valerie Santos
Cc: Nat Bottigheimer
Cc: John Catoe
Subject: RE: Jazz @ Florida Avenue - Method and Schedule for Moving Forward
Sent: Jul 13, 2009 9:47 AM

Omar,

Thanks for keeping me in the loop on this project, I have been following both your emails and getting updates from my team as well.

My understanding is that we did run into some delays in bring on board an appropriate appraiser for the reappraisal, but they are on board we now have a clear schedule:

- Draft appraisal by the end of July 2009
- 2 weeks for review and finalizing of the appraisal
- The goal is have the appraisal finalized by the middle of August

Please let me know if this differs from your understanding and expectation of this process, and do not hesitate to call if you have any other questions.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Emeka

om: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, July 09, 2009 4:42 PM
To: Montague, Joshua W.; Doggett, Rosalyn
Cc: Maurice Perry; Adam Rashid; Tiwana Hicks; Eric Smart; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
Subject: Re: Jazz @ Florida Avenue - Method and Schedule for Moving Forward

Josh,

Thanks for the update. We appreciate it.

As we were reviewing the JDA and Lease this week, we realized that many of the issues that have not been part of the chart or recent issues resolved in the emails that have been going back and forth are basically deal terms re convenience, timing of communication, etc. As such, its prob better to get your comments prior to the 24th so that we can stay on schedule. Any way we can get them back by next Fri, July 17th? This way we can get 2 wks to review and comment. Afterwards, we can get in a room and go page by page on issues that we may not still agree on and come to a resolution. Thoughts?

Omar

Omar A. Karim
anneker Ventures, LLC
00 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Montague, Joshua W."
Date: Thu, 9 Jul 2009 10:23:14 -0400
To: okarim@bannekerventures.com<okarim@bannekerventures.com>; Doggett, Rosalyn<RDoggett@wmata.com>
Subject: RE: Jazz @ Florida Avenue - Method and Schedule for Moving Forward

Rosalyn has been out of the office at a conference. I spoke to her and she will be back tomorrow.

I have been working to simplify and update our draft documents that we were working with last year. We can have drafts for you to review by the 24th, and then we can maintain your proposed schedule (where you would return to us with comments by the 5th, etc.).

Please let me know if that works.

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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From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, July 08, 2009 11:40 AM
To: Doggett, Rosalyn
Cc: Maurice Perry; Adam Rashid; Tiwana Hicks; Eric Smart; Montague, Joshua W.; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
Subject: Jazz @ Florida Avenue - Method and Schedule for Moving Forward

Ms. Doggett,

As a follow-up to the many meetings that we have had over the past year, and in particularly the past four months, where we have agreed to what we believe to be 90% or more of the material terms of the JDA and Lease (as identified by WMATA, Banneker and BoA), we would like to begin memorializing our agreement in a more formal way (other than

FOIA CONFIDENTIAL TREATMENT REQUESTED

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------Original Message Truncated------

Sent via BlackBerry by AT&T

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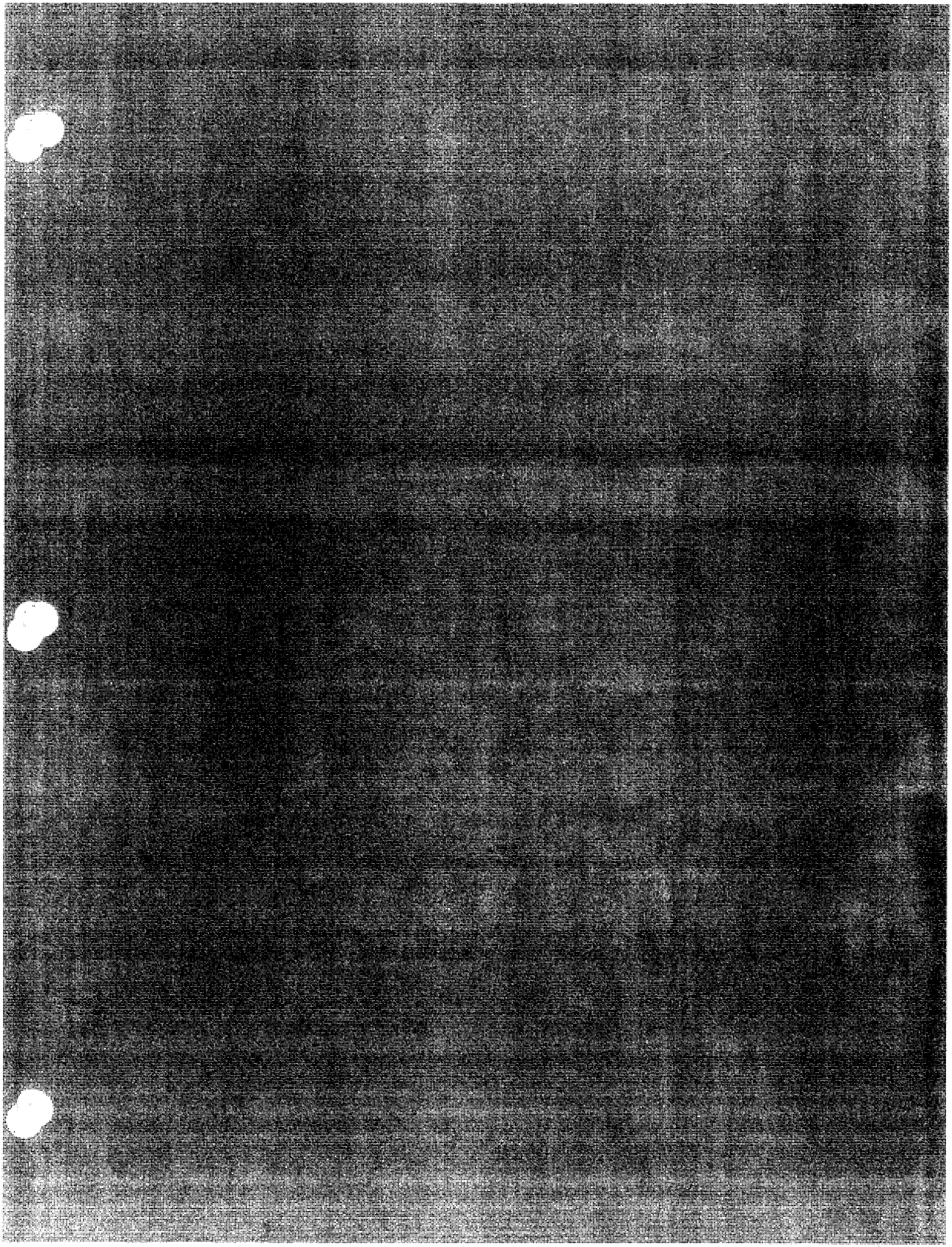

Omar Karim

m: Montague, Joshua W. <jwmontague@wmata.com>
ɔent: Friday, July 24, 2009 12:22 PM
To: Omar A. Karim
Cc: Maurice' 'Perry; thicks@bannekerventures.com; Doggett, Rosalyn
Subject: Florida Avenue Document Drafts
Attachments: Florida Avenue Joint Development Agreement - Draft 072409.docx; Florida Avenue JDA Definitions 072409.doc; Florida Avenue Lease - DRAFT 072409.docx; Florida Avenue Lease Definitions Draft 072409.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Please find attached the updated drafts of the Lease and Joint Development Agreement for the Florida Avenue project.

Please do not hesitate to contact me with any questions/comments.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
shington, DC 20001
ɹnone: (202) 962-1275

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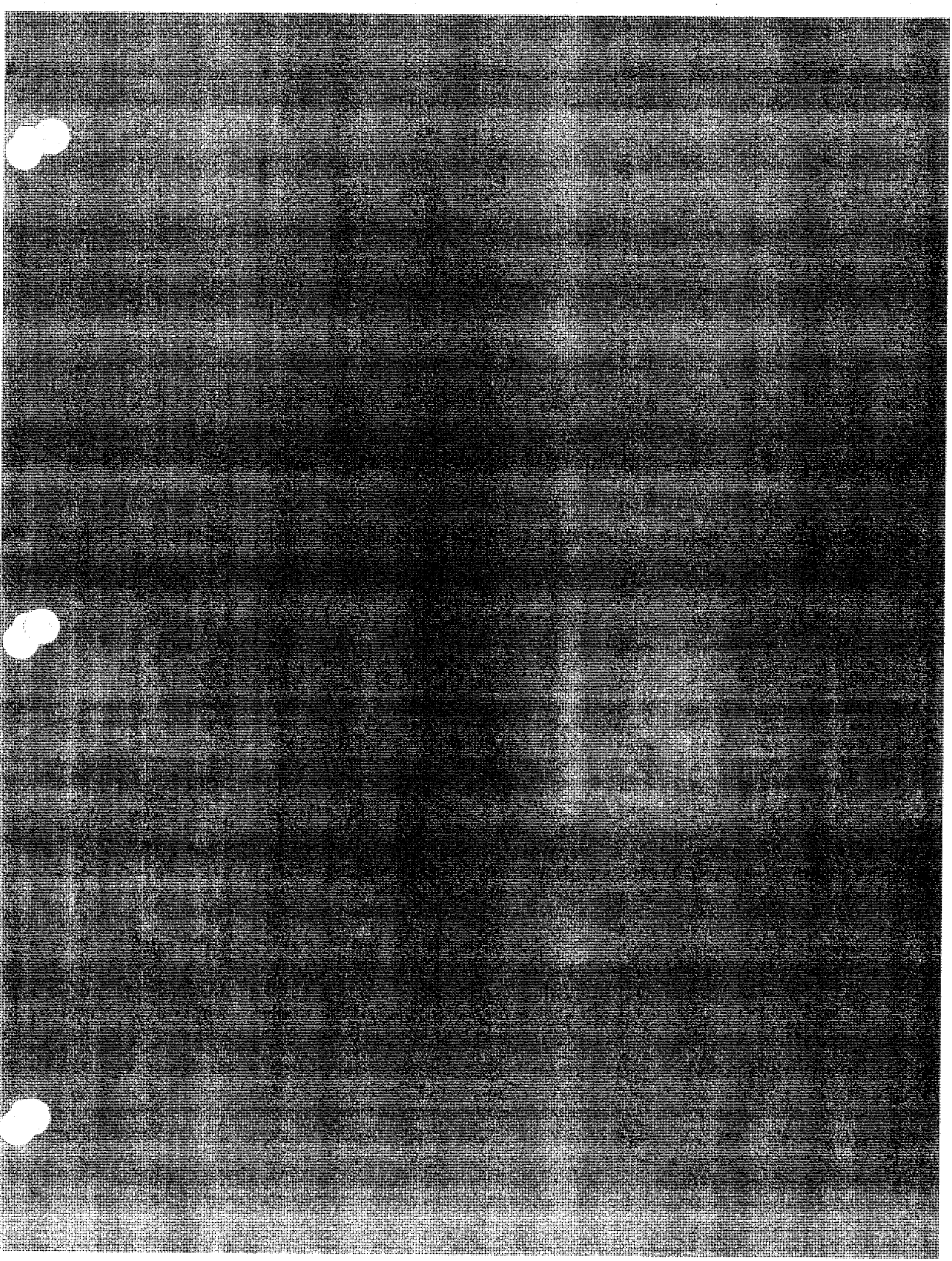


Omar Karim

From: Doggett, Rosalyn <RDoggett@wmata.com>
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
Importance: High

Ms. Doggett,

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.

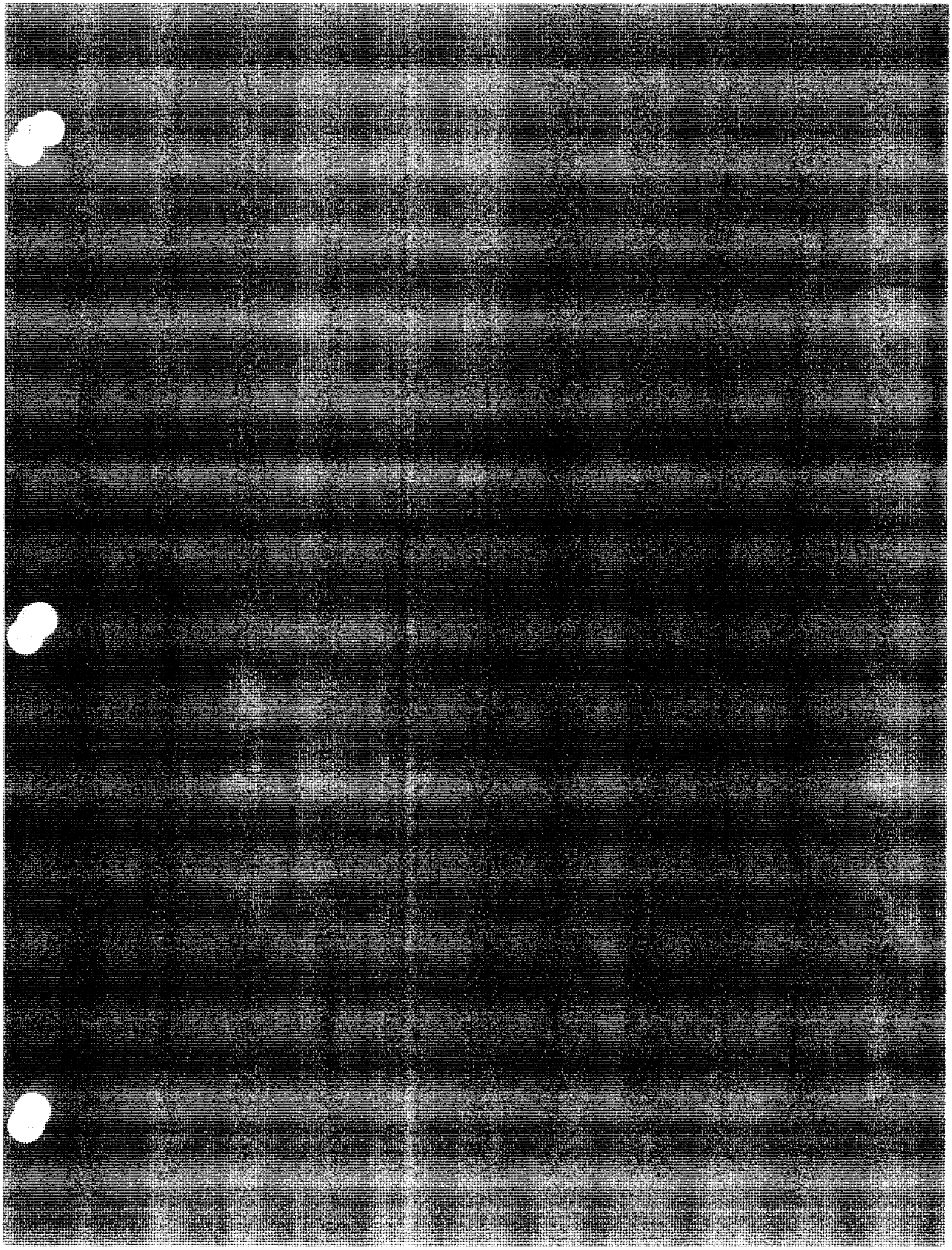
Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005

FOIA CONFIDENTIAL TREATMENT REQUESTED

(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Perry, Maurice <maurice.perry@bankofamerica.com>
nt: Tuesday, August 18, 2009 5:21 PM
o: Omar A. Karim; thicks@bannekerventures.com
Subject: FW: The Jazz - JDA and Lease Items

Based on Mrs. Doggett's email below, is it correct to assume that the appraisal is complete but WMATA hasn't shared the results yet?

From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Tuesday, August 18, 2009 11:57 AM
To: Tiwana Hicks; Montague, Joshua W.
Cc: Perry, Maurice; 'Omar A. Karim'; Moneme, Emeka; Meister, Mark K.; Bushnaq, Tariq
Subject: RE: The Jazz - JDA and Lease Items

Good morning, Tiwana

1. Josh is finishing a draft of the CCR's, and we should, after review, be able to get it to you mid week. You have the last draft of a Right of Entry Permit; we can send it again if you need us to. We will also prepare a draft Scope of Work for a future appraisal after a capital event, etc., later this week.

2. The engineering staff is researching whether there is any part of the "8th Street" fan shaft that rises vertically from the tunnel in the northeast corner of the middle parcel and therefore requires a reservation. I expect to get the answer to that question later today. We have earlier provided you with tunnel drawings which will of course be a reservation. Those drawings also show the fan shaft in profile and plan. We are researching the actual mechanical drawings to determine the shaft configuration.

3. We will get you a CD with WMATA's Design Criteria, Release 9, this week.

4. As stated before, we do not provide copies of appraisals though we can share results.

Please call if any questions.

Rosalyn

From: Tiwana Hicks [mailto:thicks@bannekerventures.com]
Sent: Monday, August 17, 2009 5:51 PM
To: Doggett, Rosalyn; Montague, Joshua W.
Cc: Maurice' 'Perry; 'Omar A. Karim'; Moneme, Emeka; Meister, Mark K.
Subject: The Jazz - JDA and Lease Items
Importance: High

Mrs. Doggett,

Please provide us with the following items:

1. A copy of the Covenants, Conditions and Restrictions, the Right of Entry Permit, and Scope of Work;

FOIA CONFIDENTIAL TREATMENT REQUESTED

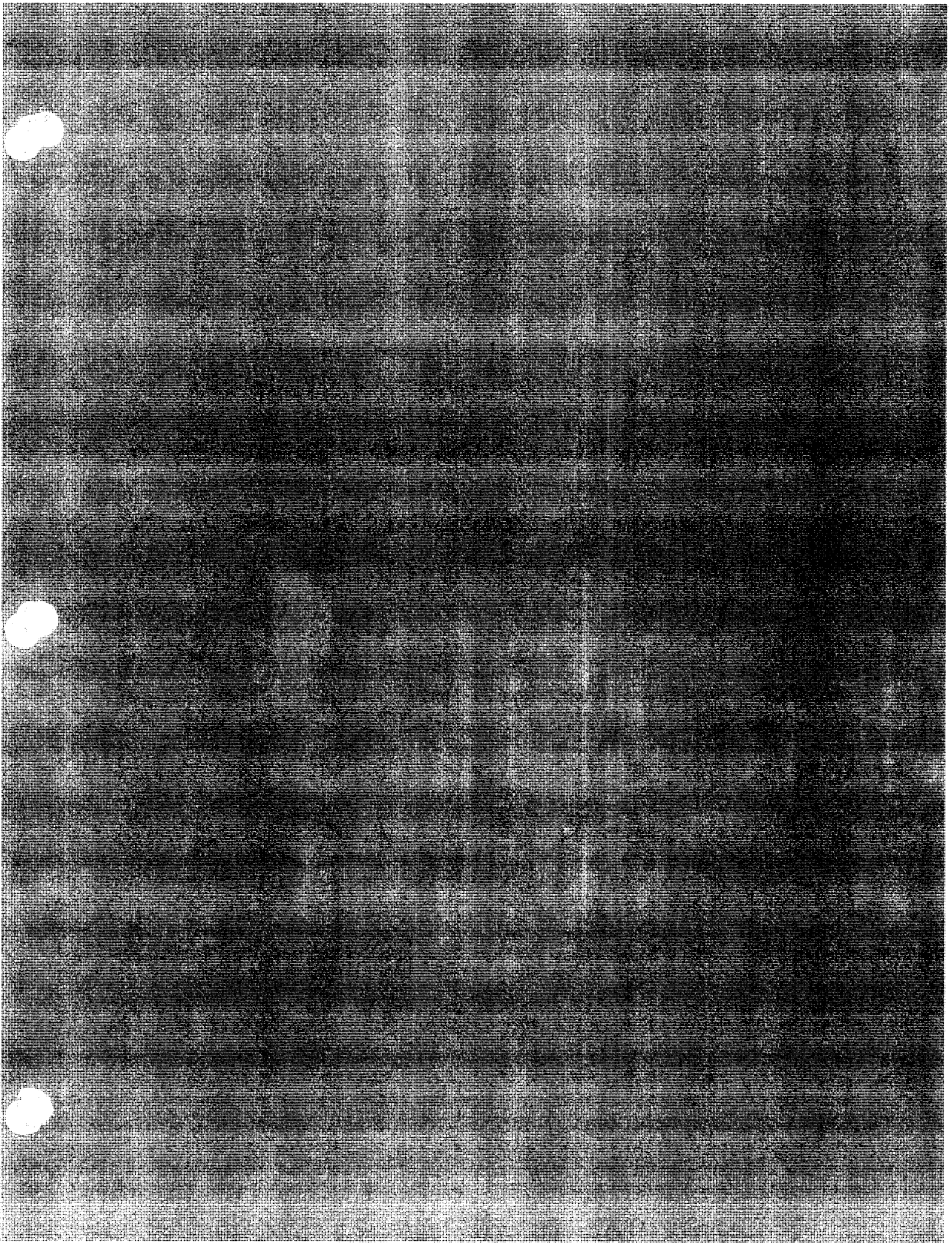
2. Please confirm if there are any WMATA Reserved Areas and Interests on the Leased Premises. You last indicated that you were awaiting confirmation from your engineers regarding the vent shaft on 8th Street. If there are any such areas on the Leased Premises , provide us with an exact list and location of those areas and/or supporting drawings;
3. A copy of the WMATA Design Criteria; and
4. A copy of the new appraisal, including the instructions provided by WMATA, assumptions used by the appraiser, and the market comparables used by the appraiser.

We expect to provide you with comments to the JDA and Ground Lease by Friday, August 28th. Thanks kindly.

Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, D.C. 20005
T: (202) 393-5460
F: (202) 393-5462
C: (202) 486-1863
thicks@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 015058**



UNITED BANK

August 19, 2009

Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005

ATTN: Tiwana Hicks

RE: TIF Funding for The Jazz @ Florida Avenue

Dear Tiwana,

Per our recent discussions on various elements being considered for the financing of the subject mixed-use project, this letter will confirm our interest in providing funding for the TIF note that may be issued for this project. It is my understanding that any TIF note to be issued by the District of Columbia for "The Jazz" will have a repayment structured around projected sales tax revenues to be generated from the retail tenants, but not supported by the funds accumulated from the Downtown TIF District. Should that remain the case, we would consider an assignment of the TIF note as collateral for the loan we would extend, but the loan would require the guarantee of Banneker Ventures, LLC, additional credit enhancement from the District of Columbia, or some combination thereof.

We have purchased TIF notes from the District of Columbia, but those purchased to date have been supported by funding from the entire Downtown TIF District, not just the tax revenues from a specific property.

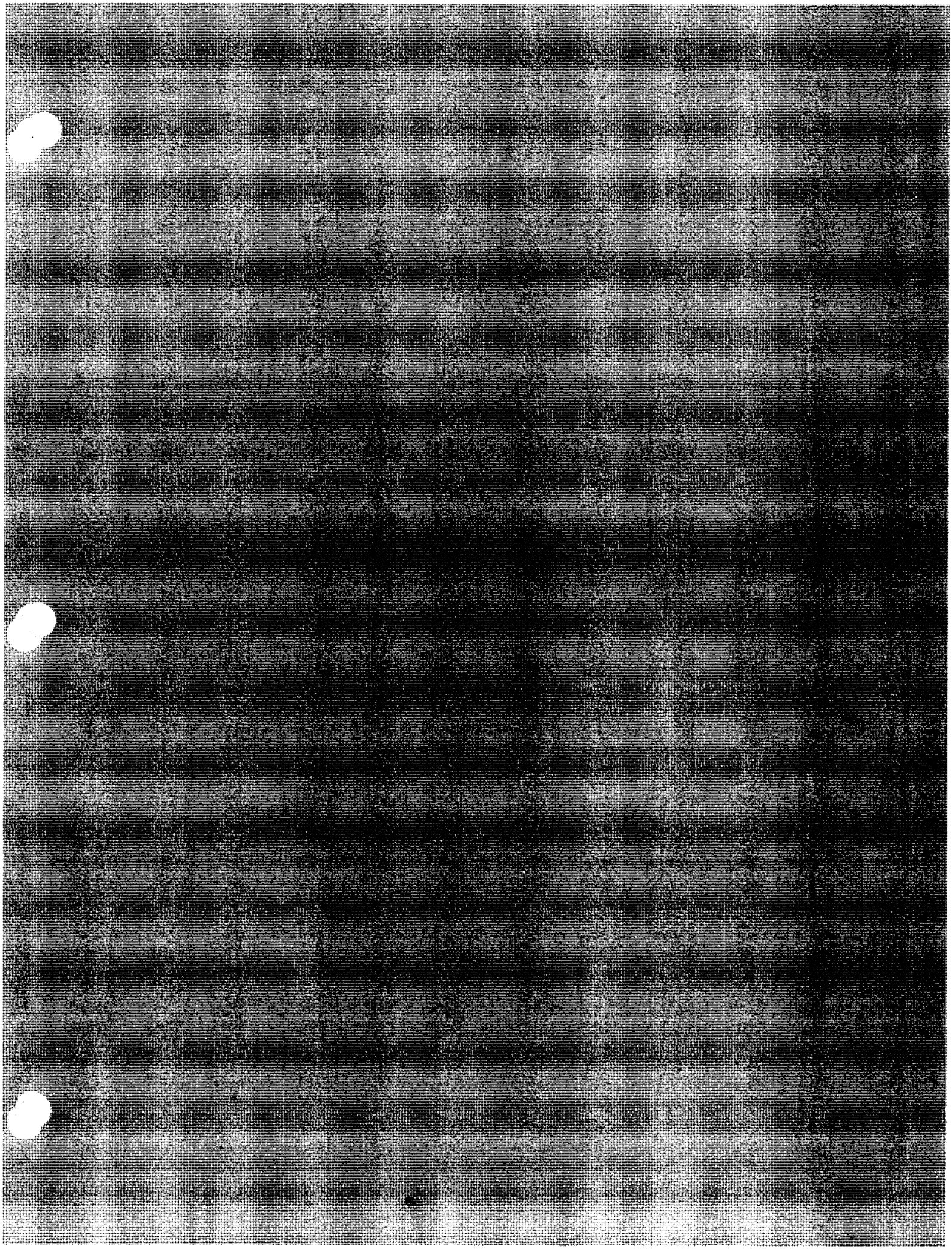
We look forward to working with you on this project, and hope to provide the funding you seek from tax increment financing. Feel free to contact me if you have any questions.

UNITED BANK
@ Your Service,

Thomas A. Nida
Executive Vice President
Community Development Group

1875 EYE STREET, NW • WASHINGTON, DC 20006 • PHONE (202) 496-4099 • FAX (202) 833-3392
WWW.UNITEDBANK-VA.COM

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Doggett, Rosalyn <RDoggett@wmata.com>
ent: Wednesday, August 19, 2009 8:59 AM
ro: okarim@bannekerventures.com; Maurice Perry; Tiwana Hicks; Medina, Ed; Moneme, Emeka; Montague, Joshua W.; Marshall, Malcolm; Meister, Mark K.; Bushnaq, Tariq
Subject: RE: The Jazz - JDA and Lease Items

Please have your architect send us the updated plan electronically. Thanks

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, August 19, 2009 8:52 AM
To: Maurice Perry; Tiwana Hicks; Doggett, Rosalyn; Medina, Ed; Moneme, Emeka; Montague, Joshua W.; Marshall, Malcolm; Meister, Mark K.; Bushnaq, Tariq
Subject: Re: The Jazz - JDA and Lease Items

Thank you for the update. There will be 1 level of underground parking beneath the entire property, including wmata's smallest parcel. This is in conformity with our updated plan (since last Oct) which includes the 2 adjacent parcels on 9th Street. I will call Eric to answer any questions that he may have.

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
01) 523-1810 cell
okarim@bannekerventures.com

From: "Doggett, Rosalyn"
Date: Wed, 19 Aug 2009 08:40:34 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>; Tiwana Hicks<thicks@bannekerventures.com>; Bushnaq, Tariq<TBushnaq@wmata.com>; Meister, Mark K.<MMeister@wmata.com>; Moneme, Emeka<EMoneme@wmata.com>; Maurice' 'Perry<maurice.perry@bankofamerica.com>; Medina, Ed<EMedina@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>
Subject: FW: The Jazz - JDA and Lease Items
Correction: I should have said that the large parcel (Parcel 3) has the fan shaft on 8th St. but you probably figured that out.

The appraisal is almost finished; I will let you know when it is completed. The appraisal is assuming no subterranean level on the smallest parcel. Please confirm.

I left a phone message for you on Friday but apparently the receptionist did not inform you. I called to request a current sources and uses of funds and the most recent pro forma. Eric had been making assumptions but is not sure that they reflect where you are.

om: Omar A. Karim [mailto:okarim@bannekerventures.com]
nt: Tuesday, August 18, 2009 5:52 PM
o: 'Tiwana Hicks'; Doggett, Rosalyn; Montague, Joshua W.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Cc: 'Maurice' 'Perry'; Moneme, Emeka; Meister, Mark K.; Bushnaq, Tariq
Subject: RE: The Jazz - JDA and Lease Items

Ms. Doggett,

Thank you for the update. We look forward to receiving the CCrs and draft Scope of Work. As for the results of the appraisal, can you please forward this to us.

Omar

From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Tuesday, August 18, 2009 11:57 AM
To: Tiwana Hicks; Montague, Joshua W.
Cc: Maurice' 'Perry; 'Omar A. Karim'; Moneme, Emeka; Meister, Mark K.; Bushnaq, Tariq
Subject: RE: The Jazz - JDA and Lease Items

Good morning, Tiwana

1. Josh is finishing a draft of the CCR's, and we should, after review, be able to get it to you mid week. You have the last draft of a Right of Entry Permit; we can send it again if you need us to. We will also prepare a draft Scope of Work for a future appraisal after a capital event, etc., later this week.

2. The engineering staff is researching whether there is any part of the "8th Street" fan shaft that rises vertically from the tunnel in the northeast corner of the middle parcel and therefore requires a reservation. I expect to get the answer to that question later today. We have earlier provided you with tunnel drawings which will of course be a reservation. Those drawings also show the fan shaft in profile and plan. We are researching the actual mechanical drawings to determine the shaft configuration.

3. We will get you a CD with WMATA's Design Criteria, Release 9, this week.

4. As stated before, we do not provide copies of appraisals though we can share results.

Please call if any questions.

Rosalyn

From: Tiwana Hicks [mailto:thicks@bannekerventures.com]
Sent: Monday, August 17, 2009 5:51 PM
To: Doggett, Rosalyn; Montague, Joshua W.
Cc: Maurice' 'Perry; 'Omar A. Karim'; Moneme, Emeka; Meister, Mark K.
Subject: The Jazz - JDA and Lease Items
Importance: High

Mrs. Doggett,

Please provide us with the following items:

1. A copy of the Covenants, Conditions and Restrictions, the Right of Entry Permit, and Scope of Work;
2. Please confirm if there are any WMATA Reserved Areas and Interests on the Leased Premises. You last indicated that you were awaiting confirmation from your engineers regarding the vent shaft on 8th Street. If there are any such areas on the Leased Premises , provide us with an exact list and location of those areas and/or supporting drawings;

FOIA CONFIDENTIAL TREATMENT REQUESTED

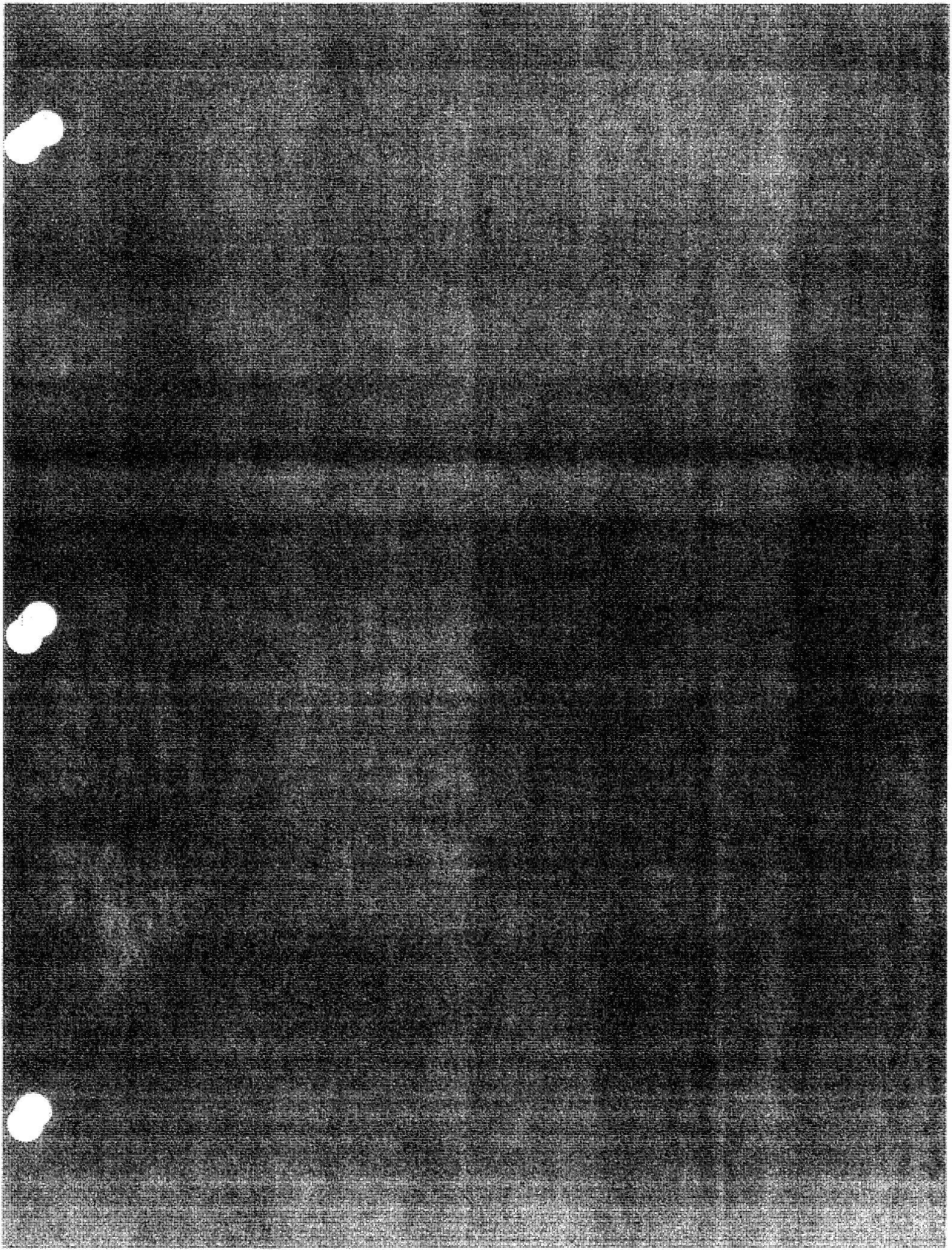
3. A copy of the WMATA Design Criteria; and
4. A copy of the new appraisal, including the instructions provided by WMATA, assumptions used by the appraiser, and the market comparables used by the appraiser.

e expect to provide you with comments to the JDA and Ground Lease by Friday, August 28th. Thanks kindly.

Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, D.C. 20005
T: (202) 393-5460
F: (202) 393-5462
C: (202) 486-1863
thicks@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 015064**



Omar Karim

From: Tiwana Hicks <thicks@bannekerventures.com>
Sent: Wednesday, August 19, 2009 10:35 AM
To: 'Doggett, Rosalyn'; okarim@bannekerventures.com; 'Maurice Perry'; 'Medina, Ed'; 'Moneme, Emeka'; 'Montague, Joshua W.'; 'Marshall, Malcolm'; 'Meister, Mark K.'; 'Bushnaq, Tariq'
Subject: RE: The Jazz - JDA and Lease Items
Attachments: 090610_Jazz_First Floor.pdf; 090610_Jazz_Garage.pdf; 090610_Jazz_Typical Floor.pdf

Ms. Doggett:

Attached please find our updated drawings for The Jazz. Thanks.

Tiwana

Tiwana Z. Hicks
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729 15th Street, NW, Suite 400
Washington, D.C. 20005
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F: (202) 393-5462
C: (202) 486-1863
thicks@bannekerventures.com

From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Wednesday, August 19, 2009 7:59 AM
To: okarim@bannekerventures.com; Maurice Perry; Tiwana Hicks; Medina, Ed; Moneme, Emeka; Montague, Joshua W.; Marshall, Malcolm; Meister, Mark K.; Bushnaq, Tariq
Subject: RE: The Jazz - JDA and Lease Items

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From: Omar Karim [mailto:okarim@bannekerventures.com]
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To: Maurice Perry; Tiwana Hicks; Doggett, Rosalyn; Medina, Ed; Moneme, Emeka; Montague, Joshua W.; Marshall, Malcolm; Meister, Mark K.; Bushnaq, Tariq
Subject: Re: The Jazz - JDA and Lease Items

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FOIA CONFIDENTIAL TREATMENT REQUESTED

From: "Doggett, Rosalyn"
Date: Wed, 19 Aug 2009 08:40:34 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>; Tiwana Hicks<thicks@bannekerventures.com>; ushnaq, Tariq<TBushnaq@wmata.com>; Meister, Mark K.<MMeister@wmata.com>; Moneme, Emeka<EMoneme@wmata.com>; Maurice' 'Perry<maurice.perry@bankofamerica.com>; Medina, Ed<EMedina@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>
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Sent: Tuesday, August 18, 2009 5:52 PM
To: 'Tiwana Hicks'; Doggett, Rosalyn; Montague, Joshua W.
Cc: 'Maurice' 'Perry'; Moneme, Emeka; Meister, Mark K.; Bushnaq, Tariq
Subject: RE: The Jazz - JDA and Lease Items

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ɔsalyn

From: Tiwana Hicks [mailto:thicks@bannekerventures.com]
Sent: Monday, August 17, 2009 5:51 PM
To: Doggett, Rosalyn; Montague, Joshua W.
Cc: Maurice' 'Perry; 'Omar A. Karim'; Moneme, Emeka; Meister, Mark K.
Subject: The Jazz - JDA and Lease Items
Importance: High

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1. A copy of the Covenants, Conditions and Restrictions, the Right of Entry Permit, and Scope of Work;
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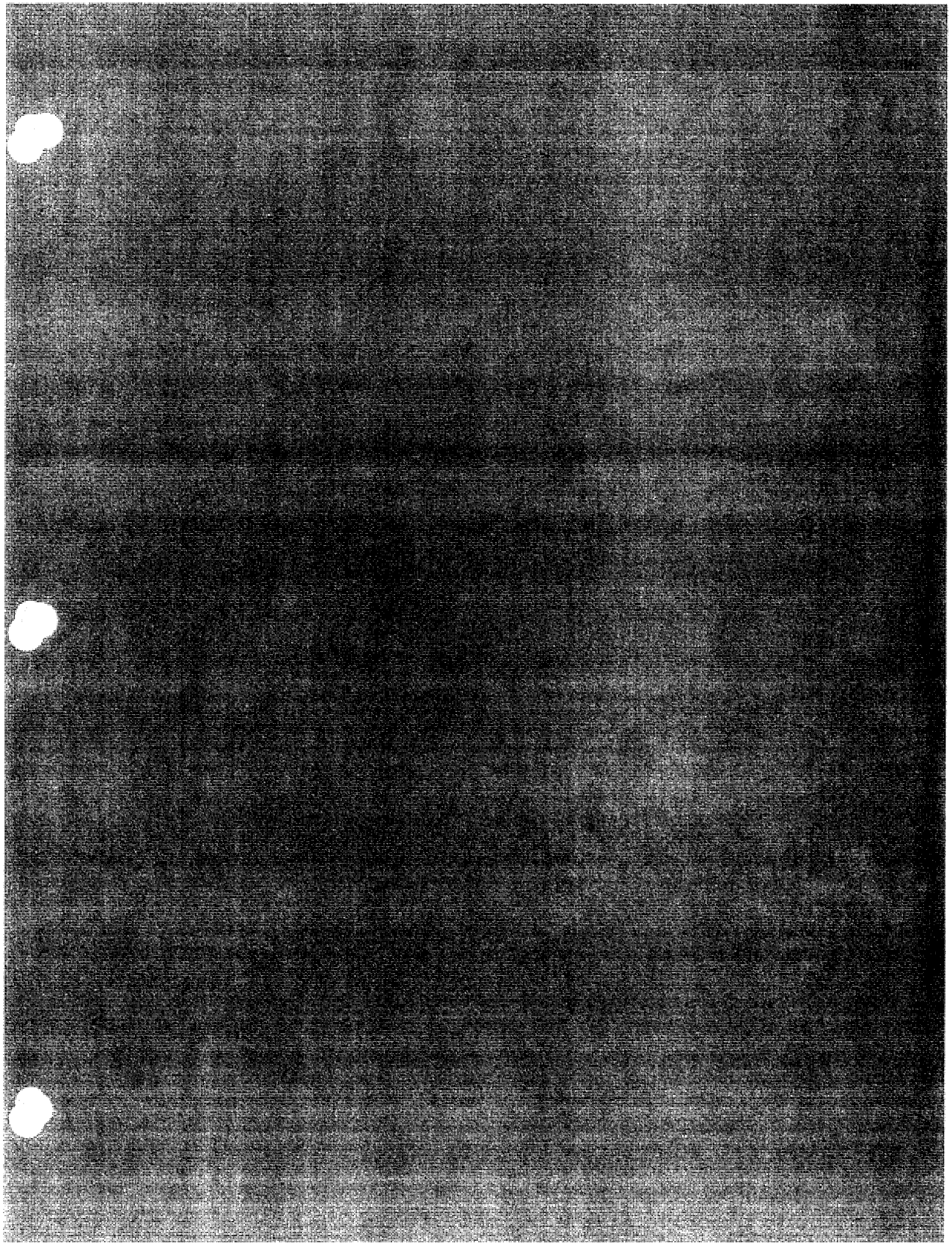
thicks@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015068



Omar Karim

From: Doggett, Rosalyn <RDoggett@wmata.com>
Sent: Friday, August 28, 2009 4:52 PM
To: Omar A. Karim
Cc: 'Tiwana Hicks'; eric.smart@bolansmart.com
Subject: RE:

Thanks for the response, Omar. It is helpful though not complete. The last pro forma I have is from March and shows an annual lease payment of $300,000 per year, which is not, I believe, what you are currently proposing. So, I reiterate that we need an updated pro forma that reflects the current offer. We also need project funding amounts by sources and uses of funds as previously requested even though some may change upon review by the various lenders/grantors.

The third question had to do with BACDC and Maurice is addressing it.

With regard to schedule, this project is on the agenda for Board action at its 12/17 meeting. The Planning, Development and Real Estate (PD&RE) Committee meeting, 12/3, is the precursor meeting to the Board meeting. Materials for that meeting need to be prepared, be complete and circulating within the agency as of 10/21. As I've stated in prior meetings, the process to get to a Board decision generally takes two months. We need to have a completely sewn up and agreed-upon deal and documents (except for *minor* lease and jda exhibits) by the middle of the second month before a Board decision.

That makes and October Board action impossible as materials would have had to be in circulation starting earlier this week for executive reviews that start next week. It also makes a November Board action highly unlikely since materials would need to be circulating within the agency at the beginning of the last full week of September in order to the meet e schedule of executive reviews for an 11/5 PD&RE Committee meeting and 11/19 Board meeting. Your schedule, below, does not allow for the time to respond to and resolve issues though, for my part, I can certainly commit to your schedule to review and have comments on your markup that will arrive here Sept 3 (I will not be here on the 4th). Josh is not here this afternoon so I have not been able to contact him but can let you know on Monday.

I recognize that you have had some more input that has delayed your transmittal of the jda/lease markup. The same as occurred for the appraisal, which we hope will be completed next week around the same time as your markup.

Our surveyor is checking on the Square 416 parcels.

Please call or e-mail if further questions.

Regards,
Rosalyn

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:

FOIA CONFIDENTIAL TREATMENT REQUESTED

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?

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:

FOIA CONFIDENTIAL TREATMENT REQUESTED

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:

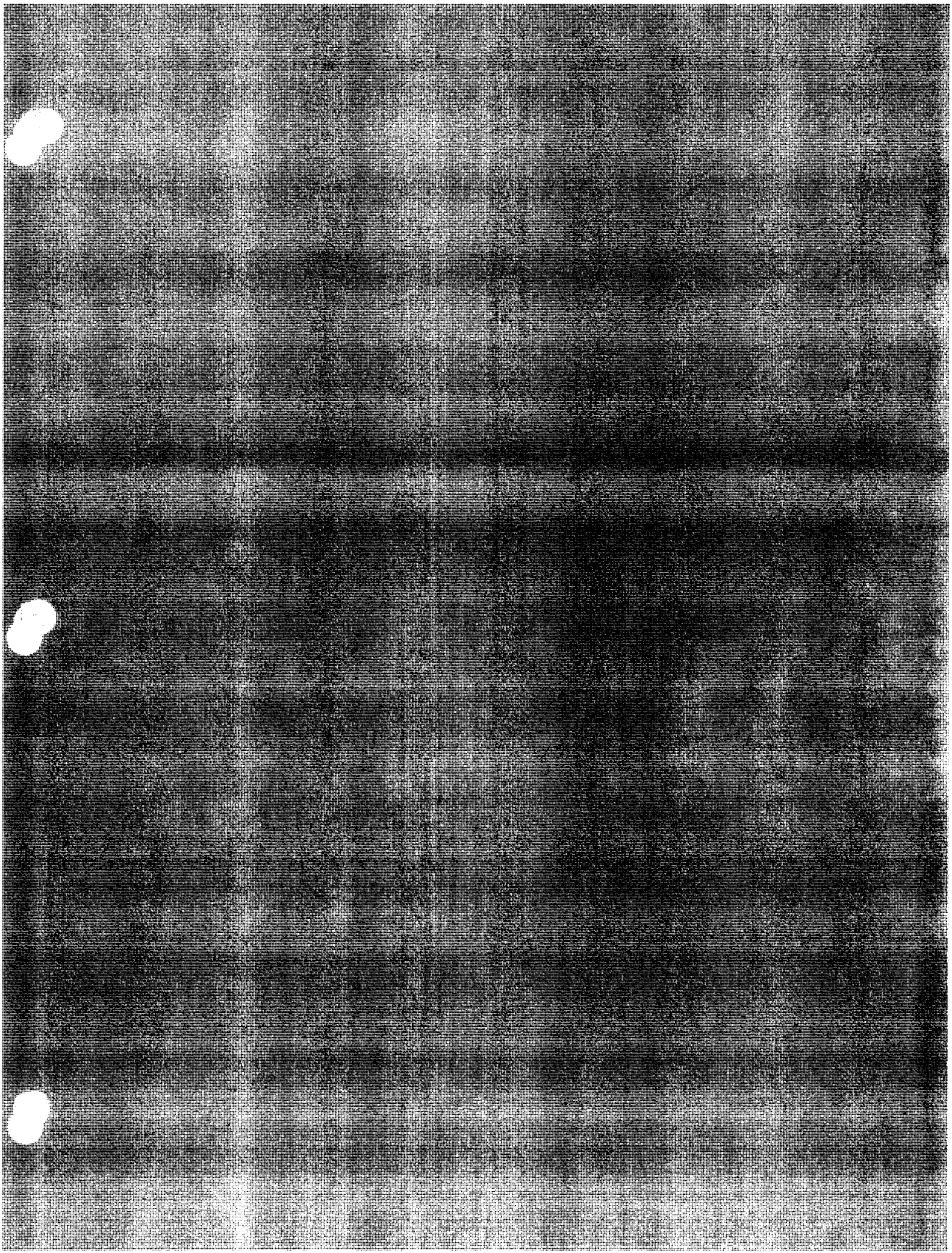
1) The current size, FAR, unit count, and percent affordable units for a) the entire project and b) that portion proposed for WMATA property
2) The sources, amounts and uses of funds, especially public funding assistance or other subsidies you have or for which you expect to apply
3) When we can expect 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

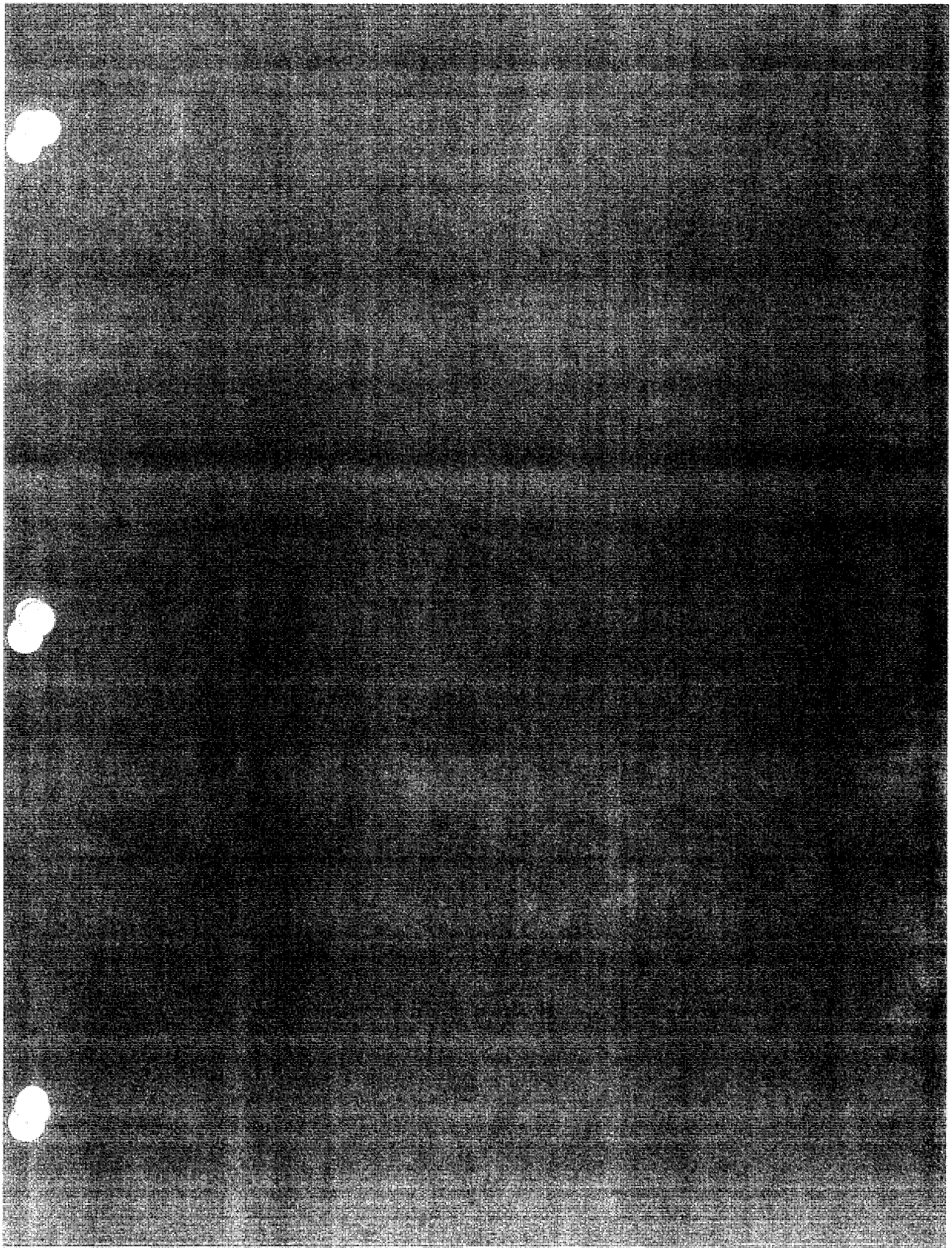
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015072



Omar Karim

›ject:	CONFIRMED - Meeting with Omar Karim and Yohance Fuller re: WMATA
Location:	Wilson Building - Suite 327
Start:	Mon 8/31/2009 5:00 PM
End:	Mon 8/31/2009 5:30 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Albert, Neil (EOM)

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

ɔm:	Fuller, Yohance (EOM) <yohance.fuller@dc.gov>
.nt:	Tuesday, September 01, 2009 12:02 PM
To:	Tiwana Hicks
Cc:	okarim@bannekerventures.com
Subject:	RE: The Jazz @ Florida Avenue

Tiwana --

Thanks for the thorough briefing. Let me review and get back to you with questions.

Yohance

From: Tiwana Hicks [mailto:thicks@bannekerventures.com]
Sent: Tuesday, September 01, 2009 12:17 AM
To: Fuller, Yohance (EOM)
Cc: okarim@bannekerventures.com
Subject: The Jazz @ Florida Avenue

Yohance:

Great to hear you will be working with us on The Jazz @ Florida Avenue (the "Project")! By way of background, I have summarized below the Project and our progress to date.

n July 2008, we were awarded the rights to develop 3 WMATA-owned parcels located along Florida Avenue, NW, between 8th Street, NW, and 9th Street, NW ("WMATA Site") (see attached Term Sheet). Shortly after being awarded the sites, we entered into agreements with the adjacent landowners to purchase 2 parcels along 9th Street (1931 9th Street, NW and 1933-1935 9th Street, NW) totaling approximately 7,770 square feet ("Adjacent Sites"). Collectively, the WMATA Site and the Adjacent Sites total 36,072 ground square feet.

The Project will include 2 apartment buildings, which will consist of 132 units and over 20,000 square feet of ground floor retail space. The construction type will be 4 stories of stick build over a retail podium, for a total of approximately 155,000 gross square feet of residential and retail space. We anticipate closing the alley that runs parallel between 9th and 8th Streets to construct the largest building, as depicted in the attached drawings. [NOTE: in the LEAD Survey Attachment, Parcel 1 consists of a combination of one WMATA parcel (to the north) and the two 9th Street parcels (to the south), and Parcels 2 & 3 are solely WMATA-owned Parcels.] The Project will feature one level of below-grade parking in each building, with a total of 71 parking spaces. The top of the Metro tunnel is approximately 25ft below the surface, but we do not anticipate getting close to the tunnel. The Project will be a mixed-income development with 80% market units and 20% affordable units.

Our development partner on the Project is Banc of America CDC ("BoA"). We anticipate finalizing the terms of our partnership agreement with BoA in the coming weeks. The Project's financing structure includes a mix of private equity, a PILOT, tax increment financing ("TIF"), 9% Low Income Housing Tax Credits ("LIHTC"), and traditional debt in the form of a HUD Loan. We are in discussions with DMPED and OCFO to finalize the amount of TIF financing we will receive per ~ur May 7, 2009 interest letter (attached). This past month our LIHTC application was selected for further underwriting we will be working with DHCD closely to finalize our credit amount (letter attached).

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To date, we are negotiating the terms of our Joint Development Agreement ("JDA") and Ground Lease with WMATA. Our attorney John Hagner (Womble, Carlyle, Sandridge & Rice) is completing his revisions to the JDA today, which we will be turning around to WMATA by tomorrow, at the latest. John will be following the JDA with revisions to the Ground Lease, which we will review and forward to WMATA.

As of Friday, we were informed by WMATA that the results of the WMATA appraisal will be finalized this week. I have also attached the latest chain of email correspondence sent between Omar and Rosalyn Doggett, which will give you a better sense of the schedule we are trying to push with WMATA and some of the outstanding issues.

Hopefully, this gives you some insight into the Project and our progress. We look forward to working with you and all of the assistance you will surely provide. Thanks.

Tiwana

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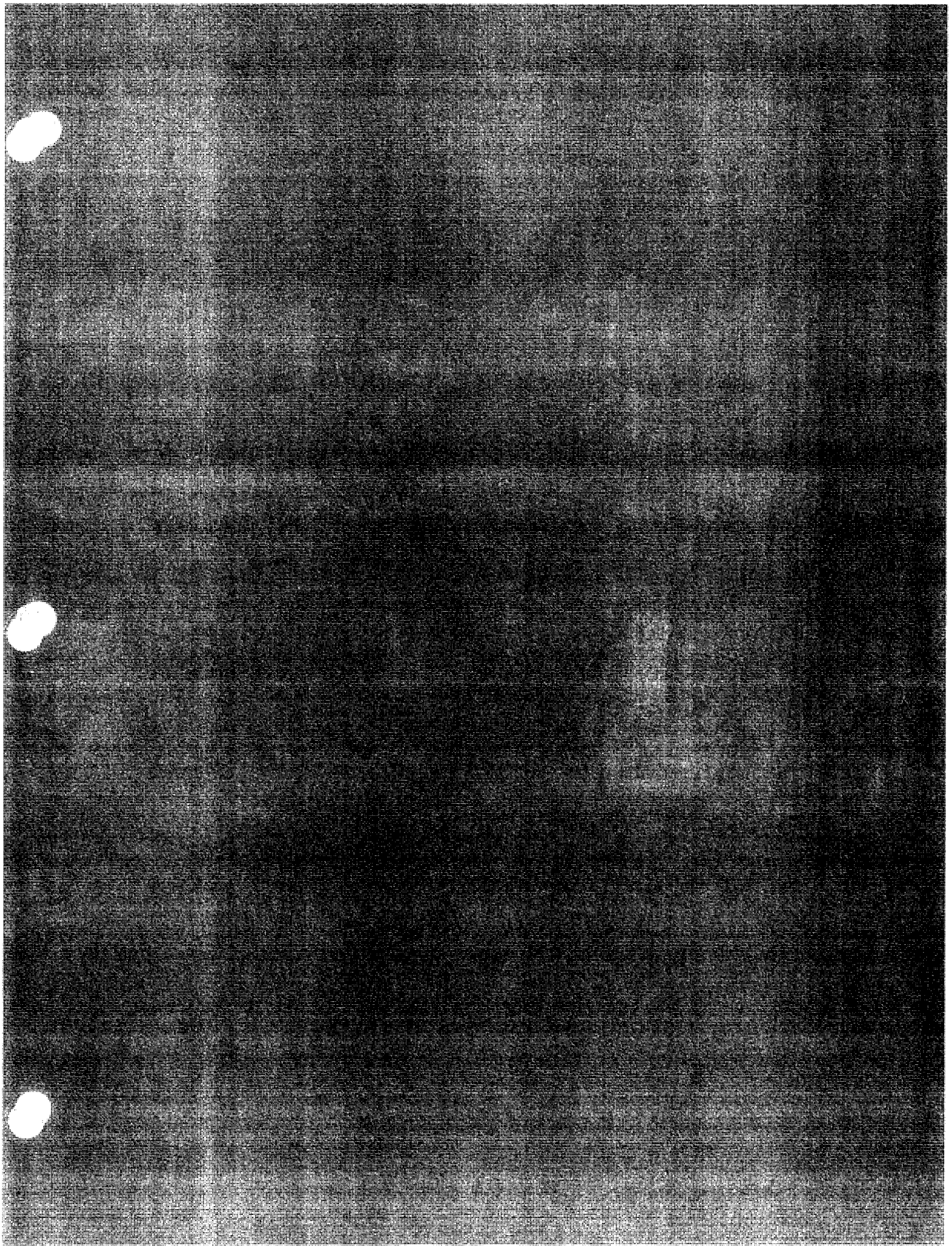
FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 015077**



Omar Karim

From:	Fuller, Yohance (EOM) <yohance.fuller@dc.gov>
Sent:	Tuesday, September 01, 2009 4:20 PM
To:	okarim@bannekerventures.com; Tiwana Hicks
Cc:	Albert, Neil (EOM); Guzman, Bernard (EOM)
Subject:	FW: Jazz @ Florida Avenue Appraisal
Attachments:	List of Items Needed from Banneker 9-1-09.doc
Importance:	High
Sensitivity:	Confidential

Omar,

Attached, you will find the outstanding issues relating to Jazz @ Florida as communicated to me by WMATA. I've already communicated that these need to be resolved in order for us to get this project on the agenda by October; however we must ensure that we fulfill our obligations, so as to not give any reason to further delay.

Please review and let's plan to talk after my meeting tomorrow morning to discuss the appraisal. I will follow up with you to get clarity and ensure that Bernard and I can assist you in getting this put to bed.

Regards,

Yohance

From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Tuesday, September 01, 2009 3:59 PM
To: Fuller, Yohance (EOM); Meister, Mark K.
Cc: Moneme, Emeka; Marshall, Malcolm; Bottigheimer, Nat
Subject: RE: Jazz @ Florida Avenue Appraisal

Yohance, please see the attachment.

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Sent: Tuesday, September 01, 2009 3:02 PM
To: Doggett, Rosalyn; Meister, Mark K.
Cc: Moneme, Emeka; Marshall, Malcolm; Bottigheimer, Nat
Subject: RE: Jazz @ Florida Avenue Appraisal

Mark/Roz --

When today can I expect to receive the email, detailing the items that you're still awaiting from Banneker Ventures? Please advise.

Thanks In Advance,

Yohance

FOIA CONFIDENTIAL TREATMENT REQUESTED

From: Bottigheimer, Nat [mailto:NBottigheimer@wmata.com]
Sent: Tuesday, September 01, 2009 11:10 AM
To: Meister, Mark K.; Doggett, Rosalyn
Cc: Moneme, Emeka; Fuller, Yohance (EOM); 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. Roz and Mark, could you prepare an email for me that I can forward to Yohance today about what items Omar needs to deliver so we can get to the next level of detail?

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Yohance, for your meeting tomorrow morning, Malcolm's direct number is 962-1584. Mark Meister's is 962-1589.

Thanks very much,

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From: Meister, Mark K.
Sent: Tuesday, September 01, 2009 9:42 AM
To: Wallace, Maria A; Bottigheimer, Nat
Subject: RE: Jazz @ Florida Avenue Appraisal

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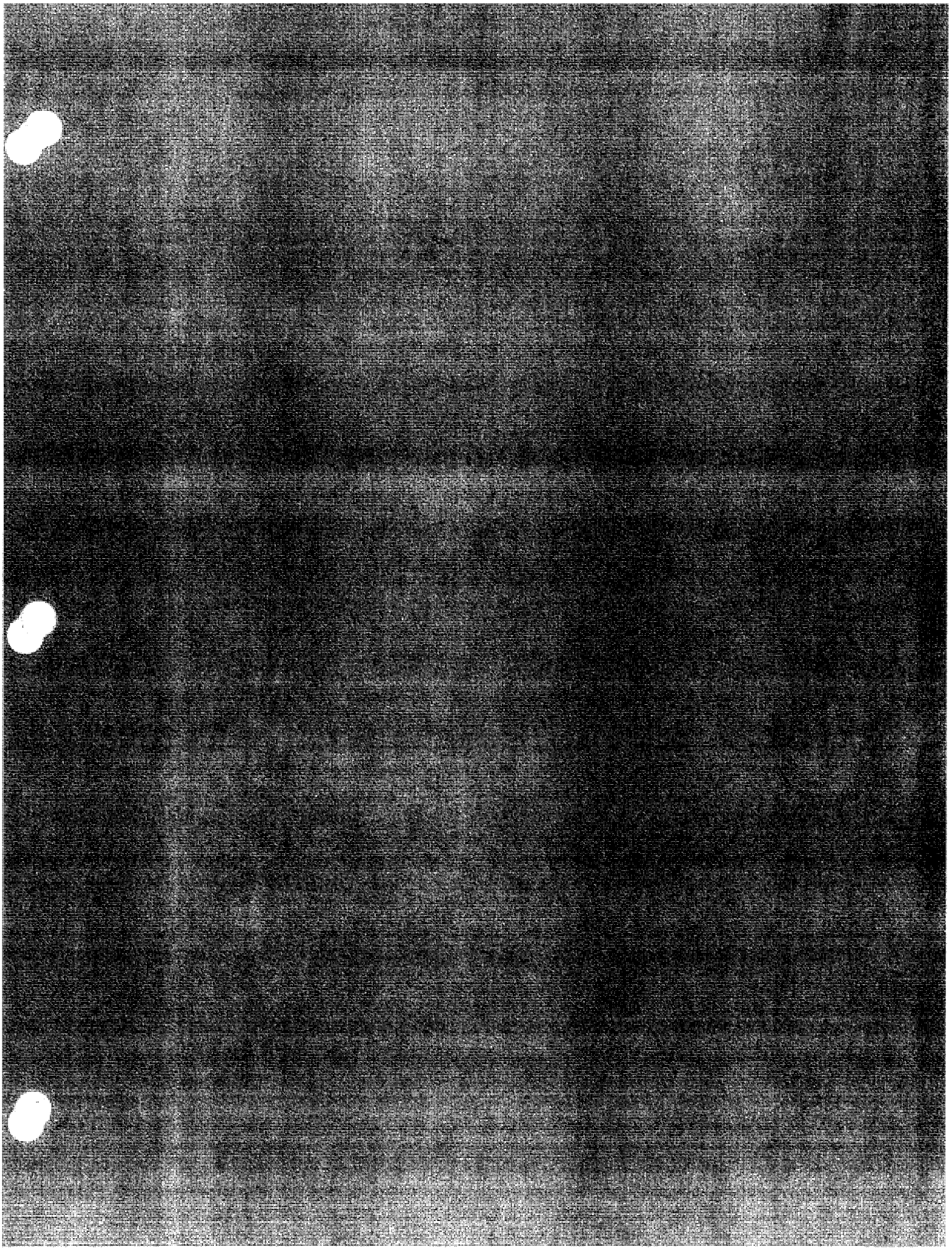
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015080



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Site Control and Development Allocation

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Other

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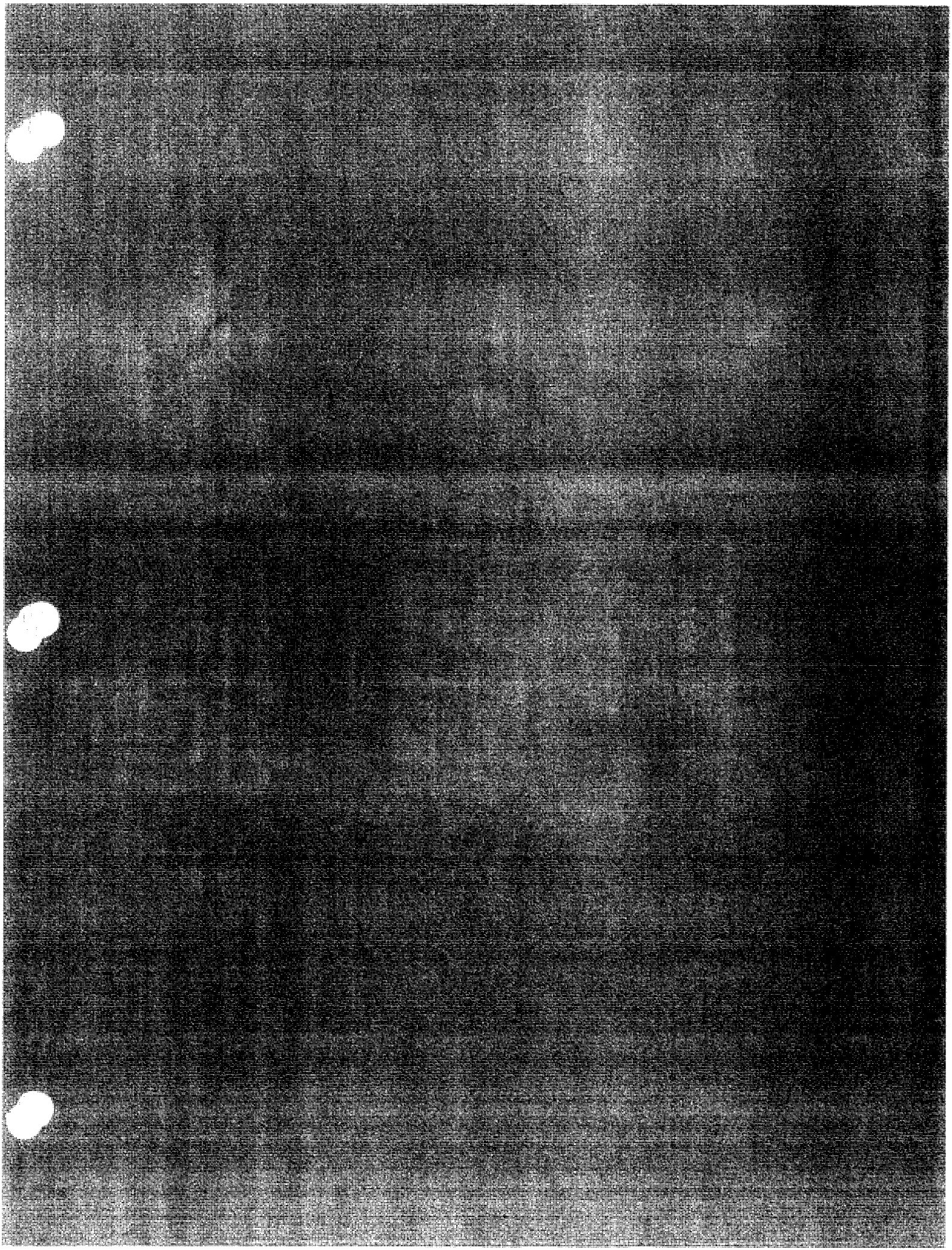


Omar Karim

From: eric.smart@bolansmart.com
Sent: Tuesday, September 01, 2009 7:15 PM
To: okarim@bannekerventures.com
Cc: Rosalyn Doggett; pam.dubois@bolansmart.com
Subject: your phone call

Omar

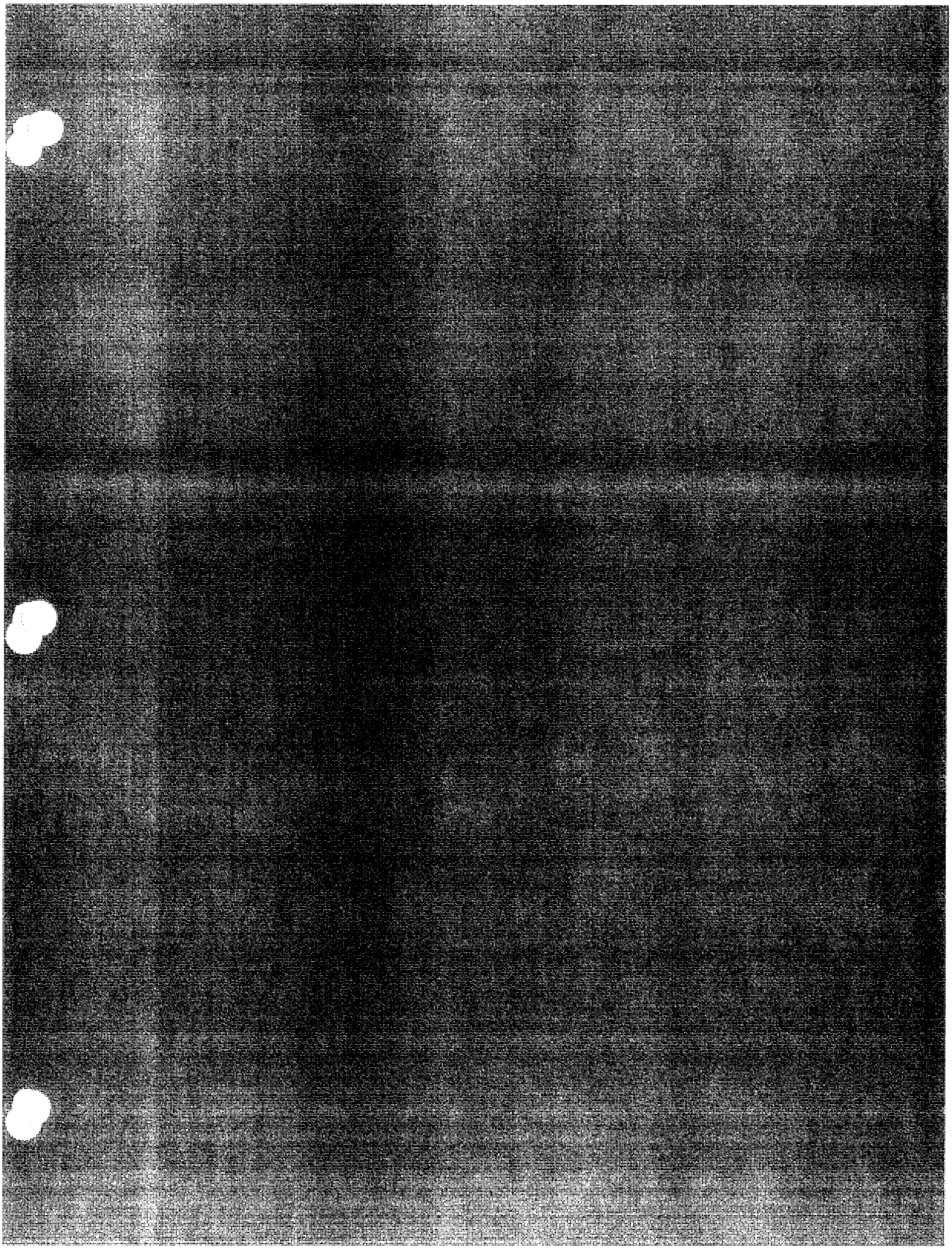
WMATA has asked for the time being that any discussions that might involve Bolan Smart regarding Florida Ave be channeled directly through WMATA. While I am presuming your call was WMATA related, obviously feel free to call for any other purposes.

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



Omar Karim

From: Tiwana Hicks <thicks@bannekerventures.com>
Sent: Tuesday, September 01, 2009 9:54 PM
To: 'Fuller, Yohance (EOM)'
Cc: 'Albert, Neil (EOM)'; 'Guzman, Bernard (EOM)'; okarim@bannekerventures.com; 'Maurice' 'Perry'
Subject: Responses to WMATA Issue List
Attachments: List of Items Needed from Banneker (Banneker and BACDC Response) 9-2-09.doc; Real Estate Purchase Agreement by and between Teles Professional Services LLC and Banneker Ventures LLC.PDF; Real Estate Purchase Agreement by and between Mengstab Ghebretinsae and T Ghebretinsae and Banneker Ventures LLC.PDF

Importance: High
Sensitivity: Confidential

Yohance,

Our prepared responses to WMATA's outstanding items are contained in the attached document. For your convenience, the same responses can also be found below. Thanks in advance for your assistance. We look forward to speaking with you this afternoon. Please call us with any questions you may have.

List of Items Needed from Banneker 9/1/09

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Developer Response: We expect to send the revised Joint Development Agreement to WMATA by Thursday. We expect to send the revised Ground Lease by the end of next week. Both documents are considerably more involved than we initially anticipated due to the myriad of new issues that needed to be addressed, including dozens of new issues that WMATA just raised in the documents, as well as the capitalization of the lease, inclusion of the adjacent parcels, alley closing, HUD financing provisions, etc.

Financial
Current operating (for 15 years) and development pro formas
The current deal being proposed by Banneker. Banneker has told us (through Eric Smart) that they will be proposing a capitalized lease. We have not seen the terms of this lease though we believe it to be some present value calculation of $250,000 rent starting approximately 4.5 years from jda execution. The capitalized lease proposal is a major change from what we have been previously discussing; therefore, we reserve the right to look at some of our tentative agreements on other terms to date (e.g. capital event participation and operating income participation) in light of whatever new terms Banneker might propose.
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Developer Response: As we have communicated to Rosalyn Doggett as recently as Friday, we will not share our current pro forma until we have received the results of the appraisal and negotiated all of the terms of the deal. We shared the pro forma in the past only to give WMATA a sense of the impact that the affordable housing requirement had on the

FOIA CONFIDENTIAL TREATMENT REQUESTED

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With respect to the sources of funds, our proposed sources include: 1) a HUD-insured loan; 2) a TIF/PILOT which is allocated 100% to non-residential uses (dollar amount TBD as the note is still being underwritten); 3) 9% Low Income Housing Tax Credits, which are being allocated to the affordable housing units only (dollar amount TBD as the project is still being underwritten by DHCD); and, 4) developer equity, exact dollar amount to be determined once our TIF/PILOT and tax credits are finalized. John Hagner (our counsel from Womble, Carlyle, Sandridge & Rice, LLP), who has worked on several WMATA projects that involve HUD-insured loans, is redrafting both the JDA and Lease to ensure that the appropriate HUD financing terms are included in our revised documents.

Design
Elevations and sections for site plan

Developer Response: At this time we do not have elevations and sections for the site plan. Last week was the first time that WMATA has requested these documents. We are not sure why they are needed at this time. We don't think they are required for approval or execution of the JDA or Lease.

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Developer Response: BACDC has provided financial reports to WMATA (i.e., call reports) which have been accepted by every municipality and quasi-government agency that BACDC has dealt with during its 30 years of experience with community redevelopment projects. WMATA's request is extremely unreasonable and will not be accommodated.

t,

iwana

Tiwana Z. Hicks
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, D.C. 20005
T: (202) 393-5460
F: (202) 393-5462
C: (202) 486-1863
thicks@bannekerventures.com

From: Fuller, Yohance (EOM) [mailto:yohance.fuller@dc.gov]
Sent: Tuesday, September 01, 2009 3:20 PM
To: okarim@bannekerventures.com; Tiwana Hicks
Cc: Albert, Neil (EOM); Guzman, Bernard (EOM)
Subject: FW: Jazz @ Florida Avenue Appraisal
Importance: High
Sensitivity: Confidential

Omar,

ttached, you will find the outstanding issues relating to Jazz @ Florida as communicated to me by WMATA. I've already communicated that these need to be resolved in order for us to get this project on the agenda by October; however we must ensure that we fulfill our obligations, so as to not give any reason to further delay.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 015089**

Please review and let's plan to talk after my meeting tomorrow morning to discuss the appraisal. I will follow up with you to clarity and ensure that Bernard and I can assist you in getting this put to bed.

Regards,

Yohance

From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Tuesday, September 01, 2009 3:59 PM
To: Fuller, Yohance (EOM); Meister, Mark K.
Cc: Moneme, Emeka; Marshall, Malcolm; Bottigheimer, Nat
Subject: RE: Jazz @ Florida Avenue Appraisal

Yohance, please see the attachment.

From: Yohance (EOM) Fuller [mailto:yohance.fuller@dc.gov]
Sent: Tuesday, September 01, 2009 3:02 PM
To: Doggett, Rosalyn; Meister, Mark K.
Cc: Moneme, Emeka; Marshall, Malcolm; Bottigheimer, Nat
Subject: RE: Jazz @ Florida Avenue Appraisal

Mark/Roz --

When today can I expect to receive the email, detailing the items that you're still awaiting from Banneker Ventures? Please advise.

Thanks In Advance,

Yohance

From: Bottigheimer, Nat [mailto:NBottigheimer@wmata.com]
Sent: Tuesday, September 01, 2009 11:10 AM
To: Meister, Mark K.; Doggett, Rosalyn
Cc: Moneme, Emeka; Fuller, Yohance (EOM); Marshall, Malcolm
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Mark and Roz –

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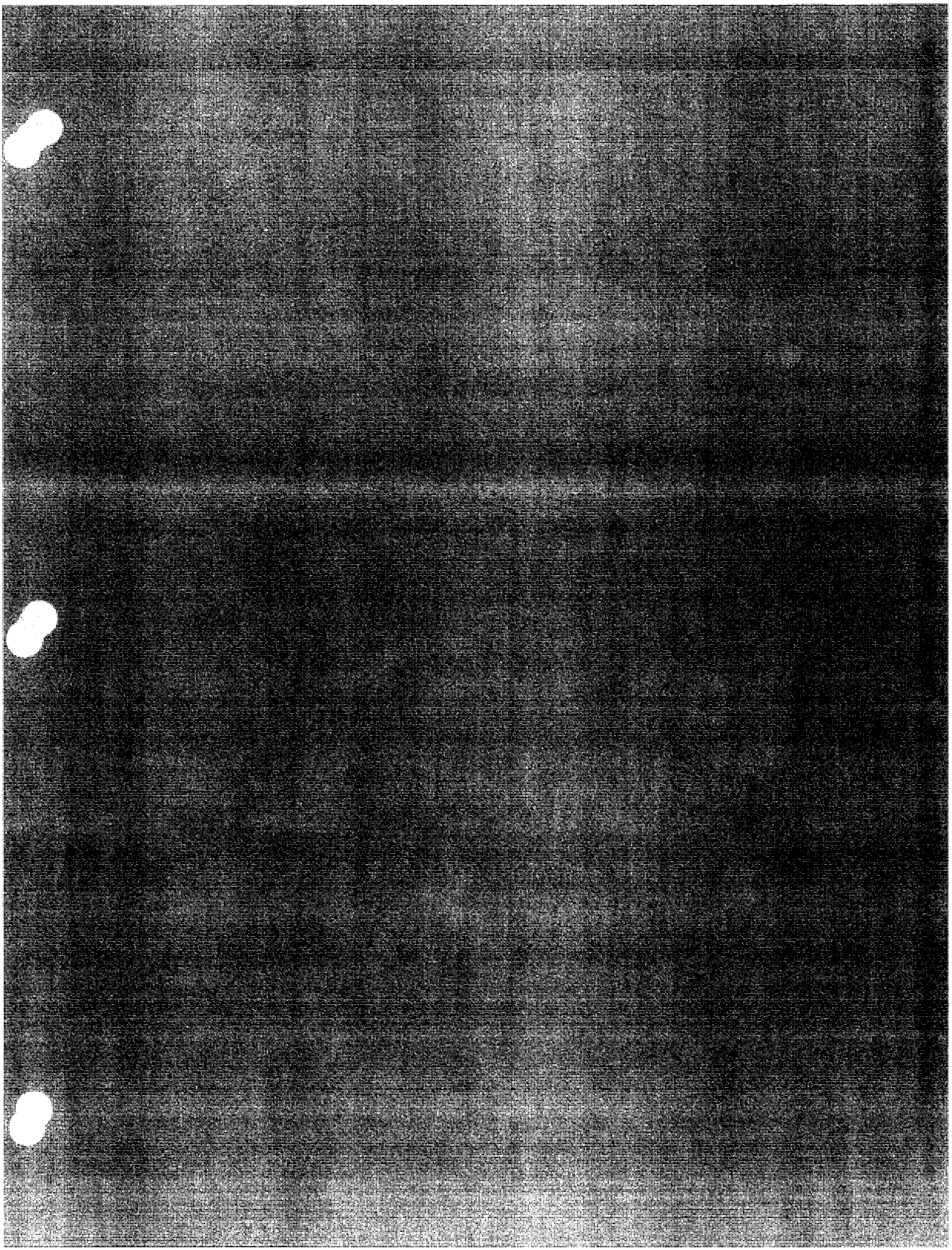

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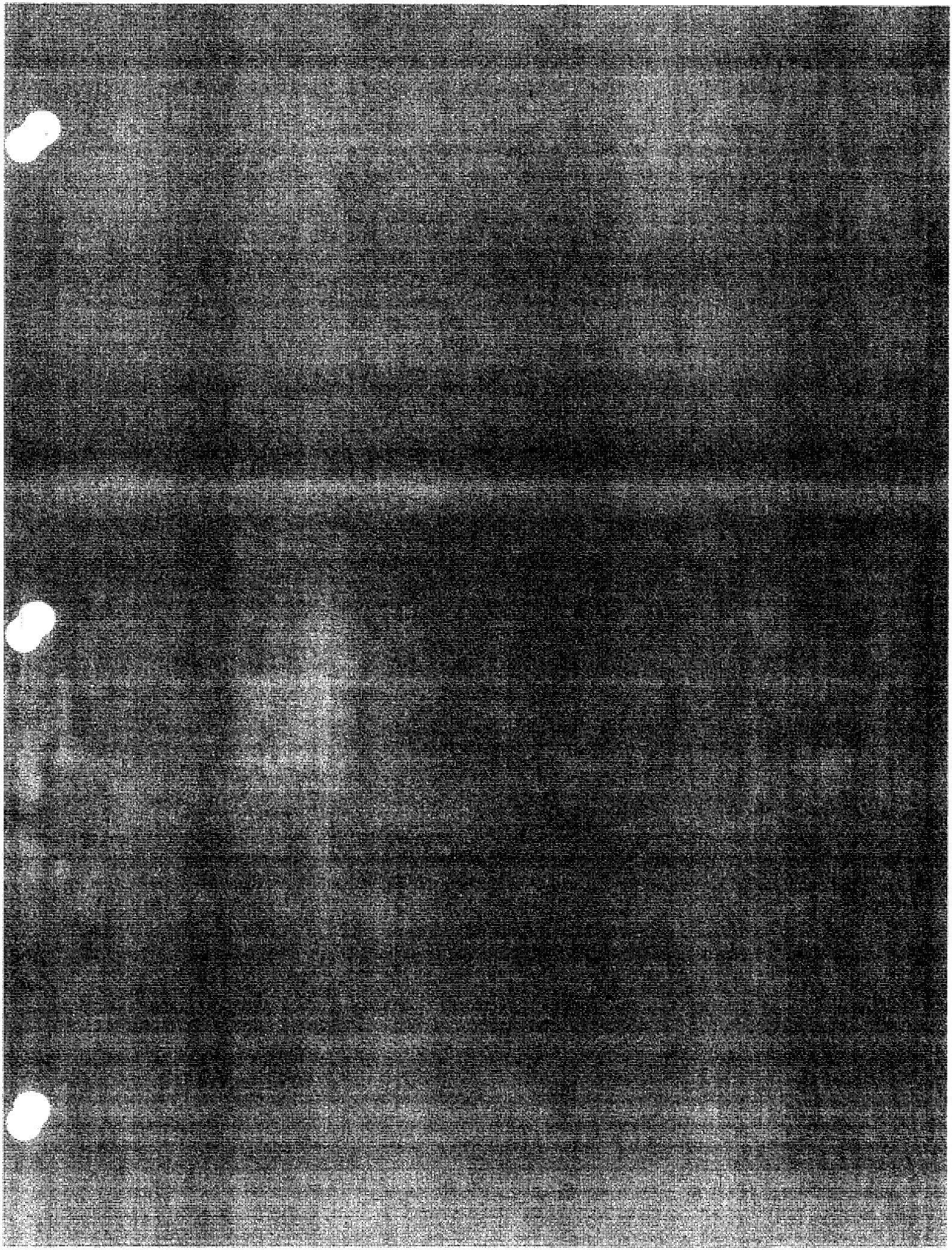


Omar Karim

From:	Bottigheimer, Nat <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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Finally, as you may know, it is **1 ½ years** after we negotiated a Term Sheet with WMATA and we seem to be no closer today than where we were back in March 2008. This is extremely discouraging as we have been working in good faith to get this deal done expending more than $600,000 in legal, design and other fees to date. As a local, small, minority-owned development firm, these delays have severely increased the risk that our financing and JV partner might walk should the delays continue.

Please let us know when we might expect to receive this information.

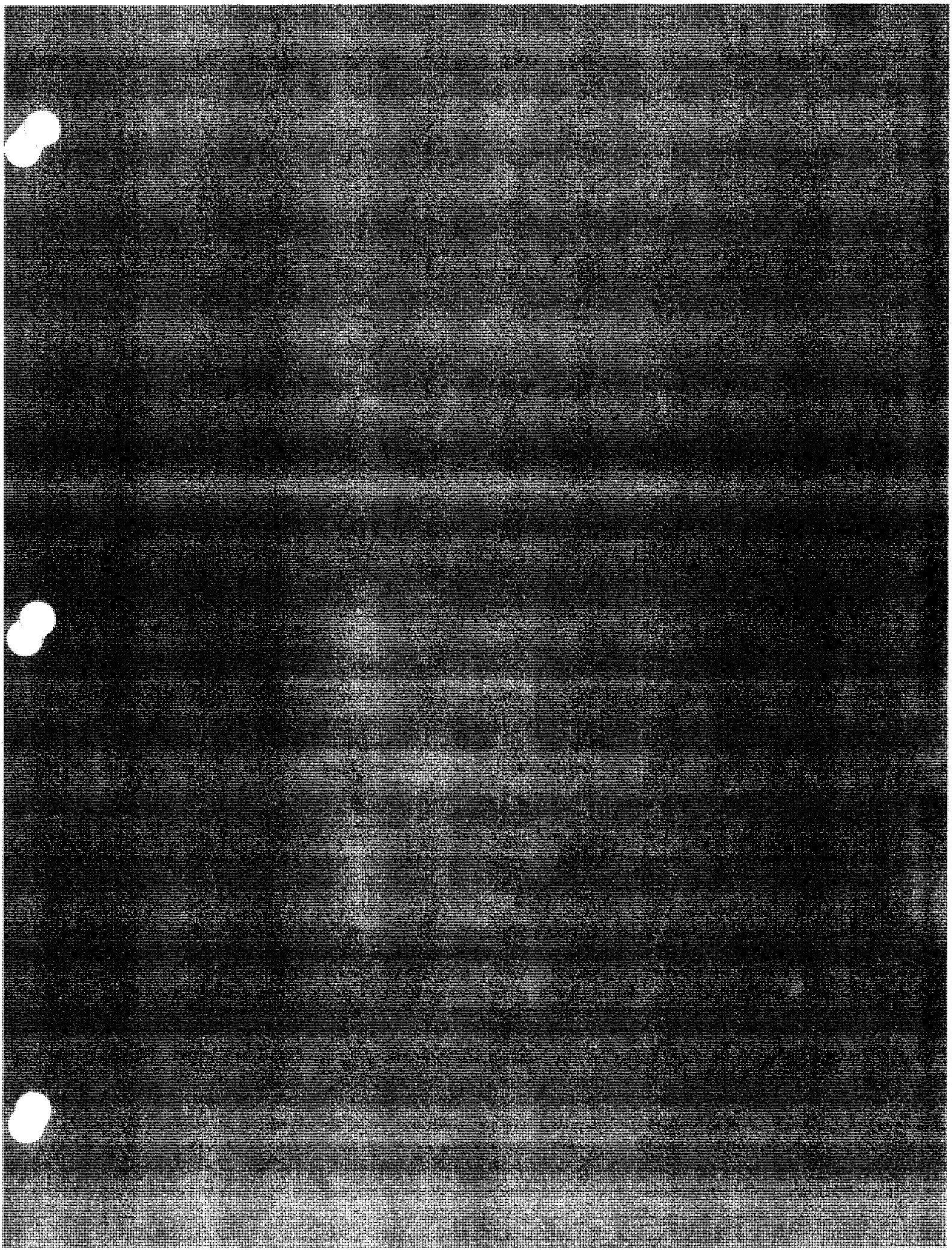
Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: Marshall, Malcolm [mailto:MMarshall@wmata.com]
Sent: Wednesday, September 02, 2009 3:58 PM
To: OKarim@BannekerVentures.com
Cc: Doggett, Rosalyn; Meister, Mark K.; Bottigheimer, Nat
Subject: Shaw Howard Sites

We have not as yet received a draft of the appraisal of the above property. However, based on discussions with the appraiser, the base market rental for the lease of the above property, assuming a lease structure with a fixed rental for 60 years plus rent participation equal to 1% of gross revenue per year and 2% of the net proceeds from refinancing or sales, is estimated at $375,000 per year. In his evaluation the appraiser assumed 124,000 SF of density to be used for the combined sites and made downward rental adjustments for additional costs associated with building over the WMATA tunnel and for mandatory IZ requirements.

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Marshall, Malcolm <MMarshall@wmata.com>
Sent: Thursday, September 03, 2009 12:11 PM
To: Omar A. Karim
Cc: Meister, Mark K.; Doggett, Rosalyn
Subject: RE: Shaw Howard Sites

So we can complete the appraisal under a 20% affordable housing scenario can you please provide details on the tax credits you mentioned. 4%? 9%? Have the tax credits have been awarded, by what agency, date of agency and Council action, if known, etc. Thanks - Malcolm

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, September 02, 2009 6:26 PM
To: Marshall, Malcolm; Bottigheimer, Nat
Cc: 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Lawson, Arthuro V.; Moneme, Emeka; Meister, Mark K.; Doggett, Rosalyn
Subject: RE: Shaw Howard Sites
Importance: High

Nat,

Thank you for your email. I look forward to hearing from Mark. My office # is 202-393-5460 and my cell # is 301-523-1810. I am still unclear whether the appraisal includes 20% affordable housing in it or not; can you or Mark clarify this 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
.9 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax

FOIA CONFIDENTIAL TREATMENT REQUESTED

(301) 523-1810 cell
okarim@bannekerventures.com

From: Bottigheimer, Nat [mailto:NBottigheimer@wmata.com]
Sent: Wednesday, September 02, 2009 5:51 PM
To: 'okarim@bannekerventures.com'; Marshall, Malcolm
Cc: 'thicks@bannekerventures.com'; Neil.Albert@dc.gov; Yohance S. Fuller; Moneme, Emeka; Meister, Mark K.; Doggett, Rosalyn; Lawson, Arthuro V.
Subject: Re: Shaw Howard Sites

Omar-

I'm asking Mark Meister to reach out to you to address your questions about the appraisal parameters. I believe Mark is out of the office now, but he can call you first thing tomorrow morning.

I've already spoken with Mark about the 8 percent / 20 percent issue. We need to take to the Board an agreement that's based on the Duke Plan goals as you point out, but if ultimately the project has lower affordable housing requirements than that, we need to be able to reflect that in our final agreement. For these immediate purposes, we will modify the lease payments accordingly, but subject to Board approval of course and also subject to the final affordable housing requirement.

We may need to meet all together in the coming days to hash out details for an October Board committee item. I will participate in such a meeting as needed to make sure Metro provides information needed to hit the October target.

Best wishes,

Nat

From: Omar A. Karim
To: Marshall, Malcolm
Cc: 'Tiwana Hicks' ; Neil.Albert@dc.gov; Yohance S. Fuller; Bottigheimer, Nat; Moneme, Emeka; Meister, Mark K.; Doggett, Rosalyn
Sent: Wed Sep 02 17:01:17 2009
Subject: RE: Shaw Howard Sites
Mr. Marshall,

This is very confusing. Is the $375,000 lease payment exclusive of (1) rent participation and (2) share of proceeds or is the appraiser saying that if the 1% rent participation and 2% net proceeds was included, the estimated flat lease payment would be $375,000?

Also, your email does not state that the appraisal includes the 20% affordable housing at 50% of AMI. Since zoning for the site (which is governed by the DUKE Plan) requires a **minimum of 20% affordable housing**, 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Finally, as you may know, it is **1 ½ years** after we negotiated a Term Sheet with WMATA and we seem to be no closer today than where we were back in March 2008. This is extremely discouraging as we have been working in good faith to get this deal done expending more than $600,000 in legal, design and other fees to date. As a local, small, minority-owned development firm, these delays have severely increased the risk that our financing and JV partner might walk should the delays continue.

Please let us know when we might expect to receive this information.

Omar

Omar A. Karim
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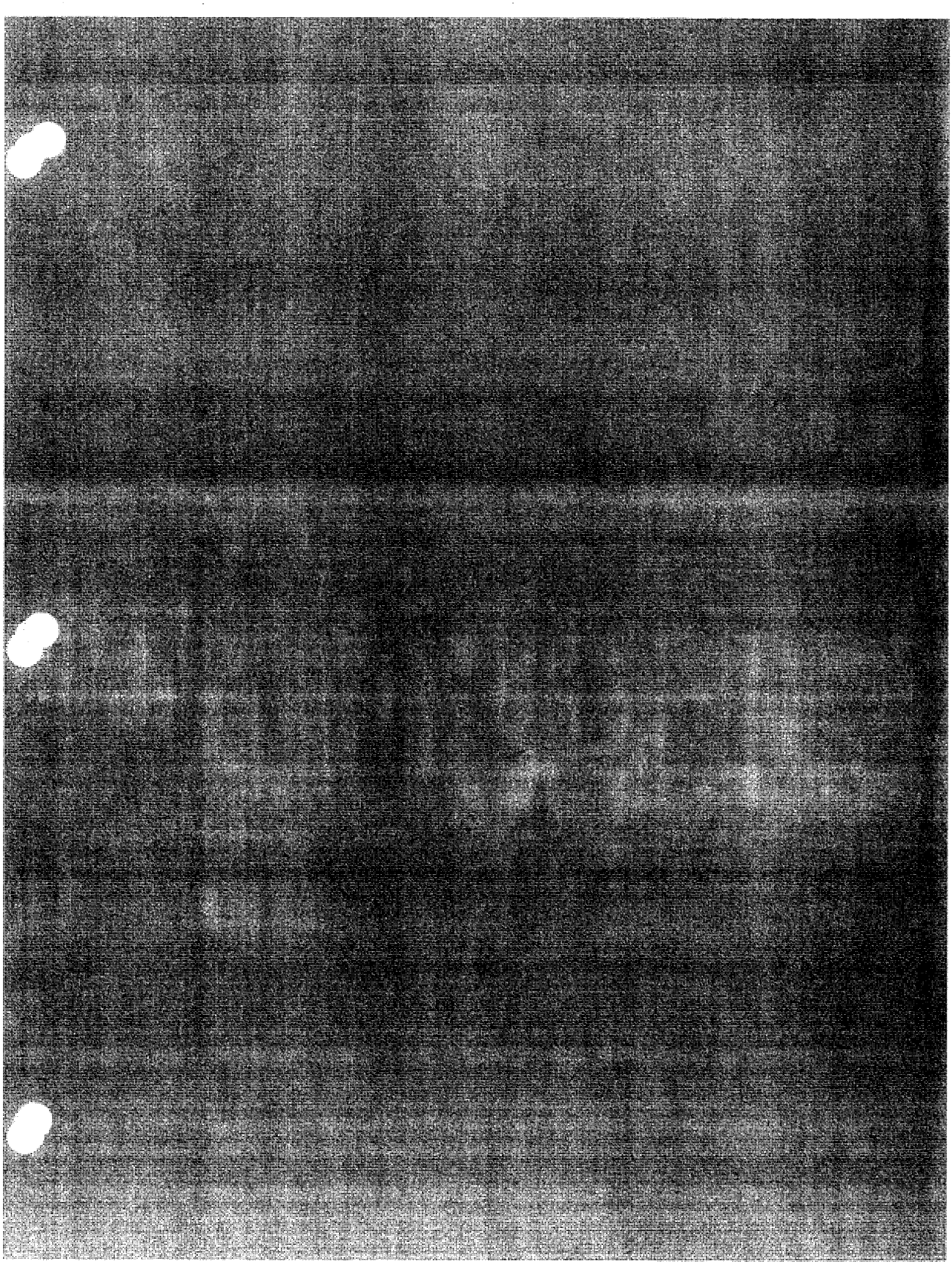
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: Marshall, Malcolm [mailto:MMarshall@wmata.com]
Sent: Wednesday, September 02, 2009 3:58 PM
To: OKarim@BannekerVentures.com
Doggett, Rosalyn; Meister, Mark K.; Bottigheimer, Nat
Subject: Shaw Howard Sites

We have not as yet received a draft of the appraisal of the above property. However, based on discussions with the appraiser, the base market rental for the lease of the above property, assuming a lease structure with a fixed rental for 60 years plus rent participation equal to 1% of gross revenue per year and 2% of the net proceeds from refinancing or sales, is estimated at $375,000 per year. In his evaluation the appraiser assumed 124,000 SF of density to be used for the combined sites and made downward rental adjustments for additional costs associated with building over the WMATA tunnel and for mandatory IZ requirements.

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Marshall, Malcolm <MMarshall@wmata.com>
Sent: Thursday, September 03, 2009 4:41 PM
To: Omar A. Karim
Cc: 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Meister, Mark K.; Bottigheimer, Nat; Doggett, Rosalyn
Subject: RE: Shaw Howard Sites

We have not as yet received a draft of the appraisal. Applying the Duke Plan 20% affordable housing requirement, base rent can be estimated at a fixed rent of $271,000 for 60 years plus 1% of gross revenue per year and 2% of the net proceeds from refinancing or sales.

If the base, fixed rent of $271,000 for 60 years is paid in a lump sum, the rent would be $4,175,000.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, September 03, 2009 1:07 PM
To: Marshall, Malcolm
Cc: 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Meister, Mark K.; Bottigheimer, Nat; Doggett, Rosalyn
Subject: RE: Shaw Howard Sites

Marshall,

When you send the results of the appraisal, please provide us with the assumptions that the appraiser used (i.e., any discount rate used, cap rate, assumed cost of the project, cost of impact of designing and building a project on WMATA tunnels, etc.). Thank you.

Omar

From: Marshall, Malcolm [mailto:MMarshall@wmata.com]
Sent: Thursday, September 03, 2009 12:11 PM
To: Omar A. Karim
Cc: Meister, Mark K.; Doggett, Rosalyn
Subject: RE: Shaw Howard Sites

So we can complete the appraisal under a 20% affordable housing scenario can you please provide details on the tax credits you mentioned. 4%? 9%? Have the tax credits have been awarded, by what agency, date of agency and Council action, if known, etc. Thanks - Malcolm

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, September 02, 2009 6:26 PM
To: Marshall, Malcolm; Bottigheimer, Nat
Cc: 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Lawson, Arthuro V.; Moneme, Emeka; Meister, Mark K.; Doggett, Rosalyn
Subject: RE: Shaw Howard Sites
Importance: High

at,

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015104

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

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?9 15th Street, NW, Suite 400
.ashington, DC 20005
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(301) 523-1810 cell
okarim@bannekerventures.com

From: Bottigheimer, Nat [mailto:NBottigheimer@wmata.com]
Sent: Wednesday, September 02, 2009 5:51 PM
To: 'okarim@bannekerventures.com'; Marshall, Malcolm
Cc: 'thicks@bannekerventures.com'; Neil.Albert@dc.gov; Yohance S. Fuller; Moneme, Emeka; Meister, Mark K.; Doggett, Rosalyn; Lawson, Arthuro V.
Subject: Re: Shaw Howard Sites

Omar-

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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 ıse payments accordingly, but subject to Board approval of course and also subject to the final affordable housing equirement.

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FOIA CONFIDENTIAL TREATMENT REQUESTED

participate in such a meeting as needed to make sure Metro provides information needed to hit the October target.

Best wishes,

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
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Please let us know when we might expect to receive this information.

Omar

Omar A. Karim
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(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015106

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

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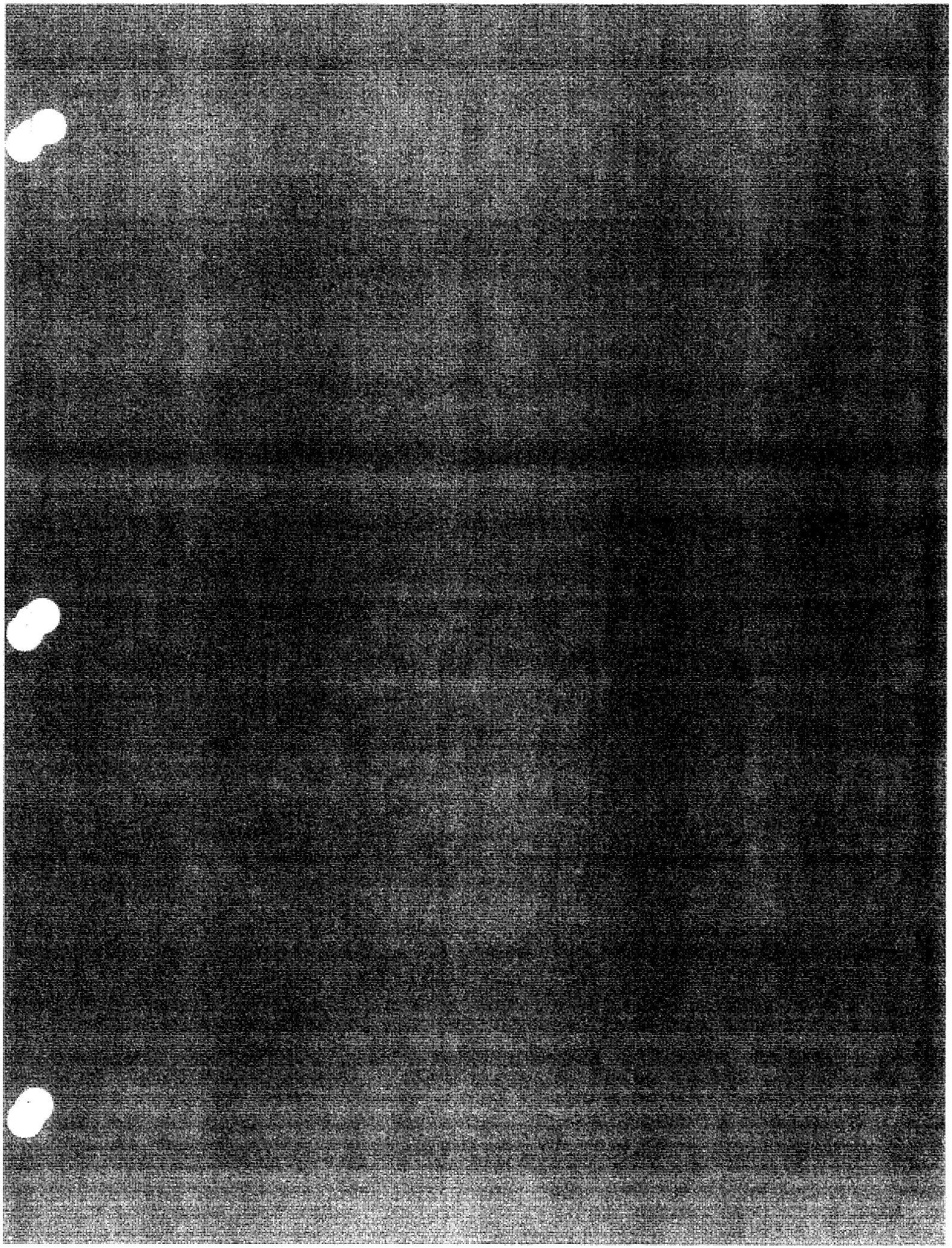
FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Fuller, Yohance (EOM) <yohance.fuller@dc.gov>
Sent: Thursday, September 10, 2009 11:31 PM
To: okarim@bannekerventures.com
Cc: thicks@bannekerventures.com; Albert, Neil (EOM)
Subject: Fw: Shaw-Howard/Florida Avenue Appraisal
Attachments: Shaw-Howard Florida Avenue WMATA Response to Banneker 9-10-09.doc

Omar,

I just reviewed WMATA's comments and its my understanding that the provision of a Pro Forma and Sources and Uses Table is necessary to hash out the details of the term sheet. It doesn't appear that WMATA received those documents yet.

I believe we all agreed last week, that once the appraisal numbers were received, your team would turn around a pro forma and S&U in time for the discussion on Friday.

Please have that available in time for our meeting tomorrow. I understand that some items still need to be confirmed, but bring what you have.

Thanks,

Yohance

From: Bottigheimer, Nat <NBottigheimer@wmata.com>
To: Fuller, Yohance (EOM); Omar A. Karim <okarim@bannekerventures.com>; Meister, Mark K. <MMeister@wmata.com>
Cc: Maurice Perry <maurice.perry@bankofamerica.com>; aives@bannekerventures.com <aives@bannekerventures.com>; Tiwana Hicks <thicks@bannekerventures.com>; Albert, Neil (EOM); John Hagner <JHagner@wcsr.com>; Moneme, Emeka <EMoneme@wmata.com>; Marshall, Malcolm <MMarshall@wmata.com>; Doggett, Rosalyn <RDoggett@wmata.com>; sgoldin@intercapholdings.com <sgoldin@intercapholdings.com>
Sent: Thu Sep 10 22:03:12 2009
Subject: RE: Shaw-Howard/Florida Avenue Appraisal

Yohance and Omar--

I recognize neither of you may be able to review this material prior to tomorrow morning's meeting among ourselves and Banneker, but I wanted to provide our responses to Omar's comments below so that all involved in this negotiation can be aware of the positions Metro staff will be taking and the basis for these positions.

Thanks very much.

Nat

From: Yohance (EOM) Fuller [yohance.fuller@dc.gov]
Sent: Wednesday, September 09, 2009 6:28 PM
To: Omar A. Karim; Meister, Mark K.
Cc: Maurice Perry; aives@bannekerventures.com; Tiwana Hicks; Neil.Albert@dc.gov; Bottigheimer, Nat; John Hagner; Moneme, Emeka; Marshall, Malcolm; Doggett, Rosalyn
Subject: RE: Shaw-Howard/Florida Avenue Appraisal

Mark et al.,

FOIA CONFIDENTIAL TREATMENT REQUESTED

Per an email exchange with Nat earlier today -- there are only a few outstanding items to resolve to get a term sheet in draft from and more importantly get this on October's agenda. I don't see why we can't get all stakeholders at a table and these issues finally put to bed.

Please set up a meeting this Friday, per our conversation last week. It is imperative that we get these initial deal terms finalized by COB Friday. I am available 2:30p and anytime thereafter.

Regards,

Yohance

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wed 9/9/2009 5:21 PM
To: 'Meister, Mark K.'
Cc: 'Bottigheimer, Nat'; 'Moneme, Emeka'; 'Doggett, Rosalyn'; 'Marshall, Malcolm'; Fuller, Yohance (EOM); Albert, Neil (EOM); 'Perry, Maurice'; 'Tiwana Hicks'; aives@bannekerventures.com; 'Hagner, John'
Subject: RE: Shaw-Howard/Florida Avenue Appraisal

Mark,

Thank you for the email with your thoughts on the basic WMATA Financial Terms. Below are our comments:

Capitalized Lease Payments

If we agree to all of the other terms, we could agree to pay the value of the capitalized lease payment of $1.98M that our appraiser put together.

Please explain why you indicated that the value of the land was absent any subsidies other than 4% tax credits. Based on our knowledge of projects that include 20% affordable housing, and as discussed with you all on several occasions, the value of the land would be zero if we had to do 20% affordable housing and then we would still need some subsidies to cover the gap. We can't think of one project in the District that includes 20% affordable housing that is paying anywhere close to what we would pay WMATA AND these projects would still need subsidies.

We would not be willing to pay WMATA any portion of any subsidies that we obtain for the project, let alone paying 80% of anything that we get. We've mentioned this many times before as we believe that no project could move forward with 20% affordable housing and pay $1.98M at closing for the land, without some public subsidies to help close the gap because of the inclusion of the affordable housing units.

Pre-Closing Payments

Okay with amounts but payments would be made quarterly.

Additional Density

This is confusing. The portion of the alley that will be closed is 1,025 SF. About ½ will be deeded to WMATA and ½ will be deeded to us as the purchasers of the adjacent parcels that are next to the alley. Since we are building a 5 story building, this would mean 512 SF x 5 stories = 2,560 SF would be attributable to WMATA land. Based on your calculations of the value of the land, this would mean that we would pay about $16 per SF or $42,000 in additional capitalized rent at Lease execution. We could agree to this increase over the $1.98M.

Annual Operating Income Participation

We would agree to 1.5% of Effective Gross Income but would not run our Debt Service Coverage at 1.25. We've never run our DSC at 1.25 as our project couldn't be financed at this rate. We are using a 1.11 DSC because HUD allows this.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Capital Event Participation
Any equity or member loans to receive a 20% return prior to WMATA receiving its 10% of net proceeds. Member loans equity are indistinguishable. We could agree that equity or member loans not to exceed 40% of the development sts.

Term
Initial term is 60 years with an option for the Developer to extend for another 39 years. Any annual escalation after the initial term to be at 1%, not 3%.

After yesterday's meeting, we thought that we were much closer to resolving the financial issues with you all. However, based on the terms that you sent us this afternoon, it appears that you all want to continue to raise new issues and change old ones. We cannot send over a summary of open issues until we know where we are with the ones above.

We welcome meeting with you again on Friday to try to come to some agreement on these terms.

Omar

Omar A. Karim
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729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
01) 523-1810 cell
okarim@bannekerventures.com

From: Meister, Mark K. [mailto:MMeister@wmata.com]
Sent: Wednesday, September 09, 2009 2:54 PM
To: okarim@bannekerventures.com
Cc: Bottigheimer, Nat; Moneme, Emeka; Doggett, Rosalyn; Marshall, Malcolm
Subject: RE: Shaw-Howard/Florida Avenue Appraisal

Omar,

As discussed, please see attached Basic WMATA Financial Terms.

Mark

Mark K. Meister
Acting Director
Office of Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001
Tel: 202-962-1589
Fax: 202-962-2396
Email: mmeister@wmata.com

FOIA CONFIDENTIAL TREATMENT REQUESTED

n: Omar Karim [mailto:okarim@bannekerventures.com]
t: Wednesday, September 09, 2009 2:38 PM
o: Meister, Mark K.
Cc: Tiwana Hicks
Subject: Re: Shaw-Howard/Florida Avenue Appraisal?

Thanks.

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Meister, Mark K."
Date: Wed, 9 Sep 2009 14:22:28 -0400
To: Omar A. Karim<okarim@bannekerventures.com>
Subject: RE: Shaw-Howard/Florida Avenue Appraisal?
Omar,

ll have it to you within the next half hour.

Mark

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, September 09, 2009 1:55 PM
To: Meister, Mark K.
Cc: 'Tiwana Hicks'
Subject: Shaw-Howard/Florida Avenue Appraisal?
Importance: High

Mark,

Any word on the update appraisal results?

Omar

Omar A. Karim
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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015112

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

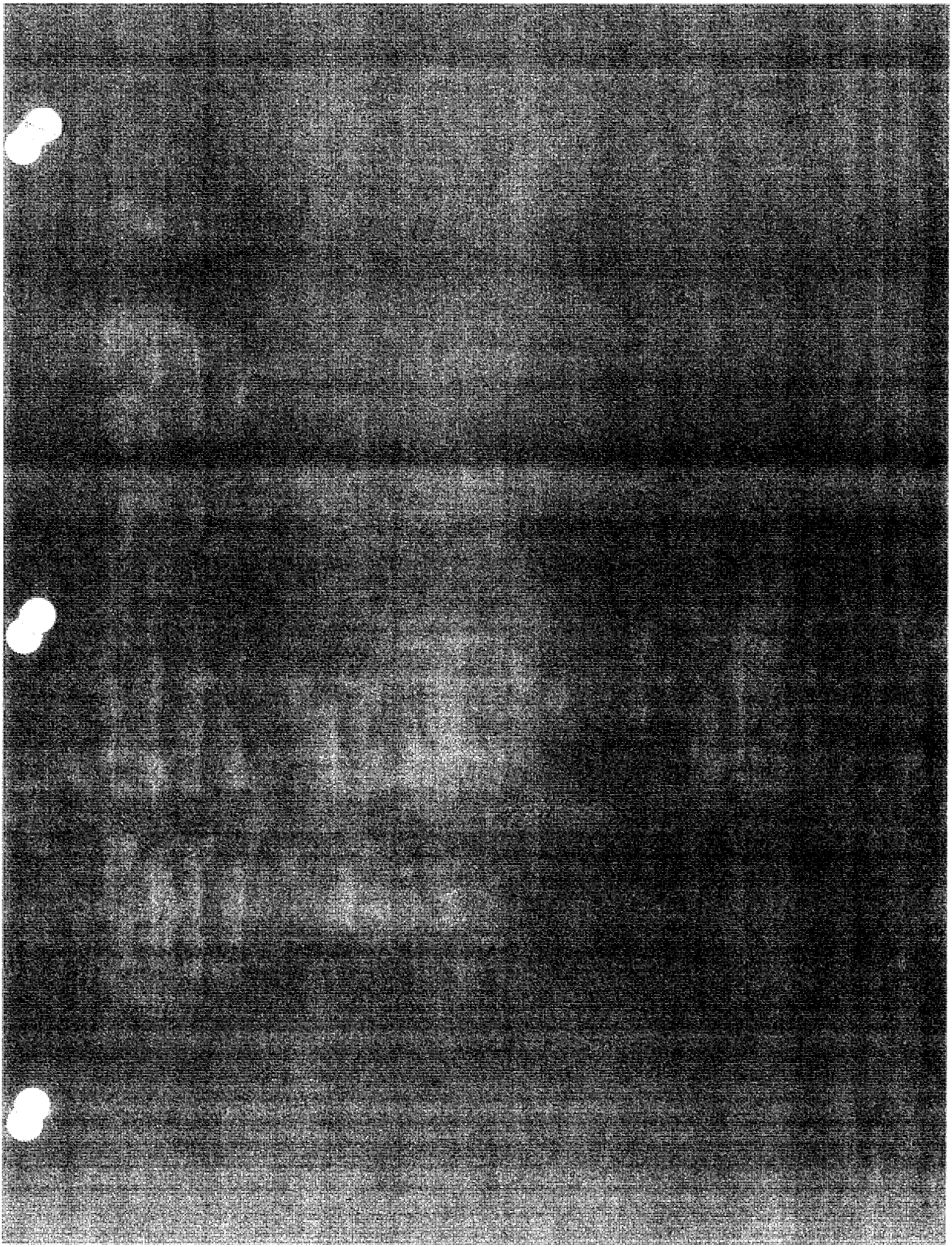
   Again, this relates to a sources and uses of funds table. WMATA does not know how much tax credit equity is anticipated to be put into this project but, in any event, such equity earns no return. Therefore the focus should be on non-tax credit equity. If this amount is 30% or less of

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.



From the Washington Business Journal
:http://www.bizjournals.com/washington/blog/breaking_ground/2009/09/metro_grants_banneker_ventures_development_extension_

Metro grants Banneker Ventures development extension

Washington Business Journal by Sarah Krouse, Reporter

Date: Thursday, September 10, 2009, 2:15pm EDT

Sarah Krouse
Reporter
Email

Metro gave Banneker Ventures LLC an extra 120 days to negotiate a joint development agreement for Shaw-Howard University/ Florida Avenue Parcels today.

This is the second such extension for the developer that is partnering with Bank of America CDC to build a mixed-use project on the 700 and 800 blocks of Florida Avenue NW. After a closed session discussion, the board approved the extension, though D.C. Councilmember Jim Graham D-Ward 1 said it should be the last of its kind.

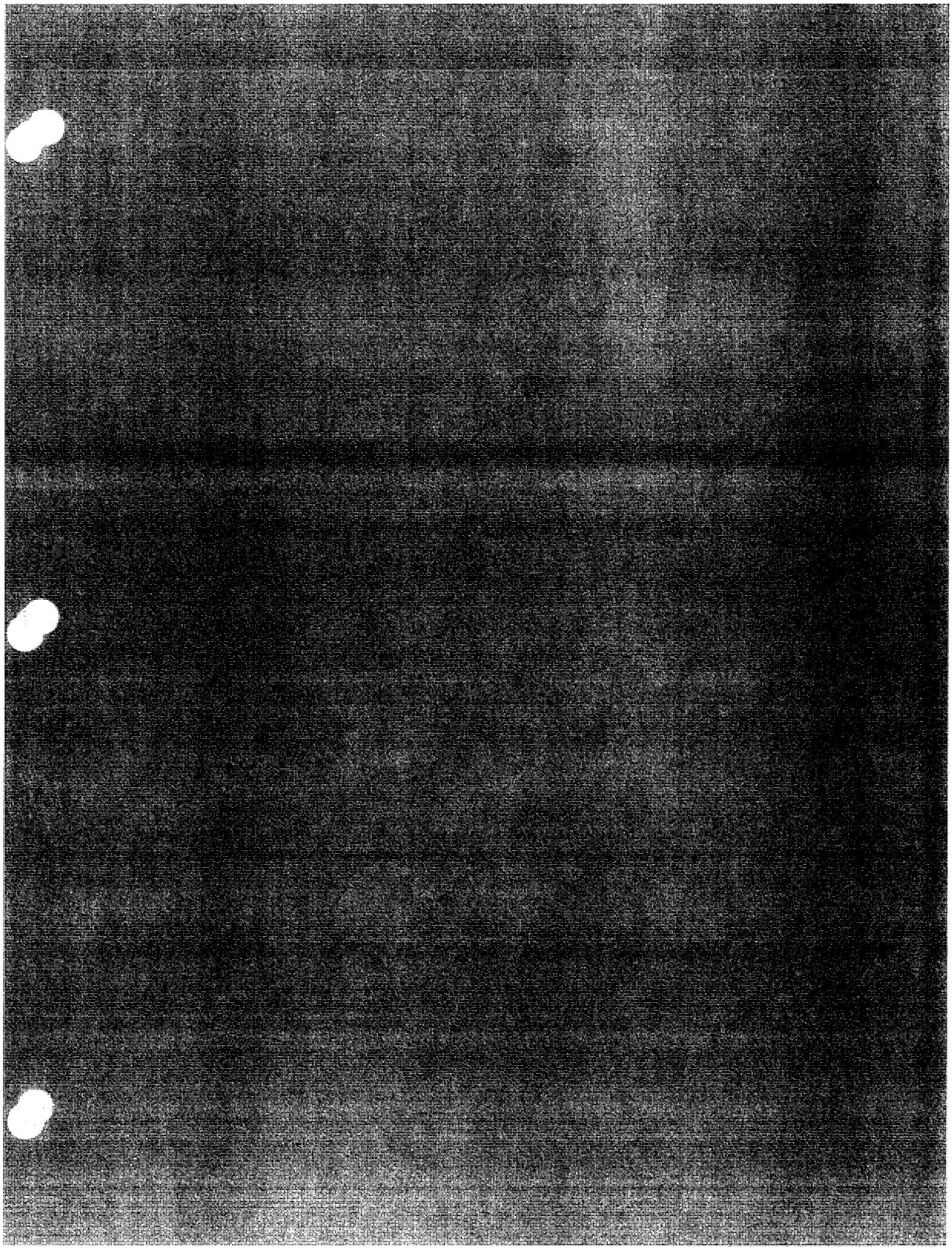
"I know that the developer is dealing with a recovering real estate market but we either have to move forward now, or take another look at who will do this job," Graham said.

The development, known as The Jazz @ Florida Ave. is slated to include 124 apartments, a portion of which will be affordable and over 10,000 square feet of retail space. Metro tapped Banneker to develop the 28,892-square-foot site over a year ago.

The D.C. Department of Housing and Community Development selected the site in August as one of ten projects in the city to receive part of $33.7 million in stimulus funds.

The money was targeted at projects that are eligible for low-income tax housing tax credits that developers can use to attract private financing.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015117



Omar Karim

From: Fuller, Yohance (EOM) <yohance.fuller@dc.gov>
Sent: Wednesday, September 16, 2009 5:17 PM
To: Omar A. Karim
Subject: RE: Shaw-Howard/Florida Avenue Appraisal

Omar,

How are we doing on the exchange of deliverables. Does WMATA have everything they need from you guys and vice versa?

Please advise.

Yohance

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tue 9/15/2009 4:49 PM
To: 'Bottigheimer, Nat'; 'Meister, Mark K.'; 'Doggett, Rosalyn'
Cc: 'Maurice Perry'; aives@bannekerventures.com; 'Tiwana Hicks'; Albert, Neil (EOM); Fuller, Yohance (EOM); sgoldin@intercapholdings.com; 'John Hagner'; 'Moneme, Emeka'; 'Marshall, Malcolm'
Subject: RE: Shaw-Howard/Florida Avenue Appraisal

[illegible]t, Mark, and Roz,

Attached please find the updated Summary of the Term Sheet for the Shaw-Howard/Florida Avenue sites. The four items highlighted in red are our responses to some of the questions that were raised at Friday's meeting. All of the other items we believe have been agreed to by WMATA and Banneker/BACDC. Please review the Summary for accurateness as we hope to finalize all remaining issues either prior to or at Friday's meeting.

Best,

Omar

Omar A. Karim
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Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: Meister, Mark K. [mailto:MMeister@wmata.com]
Sent: Tuesday, September 15, 2009 1:51 PM
To: Omar A. Karim; Bottigheimer, Nat; Doggett, Rosalyn

FOIA CONFIDENTIAL TREATMENT REQUESTED

Cc: 'Maurice Perry'; aives@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; sgoldin@intercapholdings.com; 'John Hagner'; Moneme, Emeka; Marshall, Malcolm
Subject: RE: Shaw-Howard/Florida Avenue Appraisal

Omar,

I can't do Friday morning but I am available at 1:30. Roz is out of the office today, so I cannot confirm her attendance at this time. Let's hold 1:30 and I will talk to Roz tomorrow.

Mark

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, September 15, 2009 10:51 AM
To: Meister, Mark K.; Bottigheimer, Nat; Doggett, Rosalyn
Cc: 'Maurice Perry'; aives@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; sgoldin@intercapholdings.com; 'John Hagner'; Moneme, Emeka; Marshall, Malcolm
Subject: RE: Shaw-Howard/Florida Avenue Appraisal

Nat, Mark and Roz,

On Friday, Roz indicated that she would have to check her schedule before we could confirm a time to meet again this Friday. I believe we had agreed to hold the meeting in the morning. Can you all confirm that the morning is still good. If so, can we meet at 9am?

Thank you in advance.

mar

From: Bottigheimer, Nat [mailto:NBottigheimer@wmata.com]
Sent: Thursday, September 10, 2009 10:03 PM
To: Yohance S. Fuller; Omar A. Karim; Meister, Mark K.
Cc: Maurice Perry; aives@bannekerventures.com; Tiwana Hicks; Neil.Albert@dc.gov; John Hagner; Moneme, Emeka; Marshall, Malcolm; Doggett, Rosalyn; sgoldin@intercapholdings.com
Subject: RE: Shaw-Howard/Florida Avenue Appraisal

Yohance and Omar--

I recognize neither of you may be able to review this material prior to tomorrow morning's meeting among ourselves and Banneker, but I wanted to provide our responses to Omar's comments below so that all involved in this negotiation can be aware of the positions Metro staff will be taking and the basis for these positions.

Thanks very much.

Nat

From: Yohance (EOM) Fuller [yohance.fuller@dc.gov]
Sent: Wednesday, September 09, 2009 6:28 PM
To: Omar A. Karim; Meister, Mark K.
Cc: Maurice Perry; aives@bannekerventures.com; Tiwana Hicks; Neil.Albert@dc.gov; Bottigheimer, Nat; John Hagner; Moneme, Emeka; Marshall, Malcolm; Doggett, Rosalyn
Subject: RE: Shaw-Howard/Florida Avenue Appraisal

Mark et al.,

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Per an email exchange with Nat earlier today -- there are only a few outstanding items to resolve to get a term sheet in draft from and more importantly get this on October's agenda. I don't see why we can't get all stakeholders at a table and these issues finally put to bed.

Please set up a meeting this Friday, per our conversation last week. It is imperative that we get these initial deal terms finalized by COB Friday. I am available 2:30p and anytime thereafter.

Regards,

Yohance

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wed 9/9/2009 5:21 PM
To: 'Meister, Mark K.'
Cc: 'Bottigheimer, Nat'; 'Moneme, Emeka'; 'Doggett, Rosalyn'; 'Marshall, Malcolm'; Fuller, Yohance (EOM); Albert, Neil (EOM); 'Perry, Maurice'; 'Tiwana Hicks'; aives@bannekerventures.com; 'Hagner, John'
Subject: RE: Shaw-Howard/Florida Avenue Appraisal

Mark,

Thank you for the email with your thoughts on the basic WMATA Financial Terms. Below are our comments:

Capitalized Lease Payments
If we agree to all of the other terms, we could agree to pay the value of the capitalized lease payment of $1.98M that our appraiser put together.

Please explain why you indicated that the value of the land was absent any subsidies other than 4% tax credits. Based on our knowledge of projects that include 20% affordable housing, and as discussed with you all on several occasions, the value of the land would be zero if we had to do 20% affordable housing and then we would still need some subsidies to cover the gap. We can't think of one project in the District that includes 20% affordable housing that is paying anywhere close to what we would pay WMATA AND these projects would still need subsidies.

We would not be willing to pay WMATA any portion of any subsidies that we obtain for the project, let alone paying 80% of anything that we get. We've mentioned this many times before as we believe that no project could move forward with 20% affordable housing and pay $1.98M at closing for the land, without some public subsidies to help close the gap because of the inclusion of the affordable housing units.

Pre-Closing Payments
Okay with amounts but payments would be made quarterly.

Additional Density
This is confusing. The portion of the alley that will be closed is 1,025 SF. About ½ will be deeded to WMATA and ½ will be deeded to us as the purchasers of the adjacent parcels that are next to the alley. Since we are building a 5 story building, this would mean 512 SF x 5 stories = 2,560 SF would be attributable to WMATA land. Based on your calculations of the value of the land, this would mean that we would pay about $16 per SF or $42,000 in additional capitalized rent at Lease execution. We could agree to this increase over the $1.98M.

Annual Operating Income Participation
We would agree to 1.5% of Effective Gross Income but would not run our Debt Service Coverage at 1.25. We've never run our DSC at 1.25 as our project couldn't be financed at this rate. We are using a 1.11 DSC because HUD allows this.

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Capital Event Participation
Any equity or member loans to receive a 20% return prior to WMATA receiving its 10% of net proceeds. Member loans and equity are indistinguishable. We could agree that equity or member loans not to exceed 40% of the development costs.

Term
Initial term is 60 years with an option for the Developer to extend for another 39 years. Any annual escalation after the initial term to be at 1%, not 3%.

After yesterday's meeting, we thought that we were much closer to resolving the financial issues with you all. However, based on the terms that you sent us this afternoon, it appears that you all want to continue to raise new issues and change old ones. We cannot send over a summary of open issues until we know where we are with the ones above.

We welcome meeting with you again on Friday to try to come to some agreement on these terms.

Omar

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(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: Meister, Mark K. [mailto:MMeister@wmata.com]
Sent: Wednesday, September 09, 2009 2:54 PM
To: okarim@bannekerventures.com
Cc: Bottigheimer, Nat; Moneme, Emeka; Doggett, Rosalyn; Marshall, Malcolm
Subject: RE: Shaw-Howard/Florida Avenue Appraisal

Omar,

As discussed, please see attached Basic WMATA Financial Terms.

Mark

Mark K. Meister
Acting Director
Office of Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001
Tel: 202-962-1589
Fax: 202-962-2396
Email: mmeister@wmata.com

FOIA CONFIDENTIAL TREATMENT REQUESTED

m: Omar Karim [mailto:okarim@bannekerventures.com]
.it: Wednesday, September 09, 2009 2:38 PM
To: Meister, Mark K.
Cc: Tiwana Hicks
Subject: Re: Shaw-Howard/Florida Avenue Appraisal?

Thanks.

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Meister, Mark K."
Date: Wed, 9 Sep 2009 14:22:28 -0400
To: Omar A. Karim<okarim@bannekerventures.com>
Subject: RE: Shaw-Howard/Florida Avenue Appraisal?
Omar,

.ill have it to you within the next half hour.

Mark

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, September 09, 2009 1:55 PM
To: Meister, Mark K.
Cc: 'Tiwana Hicks'
Subject: Shaw-Howard/Florida Avenue Appraisal?
Importance: High

Mark,

Any word on the update appraisal results?

Omar

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(301) 523-1810 cell
okarim@bannekerventures.com

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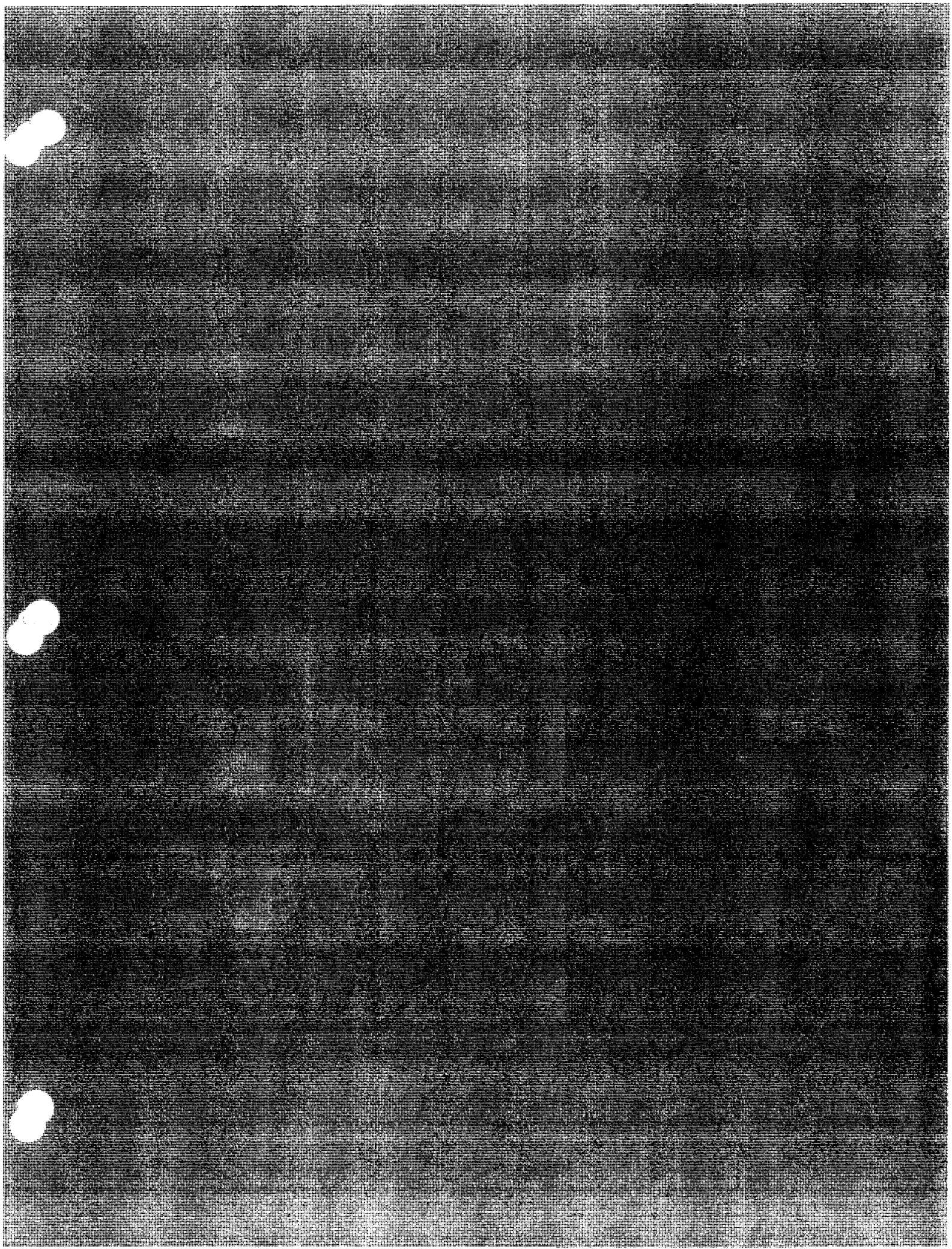
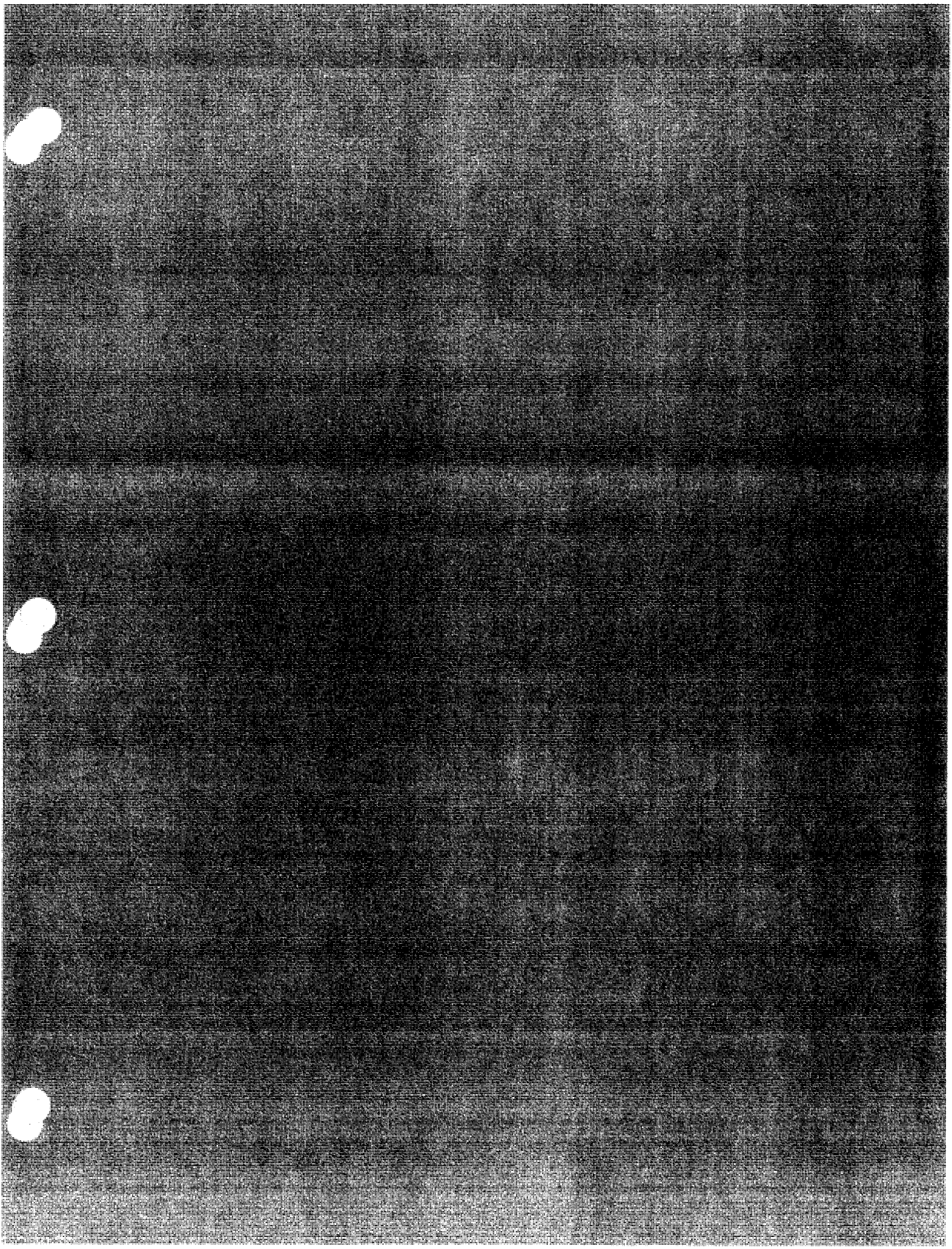
FOIA CONFIDENTIAL TREATMENT REQUESTED



Mtg w/ WMATA

2/17/09

- Nat said General Counsel has issue w/ co-tenancy agreement.
- Nat ~~said~~ offered to sale property to us.
- Wants to know what support city is requiring
- why developer fee increased concessions
- What subsidies we are getting?



Omar Karim

Subject:	FW: Shaw/Howard/FL Ave
Location:	Room JGB 5B Land Conference
Start:	Fri 9/18/2009 9:00 AM
End:	Fri 9/18/2009 11:00 AM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Johnson, Shariyka

-----Original Appointment-----
From: Johnson, Shariyka
Sent: Tuesday, September 15, 2009 4:39 PM
To: Johnson, Shariyka; Meister, Mark K.; Doggett, Rosalyn; Bottigheimer, Nat; Montague, Joshua W.
Subject: Shaw/Howard/FL Ave
When: Friday, September 18, 2009 9:00 AM-11:00 AM (GMT-05:00) Eastern Time (US & Canada).
Where: Room JGB 5B Land Conference

When: Friday, September 18, 2009 9:00 AM-11:00 AM (GMT-05:00) Eastern Time (US & Canada).
Where: Room JGB 5B Land Conference

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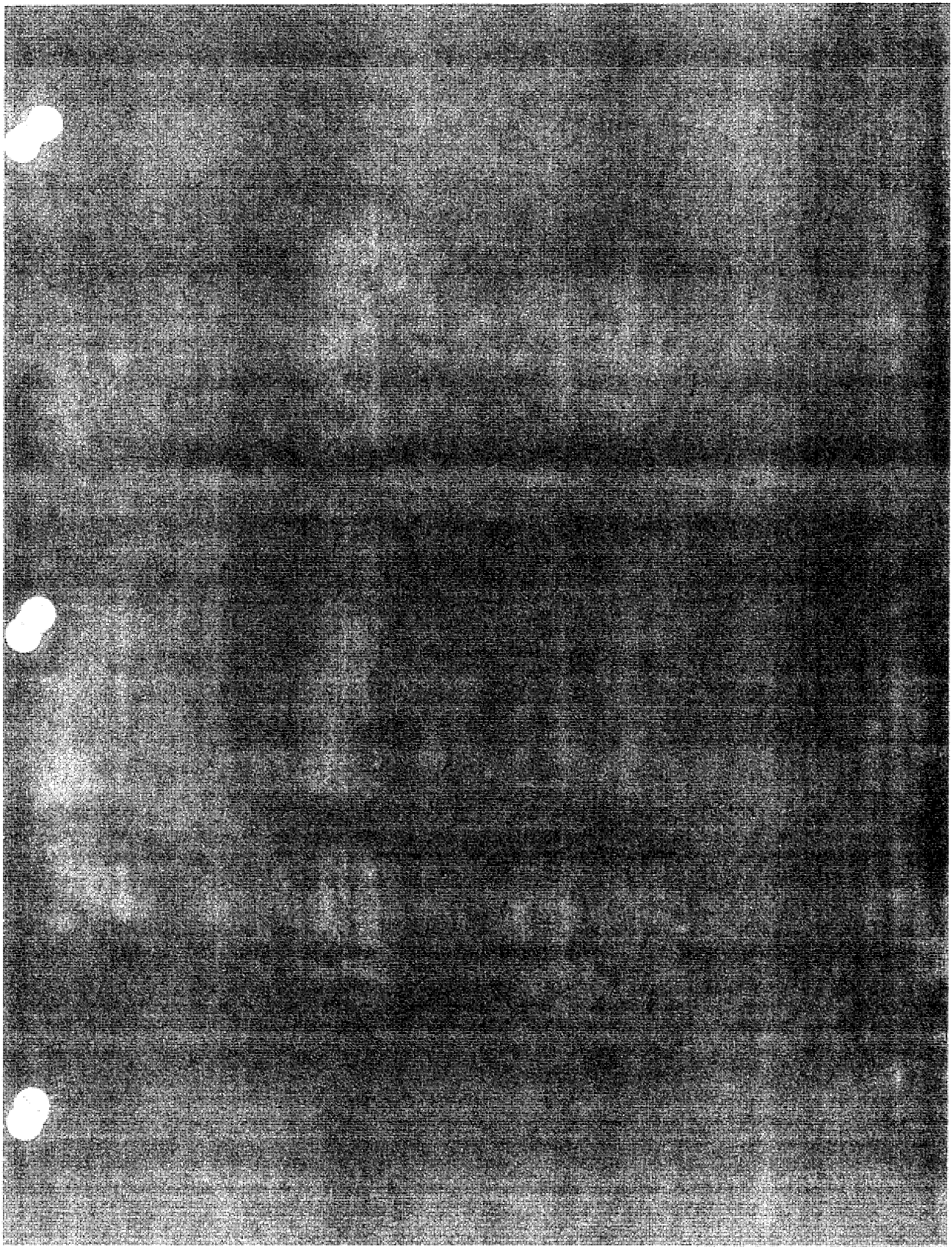


Omar Karim

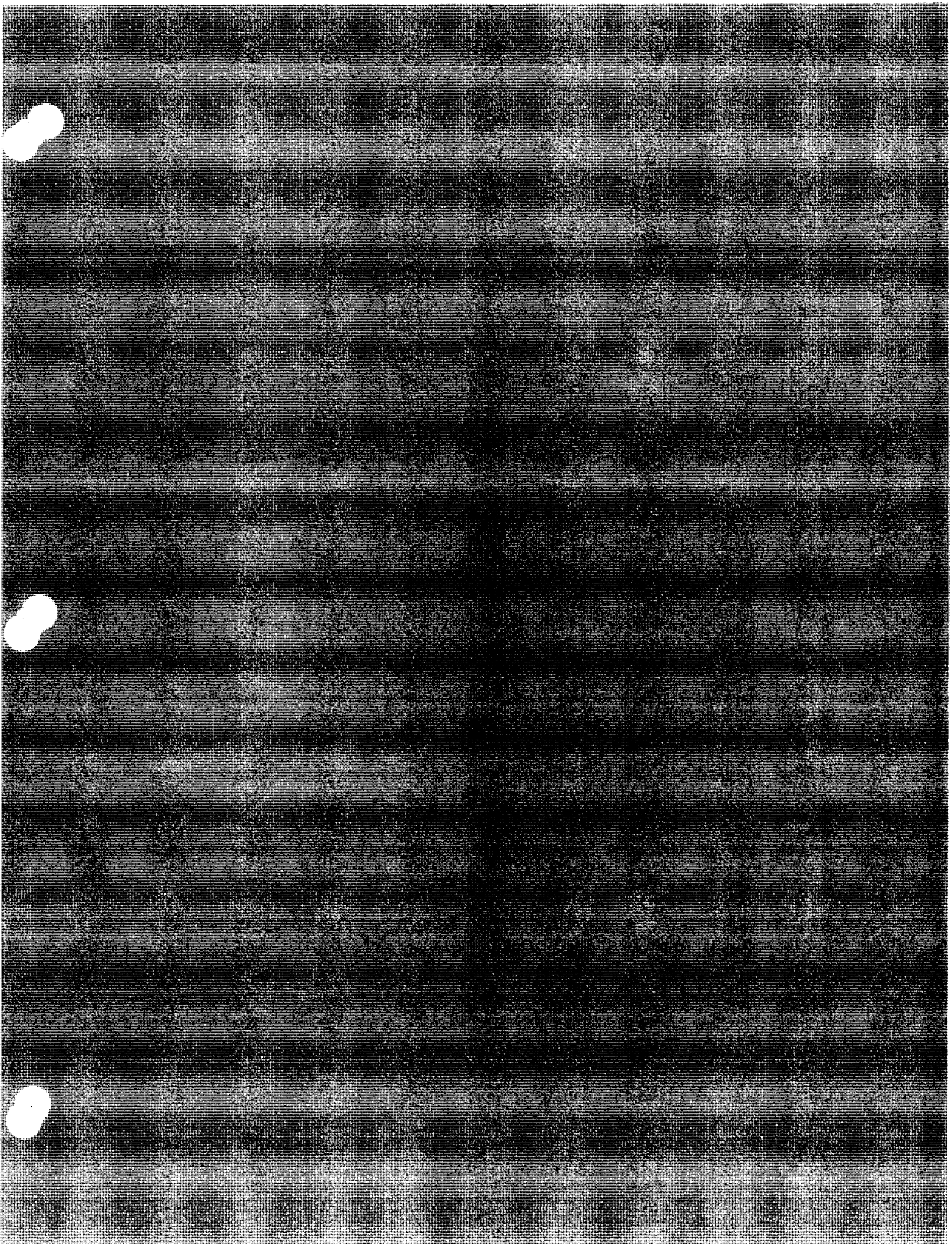
'om: Doggett, Rosalyn <RDoggett@wmata.com>
ent: Friday, September 18, 2009 3:16 PM
To: okarim@bannekerventures.com
Cc: Meister, Mark K.; Bottigheimer, Nat; Marshall, Malcolm; Yohance S. Fuller
Subject: Florida Ave Draft Appraisal

Omar,
I am delivering a copy of the draft appraisal now to your offices. Please note that our appraiser has not provided his comments to the third party appraiser yet, and I understand that he does have some comments.
Regards,
Rosalyn

Rosalyn P. Doggett
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

rdoggett@wmata.com
202-962-2208 phone
202-962-2396 fax

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015130



Omar Karim

'om: Perry, Maurice <maurice.perry@bankofamerica.com>
ent: Saturday, September 19, 2009 1:52 PM
To: okarim@bannekerventures.com; thicks@bannekerventures.com
Subject: Re: Florida Ave Draft Appraisal

Please send me a copy of the appraisal. Thxs

From: Omar Karim <okarim@bannekerventures.com>
To: Rosslyn Doggett <rdoggett@wmata.com>
Cc: Mark K. Meister <MMeister@wmata.com>; Bottigheimer, Nat <NBottigheimer@wmata.com>; Marshall, Malcolm <MMarshall@wmata.com>; Yohance Fuller <yohance.fuller@dc.gov>; Tiwana Hicks <thicks@bannekerventures.com>; Perry, Maurice
Sent: Fri Sep 18 15:20:12 2009
Subject: Re: Florida Ave Draft Appraisal

Thank you. Is the appraisal coming to our offices @ 729 15th Street, NW, Suite 400. Our office # is 202-393-5460. Is Malcolm in the office to discuss with us his comments?

Omar

Omar A. Karim
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'9 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Doggett, Rosalyn"
Date: Fri, 18 Sep 2009 15:16:03 -0400
To: okarim@bannekerventures.com<okarim@bannekerventures.com>
Subject: Florida Ave Draft Appraisal

Omar,
I am delivering a copy of the draft appraisal now to your offices. Please note that our appraiser has not provided his comments to the third party appraiser yet, and I understand that he does have some comments.
Regards,
Rosalyn

Rosalyn P. Doggett
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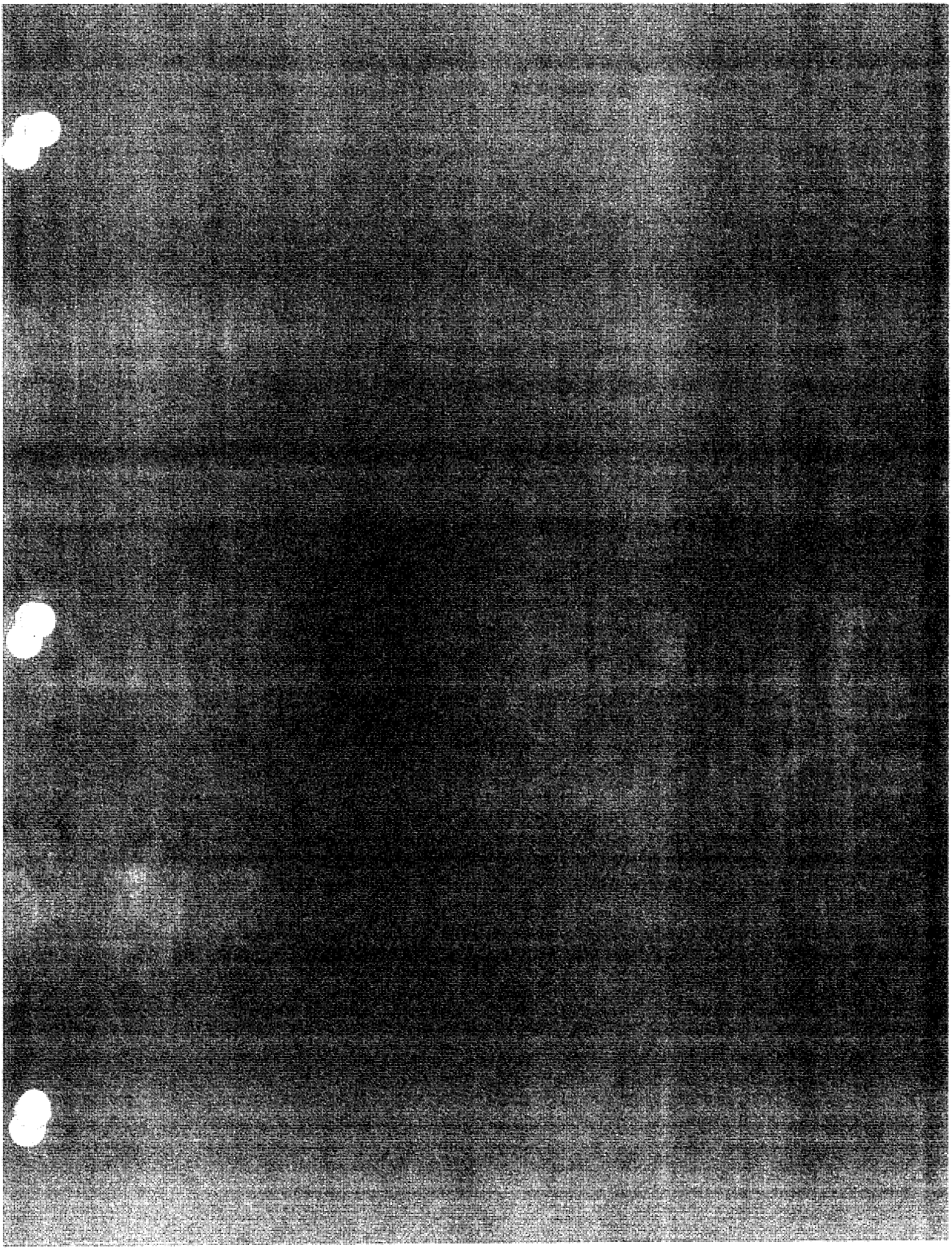
FOIA CONFIDENTIAL TREATMENT REQUESTED

202-962-2396 fax

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

m: Doggett, Rosalyn <RDoggett@wmata.com>
Sent: Monday, September 21, 2009 1:54 PM
To: Omar A. Karim
Cc: Marshall, Malcolm
Subject: RE: Appraisal for WMATA Parcels on Florida Avenue - Extraordinary Assumptions

Malcolm is at a doctor's appointment and can respond when he gets back.

However, without copying "the world" let me say that you appear to assume that 1) 80% AMI tenants pay no rent whatsoever whereas the rental tables put out by the city clearly show that they do and that therefore they can support a good deal, just not all, of project cost and 2) that somehow affordable units cost more than the average FAR sf project cost of $254. Please let me know if this is helpful.

Again, without copying "the world" please note below a more coherent version of the two questions I posed on Friday, which you were going to respond to anyway, as I recall:

From: eric.smart@bolansmart.com
Sent: Monday, September 21, 2009 12:01 PM
To: Doggett, Rosalyn
Subject: Fla Ave value components

Two valuation issues per Omar's most recent static proforma.

A. DEVELOPMENT COSTS

In representations through to spring 2009 Omar was illustrating combined project management and development fees of $1,020,000 on a project size of 135,414 gsf and overall budget of $26.8M. Bumping the project to 157,432 gsf with a simple porata increase would suggest the combined developer costs and fee could go up by 16.3%, or to $1,186,260. Similarly, if the math was applied to the total project costs, including the cost of the extra land, the increase would be 48.7%, implying the combined fee would go to in the range of $1.5M. While we would not agree that simply growing a project in size means the developer costs and fees go in proportion, these are the numbers.

Let us say, however, that we never saw an earlier rendition. For a project of this sort a market developer fee of 3% to 4% could normally apply plus some agreed G&A, and maybe even go lower given today's competitive conditions, and for an experienced developer at that. It would not necessarily include the cost of the land, especially the cost of the WMATA ground rent. Inclusive of all project costs, the developer fee at 4% would be a little less than $1.6M, and depending on the treatment of WMATA capitalized lease costs it would be less than $1.5M if just this component of land costs was netted out of the computation.

Given the nature of the project, including the developer's recovery of upfront JDA related costs, we can see no reason why the combined project management and development fees should total $3.0M, or 7.55% of the total cost, and even

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a higher percentage if some portion of the land costs are netted out. Much more defensible to allow for up to $1.5M, with the difference going directly towards paying a more fair ground rent.

B. INCOME

As depicted the residential income takes a permanent 16.7% hit in the form of rent concessions off of the face rent. While this may well apply in today's snap shot for an initial lease up in an emerging market, this is much too high if spanning for the entire investment period at this specific location. To quote from the Mid-Year 2009 Delta Report:

"Concessions at Class A projects continued to edge higher, to 6.2% of face rent, compared to mid-year 2008, which were 4.1% of face rent. This upward trend began in the first quarter of 2007 as the market became more competitive."

Fine to allow for two months rent concessions through stabilization, but thereafter a permanent assumed rent concession environment of much over 5% for all the units combined would be excessive. For discussion purpose if we say that the permanent concessions would average 7% of face rent, this would add over $230,000 in annual net rent after stabilization. Capitalized at 7% this would mean the project is worth almost $3.3M more than represented currently by Omar before discounting to a prestablized timeframe, meaning that the value is at least $2.5M more than represented just on this basis. Moreover, this does not address that the current cash flows are capped at a 2.0% annual increase, which is a particularly conservative assumption.

C. OTHER

Put the two above impacts on value together suggests that there should be well more than $3.0M of present value that could be re-presented in the current submitted proforma without altering the project's fundamental economic feasibility.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, September 21, 2009 11:56 AM
To: Marshall, Malcolm
Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Doggett, Rosalyn; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
Subject: RE: Appraisal for WMATA Parcels on Florida Avenue - Extraordinary Assumptions
Importance: High

Malcolm,

Can you ask the appraiser how he came up with the $200,000 figure for the Extraordinary Assumption costs to build the IZ units. The appraisal read like it was a much higher cost. The $200,000 seems way low. If we have to build 8 units for example (8% of 100,000 SF), this would result in a deduct of $300,000 per unit (hard and soft costs) x 8 units or $2.4M, versus the $500,000 in land value deduction and $200,000 in additional deductions that you mentioned in your email.

Thank you in advance.

Omar

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From: Marshall, Malcolm [mailto:MMarshall@wmata.com]
Sent: Monday, September 21, 2009 11:43 AM
Omar A. Karim
Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat; Doggett, Rosalyn
Subject: RE: Appraisal for WMATA Parcels on Florida Avenue - Extraordinary Assumptions

I have provided our appraiser the information below. He indicated preliminarily that Item 1. below would lower the value approximately $200,000. He is analyzing Item 2. below & indicates that this would, obviously, have a significant impact, resulting in a very low figure. He is currently preparing an analysis for us.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, September 21, 2009 10:30 AM
To: Marshall, Malcolm
Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat; Doggett, Rosalyn
Subject: Appraisal for WMATA Parcels on Florida Avenue - Extraordinary Assumptions
Importance: High

Malcolm,

We are analyzing the appraisal sent over by Harps & Harps and have 2 quick questions that we hope you can reach out to your appraiser this morning and get responses:

1. The appraiser included an Extraordinary Assumption in the appraisal in four different locations that any costs to develop the 8% IZ units, less the value of the land, would be offset by city or federal subsidies. To our knowledge, there are no city or federal subsidies for any projects that don't have a minimum of 20% affordable units (not IZ units which are at a higher AMI), and then there are no assurances that the project would even receive these subsidies. Can you ask the appraiser to what the value of the sites would be if he didn't include this Extraordinary Assumption.

2. If we have to build 20% affordable housing units on the WMATA parcels, what would the impact of the appraised value be?

We are completing a comprehensive review of the appraisal today and need this for our review which we plan on submitting to you by COB today.

Thank you in advance.

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(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

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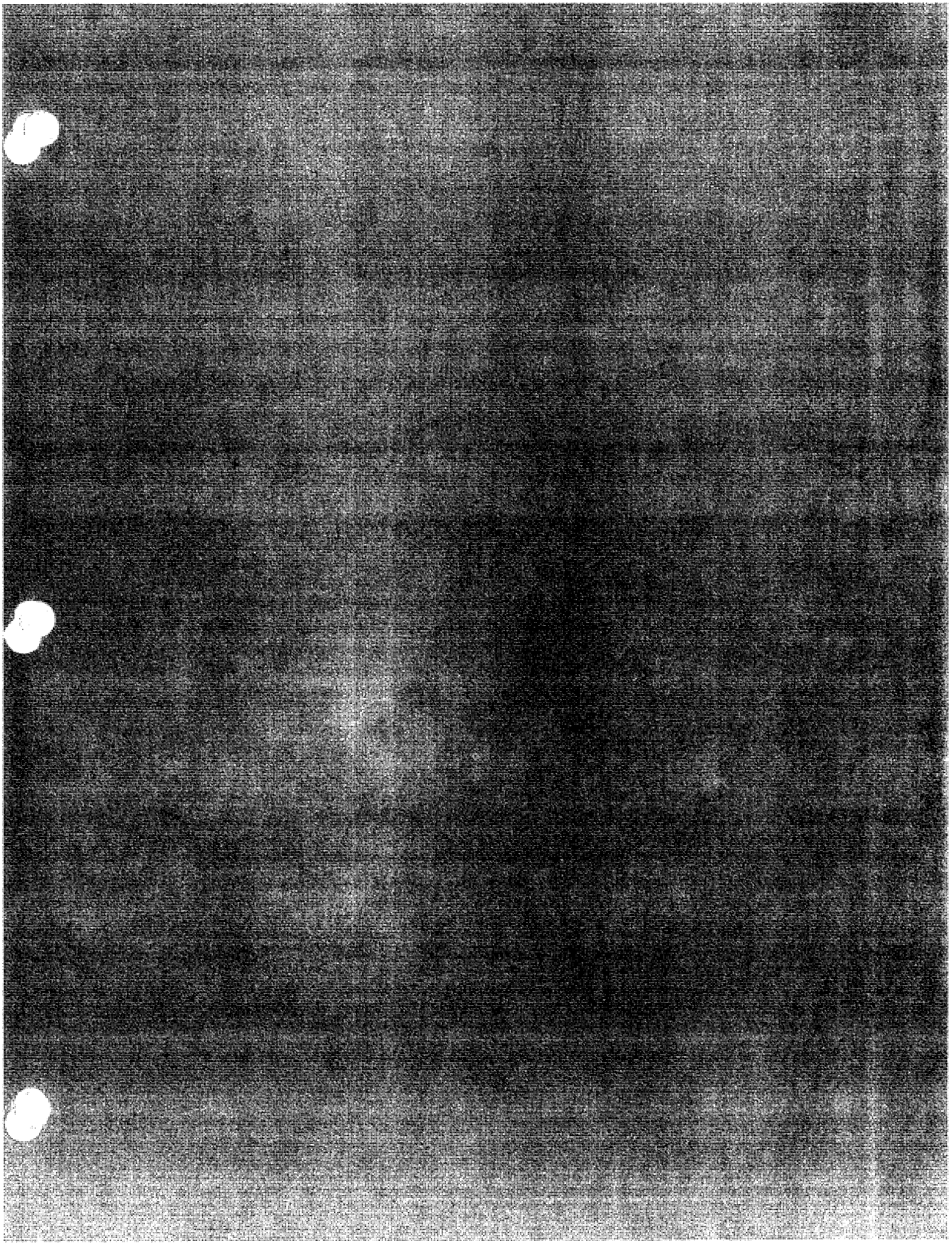


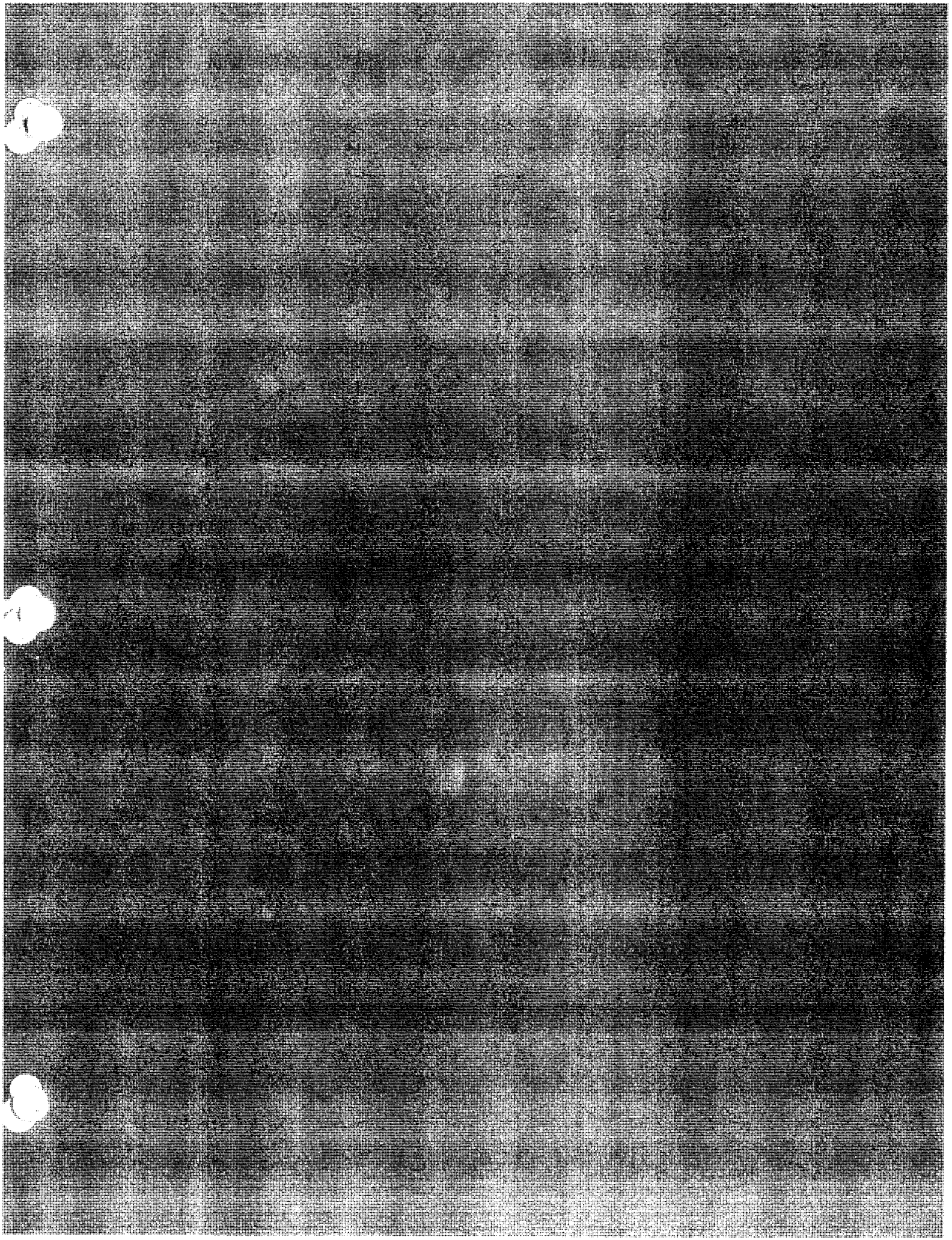
Communications Related to Independent Investigation of Certain Decisions to Develop WMATA-owned property located on the 700 and 800 blocks of Florida Avenue, NW, Washington, DC

Prepared by Banneker Ventures
July 15, 2012

Submitted to:

Bradley J. Bondi
Cadwalader, Wickersham & Taft LLP
700 Sixth Street, NW
Washington, DC 20001
(202) 862-2314

Binder 2 of 2



Omar Karim

n: Marshall, Malcolm <MMarshall@wmata.com>
ɔent: Monday, September 21, 2009 4:08 PM
To: Omar A. Karim
Cc: Doggett, Rosalyn
Subject: RE: Appraisal for WMATA Parcels on Florida Avenue - Extraordinary Assumptions

No. The appraiser used the sales comparison approach overall with a land residual technique implied only as part of footnote 11 where net income from the affordable units is considered relevant. Together the two deductions will likely be close to $700,000 ($500,000 & $200,000).

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, September 21, 2009 3:18 PM
To: Marshall, Malcolm
Cc: Doggett, Rosalyn
Subject: RE: Appraisal for WMATA Parcels on Florida Avenue - Extraordinary Assumptions

I thought that the appraiser used a comparable sales approach, as oppose to an income approach. If they did, then the income from the affordable units would not be relevant or really counted in the value. If it was, it would be about 1/3 of the income of the market units and thus, maybe the $2.4M deduct would be $1.6M deduct, but certainly there would be a larger deduct than $500k, wouldn't you agree?

From: Marshall, Malcolm [mailto:MMarshall@wmata.com]
ıt: Monday, September 21, 2009 3:12 PM
o: Omar A. Karim
Cc: Doggett, Rosalyn
Subject: RE: Appraisal for WMATA Parcels on Florida Avenue - Extraordinary Assumptions

I think you are double-counting deductions with the $2.400,000. I believe the appraiser made deductions for the affordable units based primarily on his estimate of reduced net income generated from the affordable units as compared with market rate units.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, September 21, 2009 11:56 AM
To: Marshall, Malcolm
Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat; Doggett, Rosalyn
Subject: RE: Appraisal for WMATA Parcels on Florida Avenue - Extraordinary Assumptions
Importance: High

Malcolm,

Can you ask the appraiser how he came up with the $200,000 figure for the Extraordinary Assumption costs to build the IZ units. The appraisal read like it was a much higher cost. The $200,000 seems way low. If we have to build 8 units for example (8% of 100,000 SF), this would result in a deduct of $300,000 per unit (hard and soft costs) x 8 units or $2.4M, versus the $500,000 in land value deduction and $200,000 in additional deductions that you mentioned in your email.

ıank you in advance.

Omar

FOIA CONFIDENTIAL TREATMENT REQUESTED

From: Marshall, Malcolm [mailto:MMarshall@wmata.com]
Sent: Monday, September 21, 2009 11:43 AM
To: Omar A. Karim
Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat; Doggett, Rosalyn
Subject: RE: Appraisal for WMATA Parcels on Florida Avenue - Extraordinary Assumptions

I have provided our appraiser the information below. He indicated preliminarily that Item 1. below would lower the value approximately $200,000. He is analyzing Item 2. below & indicates that this would, obviously, have a significant impact, resulting in a very low figure. He is currently preparing an analysis for us.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, September 21, 2009 10:30 AM
To: Marshall, Malcolm
Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat; Doggett, Rosalyn
Subject: Appraisal for WMATA Parcels on Florida Avenue - Extraordinary Assumptions
Importance: High

Malcolm,

We are analyzing the appraisal sent over by Harps & Harps and have 2 quick questions that we hope you can reach out to your appraiser this morning and get responses:

1. The appraiser included an Extraordinary Assumption in the appraisal in four different locations that any costs to develop the 8% IZ units, less the value of the land, would be offset by city or federal subsidies. To our knowledge, there are no city or federal subsidies for any projects that don't have a minimum of 20% affordable units (not IZ units which are at a higher AMI), and then there are no assurances that the project would even receive these subsidies. Can you ask the appraiser to what the value of the sites would be if he didn't include this Extraordinary Assumption.

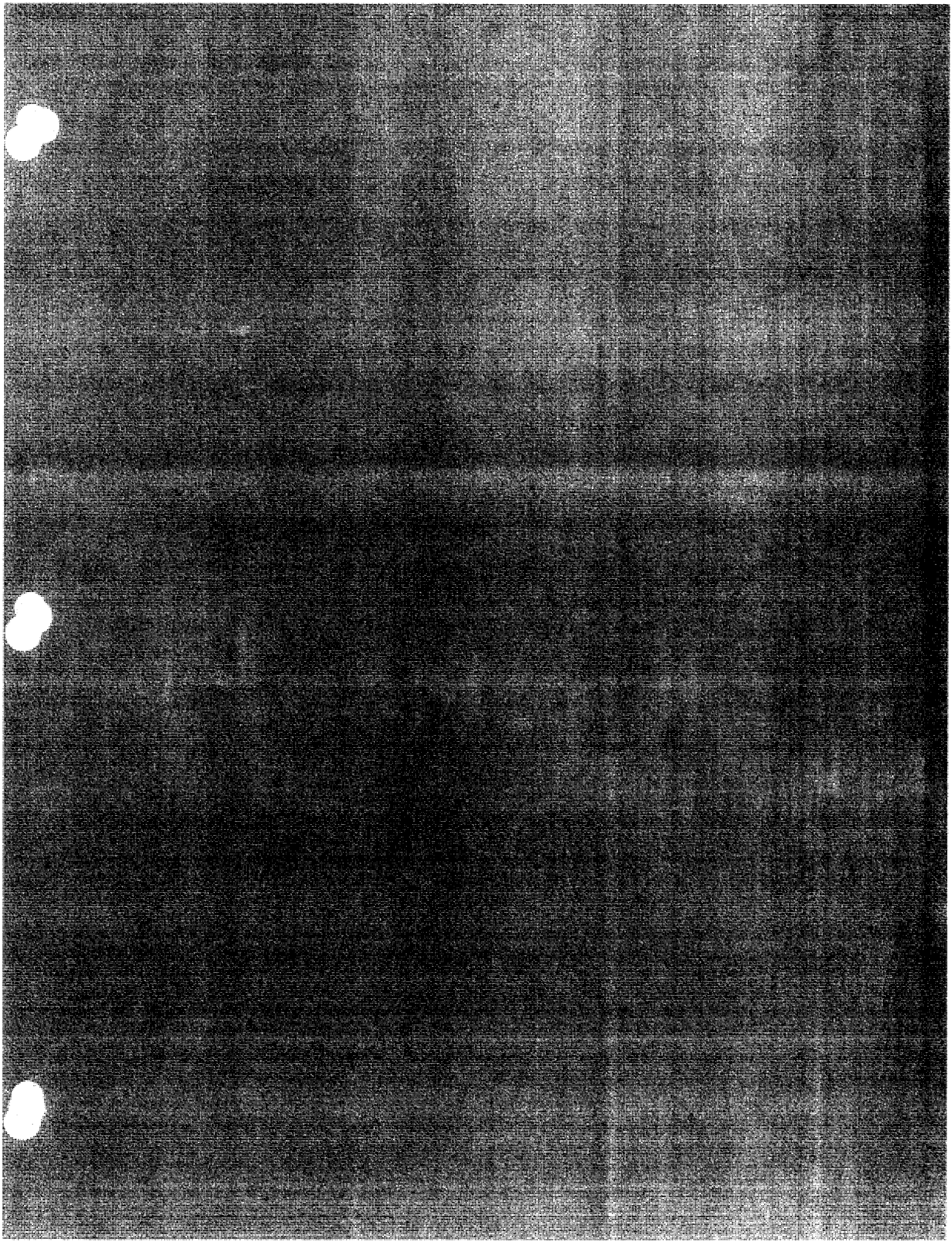
2. If we have to build 20% affordable housing units on the WMATA parcels, what would the impact of the appraised value be?

We are completing a comprehensive review of the appraisal today and need this for our review which we plan on submitting to you by COB today.

Thank you in advance.

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



Omar Karim

n: Perry, Maurice <maurice.perry@bankofamerica.com>
ent: Thursday, September 24, 2009 10:57 AM
To: okarim@bannekerventures.com
Subject: RE: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW

Okay, understood. If possible, I would prefer to meet with them tomorrow.

Any comments on the LIHTC proforma I sent over yesterday?

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, September 24, 2009 10:40 AM
To: Perry, Maurice
Subject: Re: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW

Do you think we can get them to agree to our terms over a call? Personally, I think this is at such a critical stage that we need to be face to face to get this done.

Omar

Omar A. Karim
Banneker Ventures, LLC
[illegible]9 15th Street, NW, Suite 400
ashington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Perry, Maurice"
Date: Thu, 24 Sep 2009 10:29:17 -0400
To: <okarim@bannekerventures.com>
Subject: RE: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW
Omar,

How about we propose a conference call instead of meeting face to face?

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, September 24, 2009 10:26 AM
To: Mark K. Meister; Marshall, Malcolm; Bottigheimer, Nat; Rosslyn Doggett; Yohance Fuller
Cc: Perry, Maurice; Anthony James Ives; Tiwana Hicks; Neil Albert
Subject: Re: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW

Mark,

Wanted to confirm what time we are meeting today.

Thanks.

FOIA CONFIDENTIAL TREATMENT REQUESTED

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From: "Fuller, Yohance (EOM)"
Date: Wed, 23 Sep 2009 17:05:49 -0400
To: Meister, Mark K.<MMeister@wmata.com>; Omar A. Karim<okarim@bannekerventures.com>; Marshall, Malcolm<MMarshall@wmata.com>; Bottigheimer, Nat<NBottigheimer@wmata.com>; Doggett, Rosalyn<RDoggett@wmata.com>
Subject: RE: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW
Mark,

Has a time been confirmed to meet tomorrow? I will be at JBG for the Committee and Board meeting. Perhaps we can meet right after those meetings? Please advise.

Yohance

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Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Albert, Neil (EOM); Fuller, Yohance (EOM)
Subject: RE: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW

Omar,

We will make every effort to get this done tomorrow.

Mark

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, September 23, 2009 11:25 AM
To: Meister, Mark K.; Marshall, Malcolm; Bottigheimer, Nat; Doggett, Rosalyn
Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller
Subject: RE: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW

Mark,

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FOIA CONFIDENTIAL TREATMENT REQUESTED

Should Malcolm have any questions, I will be available all day to speak with him.

Thanks for the tremendous effort you and your team is putting toward getting this thing done.

Omar

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Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller
Subject: RE: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW

Omar,

Thanks for your analysis. I've asked our appraiser, Malcolm Marshall, and Rosalyn Doggett to review your analysis in light of WMATA's appraisal and formulate a response. I received a voicemail from Yohance Fuller this morning requesting a meeting this afternoon to, hopefully, finalize Term Sheet negotiations. Unfortunately, Roz is out of the office today and Malcolm will need some time to complete his review having received your information at 6:25 p.m. yesterday. Consequently, a meeting today will not work. Upon Roz's return to the office, I will be in further touch with you to schedule the meeting.

Mark

Mark K. Meister
Program Manager, Real Estate
Office of Station Area Planning and Asset Management
ashington Metropolitan Area Transit Authority
00 Fifth Street, NW
Washington, DC 20001
Tel: 202-962-1589
Fax: 202-962-2396
Email: mmeister@wmata.com

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, September 22, 2009 6:25 PM
To: Meister, Mark K.; Marshall, Malcolm; Bottigheimer, Nat; Doggett, Rosalyn
Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller
Subject: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW
Importance: High

Nat, Mark, Malcolm and Roz,

Below please find our thoughts on the appraisal by Harps & Harps for the WMATA-owned parcels on the 700 and 800 blocks of Florida Avenue, NW dated September 17, 2009. Based on our analysis, we would be prepared to pay WMATA a total of**$2,545,000** to purchase the parcels. Our rationale is as follows:

1. WMATA parcels actually total 28,357 SF (**as oppose to 28,892 SF** that was listed in the appraisal and mistakenly in our pro forma sent to WMATA). Our surveyor recently completed a field survey of the sites, which resulted in the following information:

	RECORD	SURVEY

FOIA CONFIDENTIAL TREATMENT REQUESTED

Lot 31, Square 416	15,956 sq. ft.	15,944.97 sq.ft.
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Total sq. ft.	**28,376 sq. ft.**	**28,356.90 sq. ft.**

RECORD means information shown in the District of Columbia Surveyor's Office and SURVEY means information actually gathered by the surveyor during field surveys. Also, our surveyor performed research in the D.C. Surveyor's Office and found that Lot 0018 is no longer a valid lot. WMATA performed a subdivision on lots 0012 - 0018 to create lot 0031. The subdivision was completed on December 26, 1996.

2. Total developable FAR SF of WMATA parcels should be as follows:

15,945 SF x 3.35 FAR (developable FAR according to Eric Colbert, AIA, the appraiser's consultant) = 53,415.75 SF
8,621 SF x 3.83 FAR = 33,018.43 SF
3,799 SF x 4.11 FAR = 15,613.89 SF
Total developable SF = 102,048.08 SF

Thus, no premium should be added to this 102,048 SF because the Developer is unsure if it will be able to achieve its desired density on the adjacent parcels because the buildings that are part of the development may contribute to the 9th Street Historic District, and therefore, all, or part of the buildings may need to be kept, and therefore the Developer may not be able to demolish these buildings and as a result by not be able to build out to its desired FAR for the entire project. Moreover, if the buildings are not able to be fully demolished, the Developer will have to expend significant costs to maintain all or a portion of these structures. Thus, it is inappropriate to view the entirety of the development density generated by the WMATA sites and our sites as oppose to WMATA's stand alone sites, unless WMATA is willing to discount the price that the Developer is paying for the adjacent parcels as the price has a negative economic impact on the entire project.

3. Upon review of the comps in the appraisal, and discussion with an appraiser that we often work with for projects in this area, comps should only be used that are less than 12 months old. However, since there has been a lack of sales activity in this market, the appraiser indicated that it might use comps in the last 18 months (comps 3-6), but certainly not comps in 2006 and 2007. Thus, if comp 1 (which is almost 3 years old), comp 2 (which is 24 months old) and comp 3 (which is 20 months old) were removed from the comp chart, the average sales price is $46 per FAR before any adjustments and before taking into account that the contract on the parcel at 1912 8th Street may not go for the price that its under contract for. If we use the appraiser's adjustment of 15% per year on each parcel (0.0125% deduct per month) the comp sales would indicate an adjusted price range of $41.88 (comp 4), $36.55 (comp 5) and $38.25 (comp 6 assuming property closed w/n 12 months of contract) or **average of $38.89 per FAR**. Thus, none of the last three comps sold for more than $41.88 per FAR and therefore, we believe a comparable sales value would be no more than $41.88 per FAR. If you added a location bump, we could accept a price of $45 per FAR assuming we purchased the property within 12 months of approval of a purchase agreement.

4. Thus, the Unencumbered Value of the WMATA parcels would be $45 per FAR x 102,048 or **$4,592,160**.

5. Adjustment to Value b/c of Inclusionary Zoning. A deduct to the overall value b/c of inclusion of the IZ should be calculated by taking into account the difference b/t what market rate units would generate and what IZ units would generate. Assuming that we have 8,163 SF attributed to the IZ units (8% of total buildable SF of project), and assuming that the market units would generate $2.5 SF and the IZ units would generate $1.5 SF, this would be a delta of $1 per SF. Multiplying 8,163 x $1 per SF x 12 months per year would generate a loss of $97,956 (approx $100,000) per year in loss revenue. Capping this at a 6.5% would generate a $1.538M loss.

6. Adjustment to Value b/c of Extraordinary Costs (WMATA Easements and Tunnels): **$2,300,000** (according to WMATA)

FOIA CONFIDENTIAL TREATMENT REQUESTED

Final Value of Property Subject to IZ and WMATA Tunnels and Easements

Value unencumbered: $4,592,160
Adjustments for IZ: $1,538,000
Adjustments for Extraordinary Costs: $2,300,000

Final Encumbered Value of Property: $754,160

However, the Developer would be willing to pay the following to purchase the parcels:

$1,980,000 (amount that we agreed to pay in a capitalized lease)
$350,000 (value that the EGI payments is worth)
$100,000 (Option Fee)
$115,000 (Pre-Closing payments)

TOTAL PAYMENTS TO WMATA $2,545,000.00

This offer assumes that WMATA will be willing to have our Term Sheet go to the Board in October, the Purchase Agreement go to the Board at the November meeting, and agree to a critical path schedule with all of WMATA's reviews.

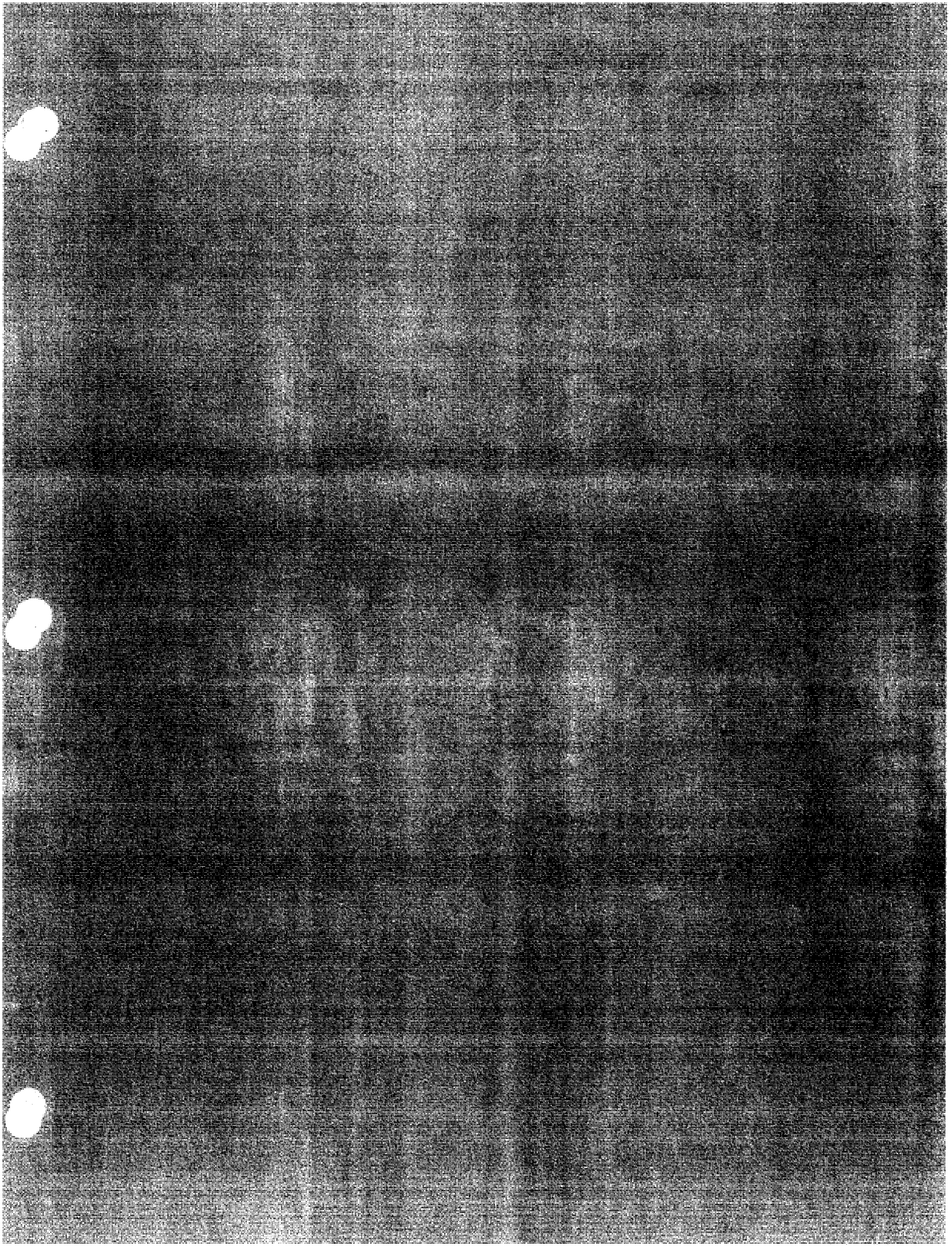
We hope that we can meet tomorrow to wrap up the final terms of the Revised Term Sheet.

Thanks.

.nar

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



Omar Karim

From: Doggett, Rosalyn <RDoggett@wmata.com>
Sent: Friday, September 25, 2009 9:40 AM
To: okarim@bannekerventures.com; Yohance S. Fuller; Marshall, Malcolm; Meister, Mark K.; Bottigheimer, Nat
Cc: Maurice Perry; Anthony James Ives; Tiwana Hicks; Neil.Albert@dc.gov
Subject: RE: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW

Omar, this will confirm the message that I left with your office. Since alternative arrangements were made for appraisal review by an MAI appraiser selected by you, there does not appear to be a need for a meeting today in our opinion. I called to see if you agree that there is no need for a meeting and to follow up on the alternative arrangement. I look forward to hearing from you.
Rosalyn

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, September 24, 2009 10:54 PM
To: Yohance S. Fuller; Doggett, Rosalyn; Marshall, Malcolm; Meister, Mark K.; Bottigheimer, Nat
Cc: Maurice Perry; Anthony James Ives; Tiwana Hicks; Neil.Albert@dc.gov
Subject: Re: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW
Importance: High

Nat and Roz,

Based on Mark's email below, please confirm that we are meeting tomorrow. Since we did not confirm a time, I assume the due to the lateness, the morning would be out and therefore, the afternoon would have to do. Can we meet @ 2:30 tomorrow?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Omar Karim"
Date: Thu, 24 Sep 2009 15:57:56 +0000
To: Mark K. Meister<MMeister@wmata.com>; Yohance Fuller<yohance.fuller@dc.gov>; Marshall, Malcolm<MMarshall@wmata.com>; Bottigheimer, Nat<NBottigheimer@wmata.com>; Rosslyn Doggett<rdoggett@wmata.com>
Subject: Re: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW
Mark,

FOIA CONFIDENTIAL TREATMENT REQUESTED

If we meet tomorrow, since you will not be at the meeting, would Nat be present? We can meet first thing (9-11) or 2:30-5. If your appraiser provides you with additional info today, can you forward this to us prior to tomorrow's meeting so that we can review.

Thank you in advance.

Omar

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okarim@bannekerventures.com

From: "Meister, Mark K."
Date: Thu, 24 Sep 2009 10:56:41 -0400
To: okarim@bannekerventures.com<okarim@bannekerventures.com>; Yohance S. Fuller<Yohance.Fuller@dc.gov>; Marshall, Malcolm<MMarshall@wmata.com>; Bottigheimer, Nat<NBottigheimer@wmata.com>; Doggett, Rosalyn<RDoggett@wmata.com>
Subject: RE: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW

Omar,

We are working with our appraiser to formulate a counteroffer to your offer of 9/22/09. As we are awaiting additional data from the appraiser, we are not in a position to meet today but anticipate being able to meet tomorrow. As I will be out of the office, I have asked Roz Doggett to contact you tomorrow, or later today if possible, to schedule a meeting.

Mark

Mark K. Meister
Program Manager, Real Estate
Office of Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001
Tel: 202-962-1589
Fax: 202-962-2396
Email: mmeister@wmata.com

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FOIA CONFIDENTIAL TREATMENT REQUESTED

be a delta of $1 per SF. Multiplying 8,163 x $1 per SF x 12 months per year would generate a loss of $97,956 (approx $100,000) per year in loss revenue. Capping this at a 6.5% would generate a $1.538M loss.

6. Adjustment to Value b/c of Extraordinary Costs (WMATA Easements and Tunnels): **$2,300,000** (according to WMATA)

Final Value of Property Subject to IZ and WMATA Tunnels and Easements

Value unencumbered: $4,592,160
Adjustments for IZ: $1,538,000
Adjustments for Extraordinary Costs: $2,300,000

Final Encumbered Value of Property: $754,160

However, the Developer would be willing to pay the following to purchase the parcels:

$1,980,000 (amount that we agreed to pay in a capitalized lease)
$350,000 (value that the EGI payments is worth)
$100,000 (Option Fee)
$115,000 (Pre-Closing payments)

TOTAL PAYMENTS TO WMATA $2,545,000.00

This offer assumes that WMATA will be willing to have our Term Sheet go to the Board in October, the Purchase Agreement go to the Board at the November meeting, and agree to a critical path schedule with all of WMATA's views.

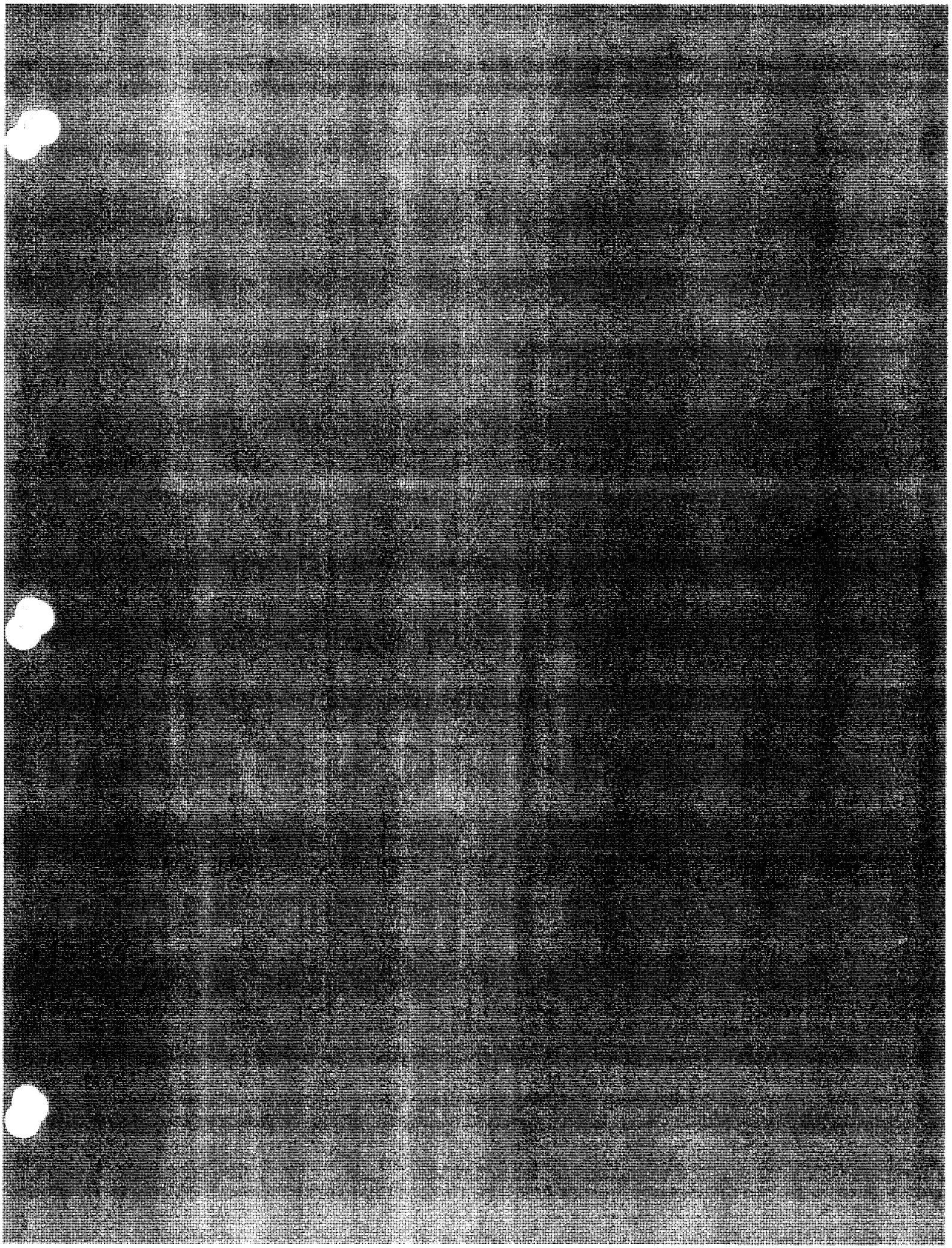
We hope that we can meet tomorrow to wrap up the final terms of the Revised Term Sheet.

Thanks.

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

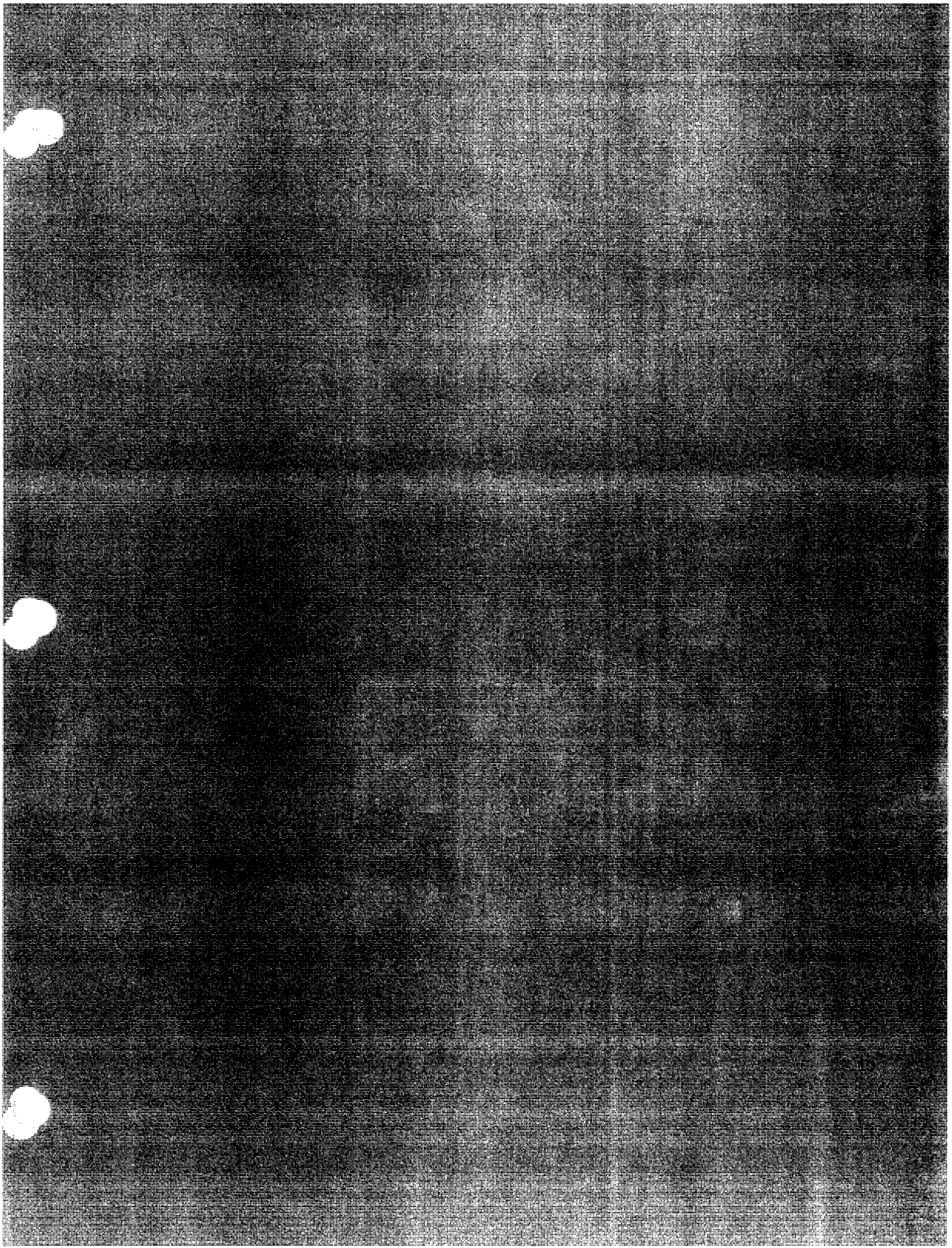
FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

Subject:	Shaw Howard Florida Avenue Properties Appraisal
cation:	Room JGB 5B Land Conference
Start:	Tue 9/29/2009 3:00 PM
End:	Tue 9/29/2009 4:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Doggett, Rosalyn

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

m: Fuller, Yohance (EOM) <yohance.fuller@dc.gov>
Sent: Monday, October 05, 2009 8:58 PM
To: nbottigheimer@wmata.com; okarim@bannekerventures.com
Cc: Albert, Neil (EOM); sgoldin@wmata.com
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 Board 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.

ird, 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.

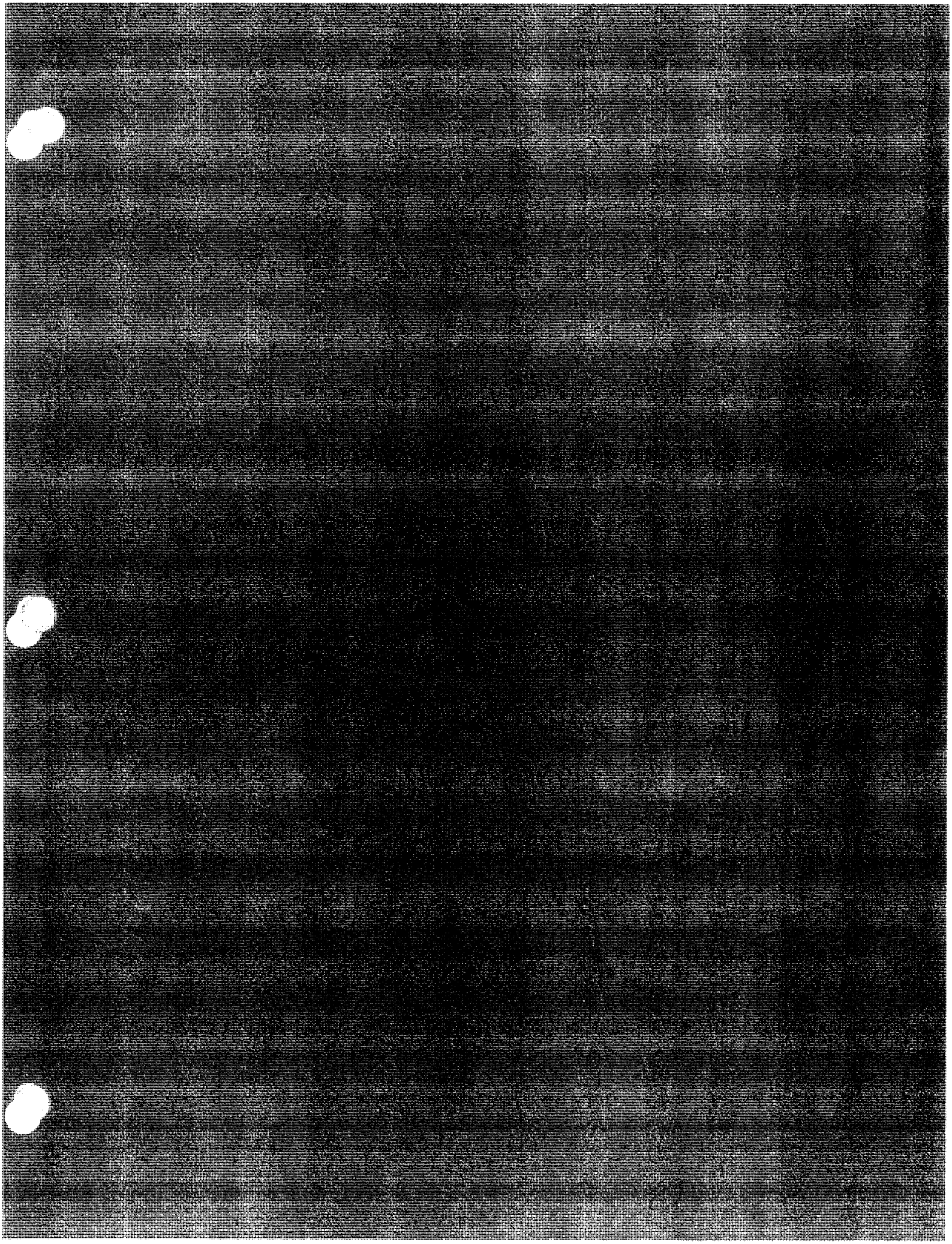
Omar -- Please plan to have your counsel present for the meeting that Nat and his team will coordinate this week.

Thanks for both parties' willingness to get this deal done.

Regards,

Yohance

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

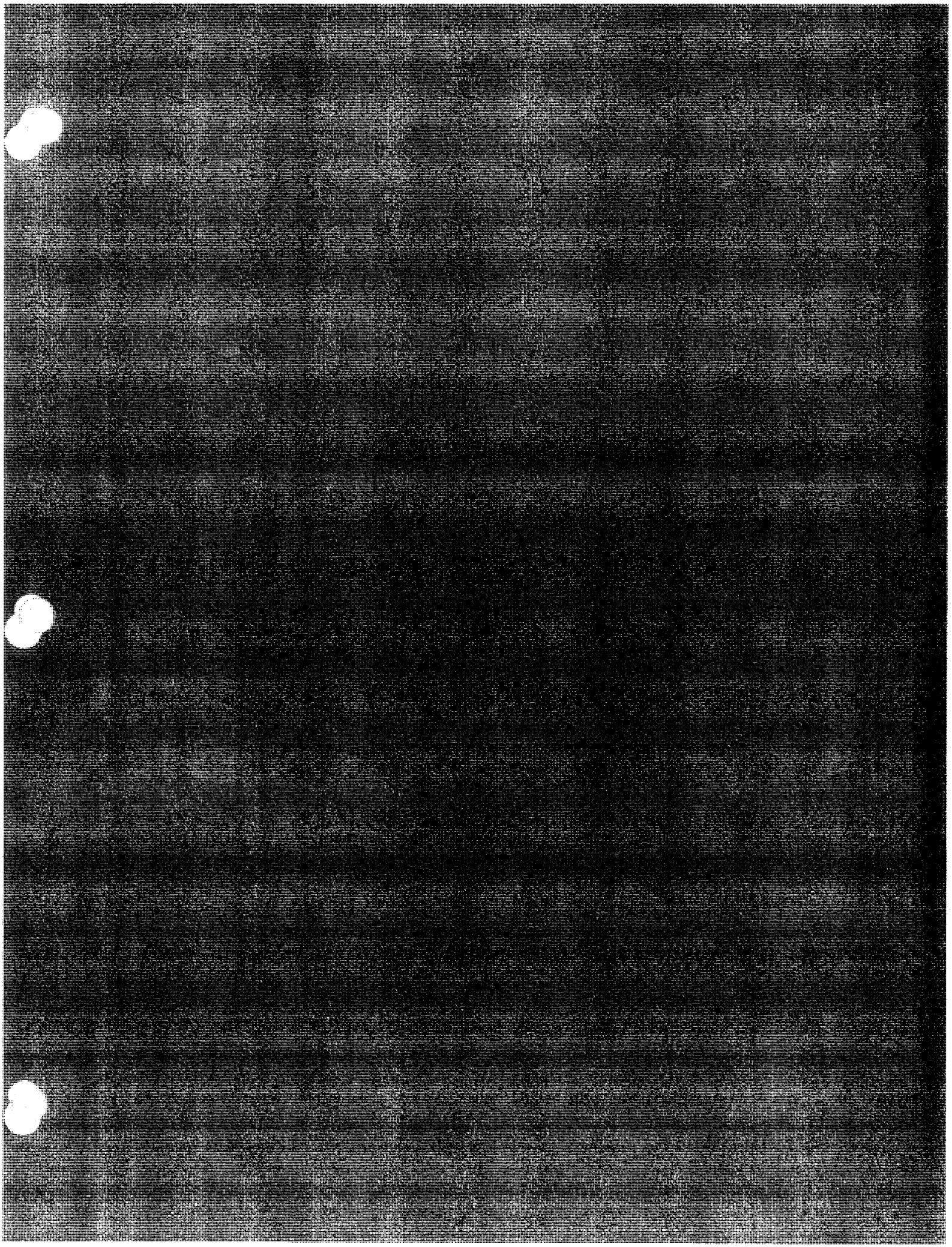
From: Doggett, Rosalyn <RDoggett@wmata.com>
Sent: Tuesday, October 06, 2009 12:29 PM
To: Yohance S. Fuller; okarim@bannekerventures.com
Cc: Marshall, Malcolm
Subject: FW: Shaw Howard

As soon as the appraisal comes in, I will forward to you both.
Rosalyn

From: Marshall, Malcolm
Sent: Tuesday, October 06, 2009 10:52 AM
To: Meister, Mark K.
Cc: Bottigheimer, Nat; Goldin, Steven; Doggett, Rosalyn
Subject: Shaw Howard

The appraiser, Richard Harps, expects to send over a revised appraisal, incorporating the latest changes, this Friday

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Fuller, Yohance (EOM) <yohance.fuller@dc.gov>
Sent: Tuesday, October 06, 2009 5:15 PM
To: okarim@bannekerventures.com; nbottigheimer@wmata.com
Cc: Albert, Neil (EOM); Steve Goldin
Subject: RE: Florida/Shaw Project -- Update and Next Steps

Omar,

I spoke with both Nat and Steve earlier today. WMATA will be receiving the updated appraisal on Friday and they've committed to providing both, the appraisal and draft term sheet to the development team before COB Friday.

We will postpone the meeting until the aforementioned items have been received. We can reconvene next week, once your team has had a chance to review the deliverables on Friday.

We are all still on board to have this as an agenda item on the October 22nd Board meeting.

Thanks,

Yohance

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Tue 10/6/2009 5:09 PM
To: nbottigheimer@wmata.com
Cc: Albert, Neil (EOM); Steve Goldin; Fuller, Yohance (EOM)
Subject: Re: Florida/Shaw Project -- Update and Next Steps

Nat,

Any word on a time for tomorrow's meeting?

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Fuller, Yohance (EOM)" <yohance.fuller@dc.gov>
Date: Mon, 5 Oct 2009 20:57:37 -0400
To: <nbottigheimer@wmata.com>; <okarim@bannekerventures.com>
Cc: Albert, Neil (EOM)<Neil.Albert@dc.gov>; <sgoldin@wmata.com>
Subject: Florida/Shaw Project -- Update and Next Steps

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015163

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 Board 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.

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.

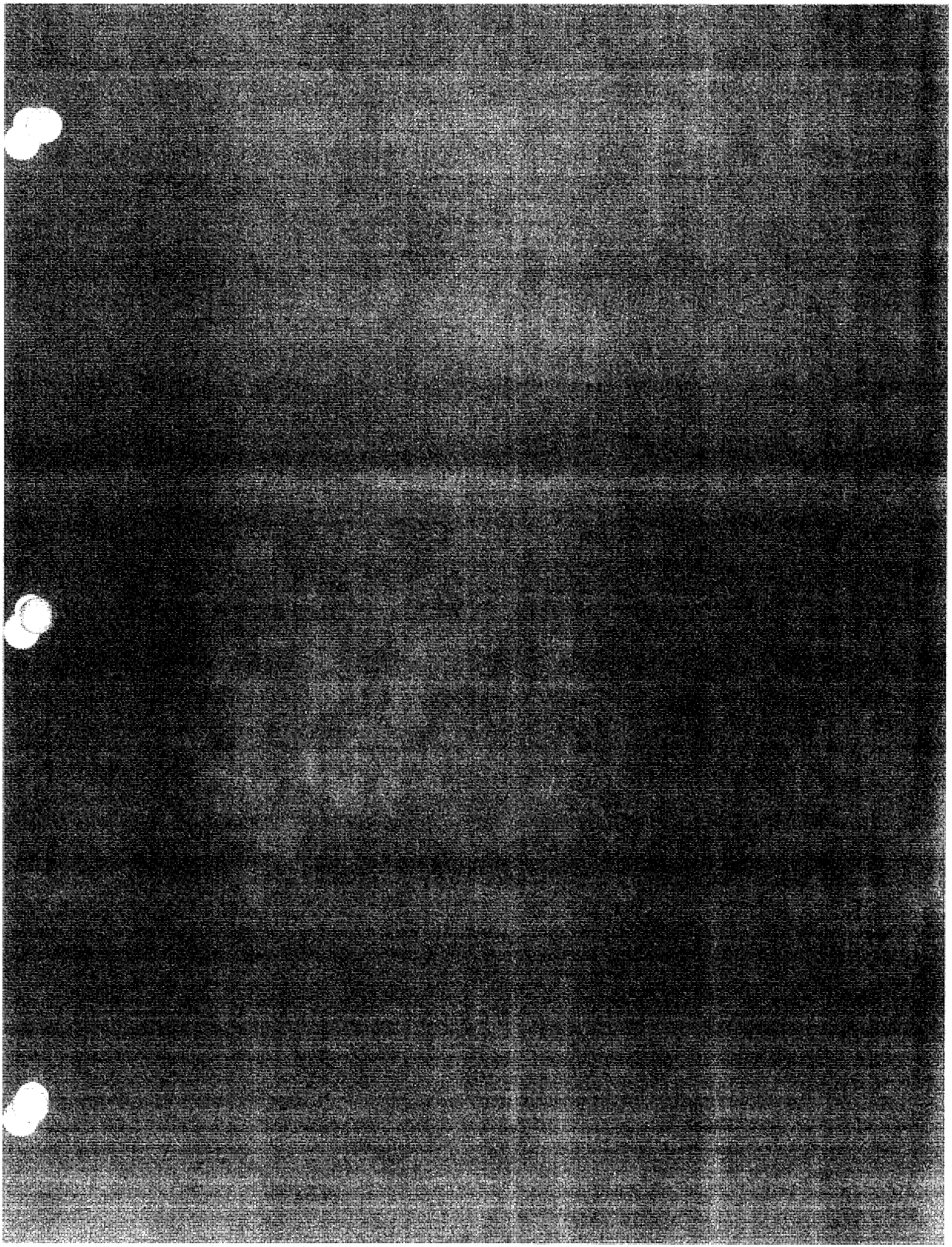
Omar -- Please plan to have your counsel present for the meeting that Nat and his team will coordinate this week.

Thanks for both parties' willingness to get this deal done.

Regards,

ohance

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Doggett, Rosalyn <RDoggett@wmata.com>
nt: Tuesday, October 06, 2009 5:21 PM
To: Yohance S. Fuller; okarim@bannekerventures.com
Cc: Marshall, Malcolm; Goldin, Steven
Subject: FW: Fla 9th
Attachments: MM Memo 100109.pdf

Per your request

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, October 01, 2009 1:57 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: Fla 9th

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIDENTIAL TREATMENT REQUESTED

Harps & Harps, Inc.
1111 14th Street, NW, Suite 600, Washington, DC 20005
Tel.: (202) 682-2194 Fax: (202) 682-1579

M E M O R A N D U M

To: Malcolm Marshall, WMATA Real Estate

From: Richard Harps

Date: October 1, 2009

Re: WMATA 9th Street/Florida Avenue

Per your request, I have reviewed my original appraisal, to which this memorandum is an attachment. The review was related to the decision by the parties to use the developable area for the three WMATA parcels determined by Mr. Colbert, but based on a maximum five story building. It is my understanding that any additional developable area, over that envisioned by Mr. Colbert, gained by the developer throughout the approval process would result in a future adjustment in the final price. Additionally, we researched additional land sales and reviewed our adjustment for market conditions. As a result of this review, the following analysis summarizes the revised conclusions.

One — Re-compute Areas Using Colbert - Eliminating 6th Floor

Colbert Areas Sq/Lot		393/44	393/45	416/31	Combined
Site Area		3,799 sf	8,621 sf	15,956 sf	28,376 sf
Garage (B-1)		3,799 sf	8,621 sf	15,956 sf	
1st		3,600 sf	7,621 sf	14,456 sf	25,677 sf
AG 2nd		3,039 sf	6,100 sf	12,661 sf	
AG 3rd		3,039 sf	6,100 sf	12,661 sf	
AG 4th		3,039 sf	6,100 sf	12,661 sf	
AG 5th		0 sf	3,560 sf	6,074 sf	
AG 6th	OUT	0 sf	0 sf	0 sf	
Gross Floor Area AG (FAR Ø)		12,717 sf	29,481 sf	58,513 sf	100,711 sf

Two - Base Inclusionary Zoning On Entire WMATA Component

IZ requirement estimated at greater of 8% of GFA devoted to residential or 50% of bonus density. Under Colbert area assumptions, 8% of residential GFA would be controlling.

Allowing for 20% of the first floor and all of the upper floors to be residential GFA, IZ requirement would be

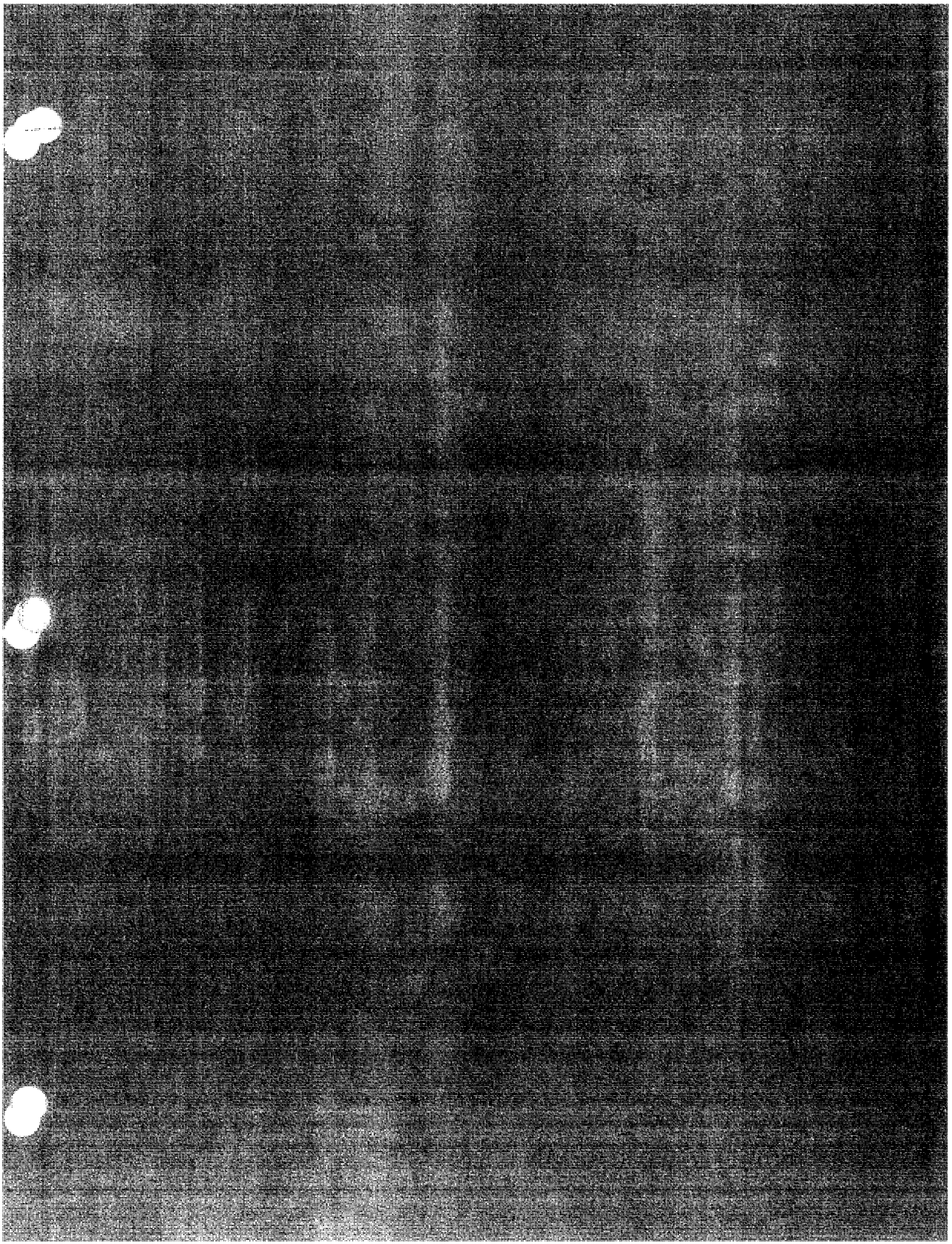
Colbert Areas – Harps Residential Assumption					
Sq/Lot		393/44	393/45	416/31	Combined
Site Area		3,799 sf	8,621 sf	15,956 sf	28,376 sf
1st	0.2	720 sf	1,524 sf	2,891 sf	
AG 2nd	1	3,039 sf	6,100 sf	12,661 sf	
AG 3rd	1	3,039 sf	6,100 sf	12,661 sf	
AG 4th	1	3,039 sf	6,100 sf	12,661 sf	
AG 5th	1	0 sf	3,560 sf	6,074 sf	
AG 6th		0 sf	0 sf	0 sf	
		9,837 sf	23,384 sf	46,948 sf	80,169 sf

Three – Review Land Sales, Research Additional Sales (Expand Geographic Search Area)

Land Value per FAR for mixed use project at subject's location, given its frontage along Florida Avenue and 9th Street, corners and proximity to Metro, estimated at $50 per FAR.

Summary of Land Value Subject to WMATA Tunnels and Inclusionary Zoning Using Revised Areas As Of August 31, 2009

GFA (FAR Ø) for Analysis		100,711 sf	
Value per FAR	$50/FAR	$5,035,550	$5,035,550
IZ Loss A			
Site Area Total		28,376 sf	
M/R FAR	3.5 FAR	99,316 sf	
M/R Max Density		80,169 sf	
% of M/R	8.00%	6,414 sf	
IZ Bonus Potential	0	0 sf	
50% Bonus	50.00%	0 sf	
Max of 8% of M/R OR 50% Bonus		6,414 sf	
Loss in Land Value	$50/FAR	$320,700	-$320,700
IZ Loss B		6,414 sf	
Operating Deficit	$30/FAR	$192,420	-$192,420
Additional Hard Costs Due To WMATA Tunnel		-$1,770,000	
Allow for Soft Costs	30%	-$530,000	
Total WMATA cost Differential		-$2,300,000	-$2,300,000
Net Land Value W/IZ+WMATA Tunnel			$2,222,430
Final Value Rounded			$2,200,000



Omar Karim

From: Doggett, Rosalyn <RDoggett@wmata.com>
Sent: Wednesday, October 07, 2009 10:47 AM
To: Omar A. Karim
Cc: Tiwana Hicks; Montague, Joshua W.
Subject: RE: Fla 9th

Thank you for the reply; I'm working on the term sheet now. Can you please send me a copy of your survey and title report as previously requested? Many thanks. R.

-----Original Message-----
From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, October 06, 2009 6:13 PM
To: Yohance S. Fuller; Doggett, Rosalyn
Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Marshall, Malcolm; Goldin, Steven
Subject: RE: Fla 9th

Ms. Doggett,

Thank you for the memo summarizing the updated appraisal. Based on the final value provided by the appraiser in the memo dated October 1, 2009, we are prepared to enter into the term sheet with you all based on this final value and other terms previously discussed with WMATA staff, and move forward to Committee and Board approval on the 22nd. We look forward to receiving the Term Sheet and final appraisal from you all on Friday.

best,

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

-----Original Message-----
From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Tuesday, October 06, 2009 5:21 PM
To: Yohance S. Fuller; okarim@bannekerventures.com
Cc: Marshall, Malcolm; Goldin, Steven
Subject: FW: Fla 9th

r your request

FOIA CONFIDENTIAL TREATMENT REQUESTED

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, October 01, 2009 1:57 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: Fla 9th

attached

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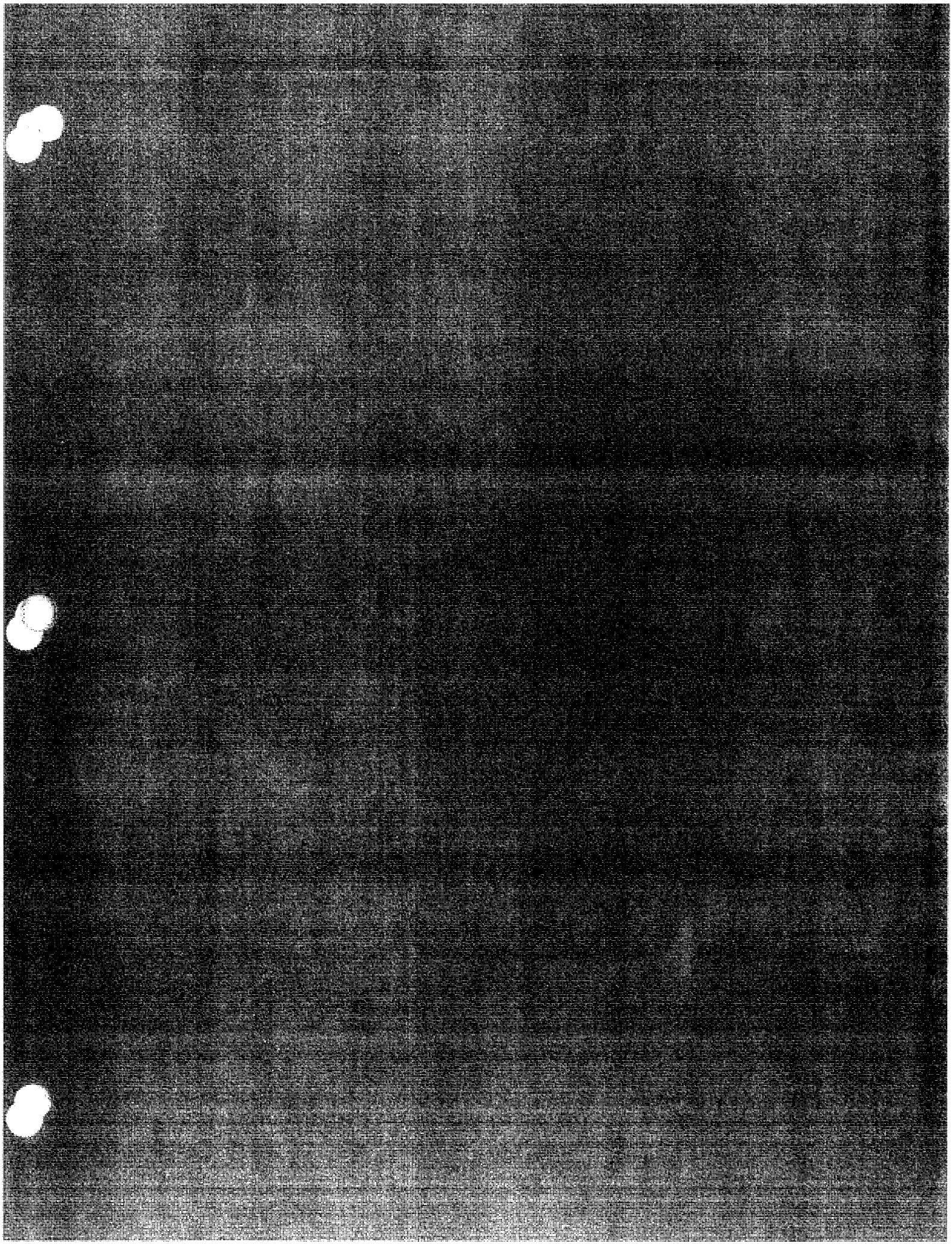

Omar Karim

om: Tiwana Hicks <thicks@bannekerventures.com>
Sent: Wednesday, October 07, 2009 11:07 AM
To: 'Doggett, Rosalyn'; 'Omar A. Karim'
Cc: 'Montague, Joshua W.'
Subject: RE: Fla 9th
Attachments: Sq 393 Lot 0044 Title Report.pdf; Sq 393 Lot 0045 Title Report.pdf; Sq 416 Lot 0031 Title Report.pdf; The Jazz Boundary & Topo Survey.PDF

Ms. Doggett,
Attached please find the Survey and title reports. Please call us with any questions. Thanks.
Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, D.C. 20005
T: (202) 393-5460
F: (202) 393-5462
C: (202) 486-1863
thicks@bannekerventures.com

-----Original Message-----
From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Wednesday, October 07, 2009 10:47 AM
To: Omar A. Karim
Cc: Tiwana Hicks; Montague, Joshua W.
Subject: RE: Fla 9th

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Sent: Tuesday, October 06, 2009 6:13 PM
To: Yohance S. Fuller; Doggett, Rosalyn
Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Marshall, Malcolm; Goldin, Steven
Subject: RE: Fla 9th

Ms. Doggett,

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My best,

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar

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Banneker Ventures, LLC
729 15th Street, NW, Suite 400
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(202) 393-5460 phone
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Sent: Tuesday, October 06, 2009 5:21 PM
To: Yohance S. Fuller; okarim@bannekerventures.com
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Per your request

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Sent: Thursday, October 01, 2009 1:57 PM
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Subject: Fla 9th

attached

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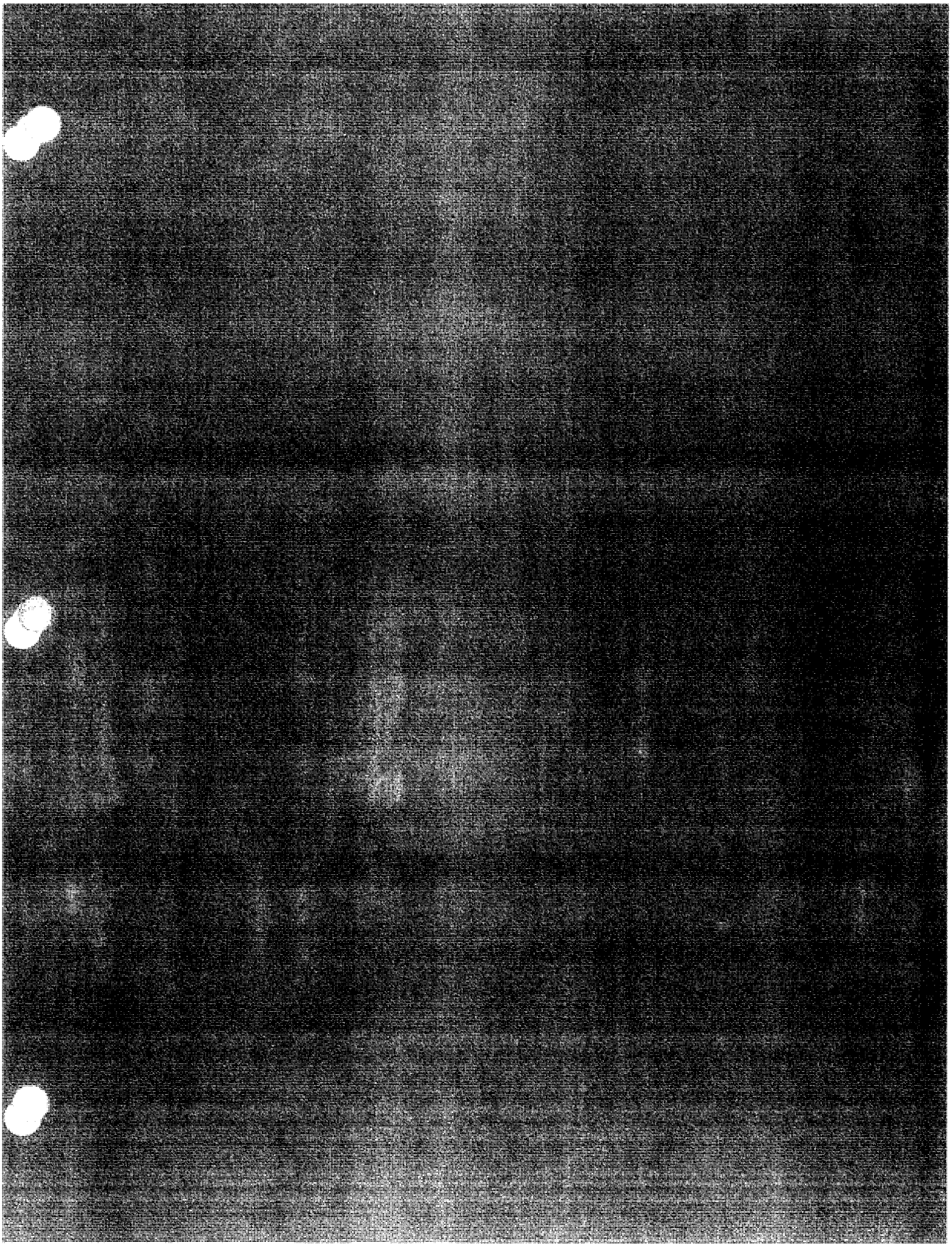


Dated 9/10/09

Subsequent Agenda
Planning, Development and Real Estate Committee

October 8, 2009

Action Item

A. Small, Local and Minority Business Enterprise Guidelines (N. Bottigheimer)

November 5, 2009

Action Items

A. Approval to Amend the Agreement Between MWAA and WMATA to Provide for Dulles Phase II Preliminary Engineering (J. Requa)
B. Regional Bus Stop Design and Spacing Requirements (N. Bottigheimer)
C. Blue Line Realignment (N. Bottigheimer)
D. Relocation of Tie Breaker Station at 100 K Street NE (N. Bottigheimer)
E. Grosvenor-Strathmore Metrorail station Sidewalk Connection Agreement (N. Bottigheimer)

Information Item

A. Regional Transit Growth Strategy (N. Bottigheimer)

December 3, 2009

First time JDA + Lease were added for approval on Agenda

Executive Session Items

A. Approve Term Sheet, Joint Development Agreement, and Lease for Shaw-Howard/Florida Avenue Joint Development Site (N. Bottigheimer)
B. Approve Joint Development Agreement and Lease for Navy Yard Chiller Joint Development Site (N. Bottigheimer)
C. Approve Amended Joint Development Master Leasing Agreement and Amended Retail Lease for Prince George's Plaza Joint Development Site (N. Bottigheimer)

Action Items

A. Award Bus Garage Rehabilitation Contract (J. Requa)
B. Approval of the Public Hearing Staff Report for Southern Avenue Division Project (J. Requa)
C. Strategic Planning – Informed Capital Projects Prioritization (N. Bottigheimer)

Omar Karim

ɔm:	Fuller, Yohance (EOM) <yohance.fuller@dc.gov>
Sent:	Friday, October 09, 2009 11:33 AM
To:	cokeeffe@wmata.com
Cc:	okarim@bannekerventures.com; Bottigheimer, Nat; Goldin, Steven; Albert, Neil (EOM)
Subject:	Shaw-Howard University Project -- General Counsel Debrief
Attachments:	Omar Karim (724 bytes)
Importance:	High

Hi Carol --

I hope this message finds you well. I am writing you to follow up on my request from earlier this week. The development team is anxiously awaiting to hear from you and your staff to discuss your communicated risks and mitigation efforts for a fee simple transaction of the WMATA parcel.

Please contact Mr. Karim (vCard attached) this morning to discuss. I will follow up with you later this afternoon to confirm.

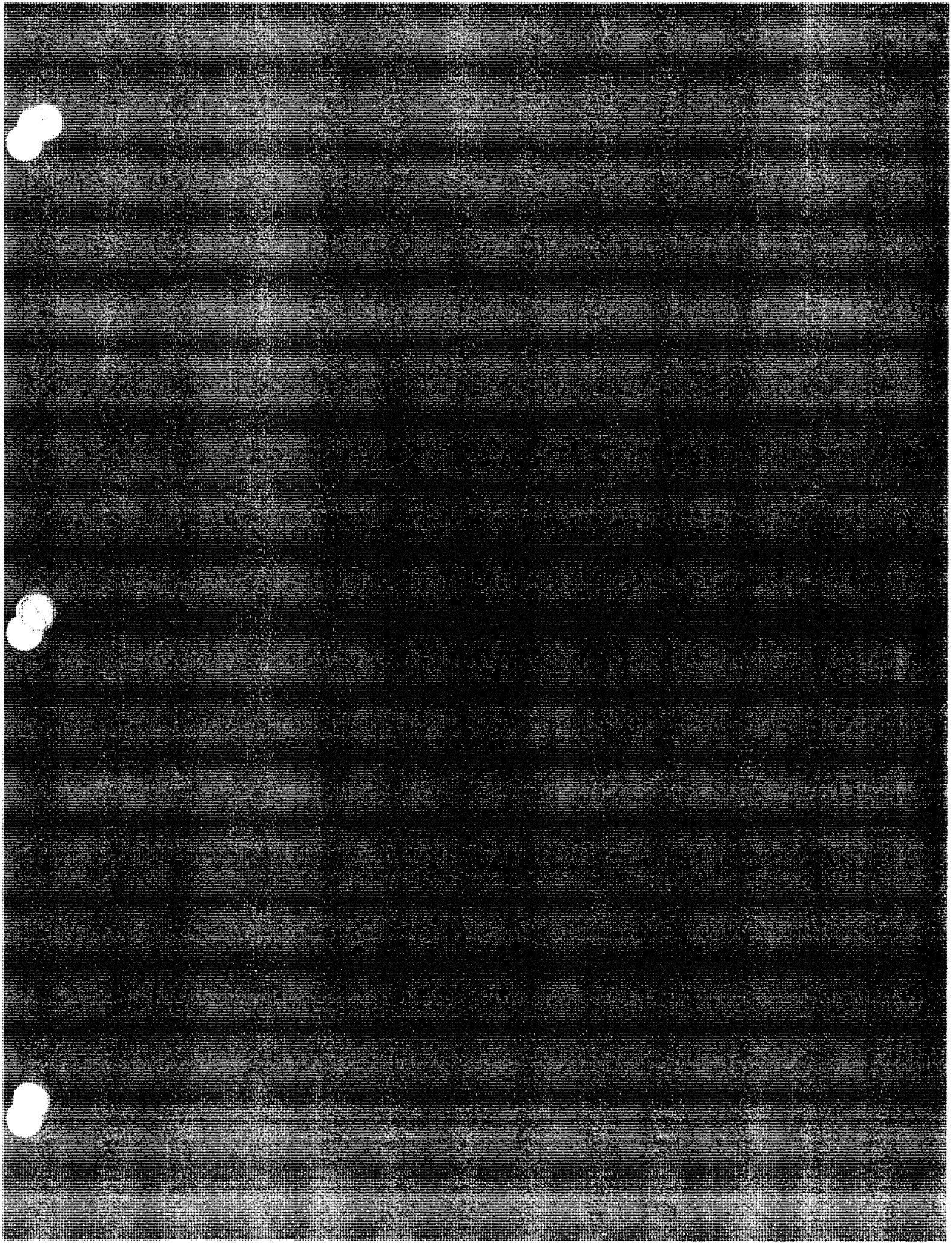
Your immediate attention to this matter is greatly appreciated.

Regards,

ɔhance

Yohance S. Fuller | Project Manager
Government of the District of Columbia
Office of the Deputy Mayor for Planning & Economic Development
2025 M Street NW, Suite 600 | Washington, DC 20036
W 202.724.5469 | M 202.538.1278 | yohance.fuller@dc.gov

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: O'Keeffe, Carol B. <cokeeffe@wmata.com>
Sent: Friday, October 09, 2009 1:15 PM
To: Omar A. Karim; Yohance S. Fuller
Cc: 'Tiwana Hicks'; Neil.Albert@dc.gov; Bottigheimer, Nat; Goldin, Steven; Pant, Shiva K.
Subject: RE: Shaw-Howard University Project -- General Counsel Debrief

Mr. Karim: I am available at 3:00 pm, but I would like either Mr. Bottigheimer or Mr.Goldin to join us. By copy of this email, I'm asking them to inform us of their availability.

Carol B. O'Keeffe
General Counsel
Washington Metropolitan Area
Transit Authority
600 5th Street, NW
Washington, DC 20001
P: 202-962-2531
F: 202-962-2550

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Friday, October 09, 2009 12:47 PM
To: Yohance S. Fuller; O'Keeffe, Carol B.
Cc: 'Tiwana Hicks'; Neil.Albert@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: RE: Shaw-Howard University Project -- General Counsel Debrief
Importance: High

Ms. O'Keefe,

I am in the office until 1 and then will be out of the office from 1-2. However, from 2-3, I will be accessible via cell (301-523-1810). Is there a time that is most convenient for you to chat. I, along with our counsel can come over to your offices if it is more convenient for you (beginning at 2:30) as this is a very critical issue and agreeing to a structure is a critical path item for the project.

Thank you.

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

From: O'Keeffe, Carol B. [mailto:cokeeffe@wmata.com]
Sent: Friday, October 09, 2009 12:38 PM
To: Yohance S. Fuller
Cc: okarim@bannekerventures.com; Neil.Albert@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: RE: Shaw-Howard University Project -- General Counsel Debrief

Mr. Fuller: I will try to contact Mr. Karim today.

Carol B. O'Keeffe
General Counsel
Washington Metropolitan Area
Transit Authority
600 5th Street, NW
Washington, DC 20001
P: 202-962-2531
F: 202-962-2550

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

From: Yohance (EOM) Fuller [mailto:yohance.fuller@dc.gov]
Sent: Friday, October 09, 2009 11:33 AM
To: O'Keeffe, Carol B.
Cc: okarim@bannekerventures.com; Neil.Albert@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: Shaw-Howard University Project -- General Counsel Debrief
Importance: High

Hi Carol --

I hope this message finds you well. I am writing you to follow up on my request from earlier this week. The development team is anxiously awaiting to hear from you and your staff to discuss your communicated risks and mitigation efforts for a fee simple transaction of the WMATA parcel.

Please contact Mr. Karim (vCard attached) this morning to discuss. I will follow up with you later this afternoon to confirm.

Your immediate attention to this matter is greatly appreciated.

Regards,

Yohance

Yohance S. Fuller | Project Manager
Government of the District of Columbia
Office of the Deputy Mayor for Planning & Economic Development
1025 M Street NW, Suite 600 | Washington, DC 20036
W 202.724.5469 | M 202.538.1278 | yohance.fuller@dc.gov

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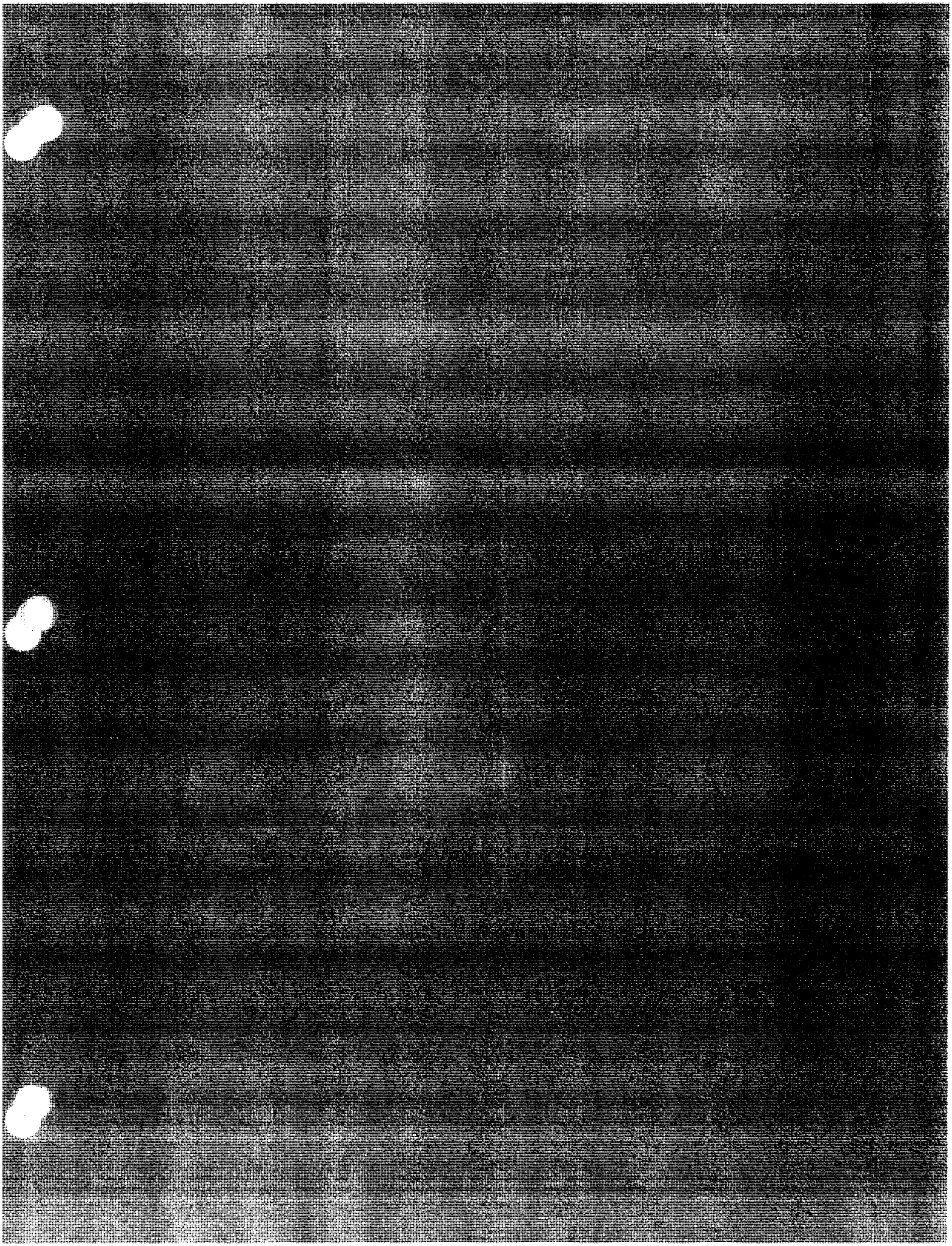

Omar Karim

From: O'Keeffe, Carol B. <cokeeffe@wmata.com>
Sent: Friday, October 09, 2009 2:20 PM
To: okarim@bannekerventures.com; Yohance S. Fuller
Cc: Maurice Perry; Tiwana Hicks; Neil.Albert@dc.gov; Bottigheimer, Nat; Goldin, Steven; Pant, Shiva K.
Subject: RE: Shaw-Howard University Project -- General Counsel Debrief

Yes. We can meet at 3 in Nat's conference room

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Friday, October 09, 2009 2:11 PM
To: Yohance S. Fuller; O'Keeffe, Carol B.
Cc: Maurice Perry; Tiwana Hicks; Neil.Albert@dc.gov; Bottigheimer, Nat; Goldin, Steven; Pant, Shiva K.
Subject: Re: Shaw-Howard University Project -- General Counsel Debrief

Carol,

Are we confirmed for 3?

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "O'Keeffe, Carol B." <cokeeffe@wmata.com>
Date: Fri, 9 Oct 2009 13:15:01 -0400
To: Omar A. Karim<okarim@bannekerventures.com>; Yohance S. Fuller<Yohance.Fuller@dc.gov>
Cc: 'Tiwana Hicks'<thicks@bannekerventures.com>; Neil.Albert@dc.gov<Neil.Albert@dc.gov>; Bottigheimer, Nat<NBottigheimer@wmata.com>; Goldin, Steven<sgoldin@wmata.com>; Pant, Shiva K.<SPant@wmata.com>
Subject: RE: Shaw-Howard University Project -- General Counsel Debrief

Mr. Karim: I am available at 3:00 pm, but I would like either Mr. Bottigheimer or Mr.Goldin to join us. By copy of this email, I'm asking them to inform us of their availability.

Carol B. O'Keeffe
General Counsel
Washington Metropolitan Area
Transit Authority
600 5th Street, NW

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Washington, DC 20001
P: 202-962-2531
F: 202-962-2550

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Friday, October 09, 2009 12:47 PM
To: Yohance S. Fuller; O'Keeffe, Carol B.
Cc: 'Tiwana Hicks'; Neil.Albert@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: RE: Shaw-Howard University Project -- General Counsel Debrief
Importance: High

Ms. O'Keefe,

I am in the office until 1 and then will be out of the office from 1-2. However, from 2-3, I will be accessible via cell (301-523-1810). Is there a time that is most convenient for you to chat. I, along with our counsel can come over to your offices if it is more convenient for you (beginning at 2:30) as this is a very critical issue and agreeing to a structure is a critical path item for the project.

Thank you.

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: O'Keeffe, Carol B. [mailto:cokeeffe@wmata.com]
Sent: Friday, October 09, 2009 12:38 PM
To: Yohance S. Fuller
Cc: okarim@bannekerventures.com; Neil.Albert@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: RE: Shaw-Howard University Project -- General Counsel Debrief

Mr. Fuller: I will try to contact Mr. Karim today.

Carol B. O'Keeffe
General Counsel
Washington Metropolitan Area
Transit Authority
600 5th Street, NW
Washington, DC 20001
P: 202-962-2531
F: 202-962-2550

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Sent: Friday, October 09, 2009 11:33 AM
To: O'Keeffe, Carol B.
Cc: okarim@bannekerventures.com; Neil.Albert@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: Shaw-Howard University Project -- General Counsel Debrief
Importance: High

Hi Carol --

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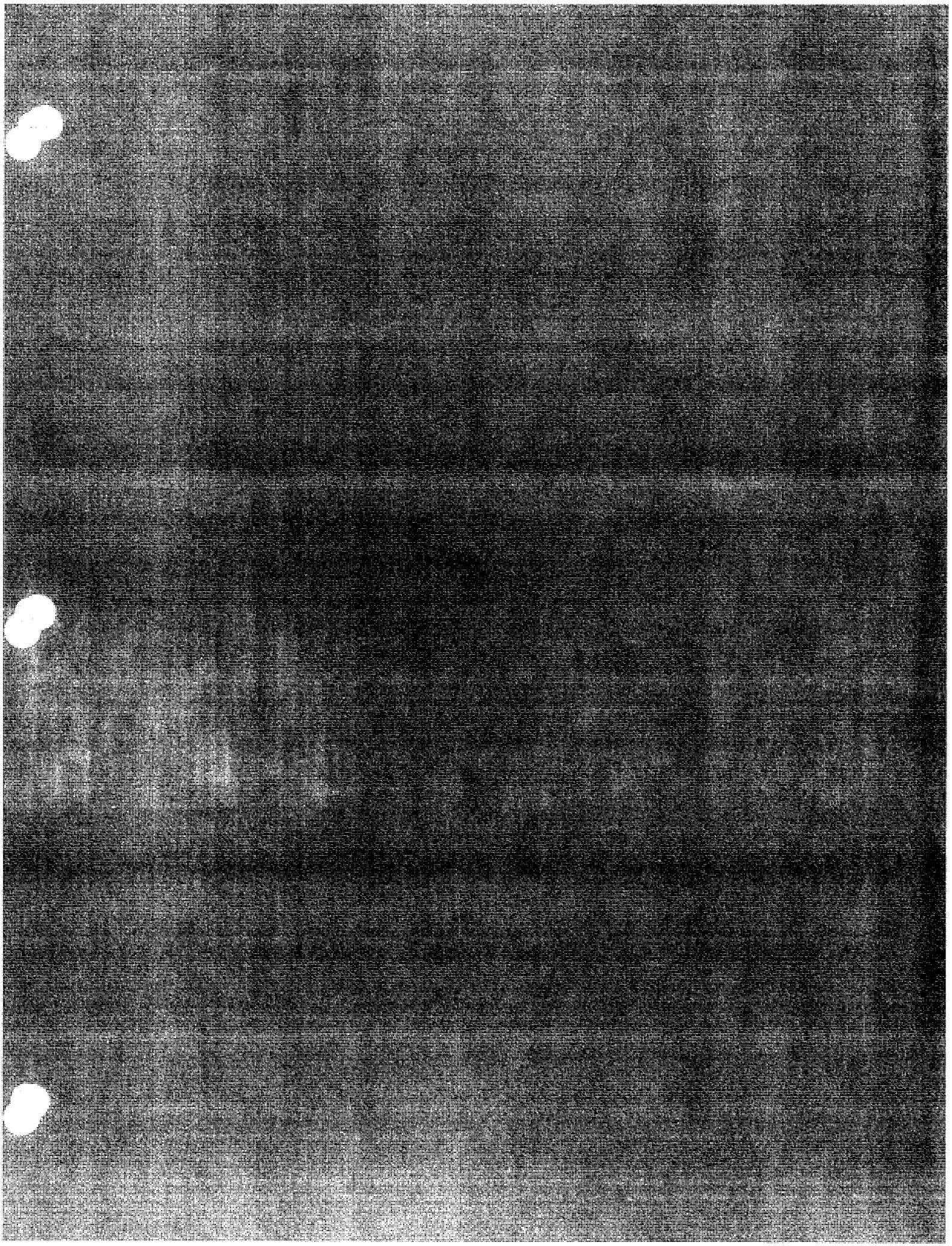
Please contact Mr. Karim (vCard attached) this morning to discuss. I will follow up with you later this afternoon to confirm.

Your immediate attention to this matter is greatly appreciated.

Regards,

Yohance

Yohance S. Fuller | Project Manager
Government of the District of Columbia
Office of the Deputy Mayor for Planning & Economic Development
2025 M Street NW, Suite 600 | Washington, DC 20036
W 202.724.5469 | M 202.538.1278 | yohance.fuller@dc.gov



APPRAISAL OF LOTS 44 AND 45 IN SQUARE 393 AND LOT 31 IN SQUARE 416 NORTHWEST, WASHINGTON, DC AS OF AUGUST 31, 2009 FOR WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

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WMATA-INV 015188

Harps & Harps, Inc.
1111 14th Street, NW, Suite 600
Washington, DC 20005-5603
Tel. 202-682-2194 Fax 202-682-1579

October 9, 2009

Mr. Mark K. Meister
Office of Station Area Planning
And Asset Management
Washington Metrorail Area
Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Re: Lots 44 and 45 in Square 393 and Lot 31 in Square in 416, vacant lots on Florida Avenue between 7th and 9th Streets, Northwest, Washington, District of Columbia.

Dear Mr. Meister:

Pursuant to your request, we have arrived at an opinion of the fair market value of the parcels set forth above subject to the WMATA easements. The intended user of the report is the client, the Washington Metrorail Area Transit Authority (WMATA). The intended use of the report is to assist the client in determining a course of action regarding the possible sale of the property. The effective date of this analysis is August 31, 2009.

The properties, located on the south side of Florida Avenue between 7th and 9th Streets, NW, are vacant lots situated above a WMATA tunnel. Given the prior uses to which the subject sites and the adjacent sites have been put to over the years, including gas stations, restaurants, industrial and parking, there may be environmental contaminants impacting the properties. This appraisal assumes that the subject sites are clean of environmental contamination. This limitation, which could have an impact on the value conclusion set forth herein, should be considered by the client in evaluating the conclusions set forth.

As a result of the analysis, we are of the opinion that the market value of the property, as of August 31, 2009, is as set forth on the Summary of Conclusions located on pages 5 and 6 of the attached summary report, of which this letter is an integral part. The extraordinary assumption and client instructions regarding extraordinary cost of constructing over the WMATA tunnel and the client instruction regarding development density (Gross Floor Area or FAR sq. ft.), development height and combined development are critical components of the analysis and

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have a direct impact on the valuation. The analysis and reasoning leading to the conclusions, along with the assumptions and conditions on the conclusions, which may be material, are set forth within the attached summary report, containing 57 pages.

We trust this information is of assistance to you. If you have any questions or comments, please contact us. Thank you for this opportunity to be of service.

Very truly yours,

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

Attachment

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WMATA-INV 015191

SUMMARY OF CONCLUSIONS

Subject Properties	Three unimproved lots located on the south side of Florida Avenue between 7th and 9th Streets, NW, Washington, DC
Legal Description	Lots 44 and 45 in Square 393, and Lot 31 in Square 416, District of Columbia
Client	Washington Metropolitan Area Transit Authority
Date of Valuation	August 31, 2009
Date of Inspection	July 30, 2009
Date of Report	October 9, 2009
Property Rights	Fee Simple Interest subject to easements and restrictions to be retained by WMATA
Site Areas	Square 393 Lot 44 - 3,799 Sq. Ft. Square 393 Lot 45 – 8,621 Sq. Ft. Square 416 Lot 31 – 15,956 Sq. Ft.
Zoning	Arts/C-2-B
Improvements:	None, Vacant lots
Highest and Best Use	Assemble with adjacent land and develop a mixed-used complex.
Extraordinary Assumption	Extraordinary hard costs associated with building over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA.
Client Instructions	One - Development density (Gross Floor Area or FAR sq. ft.) to be valued was to be the total GFA estimated by Eric Colbert EXCLUDING the 6th floor on Lot 45 in Square 393 and EXCLUDING the 6th floor on Lot 31 in Square 416. Two – Analysis of Inclusionary Zoning is to assume the three sites are considered as a unit and not sold separately.

As a result of our analysis, we have reached the following opinions, all as of August 31, 2009, the effective date of this appraisal, an all subject to the WMATA tunnel and easements and considering the impact of the Inclusionary Zoning.

Market Value of Land Subject to WMATA Easements and Tunnel and Inclusionary Zoning - $2,200,000.

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WMATA-INV 015192

This opinion is subject to all general and specific assumptions and conditions contained within the report, including an environmental assumption. Please note that the conclusions reached were based on the information as set forth herein, and are specifically and generally limited by the assumptions and conditions set forth within the report and subject to the certification attached hereto. Additional analyses, in the event that additional or new information is made available, are outside the scope of this assignment, and supplementary arrangements would be necessary before additional analyses could be undertaken. The assumptions and conditions set forth throughout the report are an integral part of this analysis and have a bearing on the conclusions reached herein.

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WMATA-INV 015193

ASSUMPTIONS AND LIMITING CONDITIONS

This analysis, the function of which is to assist the client in determining a course of action regarding the possible sale of the property, has been made with the following general and specific assumptions:

One extraordinary assumptions was utilized in this analysis - The extraordinary hard costs associated with building over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA.

Two Client Instruction were utilized in this analysis. One – the Gross Floor Area (FAR sq. ft.) to be valued was to be the total GFA estimated by Eric Colbert EXCLUDING the 6th floor on Lot 45 in Square 393 and EXCLUDING the 6th floor on Lot 31 in Square 416. Two – the impact of the Inclusionary Zoning is to be reviewed as if all three sites are sold and developed as a unit and not sold and developed separately.

This analysis is not to be used in connection with a Real Estate Syndicate(s) or Securities related activity. Real Estate Syndicate means a general or limited partnership, joint venture, unincorporated association or similar organization formed for the purpose of, and engaged in, investment or gain from an interest in real property, including but not limited to a sale, exchange, trade or development of such real property on behalf of others and which is required to be registered with the United States Securities and Exchange Commission or any state regulatory agency which regulates investments made as a public offering. Securities related activity means but is not limited to transactions involving Real Estate Investment Trusts, Limited Partnerships, Mortgage Backed Securities and any other transaction which is subject to the Securities Exchange Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Advisors act of 1940, or state Blue Sky or securities laws or any amendments thereto.

1. This analysis assumes that there are no unusual soil or property characteristics, including any environmental implications, not set forth herein, which would adversely impact the ability of an owner to utilize the site or property for any legally permitted use.

2. Except as set forth herein, the analysts have not been informed of, nor has any knowledge of, the existence of any environmental or health impediment, which if known, could have a negative impact on the market value of the property or could subject the property or its past, present or future owners or agents or other parties to the requirements of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), and the subsequent Superfund Amendments Reauthorization Act (SARA). It is assumed that there has been no contamination of the soil from any existing or former oil tank or any other tank or equipment utilized in the operation of the buildings or any use of the building. This appraisal assumes that the property has met, or will be able to meet, all requirements of laws pertaining to environmental considerations, as they may pertain to the subject. It is also assumed that the property will comply with all

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WMATA-INV 015194

provisions of Maryland and Federal laws and regulations regarding underground and above grade storage tanks as they pertain to subject

It is recommended that, prior to any transfer of title or other interest in the property, all appropriate studies, including but not limited to environmental studies, be performed, that all problems and/or conditions that are subsequently uncovered be corrected, mitigated, or otherwise reduced in liability, prior to any transfer, and that the parties seek appropriate professional and legal counsel regarding environmental and other issues.

3. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable.

No opinion is intended to be expressed for matters that require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.

4. The property is analyzed free and clear of any and all liens or encumbrances unless otherwise stated. Responsible ownership and competent property management are assumed.

5. This analysis assumes that all real estate taxes, personal property taxes, or other taxes owed to any governmental or other body are current. This analysis has not looked at, nor reviewed, any transfers of any partnership interests in the property and this report assumes no adverse effect on values due to the nature of property ownership.

6. The analysis assumes that current insurance policies are adequate to protect all parties with an interest in the property.

7. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy. It is assumed that all information known to the client and relative to the valuation has been accurately furnished and that there is no undisclosed information or documents affecting the use of the property or the valuation herein.

8. All engineering information is assumed to be correct. Maps, plats and exhibits included in the report are for illustration only as an aid in visualizing matters discussed within the report. Area of sites herein were taken from City records. Maps, right-of-way drawings and other information supplied by the client was relied upon in the analysis. Exhibits should not be considered as surveys, or relied upon for any other purpose, nor should they be removed from, reproduced, or used apart from this report.

9. According to the November 15, 1985 National Flood Insurance Maps, subject lies within Zone C, which is an area of minimal flooding. This map is for flood insurance purposes only; it does not necessarily show all areas subject to flooding in the community or all planimetric features outside the special flood hazard areas.

10. It is assumed that all required licenses, certificates of occupancy, certificates of need, consents, or other legislative or

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administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based, including all necessary zoning approvals for any building.

11. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings, if any, must not be used in conjunction with any other analysis and are invalid if so used.

12. The liability of Harps & Harps, Inc. is limited to the client only, not subsequent parties or users, and to the amount of the fee actually received by the appraisers. Further, there is no accountability, obligation or liability to any other party. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the report and the assignment. The appraisers are in no way to be responsible for any costs incurred to discover or correct any deficiencies of any type present in the property, physically, financially and/or legally. In the event the report is placed in the hands of a third party, it is required that such party be made cognizant of any and all limiting conditions resulting from the basis of appraiser's employment and discussions related thereto as well as those set forth in the report. Acceptance of and/or use of this analysis report by the client or any third party constitutes acceptance of the above conditions.

13. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the analysts, and in any event only with proper written qualification and only in its entirety.

14. The analysts herein by reason of this analysis are not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.

15. Neither all nor any part of the contents of this report (especially any conclusion as to value, the identity of the analyst, or the firm with which the analyst is connected) shall be disseminated to the public through advertising, public relations, news, sales or other media without the prior written consent and approval of the analysts.

16. The appraisers reserve the right, subject to agreement for time and fee, to make such adjustments to the analyses, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.

17. The value reported in dollars is on the basis of the currency prevailing as of the effective date of the analysis. The values estimated in this analysis are based on economic, physical and tax conditions existing as of the effective date of analysis.

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PART I – PURPOSE OF APPRAISAL AND GENERAL DATA

Appraisal of Lots 44 and 45 in Square 363, and Lot 31 in Square 416, vacant lots situated on the south side of Florida Avenue between 7th and 9th Streets, Northwest, Washington, District of Columbia.

Purpose of the Appraisal

The purpose of the appraisal is to estimate the fair market value subject to assumptions and conditions specified. The date of value is August 31, 2009. The function of the appraisal is to assist the client in determining a course of action involving a possible sale of the property. The analysis is being presented in a summary report.

For the purposes of this analysis, market value is defined as "The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) Buyer and seller are typically motivated; (2) Both parties are well informed or well advised and acting in what they consider their own best interest; (3) A reasonable time is allowed for exposure in the open market; (4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."[1] In this case the value opinions are limited by an environmental assumption that the property is not impacted by contaminants that would materially affect the ability to develop the site or materially impact demolition and/or excavation costs.

Date of Appraisal and Report

The effective date of this appraisal is August 31, 2009. The exterior of the property was inspected on July 30, 2009. The analysis was performed between July and October 2009. The date of the report is October 9, 2009.

[1]General definition used for federally related financial institutions and set forth in the Federal Register, Vol. 55 No., 165 August 1990, section 34.42.

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Client, Intended use and Intended Users

The client in this appraisal is WMATA, the owner of the property. The intended user of the report is the client. The intended use of the report is to assist the client in determining a course of action regarding the possible sale of the property.

Property Rights Appraised

The property rights appraised consist of fee simple interest subject to existing WMATA easements and restrictions relating to the Metrorail tunnels and underground easements affecting the sites. Applicable definitions are:

> Fee Simple Estate: "Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat."[2]
>
> Easement: "An interest in real property that conveys use, but not ownership, of a portion of an owner's property."[3]

The WMATA easements are permanent underground easements for the construction, support and operation of a regional rapid rail transit system, and restrict the mass and density of any structure that may be constructed above the easement and within its zone of influence. The purpose of this analysis is to estimate the market value of the property interests free and clear of all trusts, but subject to these easements. The effect, if any, which any existing trust might have on the potential "price" of the property is not considered pertinent to the estimate of market value of the property, and all existing trusts are being disregarded.

No title report was furnished the appraisers, and it is assumed that, except for the WMATA easements as set forth herein, there are no adverse easements or encumbrances that affect the property. It is assumed for the purposes of this analysis that, except for the aforementioned WMATA easements, any other easements, rights-of-way, encroachments, projections, occupancies, etc., which exist or may be found to exist in a current or future title search of the property would have no detrimental effect on the ability of an owner to utilize the property for its highest and best use, including but not limited to assembly, development, sale, use and occupancy, or any other use.

---

[2] Dictionary of Real Estate Appraisal, 4th Edition, The Appraisal Institute, Chicago, Illinois, 2002, pg. 113.

[3] ibid, pg. 90

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Extent of Data Collecting, Confirming, and Reporting

The first step in the analysis was to inspect the subject property. Next, an investigation of pertinent market data was undertaken. Market surveys of comparable data were undertaken. Sales of similar properties were researched using published sources, such as Comps Inc., CoStar, MRIS and First American CoreLogic and court records. Discussions with agents, and other individuals familiar with this market and the subject property were held. The data compiled was analyzed, and the data considered susceptible of comparison was verified, where possible, by the grantees, grantors, or brokers, as well as through recorded information at the D.C. Recorder of Deeds office and other sources as specified in the report. The data was used to arrive at the estimated value of the fee simple interest of the property. Excluded from the scope are issues that are outside the scope of these appraisers' expertise, such as, but not limited to, environmental considerations and other considerations set forth in the report.

Extraordinary Assumptions

This analysis utilizes an extraordinary assumption that has a direct impact on the conclusions set forth herein. The extraordinary hard costs associated with building over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA.

Client Instruction

Per the instruction of the client, the Gross Floor Area (FAR sq. ft.) to be valued was to be the total GFA estimated by Eric Colbert EXCLUDING the 6th floor on Lot 45 in Square 393 and EXCLUDING the 6th floor on Lot 31 in Square 416, and the Inclusionary Zoning impact is to be computed as if all three sites are sold and developed together as a unit and not sold and developed separately.

Personalty, Equipment and Fixtures

The sites are vacant and there are no personalty, equipment or fixtures onsite.

History of the Property

WMATA acquired the sites over 25 years ago. There have reportedly been no recent arms length sales transactions since the purchases and the properties are not on the market as of the date of valuation. In 2007 WMATA received an unsolicited bid for the sites. WMATA did not accept the bid but sent out an RFP for the sites to obtain competitive bids. In 2008 WMATA selected a bid from Banneker Ventures, LLC to develop the sites. Banneker proposed to build 104 apartments and 11,750 square feet

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of ground-floor retail and arts space. WMATA is currently in the process of negotiating an agreement with Banneker.

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Real Estate Assessment and Taxes

Real estate taxes in the District of Columbia are paid on a Tax Year basis (October 1 through September 30), and are based on an assessment of 100% of market value as determined by the Assessor. The recent assessment history is as set forth below:

Real Estate Assessment

Square 393 Lot 44	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$1,052,590	$1,052,590	$1,052,590
Improvements	$0	$0	$0
Total	$1,052,590	$1,052,590	$1,052,590

Square 393 Lot 45	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$2,388,620	$2,388,620	$2,388,620
Improvements	$0	$0	$0
Total	$2,388,620	$2,388,620	$2,388,620

Square 416 Lot 31	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$4,420,930	$4,420,930	$4,420,930
Improvements	$0	$0	$0
Total	$4,420,930	$4,420,930	$4,420,930

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WMATA-INV 015201

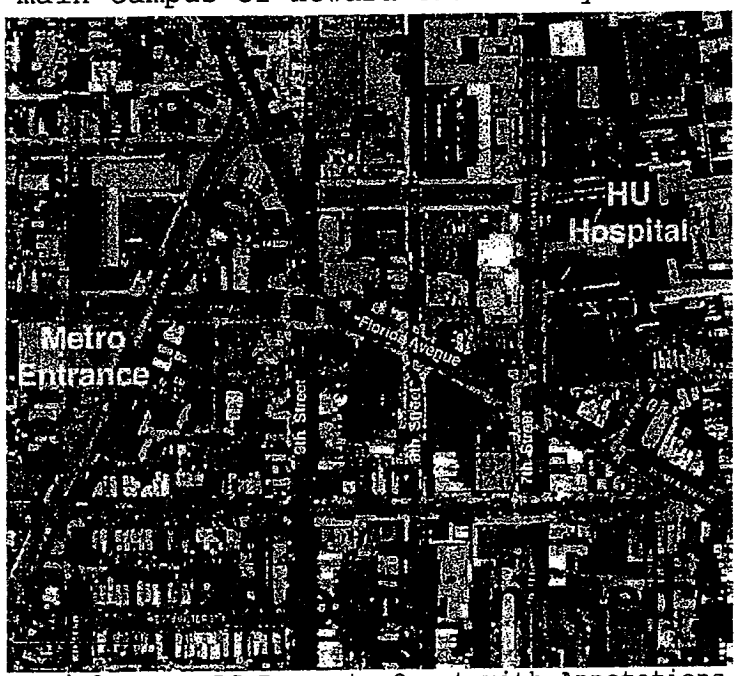
PART II – FACTUAL DATA

Legal Description

The properties are situated on three lots in two squares; Lots 44 and 45 in Square 363 and Lot 31 in Square 416. The sites are located on the south side of Florida Avenue between 7th and 9th Streets, NW.

Neighborhood Description

The subject sites are located in the Howard University and Shaw/U Street submarket of Northwest, DC, with the LeDroit Park neighborhood to the east and 14th Street/U Street corridor to west. The area just to the north of Florida Avenue had historically been a light industrial, storage and warehouse area, located along Georgia Avenue and Sherman Avenue, extending from Florida to the south up to Euclid Street on the north. Northeast of subject the main campus of Howard University has been the predominant landowner for over 140 years. West and north of the area, uses are typically moderate density residential (row houses, flats and apartments) with strip commercial uses along Georgia Avenue, Florida and U Streets. South of subject, the expansion eastward of the Shaw redevelopment trend continues with new and renovated residential units predominating. New and renovated commercial uses are principally located along U Street.



Aerial Map – DC Property Quest with Annotations

Subject's immediate blocks consist of the three story office building of the DC Housing Finance Agency at the northeast corner of 9th and Florida Avenue, a vacant two story boarded up commercial building at the northwest corner of 9th and Florida, small commercial row buildings along the east and west sides of 9th Street south of Florida Avenue. The north side of Florida between 7th and 9th Streets has a mixture of one, two and three story commercial structures occupied by carryout restaurants, offices and retail users. A CVS store is located

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015202

at the southwest corner of 7th and Florida Avenue. Eighth Street, south of Florida Avenue is improved with a Zipcar rental car parking lot, a new six-unit condominium, a small vacant lot for sale and several small residential row buildings. Eighth Street north of Florida Avenue is improved with a carryout restaurant, a nightclub, residential flats and parking lots. The condition of the buildings in subject's neighborhood ranges from boarded-up and vacant, to renovated and good. The commercial building at the northeast corner of 7th and Florida was recently remodeled and is currently for lease with the Douglas Development Company.

Access to the area is good. Georgia Avenue affords direct access to Montgomery County north of subject and to Downtown Washington to the south (via 7th Street). U Street and Florida Avenue offer easy east-west vehicular access. Metrobus routes along Georgia Avenue and U Street are available and the Metrorail has station entrances at 10th and U Streets, and 7th and S Street, both less than three blocks from subject.

During the late 1980s and early 1990s, the area was the focal point of a major re-zoning effort on the part of the City, during which most of the industrial zoned land (C-M-1, C-M-2 and C-M-3) in the area was changed to C-2-A, C-2-B, C-3-A and CR, all within an ARTS overlay south and west of subject, that gave bonuses for residential and preferred uses and significantly limited new industrial uses. Subject's immediate area was rezoned to C-2-B/Arts.

Howard University has occupied its campus east of Georgia Avenue for over 140 years, and continues to expand its campus area. The former Wonder Bread bakery structure, located north of subject on the east side of Georgia Avenue at Bryant Street, was converted to office and retail and subsequently acquired by the University in 1993. The University owns approximately 70% of the total private land between Georgia Avenue, V Street, Sherman Avenue and Barry Place. Two large dormitories have been constructed at Barry Place and much of the remainder is planned for residential and retail uses.

The major trend in this market continues to be the expansion and growth of the residential market, with numerous sites being developed with condominiums and apartments, and significant redevelopment and renovation of the retail commercial uses along U Street south of subject. An eight story 118 unit two-tower condominium was completed in 2008 just north of subject at 919 and 929 Florida Avenue. Broadway Management, Inc. has planned for 750 residential units in the immediate area under a planned unit development. The WMATA site at between 7th and 9th Streets on Florida Avenue is proposed for 104 apartment units and 11,750 sq. ft. of retail and arts.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015203

The trend of residential renovations and redevelopment continues, but the pace has slowed considerably in the past two years. As of the date of valuation Broadway Management, Inc. has not broken ground on their three planned developments in the neighborhood. In July 2009, a foreclosure notice was filed on a planned 29-unit condominium development at 11th and V Streets, NW. A number of developers have pulled out of the condominium market while others have converted planned condominium buildings into apartment buildings. An 11,942 sq. ft. site at 2143 9th Street was under contract to a residential developer in the summer of 2006. The developer backed out due to the sluggish residential market and the site sold a year later for 25% less than the former contract price. Sales in the past year at the 162 unit Rhapsody Condominiums just north of subject at 2120 Vermont Avenue indicate a 15% drop in sale prices since 2006. The Floridian Condominium, at 919 and 929 Florida Avenue, has seen slow sales even with deep discounts to attract purchasers. The owners of the building are currently having problems with lenders that have prevented recent buyers from settling on their purchases. The current recession and tight financial market has made it difficult for developers and purchasers to obtain financing, further slowing down development in the area.

Looking east along the 700 and 800 blocks of Florida Avenue. Subject sites are on the right. 7/30/09

Looking south along the 1900 block of 9th Street, NW Subject on left. 7/30/09

While the condominium and residential markets have seen lower prices and less activity in the past year, subject's location near Howard University, the U Street retail corridor and within walking distance of two Metrorail stations is considered a desirable location for a mixed-use building. New development is planned for sites near subject. A new towncenter development is planned for a large site in the 2200 block of Georgia Avenue to the northeast. These new mixed-use developments will bring additional retail and foot traffic to the neighborhood. Therefore, subject's site is well situated

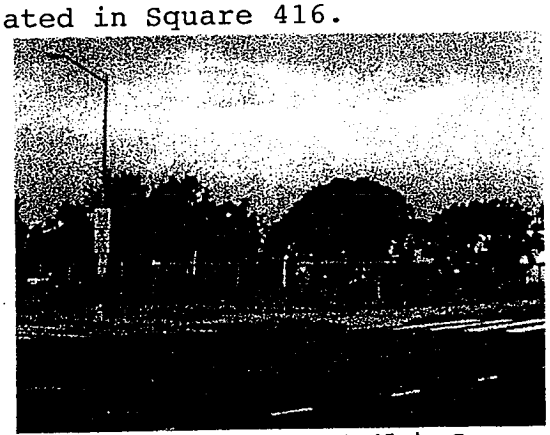
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015204

and would be a desirable location for a mixed-use property once the economy recovers from the current recession.

Site Description

Subject's sites are located on the south side of Florida Avenue between 7th and 9th Streets. Two lots are located in Square 393 and one large lot is located in Square 416.

Lot 45 in Square 393 contains 8,621 sq. ft. of irregularly shaped land with 75 feet of frontage on 8th Street, 100 feet of frontage on Florida Avenue and 108 feet along a 10-foot wide side alley to the west.



Looking southwest at Lot 45 in Square 393 on the southwest corner of 8th and Florida Avenue, NW. 7/30/09

Looking southeast at Lot 44 in Square 393. 7/30/09

Lot 44 in Square 393 contains 3,799 sq. ft. of irregularly shaped land with 100 feet of frontage on Florida Avenue, 57 feet on 9th Street and 23 feet on a 10-foot wide side alley.

Lot 31 in Square 416 contains 15,956 sq. ft. of irregularly shaped land with 114 feet of frontage on Florida Avenue and 177 feet of frontage on 8th Street.

Looking southeast at Lot 31 in Square 416, on the southeast corner of 8th and Florida Avenue, NW. CVS in background. 7/30/09

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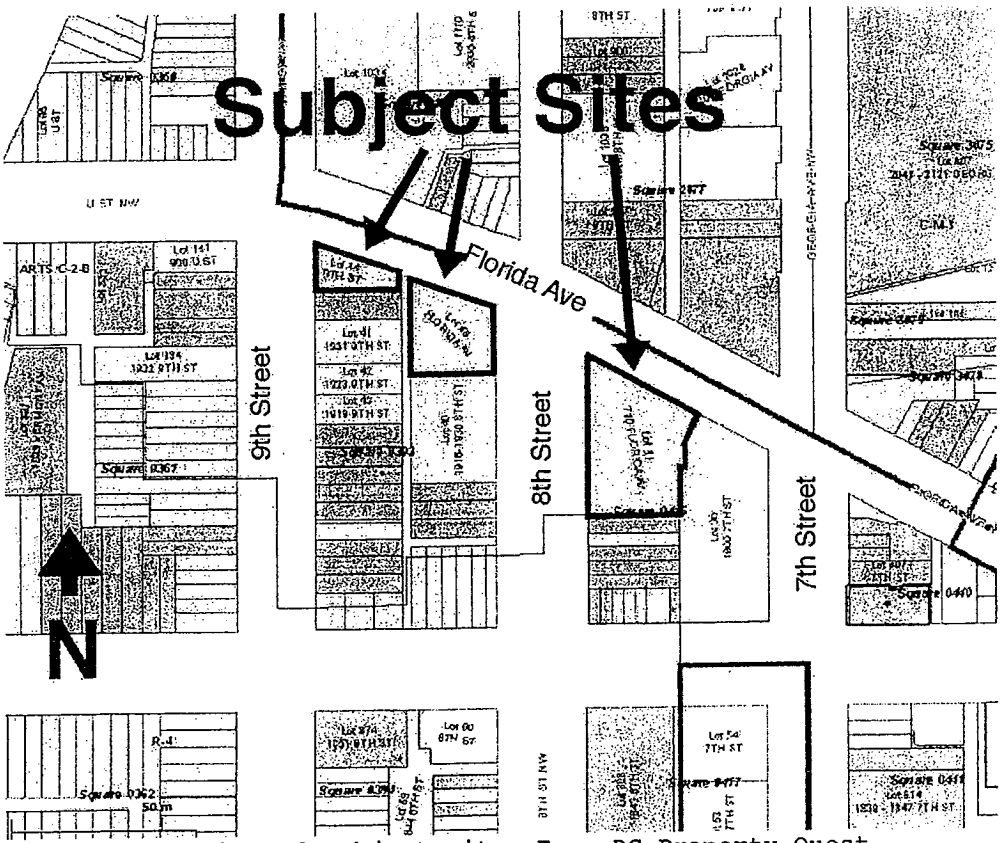
WMATA-INV 015205

The sites are level and on grade with street frontages. According to the most recent flood insurance rate map effective November 15, 1985, the subject sites lie within Zone C, an area of minimal flooding. The appraisers were not furnished with any report of soil conditions, and this appraisal assumes that there are no adverse soil or sub-soil conditions that would cause unusual construction problems.



Location of subject sites From DC Property Quest

No environmental information on the site was made available and the appraisers are not experts in environmental matters. The sites have been used as parking lots and used car lots. Whether the construction of the Metrorail tunnel resulted in the removal of any environmental contamination is not known. If the site were to be redeveloped by any prudent developer, the potential for environmental contamination of the soil should be considered. The conclusions set forth herein are predicated upon an environmentally clean property. If information regarding environmental factors is made available, the conclusions set forth herein are subject to change.

The sites appear to be served with all underground utilities. No title report was furnished to the appraiser, and

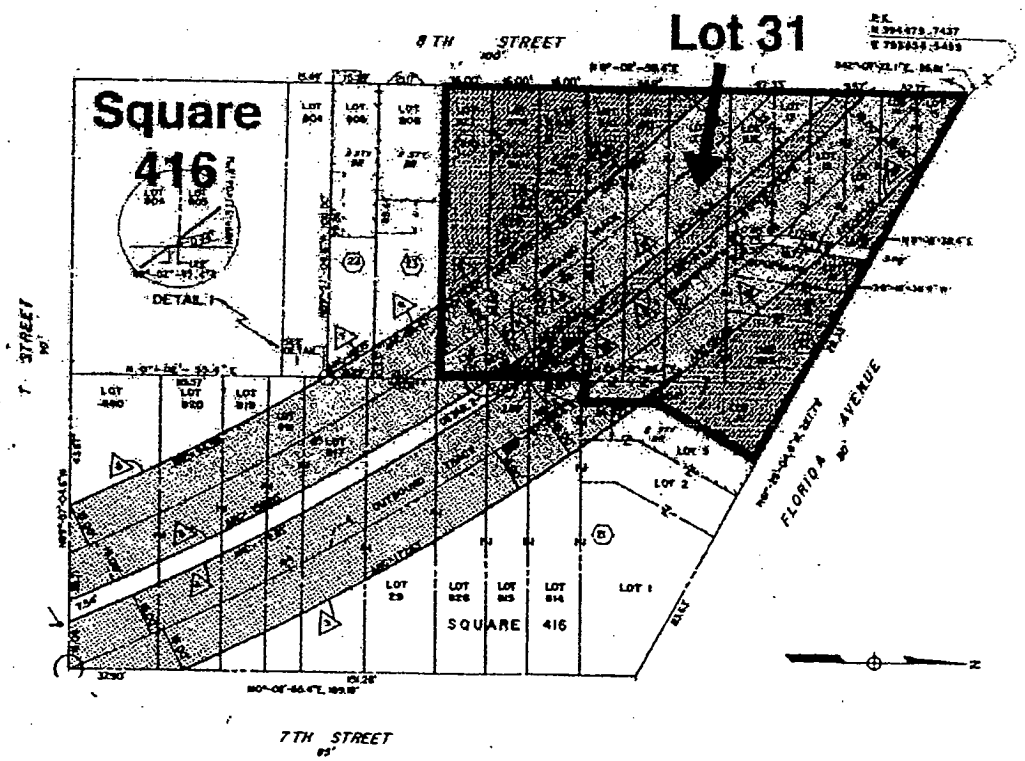
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015206

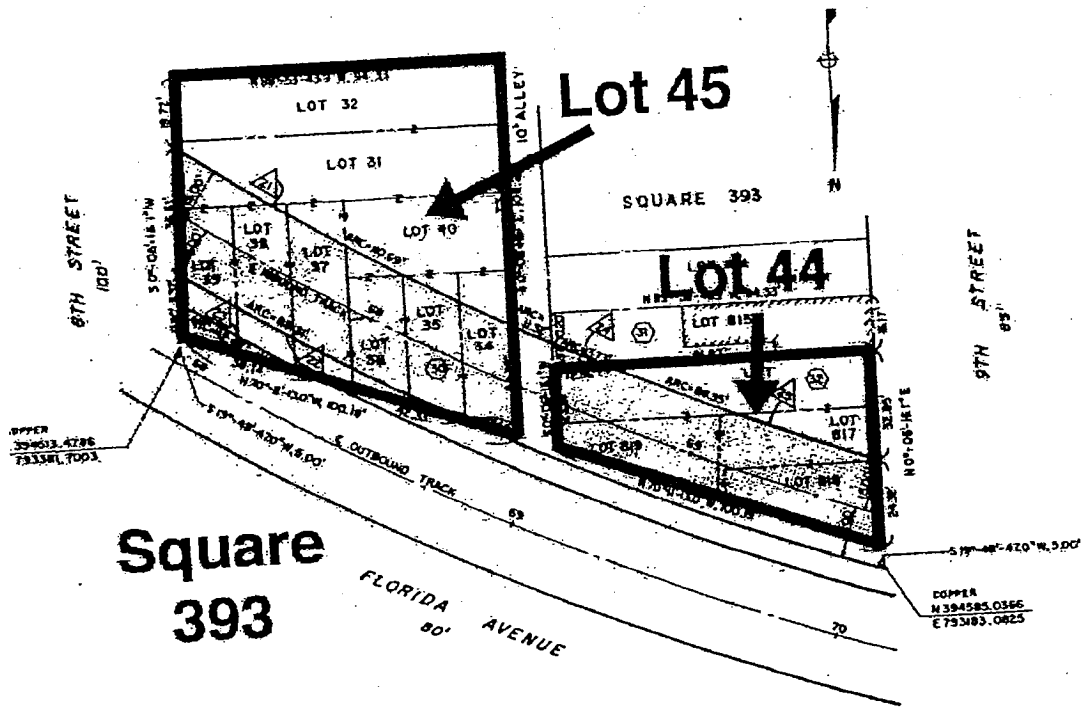
it is assumed that there are no detrimental easements or encumbrances that adversely affect the property.

The sites are currently fenced-in along the perimeters. Seventh, Eighth and Ninth Streets and Florida Avenue are fully improved streets with sidewalks, curbs and gutters. All Streets are two-way streets. Street rights-of-way, according to Baist's Atlas for the sites, are 100 feet on 8th Street, 85 feet of 9th Street, 85 feet on 7th and 80 feet on Florida Avenue. There is a 10-foot alley separating Lots 44 and 45 in Square 393.

The principal factor affecting the subject sites is the Metrorail tunnel and easement running along the Florida Avenue frontage (northern portion) of the sites. Copies of sections of the right-of-way drawings, set forth below, show the relation of the underground easements and the sites.



On Lot 31 in Square 416, the two underground tunnel easements split the site from north to site.



On Lot 44 in Square 393, the underground tunnel easement occupied the majority of the site and the entire frontage along Florida Avenue on the north. On Lot 45 in Square 393, the underground tunnel easement occupies the majority of the northern portion of the site, with a small area between the outbound track easement and the inbound track easement available for footings or supports, subject to WMATA restrictions and on tunnel and easement impact.

The distance from the surface to the upper level of the easements on all the properties appears to range from 18 to 20 feet, allowing, according to information from WMATA, for one level of below grade structure to be placed above the underground easements, again, subject to WMATA restrictions and on tunnel and easement impact.

According to the analysis from Mr. Colbert, the proximity of the tunnel and the likely reviews and restrictions on development above the tunnel will impact the maximum density that can be put above the tunnel and will cause an increase in the overall construction cost of the project. Mr. Colbert estimated that the tunnel will reduce the maximum likely density on each of the sites, taken as separate development sites, to from 3.35 FAR to 4.24 FAR, as will be shown in a later section of the report. The impact on the overall costs of the development was estimated by Mr. Colbert at from 20% to 25%, i.e., the total costs of developing the three sites, due to likely special foundation requirements above the tunnel,

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additional reviews, and other differences between normal mid-rise construction and construction over the tunnels.

WMATA's engineers have determined that the additional costs would be approximately $1,770,000 for the project as proposed. This level of additional cost is significantly less than that envisioned by Mr. Colbert, but, is reportedly based on the proposed development of the unified sites, rather than three separate developments. Per the instruction of the client, this analysis will utilize the cost figure derived by WMATA engineers, of $1,770,000, for the additional costs of constructing over and complying with, the various WMATA tunnels, easements and requirements. It would not be unreasonable for WMATA to adjust this number to reflect actual additional costs as the project proceeds, or, in the alternative, to negotiate a fixed 'additional costs' with the developer, after further consultation with appropriate cost estimators. As stated, for the purpose of this analysis, WMATA's estimate of $1,770,000 is adopted. This estimate of additional hard costs is adjusted upward by 30% to account for all of the soft costs associated with developing these complicated properties, resulting in a total deduction of

$1,770,000 x 1.3 = $2,301,000

Rounded to $2,300,000

Zoning and Land Use Controls

Subject's sites are zoned Arts/C-2-B, a commercial district designed to serve commercial and residential functions similar to the C-2-A District, but with high density residential and mixed uses. The district shall be compact and located on arterial streets, in uptown centers, and at rapid transit stops. The building use may be entirely residential or a mixture of commercial and residential.

DC Online Zoning Map with annotations

The sites are also included in the Uptown Arts Overlay District. The purpose of the Arts Overlay District is to encourage a scale of development, a mixture of building uses and other attributes such as safe and efficient conditions for pedestrians and vehicular movement. Specific requirements of

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015209

the district, set forth in Chapters 7 and 19 of the Zoning Regulations, are summarized as follows:

Summary of Arts/C-2-B Zoning Requirements

Height	65 feet maximum
Floor Area Ratio (FAR)	3.5 - Apartment house or other Residential 1.5 - other permitted uses.
FAR with Bonus for Preferred Uses	4.5
Percentage of Lot Occupancy	80% maximum for residential uses.
Rear Yard	15 ft. minimum, below 20 foot height may be measured from center line of rear alley, above 20 foot height must be measured from rear lot line.
Side Yards	None required for other than one-family detached and one-family semi-detached dwellings, but if provided 2 inches per foot of height with a 6 foot minimum.
Parking: Apartment General Office	1 for each 3 dwelling units In excess of 2,000 sf, 1 for each additional 1,800 sf GFA and cellar floor area.
Medical/Dental	Twice the number of spaces required for general office use.
Retail/Service	In excess of 3,000 sf, 1 for each 750 sf GFA and cellar floor area.
Loading-Requirements Office	20,000 to 50,000 sq. ft.: 1 berth-30 ft., 1 platform-100 sq. ft., 1 service space at 20 ft. >50,000 to 200,000 sq. ft: 2 berth-30 ft., and 2 platform-100 sq. ft., 1 service space at 20 ft.
Residential	50 or more dwelling units: 1 berth-55 ft., and 1 platform-200 sq. ft., 1 service space at 20 ft.

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Inclusionary Zoning

Subject's sites are also included in the Inclusionary Zoning regulations of Chapter 26 of the Zoning Regulations. Under Inclusionary Zoning there is a mandatory housing requirement for any new development consisting of 10 or more units. The developer of these sites is required to set aside a certain percentage of units for low and moderate-income households. The developer is given bonus density of 20% more than is allowed under matter of right developments to compensate for building low and moderate-income housings. As of the date of valuation the Inclusionary Zoning requirements have not been enacted. The Inclusionary Zoning requirements shall become effective on the date of publication of the notice of final rulemaking (5/15/2009) in the D.C. Register, but pursuant to and with the exception of 225, shall not become applicable until ninety days after such publication or the date on which the final Maximum Rent and Price Schedule is published in the D.C. Register, whichever is later. The Maximum Rent and Price Schedule was published August 14, 2009. As of the date of the report, the Maximum Rent and Price Schedule had been published and 90 days had passed since the publication of the Final Rulemaking. As of the date of value, the impending implementation of the Inclusionary Zoning provisions was expected by the market and would have been considered by any prudent purchaser.

WMATA's second instruction was to assume that the total site would be used as the basis for the Inclusionary Zoning computation and that a sale of the individual parcels would not be entertained. Therefore, while it would be possible to develop Lot 44 in such a way as to not result in an IZ requirement, this analysis utilizes the total area of all three lots for the IZ requirement. The first test for required IZ density is 8% of the residential density in the project. The second test is 50% of the bonus density attributable to IZ. As the sites, per the WMATA instruction to use only a five story building, considering the impact of the WMATA tunnel can achieve only a maximum envelop of a 3.54 FAR, there is no effective place to put any potential bonus density on these three sites. Therefore, the controlling test would be 8% of the residential density.

Using Colbert's adjusted areas, the total residential density on the sites would be 80,169 sq. ft. of GFA, as shown below.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015211

Residential Density Computation (Allow 20% of 1st Floor)

		393/44	393/45	416/31
Sq/Lot Site Area		3,799 sf	8,621 sf	15,956 sf
1st	20%	720 sf	1,524 sf	2,891 sf
AG 2nd	100%	3,039 sf	6,100 sf	12,661 sf
AG 3rd	100%	3,039 sf	6,100 sf	12,661 sf
AG 4th	100%	3,039 sf	6,100 sf	12,661 sf
AG 5th	100%	0 sf	3,560 sf	6,074 sf
AG 6th	Out	0 sf	0 sf	0 sf
		9,837 sf	23,384 sf	46,948 sf

Total All Three Sites 80,169 sf

The requirement for affordable housing units at an 8% of residential GFA yields a total IZ requirement of 6,414 sq. ft. of GFA.

80,169 sq. ft. GFA x 8% = 6,414 sq. ft. GFA

The adjustment for the affordable housing (IZ) requirement is estimated at a base loss of $80 per FAR. This represents the loss in unit value due to the requirement for renting units at a level affordable to a household making 80% of the Area Median Income, the effective requirement under the IZ for the Arts/C-2-B district. To the extent that the developer is able to obtain subsidies, assistance, or other help from local or federal sources that provided for affordable housing, or obtain subsidies, assistance, or other help from local or federal sources that provide for assistance to developments that incorporate affordable housing, part of this loss may be offset at some future date and WMATA should monitor the development approval process and financing process to ensure that any offsets due to the 80% AMI affordable unit requirement are adjusted for.

Duke Draft Development Framework for a Cultural Destination District within Washington, DC's Greater Shaw/U Street[4]

The District submitted the Duke Draft Development Framework to the DC Council for approval in February 2005. The Council adopted the document as a "small area plan" in June 2005. The plan provides guidance in public policy decision-making to District agencies and commissions on affordable housing needs, local business development, existing and new cultural facilities and programming, quality public realm investments, transportation and traffic, zoning and local resident participation. The plan calls for subject's sites to be developed with mixed-use developments with active, ground floor

[4] DC Office Of Planning September 2004

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015212

retail and residential or office uses above. In the event that the approval process 'forces' the developer to meet an affordable housing requirement different than that discussed above, the impact on the value of the land could be significant.

Land Use Element of the Comprehensive Plan

Subject's sites are located within the moderate density residential and moderate density commercial mixed use zoning category. The current zoning is not inconsistent with the Plan.

Historic Status

Subject's sites are located in the Greater U Street Historic District. The Greater U Street Historic District is a Victorian-era neighborhood, developed largely between 1862 and 1900.[5] The Greater U Street Historic District, listed in the National Register of Historic Places in 1998, extends roughly from 16th Street on the west to 7th Street on the east and from S Street on the south to Florida Avenue on the north, and includes over 1,500 historic buildings.

[5] The District of Columbia Inventory of Historic Sites, February 23, 2004 update.

sq416/31

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015213

PART III - DATA ANALYSIS AND VALUE CONCLUSION

Highest and Best Use

Highest and best use is defined in the text "The Appraisal of Real Estate", 13th ed., published by The Appraisal Institute, 2008, as "The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible and that results in the highest value." In this case, the value sought is of the fee simple value of the land, as if vacant and unimproved, and available for development to its highest and best use.

Subject's three sites are currently vacant and unimproved, zoned Arts/C-2-B, and impacted by underground easements benefiting WMATA for tunnels carrying the regional rapid rail transit system. As individual development sites, these three parcels contain 3,799 sq. ft. (Lot 44 in Square 393), 8,621 sq. ft. (Lot 45 in Square 393) and 15,956 sq. ft. (Lot 31 in Square 416).

Under the Arts/C-2-B zoning, the maximum density developable on the site is a 3.5 FAR as a matter-of-right, with the potential for up to 4.5 FAR with additional preferred, mainly residential, uses. However, with the presence of the WMATA underground easements and tunnels, and the resulting inability to place more than one level below grade, along with development restrictions on the weight and density that may be placed above the tunnel structure, the likely reasonable density that could be placed on the sites would be less than the maximum density permitted. Consultations with Mr. Eric Colbert, AIA, a well known local architect familiar with development over a Metrorail tunnel[6], yielded estimated maximum densities achievable on each of the sites as follows:

[6] Mr. Colbert is currently consulting with a developer on another site impacted by a WMATA easement in Northeast Washington, DC. Qualifications are set forth in the addenda.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Colbert Estimate of Gross Floor Area (FAR) Subject to WMATA Tunnel and Underground Easement And Excluding The Sixth Floor

	393/44	393/45	416/31
Sq/Lot	3,799 sf	8,621 sf	15,956 sf
Site Area			
1st	3,600 sf	7,621 sf	14,456 sf
AG 2nd	3,039 sf	6,100 sf	12,661 sf
AG 3rd	3,039 sf	6,100 sf	12,661 sf
AG 4th	3,039 sf	6,100 sf	12,661 sf
AG 5th		3,560 sf	6,074 sf
GFA AG – 1st to 5th	12,717 sf	29,481 sf	58,513 sf
Site Area	3,799 sf	8,621 sf	15,956 sf
Developable FAR Max	3.35 FAR	3.42 FAR	3.67 FAR

These densities are less than the maximum 'potential' density with bonus density permitted under the Arts/C-2-B district, but reflect the physical limitations of development. The estimates are, however, of each site as a standalone site. The current proposal for the development of these sites, according to information from the client, incorporates the three subject sites into a larger development including additional land owned or controlled by the prospective purchaser. Under the proposed development of the combined project, a total of 157,000 sq. ft. of Gross Floor Area (FAR SF) will be constructed. Of this amount, 124,000 sq. ft., or roughly 79%, is reportedly attributable to the inclusion of the three WMATA sites. While this represents a premium of 23.1% more FAR than the three sites could generate as standalone sites, instructions are to use the adjusted area derived from the Colbert summary with WMATA and assume an agreement to 'make the other whole' once approvals are in place and development is ready to proceed.

Additionally, the purpose of this analysis is to arrive at an opinion of the value of the site as combined and as part of the larger development of which these sites will be a part. It would typically be appropriate to view the entirety of the development density that is generated by the subject sites as part of the larger development and not as standalone sites. The 'future make whole' agreement referenced above is reportedly intended to accomplish this.

The valuation of the three sites, therefore, will focus on the sum of the development density generated by the WMATA sites as determined by Colbert with the exclusion of the 6th floor.

The proposed development on the sites incorporates residential uses on the upper floors and retail uses on the first floor. This development scheme is consistent with the other newer developments along Florida Avenue and U Street. It is the development scheme envisioned by Mr. Colbert. It is the

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015215

development scheme that is expected by the market and conforms with the market. While a full highest and best use analysis could be undertaken regarding development timing, the purpose of this analysis is ultimately to set the price (rent) that the developer will pay to WMATA for the inclusion of the sites into the larger development. Therefore, the highest and best use of the sites is the proposed use, as a part of the larger assembly by the developer.[7]

Finally, the issue of the Inclusionary Zoning will have an impact on the value, and rent, that the subject sites can generate. The requirement for including affordable housing units into the development create two issues that must be addressed. As set forth earlier, approximately 6,414 sq. ft. of the potential FAR will be set aside for affordable housing. The value of the FAR attributable to the IZ affordable FAR is approximately $80 per FAR LESS than the value attributable to a market rate unit. In other words, not only does the land underlying these units have a $-0- land value, but there is an additional loss that must be subtracted from the total land value, as the potential for sufficient revenue to offset both the cost of construction AND return additional monies as a residual to the land is virtually non-existent.

Approaches to Value and Valuation

The property, consisting of the three sites as a development project and including the total allocated to the WMATA properties, has been valued utilizing a direct sales comparison approach to value, which is consistent with current market practices involving values of vacant, unimproved and underimproved land. Recent sales of similarly zoned unimproved sites in the general area were utilized to estimate the value of the land as if vacant and unimproved, on a per square foot basis. Analysis of these sales will result in a price per FAR for residential uses, and subject's highest and best use, assuming that the land was vacant, unimproved and available for development. This will result in an indicated land value before any adjustments for Inclusionary Zoning or WMATA tunnel and easement impact. Next, the financial impact of the Inclusionary Zoning and WMATA tunnels and easements will be applied to the unadjusted value to arrive at the value of the properties, as a unit, subject to both Inclusionary Zoning and WMATA tunnels and easements.

[7] Note that the larger developer is able to generate additional density by virtue of the assembly. At the same time, the assembly is able to achieve Florida Avenue frontages by virtue of the inclusion of the WMATA sites.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Sales of sites zoned for mixed-use, primarily residential, development, in subject's larger neighborhood have been researched, verified and analyzed as to price per FAR, the most applicable unit of measurement for medium and high density residential and mixed-use residential-retail land sales. The analysis leading to the land value opinion is set forth on the following pages.

Land Sales Analysis

Subject is generally level and on grade with Florida Avenue, 8th Street and 9th Street. One of the sites, Lot 44 in Square 393, is generally triangular, two, Lot 45 in Square 393 and Lot 31 in Square 416 are irregular but generally rectangular. The zoning on these sites is Arts/C-2-B. As stated earlier, the enactment of Inclusionary Zoning on August 21, 2009 will require any new development of more than 10 units to include a percentage of affordable housing units. Additional FAR beyond the matter of right allowed on the site will be allowed to compensate for the cost of the affordable units. Adjustments to the comparable sales for the Inclusionary Zoning requirement is difficult to estimate since the exact cost of providing the affordable units on each of the sites is unknown. Most brokers or developers contacted report that the Inclusionary Zoning will probably have a negative affect. As the adjustments for Inclusionary Zoning will be made to the sites after the 'base' land value is determined, no adjustment to most of the sales is required.

Other adjustments considered include financing, location, size, site topography and site configuration. All of the comparable sales were purchased with cash or conventional financing so no adjustment will be made for financing. The six comparable sales are all level, interior sites, located in similar locations within a few blocks of subject. Comparable #4 is a sale of four non-contiguous lots and comparable #5 is a sale of very narrow site. These comparable sales would be adjusted up for inferior site configuration and lack of corner. Most of the comparables are smaller, one is larger than two of the individual subject sites but smaller than Lot 31, the largest.

Summary of Comparable Sales

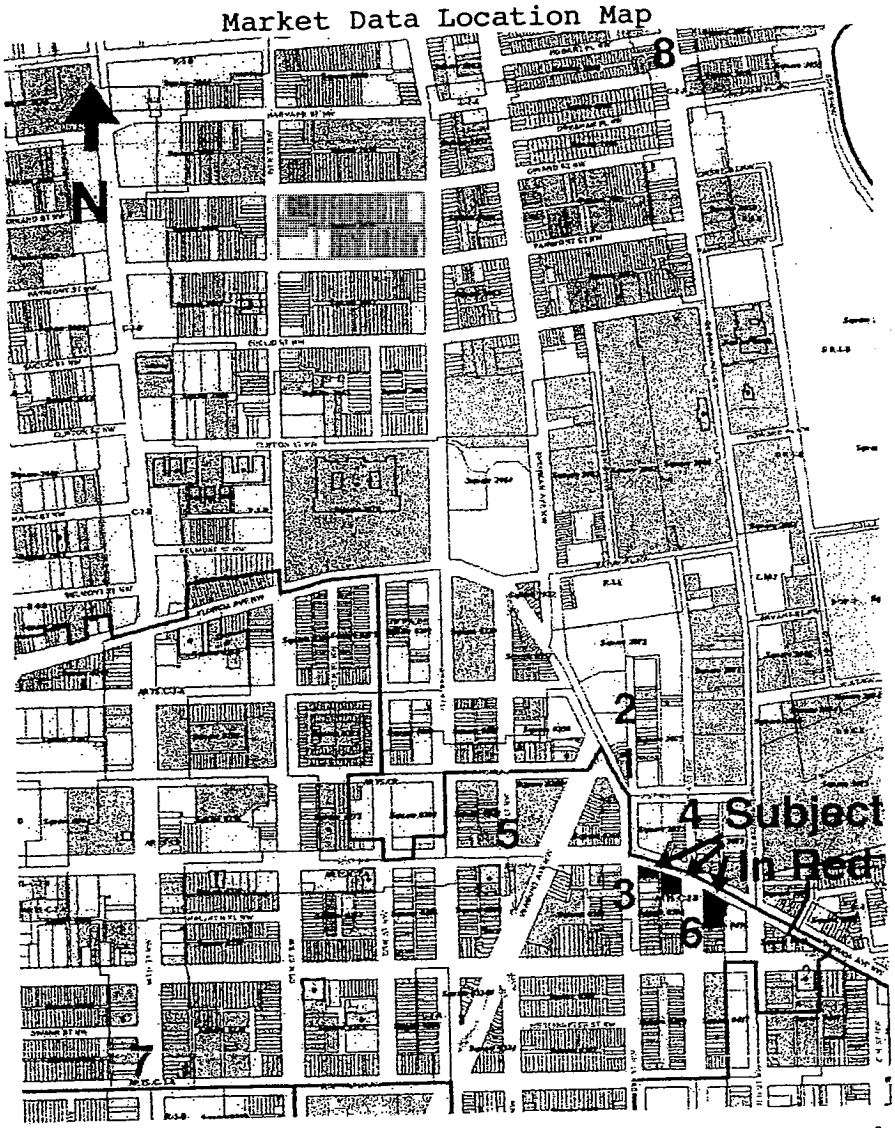
Sale-Location	Zone	FAR	Sale Date	Land Area	$/FAR
1-2047 9th	CR	6.0	Nov-06	4,073	$102
2-2143 9th	CR	6.0	Sep-07	11,942	$46
3-1932 9th	Arts/C-2-B	3.68	Jan-08	5,436	$70
4-2004+ 8th	Arts/C-2-B	4.5	Aug-08	3,537	$50
5-2006 10th	Arts/C-2-B	4.5	Sep-08	1,142	$43
6-1912 8th	Arts/C-2-B	4.5	Contract	1,887	$45
7-1407 S	Arts/C-3-A	4.99	Jun-08	20,418	$79
8-2908 Ga	C-2-A	2.5	Contr 8/09	6,477	$39

sq393/44+45,sq416/31

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015218

The sales above indicate prices in the range of $39 to $102 per FAR. The highest indication came from sale #1 at 2047 9th Street, NW. This site was purchased almost three years ago, during the height of the residential market activity, by the adjacent property owner for future expansion of his nightclub. It is currently improved with a small warehouse used for storage and a parking lot. Eliminating this sale results in a range, before adjustments, of from $39 per FAR to $79 per FAR, with an average of $46 per FAR. Set forth below is a location map, showing the location of the sales in relation to subject.

Market Data Location Map



As stated in the neighborhood section values have declined in the past two years. All of the sales are adjusted downward 15% per year for the change in market conditions. Set forth

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015219

below is a summary of these sales adjusted for market conditions to the date of value.

Sales Adjusted for Market Conditions

Sale-Location	Zone	FAR	Sale Date	Land Area	$/FAR
2-2143 9th	CR	6.0	Sep-07	11,942	$34
3-1932 9th	Arts/C-2-B	3.68	Jan-08	5,436	$55
4-2004+ 8th	Arts/C-2-B	4.5	Aug-08	3,537	$43
5-2006 10th	Arts/C-2-B	4.5	Sept-08	1,142	$37
6-1912 8th	Arts/C-2-B	4.5	Contract	1,887	$45
7-1407 S	Arts/C-3-A	4.99	Jun-08	20,418	$65
8-2908 Ga	C-2-A	2.5	Contr 8/09	6,477	$39

Comparable #2, at 2143 9th Street, is an 11,942 sq. ft. site located southeast of subject on 9th Street. The site is zoned CR. It sold in September 2007 for $46 per FAR to Howard University based on an FAR of 6.0. The site is level and has frontage on both 8th Street and the rear alley. Howard University is assembling sites in the area and also owns land adjacent to this site. This site, while small, is almost three times the size of subject. This sale would be adjusted downward for market conditions and up for corner.

Comparable #3, at 1932 9th Street, is a 5,436 sq. ft. interior site located one block southwest of subject. The site has 36 feet of street frontage on 9th Street and depth of 158 feet to a rear alley. This Arts/C-2-B zoned site sold in January 2008 for $70 per FAR based on a proposed 3.68 FAR mixed-use development. The price per FAR based on the maximum FAR allowed would be $57. The purchaser reportedly plans to build a 20,000 sq. ft. mixed use building, which equates to a 3.68 FAR. The site is located in a similar location, one-half block south of Florida Avenue. This sale would be adjusted downward for market conditions and up for corner

Comparable #4, at 2004-2008 and 2014 8th Street, is a 3,537 sq. ft. non-contiguous assembly of four lots located one block north of subject. The four lots sold for a total price of $800,000 or $50 per FAR. They are currently improved with four row houses in poor condition. According to the purchaser two of the row houses will be renovated. He is looking to assemble the remaining sites with adjacent land for a larger contiguous assembly. This sale would be adjusted downward for market conditions and upward for non-contiguous assembly and corner.

Comparable #5, at 2006 10th Street, is a 1,142 sq. ft. narrow lot located one-half block north of U Street. The site has only 13 feet of frontage on 10th street with a depth of 89 feet to a rear alley. This Arts/C-2-B zoned site sold in

sq393/44+45.sq416/31

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015220

September 2008 for $43 per FAR. The purchaser plans a residential development on the site. The property is currently back on the market at an asking price of $350,000 or $68 per FAR but the sales broker reports no interest in the site based on this asking price. This sale would be adjusted downward for market conditions and upward for narrow lot width and corner.

Comparable #6, at 1912 8th Street, is a 1,887 sq. ft. lot located south of subject. The site has 20 feet of frontage 8th Street with a depth of 94 feet to a rear alley. This Arts/C-2-B zoned site is currently listed on the market for $385,000 or $45 per FAR. The site is located adjacent to a similarly sized site that was developed in 2009 with a 5-unit condominium. This location is similar to subject but the site is smaller and lacks a corner.

Comparable #7, at 14th and S Streets, NW, is a 20,418 sq. ft. site, and is part of a 24,000 sq. ft. development site proposed for a 119,825 sq. ft. residential building with first floor retail. Zoning approval for the development was received in February 2009 and the purchaser has an option to purchase the adjacent property to finish the assembly. The site has ample frontage on both S and 14th Streets and will extend to Swann Street when the assembly is complete. This portion of the assembly represents 80+% of the total site. The Arts/C-3-A zone permits mixed uses similar to subject and the proposed development will be similar to the likely use at subject (residential over retail). This location is superior to subject, the site enjoys corners, is larger than the individual parcels at subject, but smaller than the combined development at subject.

Comparable #8, at 2908-14 Georgia Avenue is a 6,475 sq. ft. lot located at the southwest corner of Hobart Place and Georgia Avenue, north of subject. The site is L-shaped with frontages of 75 feet on Georgia Avenue and 125± feet on Hobart. The site is zoned C-2-A and is planned for a residential over retail structure. The asking price was $1,170,000 but the contract price was reported to be around $630,000. The site is in an inferior location compared to subject and has an inferior shape.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015221

Summary of Comparables

Sale-Addr	Date	Adj Mkt	Loc	Corner	Site Area	Fr X Dpth
2-2143 9th	9/07	$34	Comp	No	Comp/Lrg	118 X 101
3-1932 9th	1/08	$54	Comp	No	Sm/Comp	36 X 158
4-2004+ 8th	8/08	$43	Comp	No	Sml/Comp	Non-Contig
5-2006 10th	9/08	$37	Comp	No	Sml/Narrow	13 X 88
6-1912 8th	List	$45	Comp	No	Sml/Marrow	20 X 94
7-1407 S	6/08	$65	Sup	Yes	Comp	20 X 94
8-2908-14 Ga	Contr	$39	Inf	Yes	CompS/Sml	75 X 125

After adjustments for market conditions the comparable sales indicate an adjusted price range for subject from $34 to $65 per FAR with an average of $46 per FAR. The highest sale indication came from sale #7, similar in size and corners, but in a superior location, at $65 per FAR. Sale #8 is the reported contract for the inferior site at Georgia and Hobart and would set a lower limit for subject. The three largest sales, in terms of development density, #4, #7 and #8, ranged from $39 to $65 per FAR, with the lowest, #8, being the most inferior in terms of location and site characteristics (before WMATA adjustment).

Sale #4, at $43 per FAR, consists of four small non-contiguous lots on an inferior street north of subject. The purchaser is looking to assemble adjacent land into a larger contiguous assembly. Sale #3 is the closest comparable sale and indicated a price of $55 per FAR after adjusting for market conditions, but lacks a corner. The purchaser reportedly plans to build a mixed-used 3.68 FAR building, although nothing has been built since the purchase and the site is currently used as a pay parking lot. If this site were developed to a maximum 4.5 FAR the adjusted sale price would be $45 per FAR. Finally, the two sites located immediately south of Lot 44 in Square 393 are under contract to the potential purchaser/lessee of the subject parcels. These 2008 contracts were at prices around $90 per FAR. The purchaser indicated that he expected to renegotiate these prices down substantially given current market conditions. Based on the recent sales indications, this course of action regarding these two sites would be reasonable.

Considering the factors discussed above, subject's location along Florida Avenue (superior to sales with frontage only on 8th Street or 9th Street north of Florida Avenue) and the upper limit set by sale #7, it is our opinion that the value of subject's sites would be based on a base value of $50 per FAR.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015222

Based on the comparables and analysis above, the indicated value for the subject sites as a unified development parcel, as of August 31, 2009, would be:

Site Area - Combined	28,376 sf Land
FAR Sq. Ft. Individual Site Development	100,711 sf GFA
Value per FAR	$50.00/FAR
Unencumbered Value	$5,035,550

Adjustment to Value: Inclusionary Zoning Effective FAR Loss

The effective area lost due to Inclusionary Zoning has been estimated at 6,414 sq. ft. of Gross Floor Area. The total loss due to the Inclusionary Zoning, 80% AMI, affordable housing component has been estimated at $80 per FAR. This is equivalent to a lost land value of:

6,414 sq. ft. GFA x $80.00/FAR = $513,120

Adjustment to Value: Extraordinary Costs – WMATA Easements and Tunnels

As stated above, utilizing the cost estimates provided by WMATA, the adjustment for extraordinary hard costs associated with building over the WMATA tunnel and easements is $1,770,000. Allowing for necessary soft costs, this results in a total deduction from the unencumbered value of $2,300,000.

Final Value of Property Subject to Inclusionary Zoning and WMATA Tunnels and Easements

Value Unencumbered	$5,035,550
Adjustment for IZ FAR Loss	-$513,120
Adjustment for Extraordinary Costs	-$2,300,000
Encumbered Value 8/31/2009	$2,222,430
Rounded, as of 8/31/2009, to	$2,200,000

Exposure Time

There have been very few land sales, except for smaller sized sites and foreclosures. Given the complexities of developing the subject site, the necessity of obtaining approvals and processing reviews and agreements relating to the WMATA easements and tunnels, and the difficulty in obtaining development financing in the current economic climate, the exposure time associated with the values set forth herein is estimated at 12 to 18 months or more.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015223

CERTIFICATION

The Undersigned do hereby certify that, to the best of our knowledge and belief:

The statements of facts contained in this report are true and correct;

The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analysis, opinions and conclusions;

We have no present or prospective interest in the property that is the subject of this report, and have no personal interest with respect to the parties involved;

We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment;

Our engagement in this assignment was not contingent upon developing or reporting predetermined results;

Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal;

The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which includes the Uniform Standards of Professional Appraisal Practice;

We inspected the subject property;

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Richard R. Harps has completed the continuing education program of the Appraisal Institute.

Disclosure of the contents of this appraisal report is governed by the by-laws and Regulations of the Appraisal Institute.

Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected or the MAI or SRA designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communications without the prior written consent and approval of the undersigned.

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

sq393/44+45, sq416/31

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015224

QUALIFICATIONS OF RICHARD R. HARPS, MAI, CRE

Academic: Bachelor of Arts, Economics, The American University, Washington, D.C. 1972.
American Institute of Real Estate Appraisers courses and/or examinations: IA - Basic Principles, Methods and Techniques - 1972; IB - Capitalization Theory and Techniques - 1972; II - Urban Properties - 1973; IV - Condemnation - 1973; VI - Investment Analysis - 1980; IBA - Capitalization Theory & Techniques - 1987; 2-1 Case Studies - 1991, Highest and Best Use and Market Analysis – 1993, Advance Sales Comparison and Cost Approach - 2000
Seminars presented by AIREA, AI, GWCAR, WBR, WDCAR and other organizations.
General: 1971-1983 - John R. Pinkett, Inc., Vice President of Appraisals.
1984 to Present - HARPS & HARPS, INC., President
1996 to 2004 – HARPS & SCALLAN, LLC/INC.
Qualified as Expert in: District of Columbia Zoning Commission; District of Columbia Board of Zoning Adjustment; District of Columbia Office of Tax and Revenue Board of Real Property Assessments and Appeals; District of Columbia Alcohol Beverage Control Board; Superior Court of the District of Columbia; United States District Court for the District of Columbia; United States Bankruptcy Court for the District of Columbia; Mayor's Agent for Historic Preservation-Chief Administrative Law Judge of the District of Columbia; United States Bankruptcy Court, District of Maryland; United States District Court, District of Maryland.
District of Columbia Certified General Real Property Appraiser Certificate #10003.
Maryland Certified General Real Property Appraiser Certificate #10177
Virginia Certified General Real Estate Appraiser Certificate #003181
Appraisal/Consulting Experience: Assignments since 1971 include: houses, stores, shopping centers, office buildings, apartment buildings, hotels, unimproved land, air rights, special purpose properties; full and partial takings from office buildings, power plants, stores, houses, railroad rights-of-way, and apartment buildings; condominium conversion, relocation assistance studies, planned unit development analyses, lease analyses, fair rental studies, urban renewal re-use parcels and assessment consulting, valuation and equalization studies.
Partial Client List: , United State National Park Service, Washington Metropolitan Area Transit Authority, U.S. General Services Administration, U.S. Dept. of Justice, District of Columbia Department of Housing and Community Development, District of Columbia National Capital Revitalization Corporation, Potomac Electric Power Company, Washington Gas Light Company, Verizon, Howard University, International Monetary Fund, International Bank for Reconstruction and Development (World Bank) attorneys, financial institutions, developers and individuals.
Organizations
Appraisal Institute, successor to American Institute of Real Estate Appraisers, MAI designation - Voluntary re-certification through December 31, 2007
Minority Relations Subcommittee, 1980-1981, Vice Chairman 1981; National Education Committee, 1983-1984; Division of Courses, 1985; Division of Curriculum, 1981-1982; Board of Examiners - Examinations 1987-1989; and General Comprehensive Examination Subcommittee/General Comprehensive Examination Panel 1983-2007, Chairman 1987-1989
Washington Metropolitan Area Chapter Appraisal Institute (formed January 1991 by merger of Wash Metro Chapter # 18 AIREA and Wash Metro Chapter of SREA): President-1994
Counselors of Real Estate - CRE designation
District of Columbia Building Industry Association
Washington D.C. Association of REALTORS®: New Development/Zoning Committee 1975-90, Chrm 1981-82; Board of Directors, 1981 to 1986, 1990-1994, 1998; President, 1985
Real Estate Education Foundation (WDCAR) - President 1989
Lambda Alpha International – International Land Economics Fraternity
Real Estate Counseling Group of America – President 2005-2007
National Association of REALTORS®: Board of Directors 1985-1987, 1992; Executive Committee 1986-1987; REALTORS® Legislative Committee: 1989 Chairman Housing Subcommittee, 1990 Chairman Federal Tax Subcommittee, 1991 Vice Chairman RLC, 1992 Chairman RLC; Real Estate Finance Committee 1989-92; State and Municipal Legislative Committee 1990; Building Advisory Committee/Real Property Operations Committee 1988, 1990-1993, 2004, 2007; RPAC Trustee 1989, 1992; Real Estate Lending Working Group Chairman 1991; Public Policy Oversight Group 1993
Greater Washington Board of Trade - Board of Directors, 1985

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015225

QUALIFICATIONS OF STEPHEN C. BRENNAN

Education

1986 Graduate of Colby College, Waterville, Maine. Bachelor of Arts in Administrative Science with a minor in Economics. Graduate Real Estate courses: Principles and Practices of Real Estate, Real Estate Finance, and Appraisal 1. American Institute of Real Estate Appraisers courses and/or exams successfully completed: 1-A1 Real Estate Appraisal Principles, 1-A2 Basic Valuation Procedures, 1-B1 Capitalization Theory and Techniques Part A, and Capitalization Theory and Techniques Part B, 2-1 Case Studies in Real Estate Valuation, Report Writing and Valuation Analysis, Narrative Appraisal Report Writing, Apartment Appraisal, Appraisal Institute #I330, Standards of Professional Practice, Part B, February 2002, Evaluating Commercial Construction Seminar September 2003, National USPAP Update February 2004, and Appraisal Institute's Online Analyzing Operating Expenses, February 2004.

General Experience

Commercial Property Appraiser — 1988-Present
Harps & Harps, Inc.
Washington, D.C.

Residential Property Appraiser — 1987-1988
F. Jerome Silverstein Realty
New London, Ct.

Professional Associations and Licenses

District of Columbia, Certified General Real Property Appraiser License #10011

Maryland, Certified General Real Property Appraiser License #10178

Candidate for membership in the Appraisal Institute (MAI Designation)

Realtor Associate Member of the Washington D. C. Association of Realtors

Work Experience

Recent assignments include: appraisals of single and multifamily dwellings, condominiums, residential and commercial land, new construction, warehouses, office buildings, stores, shopping centers and apartment buildings.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015226

SCOPE OF WORK

SHAW-HOWARD UNIVERSITY METRORAIL STATION AREA

OWNER:	WMATA
LOCATION:	South Side of Florida Avenue between 7th & 9th Streets, NW Washington, DC
LEGAL DESCRIPTION:	Square 393, Lots 44 and 45; Square 416, Lots 18 and 31
ZONING:	C-2-B in Arts Overlay Zone
ESTIMATED AREA:	Lot 44 - 3,800 SF Lot 45 - 8,600 SF Lot 18 - 516 SF Lot 31 - 15,956 SF
COMMENTS:	The northern portions of the parcels contains an existing Metrorail tunnel that has an upper limit that is19 feet below the surface. WMATA can provide to the appraiser cost estimates for extraordinary costs that may be involved in building over the WMATA tunnel. The Inclusionary Zoning Implementation Act, as amended, and the Duke Plan incorporate affordable housing provisions that should be considered in an analysis of the subject property.
DUE DATE:	A preliminary draft shall be due 30 days after notice to proceed. A complete summary report shall be due 7 business days after the receipt of comments on the preliminary draft.
TYPE OF REPORT:	Summary Appraisal Report
REQUIREMENTS:	The appraiser shall provide each of the following for the subject property: 1. Fair market value of the site reserving to WMATA a permanent underground easement on the northern portion of the property for the below-grade track and tunnel; 2. Fair market value per sq. ft. of FAR for any retail or commercial component, market rate residential units, and affordable housing units

sq393/44+45,sq416/31

FOIA CONFIDENTIAL TREATMENT REQUESTED

Eric Colbert & Associates Memorandum

Located on the following three pages

The Colbert memorandum utilized a total site area of 16,472 sq. ft. for Lots 31/18 in Square 416 per the original instructions from WMATA regarding site area. Further review by WMATA indicated that the inclusion of the area within former Lot 18, although still shown on Assessment Office record, was in error and the total area of Lot 31 in Square 416 should have been 15,956 sq. ft. The Colbert areas for this lot have been adjusted, as shown below, to reflect this area change.

	Site Area
Original Site Ø	16,472 sf
Revised Site Ø	15,956 sf
Adjustment Factor	516 sf

Adjusting each of Colbert's areas on Lot 31 by -516 sq. ft., and eliminating the 6th floor, per the Client instruction, results in revised areas as follows:

	393/44	393/45	416/31
Sq/Lot	3,799 sf	8,621 sf	15,956 sf
Site Area	3,799 sf	8,621 sf	15,956 sf
Garage (B-1)	3,600 sf	7,621 sf	14,456 sf
1st	3,039 sf	6,100 sf	12,661 sf
AG 2nd	3,039 sf	6,100 sf	12,661 sf
AG 3rd	3,039 sf	6,100 sf	12,661 sf
AG 4th		3,560 sf	6,074 sf
AG 5th	12,717 sf	29,481 sf	58,513 sf
GFA AG – 1st TO 5th	3,799 sf	8,621 sf	15,956 sf
Lot Area	3.35 FAR	3.42 FAR	3.67 FAR
Developable FAR Max			

	Combined Totals
Land Area	28,376 sf
Gross Floor Area (FAR)	100,711 sf
Combined FAR	3.55 FAR

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015228

ERIC COLBERT & ASSOCIATES PC 717 5TH STREET NORTHWEST WASHINGTON DC 20001 TELEPHONE (202) 289-6800

July 31, 2009

Mr. Richard Harps
1111 14th Street, N.W., Suite 600
Washington, D.C. 20005

Re: Square 393, Lots 44 and 45; Square 416, Lots 18 and 31

Dear Richard,

Following is the analysis you requested. First is a list of zoning restrictions:

Underlying C-2-B Zoning Requirements

- Height Limit = 65'
- FAR = 3.5, 1.5 non-residential maximum
- Maximum Lot Occupancy = 80% at all residential floors
- Rear Yard = 15'
- Required Parking = 1 per 3 dwelling units

Arts Overlay

- Up to 4.5 maximum bonus density permitted.

Inclusionary Zoning (IZ)

- 20% additional density
- 5' extra building height

The problem with the proximity of the Metro tunnel with these sites is that it exists on one side (the north) of the properties. If the Metro tunnel ran through the middle of our site, we could "bridge" the tunnel, making it easier to build higher above the tunnel. Because the tunnel is on one side, we can only build a structure that can be supported by the tunnel itself. My office is working on a project now where we have had numerous meetings with Metro regarding building over a tunnel. The maximum that Metro will allow us to (economically) build is a four-story wood structure. My best assumption is that we could possibly build a structure that has one level of underground parking and four floors above ground (above the tunnel).

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015229

For Lot 44 (Square 393), the proximity of Metro to the site suggests that the entire site be limited to the restrictions I stated. This will allow a structure which has a parking garage of 3,799 square feet. Due to the small size of the lot and its awkward shape, we can probably only accommodate 8 or 9 spaces in this garage. The first floor can be entirely commercial for a gross square footage of 3,600. The actual leasable space will be much lower, however, due to the need to have a lobby for the upstairs uses plus an elevator and two fire stairs. The actual retail on this level will likely be about 2,900 square feet. Assuming that floors 2, 3, and 4 are residential use, they could occupy 80% of the lot and have 3,039 gross square feet each. An apartment building of this size will only be about 75% efficient, leaving 2,279 sellable or leasable square feet each on floors 2, 3, and 4. This gives a total rentable or sellable area of 9,737 square feet for this site.

Lot 45 in Square 393 will be more efficient to build on. Approximately half of the site could go up to 70' height, while the other half would be limited as stated for Lot 44. This will yield the following areas, assuming a building that has one full level of parking underground and one full retail level at grade. On half of the site, three more floors will be permitted, while on the other half, five more floors will be possible. Based on nearby developments, the most reasonable use for the floors above the first floor seems to be residential use.

Lot 45 Potential Building

Floor	Gross S.F.	Net Sellable/Leasable S.F.
Garage (-1)	8,621	22 Parking Spaces
1	7,621	7,000
2	6,100	5,100
3	6,100	5,100
4	6,100	5,100
5	3,560	2,850
6	3,560	2,850
Total	33,041	28,000

sq393/44+45,sq416/31

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015230

The same analysis used for Lot 45 in Square 393 will apply to Lot 31 in Square 416. Again, about one-half of the lot has the underground tunnel beneath it.

Lot 31 Potential Building

Floor	Gross S.F.	Net Sellable/Leasable S.F.
Garage (-1)	16,472	45 Parking Spaces
1	14,972	14,300
2	13,177	11,200
3	13,177	11,200
4	13,177	11,200
5	6,590	5,600
6	6,590	5,600
Total	84,155	59,100

Building next to and above the Metro structures as will be required for these lots will increase construction costs by at least 20% to 25%. Being in a historic district means that there is no guarantee that a 70-foot high building will be permitted.

Sincerely,

Eric Colbert, AIA

sq393/44+45,sq416/31

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015231

THE DEPUTY MAYOR FOR PLANNINGAND ECONOMIC DEVELOPMENT
THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

INCLUSIONARY ZONING AFFORDABLE HOUSING PROGRAM
MAXIMUM RENT AND PURCHASE PRICE SCHEDULE

This Maximum Rent and Purchase Price Schedule is established pursuant to the Inclusionary Zoning Implementation Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*) ("the Act") and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 26 Title 11 of the DCMR. The Schedule is effective August 14, 2009.

Multi-Family Inclusionary Developments

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
Studio	1	1	$108	$250	$899	$107,500	$1,438	$190,700
1	2	1 - 2	$150	$313	$1,027	$117,700	$1,643	$212,800
2	3	2 - 4	$192	$425	$1,155	$120,100	$1,849	$227,100
3	5	4 - 6	$233	$525	$1,412	$144,300	$2,259	$275,100

Single-Family Inclusionary Developments

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
2	3	2 - 4	NC	$110	$1,155	$160,300	$1,849	$267,300
3	5	4 - 6	NC	$130	$1,412	$196,800	$2,259	$327,600
4	7	6 - 8	NC	$150	$1,669	$233,400	$2,670	$388,000

The Maximum Purchase Price or Rent is based on the Washington Metropolitan Statistical Area 2009 Area Median Income of $102,700 for a family of four (4) as published by the United States Department of Housing and Urban Development. It takes into account an ability to pay thirty percent (30%) of the benchmark income towards the housing cost.

Maximum Allowable Rent is equal to the rent published minus any utility expenses paid by the tenant for heat, air conditioning, cooking, electricity, or hot water. Utilities are estimated above. Actual costs to be deducted for each utility are as described in the District of Columbia Housing Authority's Utility Schedule.

An Inclusionary Development Owner may lower the rents or prices to achieve a larger marketing band of incomes for marketing purposes to assure occupancy.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015232

Maximum Allowable Purchase Prices use the following assumptions:

1. A conventional thirty (30) year, fixed-rate, fully amortizing mortgage at the national average mortgage rate as published by the Federal Housing Finance Agency at www.fhfa.gov (5.12% as of July 28, 2009) plus a one percent (1%) cushion to protect for future interest rate increases and a five (5%) down payment.

2. Real estate property taxes are assessed at the control price at current real estate tax rates and homestead deductions.

3. Condominium fees are estimated at fifty cents ($0.50) per square foot per month applied to the assumed unit square footages. Single-family homeowner association fees are estimated at ten cents ($0.10) per square foot per month applied to the assumed unit square footages. Estimated unit sizes are:

Multi-Family Inclusionary Development

Studio	1-Bedroom	2-Bedroom	3-Bedroom
500	625	850	1,050

Single-Family Inclusionary Development

2-Bedroom	3-Bedroom	4-Bedroom
1,100	1,300	1,500

4. Monthly hazard insurance on single-family units is estimated at one half of one percent (0.5%) of replacement value.

NOTE 1. If the actual homeowner/condominium fee for a specific Inclusionary Unit is more than ten percent (10%) higher than the fee assumed in the Maximum Price or Rent Schedule and/or hazard insurance is not included in the condominium fees, then the actual fees and insurance costs shall be used to determine the maximum sales price of the Inclusionary Unit.

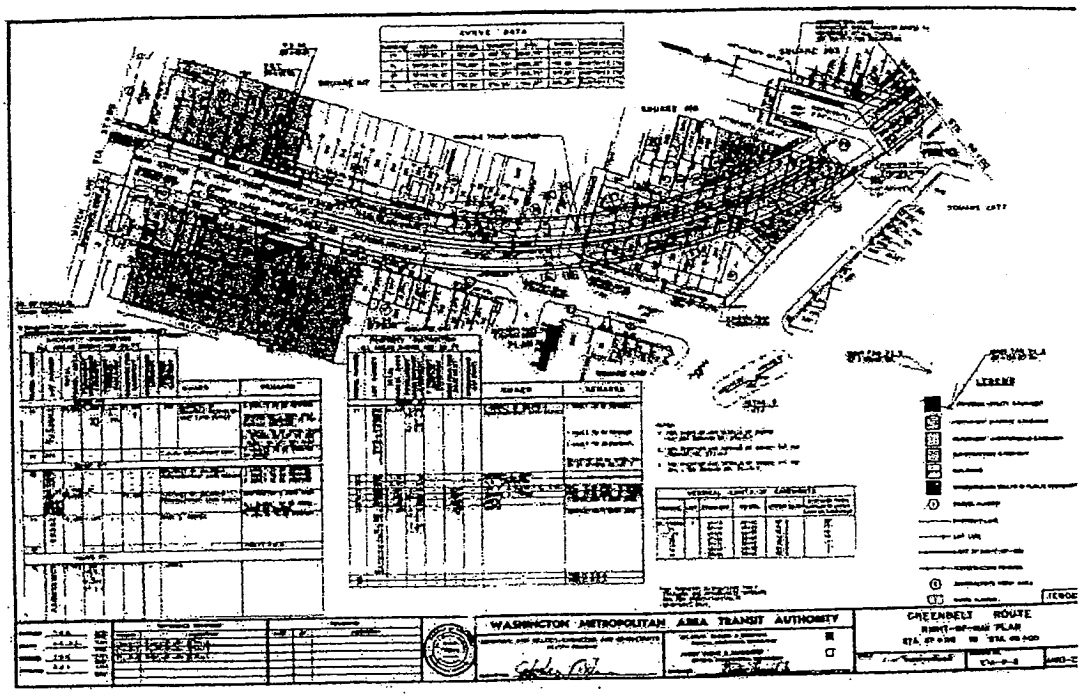
NOTE 2. For unit types larger than listed above contact the Agency.

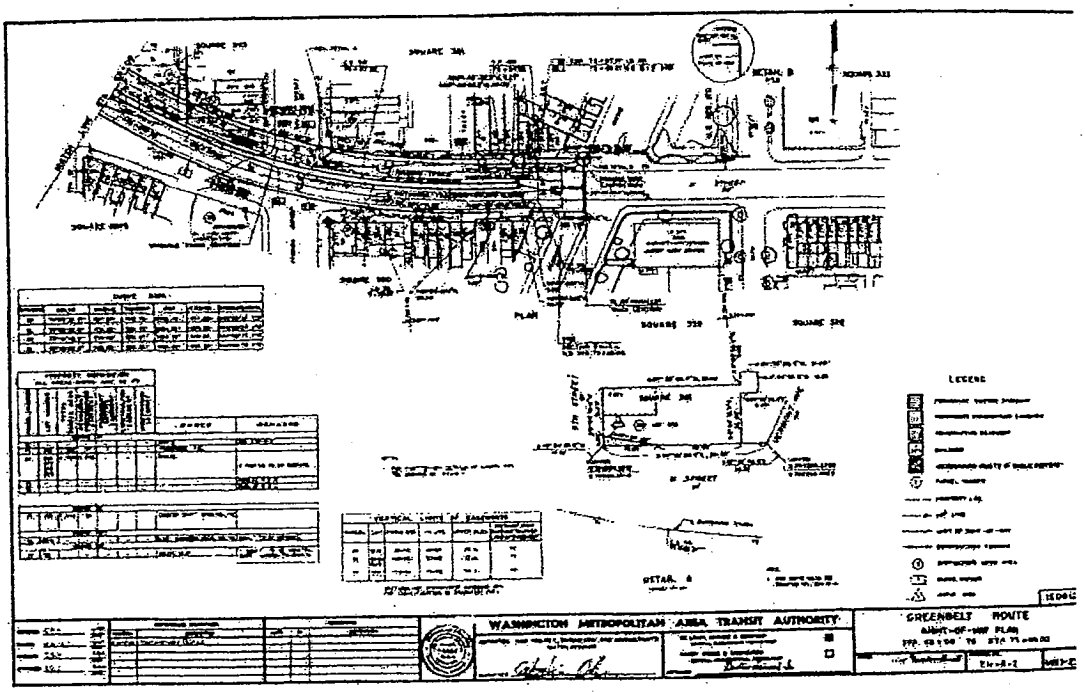
NOTE 3. NC — Not calculated. Contact the Agency.

NOTE 4. More information on Inclusionary Zoning is available at www.dhcd.dc.gov.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015233

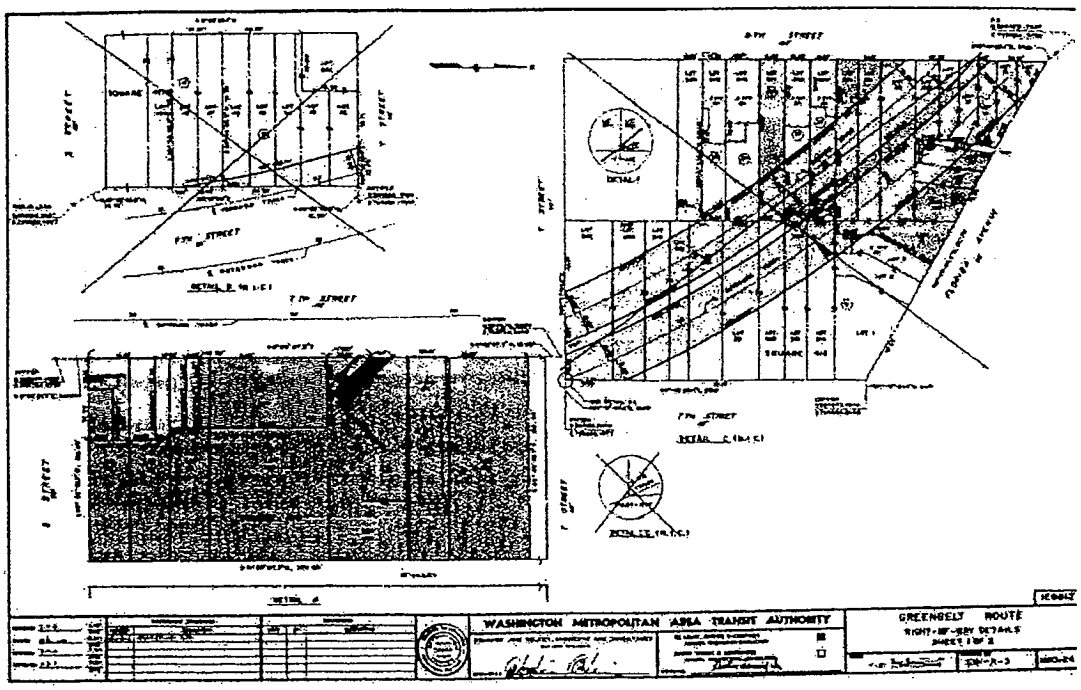
Reduced Copies of WMATA Section and Right-of-Way drawings

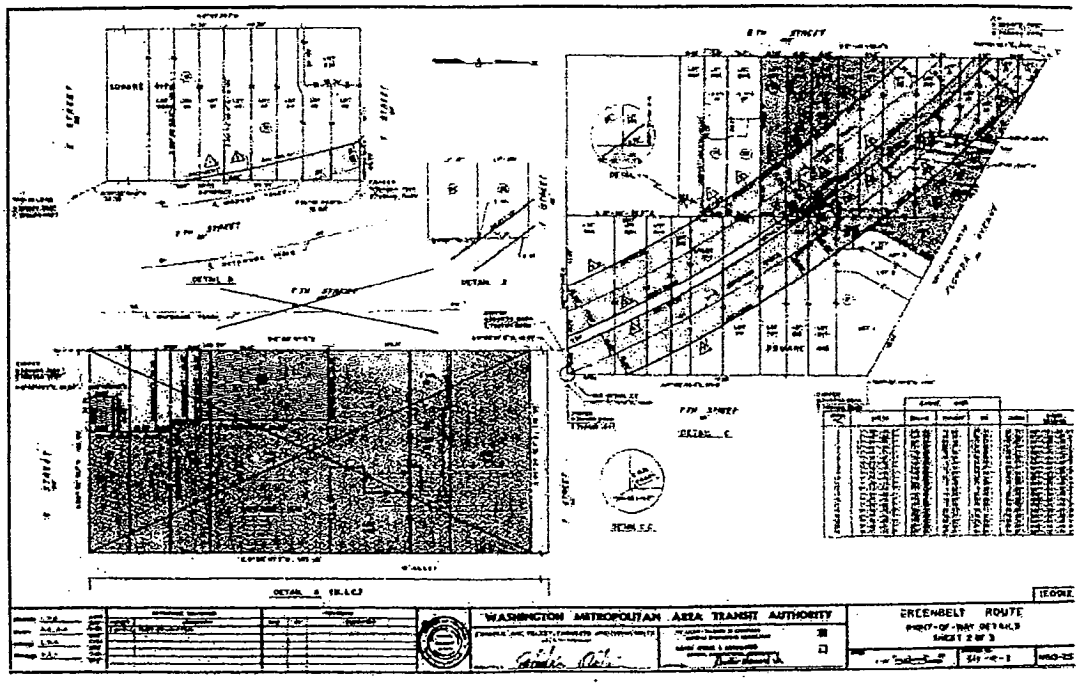




FOIA CONFIDENTIAL TREATMENT REQUESTED

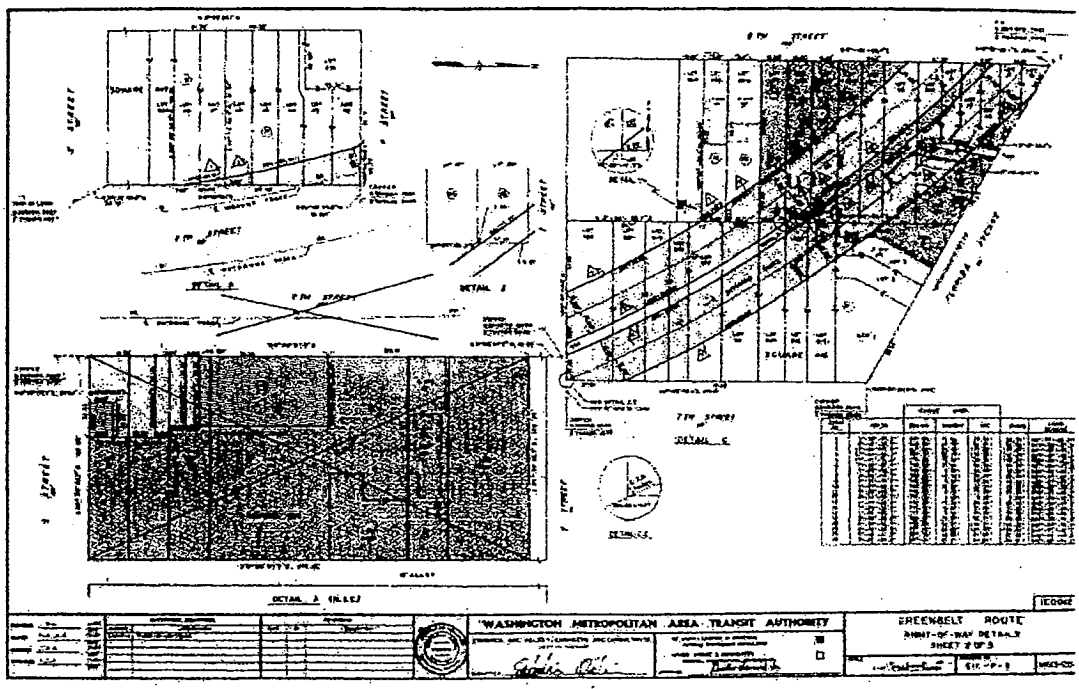
WMATA-INV 015234

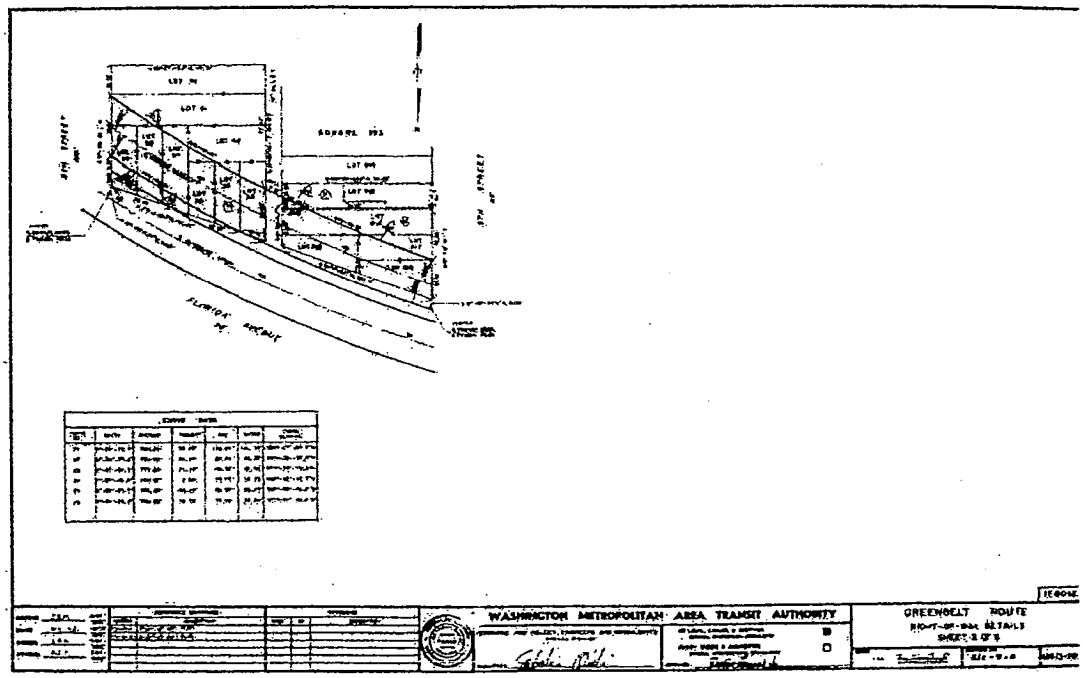




FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015235



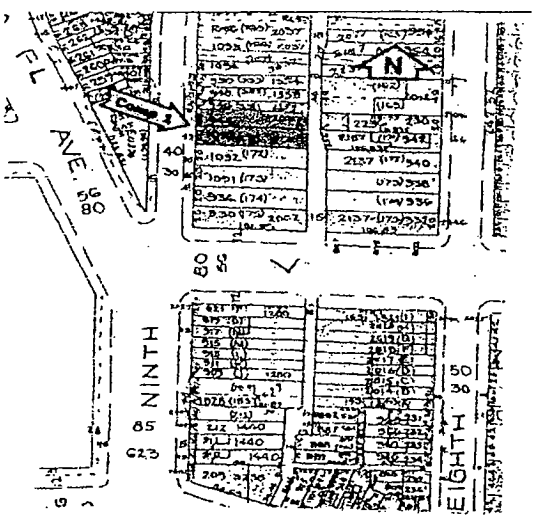


FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015236

Sale No.	1
Address	2047 9th Street, NW
Square/Lot	2875/1106
Area of Site	4,073 sq. ft.
GBA	1,940 sq. ft.
Zone	CR
FAR	6.0
Deed Dated	11/02/2006
Grantor	Ketel, LLC (Edward Needle, Manager)
Grantee	It's Mine Now, LLC (Clinton Stack)
Price	$2,500,000
Trust(s)	None recorded at time of sale
Date Recorded/Instr #	11/02/2006-#2006149549
Transfer Tax	$36,249.99
Price/sf Land	$613.80
Price/FAR	$102.30

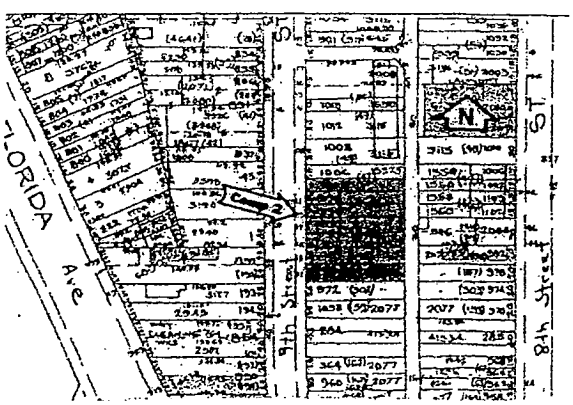
Remarks: The property was previously part of a PUD for Broadway Development. The site was dropped from the PUD and sold to the adjacent property owner. It was bought for a possible future expansion of the adjacent property, the 9:30 Club. As of September 2007, the property is being used for parking and storage. The sale was verified with the purchaser's representative, Norm Veenster, of N12 Development on September 11, 2007 and with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015237

Sale No.	2
Address	2143 9th Street, NW
Square/Lot	2875/976, 1108, 2011
Area of Site	11,942 sq. ft.
GBA	Miscellaneous Industrial
Zone	CR
FAR	6.0
Deed Dated	August 31, 2007
Grantor	Warfield and Sanford, Inc.
Grantee	Howard University
Price	$3,300,000
Trust(s)	N/A
Date Recorded/Instr #	September 6, 2007
Transfer Tax	$47,849.89
Price/sf Land	$276.34
Price/FAR	$46.06

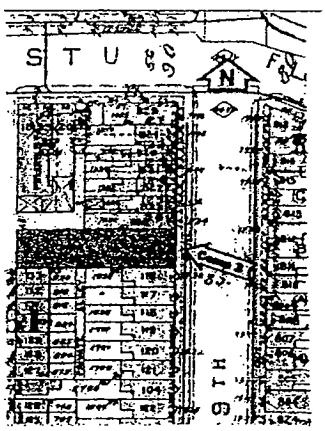
Remarks: This is an interior site purchased by Howard University as part of an ongoing assembly of land in the neighborhood. It appears that Howard owns land on both sides of this site. The property was under contract for $4,400,000 to a residential developer in the summer of 2006. The developer reportedly backed out of the deal due to the downturn in the residential market. The sale price in September 2007 indicates a drop in price of 25% from the summer 2006 contract price. Information verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection and with broker Ed Wolynec of the W. C. Smith Companies.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015238

Sale No.	3
Address	1932 9th Street, NW
Square/Lot	361/134
Area of Site	5,436 sq. ft.
GBA	Vacant land
Zone	C-2-B/Arts
FAR	4.5 Maximum with bonus
	3.68 proposed
Deed Dated	January 31, 2008
Grantor	JC Property Development, LLC (John E. Carter, Managing Member)
Grantee	PT2SO Investments, LLC
Price	$1,400,000
Trust(s)	N/A
Date Recorded/Instr #	February 7, 2008 #2008014342
Transfer Tax	$20,299.99
Price/sf Land	$257.54
Price/FAR	$57.23 (4.5 FAR Max with bonus)
	$69.98 (3.68 FAR proposed)

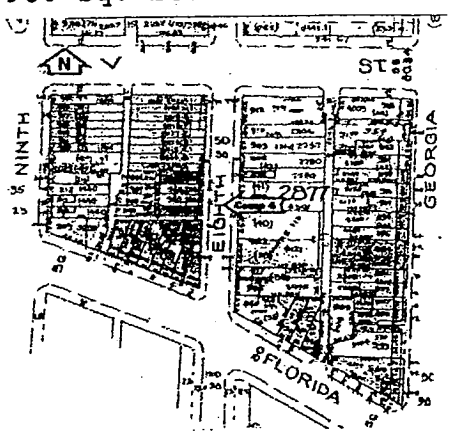
Remarks: This is a small interior site located south of Florida Avenue. The purchaser reportedly had planned to build a 20,000 sq. ft. five story mixed-use building on the site. As of August 2009 the site is still unimproved. This interior site is currently used as a pay parking lot. It has 36 feet of frontage on 9th Street and a depth of 158 feet to rear alley. The sale was verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015240

Sale No.	4
Address	2004-2008 and 2014 8th Street, NW
Square/Lot	2875/231,234,235, and 236
Area of Site	3,537 sq. ft.
GBA	Miscellaneous
Zone	C-2-B/Arts
FAR	4.5
Deed Dated	August 22, 2008
Grantor	CB 8th Street, LLC
Grantee	It's My Real Estate, LLC
Price	$800,000
Trust(s)	N/A
Date Recorded/Instr #	August 28, 2008 #2008091875+
Transfer Tax	$11,600.00
Price/sf Land	$226.18
Price/FAR	$50.26

Remarks: This is the sale of four old row houses in poor condition. The properties were purchased in four separate transactions for redevelopment into multifamily uses. The sites are not contiguous and are separated by an alley and two other row houses. Plans call for renovating two of the row houses and assembling the remaining sites with more sites to make a larger assembly. Each lot has approximately 15 feet of frontage on 8th Street and lot sizes vary from 804 to 960 sq. ft. The sale was verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection, purchaser Norm Veenstra and with Christian of Marcus and Millichap.



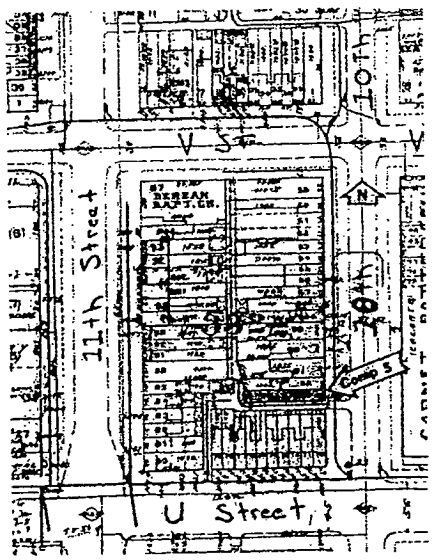
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015241

Sale No.	5
Address	2006 10th Street, NW
Square/Lot	332/69
Area of Site	1,142 sq. ft.
GBA	N/A
Zone	C-2-B/Arts
FAR Matter of Right	3.5 Max matter of right
FAR with Bonus	4.5 Max with bonus
Deed Dated	September 19, 2008
Grantor	Joseph Junior Gilliam
Grantee	Loris Williams
Price	$220,000
Price/sf Land	$192.64
$/FAR	$55.04 (Matter of right)
$/FAR w/Bonus:	$42.81 (w/bonus to 4.5 FAR)

Remarks: This is a long narrow lot located on 10th Street and a side alley one-half block north of U Street Northwest. The U Street Metro Station is located one block south at Vermont and U Streets, NW. The new owner plans to construct a residential building on the lot. The property is currently on the market for $350,000. The broker reported no interest in the property at that price.

Information verified with MRIS, Online DC Assessment data, court records, exterior inspection and with sales broker Warren Kluth of Long and Foster.



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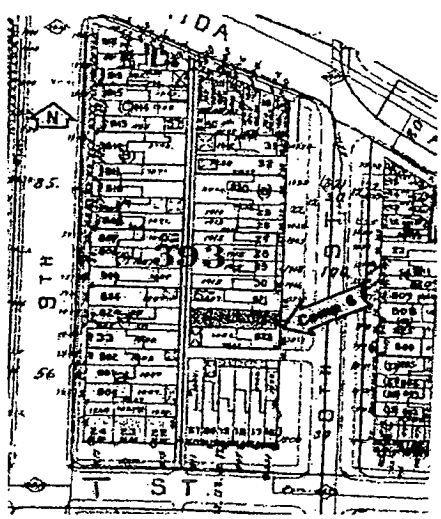
WMATA-INV 015242

Sale No.	6
Address	1912 8th Street, NW
Square/Lot	393/822
Area of Site	1,887 sq. ft.
GBA	N/A
Zone	C-2-B/Arts
FAR Matter of Right	3.5 Max matter of right
FAR with Bonus	4.5 Max with bonus
Deed Dated	Under Contract August 2009
Grantor	Luxor Properties
Grantee	N/A
Price	$385,000 (Asking)
Asking Price/sf Land	$204.03
$/FAR	$58.29 (Matter of right)
$/FAR w/Bonus:	$45.34 (w/bonus to 4.5 FAR)

Remarks: This is an interior site located a half block south of Florida Avenue, NW. The site is 20 feet wide by 94 feet deep to a rear alley. The site is the same size as the adjacent site to the south on which a 5-unit condominium was recently built. The property has been on the market for over 6 months. It reportedly is due to close around August 21st, 2009.

Information verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, exterior inspection and with sales broker Gerard DiRuggiero of the Urban land Company, LLC.

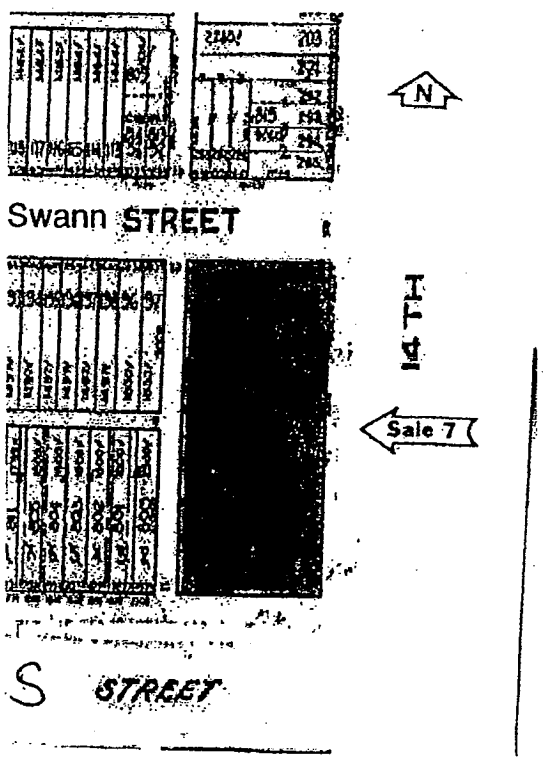


FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015243

Sale No.	7
Address	1407 S Street, NW (14th and S Streets, NW)
Square/Lot	206/1,210,230,819, and 820
Area of Site	20,418 sq. ft.
Zone	C-3-A/Arts
FAR Matter of Right	3.5 Max matter of right
FAR with Bonus	4.99 (BZA Case No. 17850)
Deed Dated	June 10, 2008
Grantor	Whitman-Walker Clinic, Inc.
Grantee	JBG/14th and S, LLC
Price	$8,000,000
Price/sf Land	$391.81
$/FAR:	$78.52 (4.99)

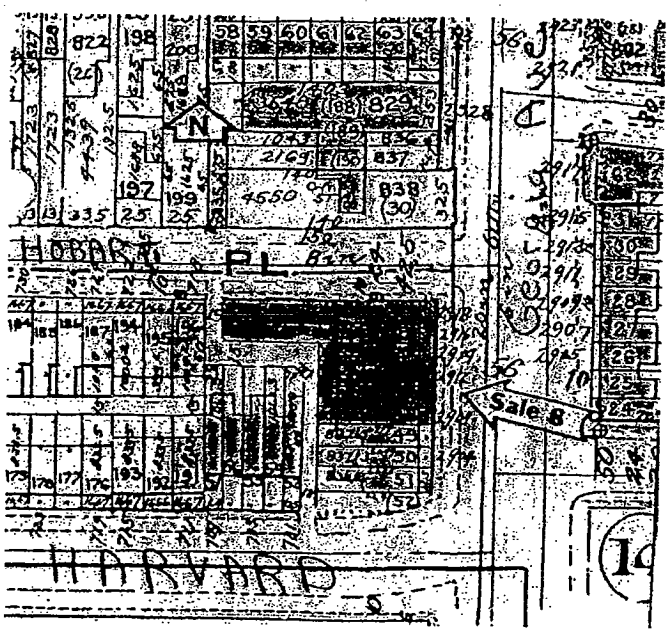
Remarks: The JBG companies purchased the Whitman Walker Building for redevelopment with a 7 story, 119,825 sq. ft. residential building. The historic building at the corner of 14th and S will be retained and incorporated into the overall development that will include 120-130 units. The 4.99 FAR development is based on a total development site of 24,000 sq. ft. including Lot 821 at 1818 14th Street. JBG has an option to purchase this lot from the current owner. Whitman-Walker clinic has an option to continue to use the property while plans for the new development are finalized. JBG applied for the proposed development with the D.C. Board of Zoning and Adjustment in July 2008 and it was approved in February 2009.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015244

Sale No.	8
Address	2908-2914 Georgia Avenue, NW
Square/Lot	2888/45-48, 67 and 68
Area of Site	6,475 sq. ft.
Zone	C-2-A
FAR	2.5
Deed Dated	Under contract September 2009
Grantor	Howard University
Grantee	
Price	$630,000
Price/sf Land	$391.81
$/FAR:	$38.92

Remarks: Corner site located north of the Howard University campus that was previously on the market for $1,170,000 in May 2009. According to the listing broker Troudy Vaughan the site is under contract for a price lower than the current asking price.



sq393/44+45,sq416/31

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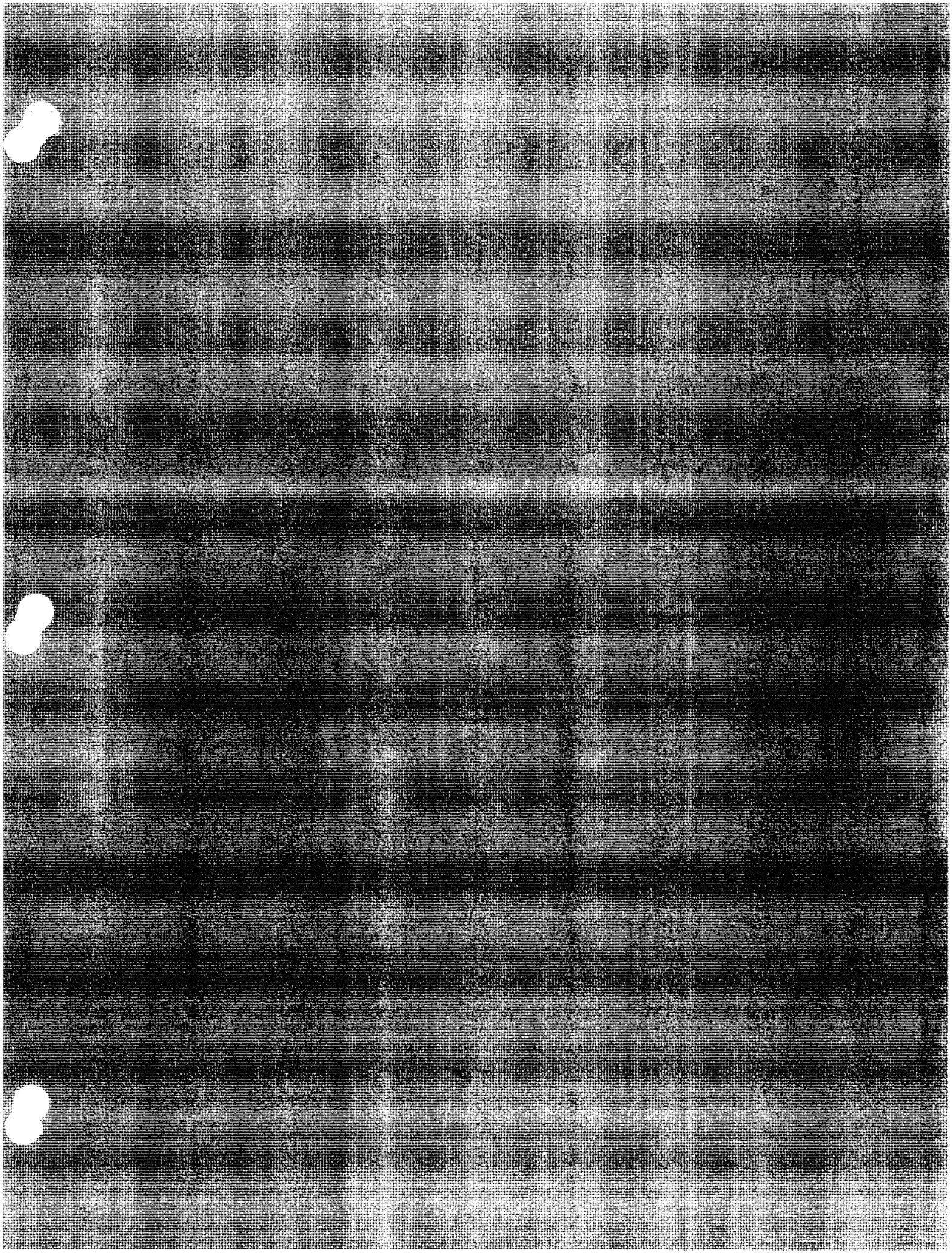

APPRAISAL OF LOTS 44 AND 45 IN SQUARE 393 AND LOT 31/18 IN SQUARE 416 NORTHWEST, WASHINGTON, DC AS OF AUGUST 31, 2009 FOR WASHINGTON METRORAIL AREA TRANSIT AUTHORITY

98,337

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015247

Harps & Harps, Inc.
1111 14th Street, NW, Suite 600
Washington, DC 20005-5603
Tel. 202-682-2194 Fax 202-682-1579

September 17, 2009

Mr. Mark K. Meister
Office of Station Area Planning
And Asset Management
Washington Metrorail Area
Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Re: Lots 44 and 45 in Square 393 and Lot 31/18 in Square in 416, vacant lots on Florida Avenue between 7th and 9th Streets, Northwest, Washington, District of Columbia.

Dear Mr. Meister:

Pursuant to your request, we have arrived at an opinion of the fair market value of the parcels set forth above subject to the WMATA easements and an opinion of the annual rent for a long-term ground lease. The intended user of the report is the client, the Washington Metrorail Area Transit Authority (WMATA). The intended use of the report is to assist the client in determining a course of action regarding the possible sale or lease of the property. The effective date of this analysis is August 31, 2009.

The properties, located on the south side of Florida Avenue between 7th and 9th Streets, NW, are vacant lots situated above a WMATA tunnel. Given the prior uses to which subject and the adjacent sites have been put to over the years, including gas stations, restaurants, industrial and parking, there may be environmental contaminants impacting the property. This appraisal assumes that the site and improvements are clean of environmental contamination. This limitation, which could have an impact on the value conclusion set forth herein, should be considered by the client in evaluating the conclusions set forth.

As a result of the analysis, we are of the opinion that the market value of the property, as of August 31, 2009, is as set forth on the Summary of Conclusions located on pages 5 and 6 of the attached summary report, of which this letter is an integral part. The analysis and reasoning leading to the conclusions, along with the assumptions and conditions on the conclusions, which may be material, are set forth within the attached summary report, containing 58 pages.

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We trust this information is of assistance to you. If you have any questions or comments, please contact us. Thank you for this opportunity to be of service.

Very truly yours,

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

Attachment

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015249

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SUMMARY OF CONCLUSIONS

Subject Properties	Three unimproved lots located on the south side of Florida Avenue between 7th and 9th Streets, NW, Washington, DC
Legal Description	Lots 44 and 45 in Square 393, and Lot 31/18 in Square 416, District of Columbia
Client	Washington Metropolitan Area Transit Authority
Date of Valuation	August 31, 2009
Date of Inspection	July 30, 2009
Date of Report	September 17, 2009
Property Rights	Fee Simple Interest subject to easements and restrictions to be retained by WMATA
Site Areas	Square 393 Lot 44 - 3,799 Sq. Ft. Square 393 Lot 45 – 8,621 Sq. Ft. Square 416 Lot 31/18 – 16,472 Sq. Ft.
Zoning	Arts/C-2-B
Improvement Description:	None, Vacant lots
Highest and Best Use	Assemble with adjacent land and develop a mixed-used complex.
Extraordinary Assumptions	One - Losses in value from the Inclusionary Zoning greater than the lost land value will be offset by city or federal subsidies. Two – Extraordinary hard costs associated with building over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA

- Land Only one component, building units is other component

As a result of our analysis, we have reached the following opinions, all as of August 31, 2009, the effective date of this appraisal, an all subject to the WMATA tunnel and easements and considering the impact of the Inclusionary Zoning.

Market Value of Land Subject to WMATA Easements and Tunnel and Inclusionary Zoning - $4,000,000.

Long Term Land Lease Option 1: Market lease terms – 60 year fixed term, no purchase option, 7% coupon rate applied to initial land value, 2% annual escalation in rate, land

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015251

revaluation every 10 years with reset of base rent to 7% of revalued land – Initial Rent $280,000, with reduced rent during development approval phase of project.

Long Term Land Lease Option 2: Initial Lump sum payment, no fixed annual payments, no annual escalations or revaluations, 1% participation in gross revenue, 2% participation in net proceeds from sale and refinancing – Initial Lump sum payment $3,134,654.

Long Term Land Lease Option 3: Flat annual payment for full 60 year term, no annual escalations or revaluations, 1% participation in gross revenue, 2% participation in net proceeds from sale and refinancing – Flat Annual Rental $329,964

These opinions are is subject to all general and specific assumptions and conditions contained within the report, including an environmental assumption. Please note that the conclusions reached were based on the information as set forth herein, and are specifically and generally limited by the assumptions and conditions set forth within the report and subject to the certification attached hereto. Additional analyses, in the event that additional or new information is made available, are outside the scope of this assignment, and supplementary arrangements would be necessary before additional analyses could be undertaken. The assumptions and conditions set forth throughout the report are an integral part of this analysis and have a bearing on the conclusions reached herein.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015252

ASSUMPTIONS AND LIMITING CONDITIONS

This analysis, the function of which is to assist the client in determining a course of action regarding the possible sale or lease of the property, has been made with the following general and specific assumptions:

Two extraordinary assumptions were utilized in this analysis. One - any loss in value from the Inclusionary Zoning greater than the lost land value will be offset by city or federal subsidies. Two – the extraordinary hard costs associated with building over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA

This analysis is not to be used in connection with a Real Estate Syndicate(s) or Securities related activity. Real Estate Syndicate means a general or limited partnership, joint venture, unincorporated association or similar organization formed for the purpose of, and engaged in, investment or gain from an interest in real property, including but not limited to a sale, exchange, trade or development of such real property on behalf of others and which is required to be registered with the United States Securities and Exchange Commission or any state regulatory agency which regulates investments made as a public offering. Securities related activity means but is not limited to transactions involving Real Estate Investment Trusts, Limited Partnerships, Mortgage Backed Securities and any other transaction which is subject to the Securities Exchange Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Advisors act of 1940, or state Blue Sky or securities laws or any amendments thereto.

1. This analysis assumes that there are no unusual soil or property characteristics, including any environmental implications, not set forth herein, which would adversely impact the ability of an owner to utilize the site or property for any legally permitted use.

2. Except as set forth herein, the analysts have not been informed of, nor has any knowledge of, the existence of any environmental or health impediment, which if known, could have a negative impact on the market value of the property or could subject the property or its past, present or future owners or agents or other parties to the requirements of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), and the subsequent Superfund Amendments Reauthorization Act (SARA). It is assumed that there has been no contamination of the soil from any existing or former oil tank or any other tank or equipment utilized in the operation of the buildings or any use of the building. This appraisal assumes that the property has met, or will be able to meet, all requirements of laws pertaining to environmental considerations, as they may pertain to the subject. It is also assumed that the property will comply with all provisions of Maryland and Federal laws and regulations regarding underground and above grade storage tanks as they pertain to subject

It is recommended that, prior to any transfer of title or other interest in the property, all appropriate studies, including but not limited to environmental studies, be performed, that all problems and/or conditions that are subsequently uncovered be corrected,

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015253

mitigated, or otherwise reduced in liability, prior to any transfer, and that the parties seek appropriate professional and legal counsel regarding environmental and other issues.

3. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable.

No opinion is intended to be expressed for matters that require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.

4. The property is analyzed free and clear of any and all liens or encumbrances unless otherwise stated. Responsible ownership and competent property management are assumed.

5. This analysis assumes that all real estate taxes, personal property taxes, or other taxes owed to any governmental or other body are current. This analysis has not looked at, nor reviewed, any transfers of any partnership interests in the property and this report assumes no adverse effect on values due to the nature of property ownership.

6. The analysis assumes that current insurance policies are adequate to protect all parties with an interest in the property.

7. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy. It is assumed that all information known to the client and relative to the valuation has been accurately furnished and that there is no undisclosed information or documents affecting the use of the property or the valuation herein.

8. All engineering information is assumed to be correct. Maps, plats and exhibits included in the report are for illustration only as an aid in visualizing matters discussed within the report. Area of sites herein were taken from City records. Maps, right-of-way drawings and other information supplied by the client was relied upon in the analysis. Exhibits should not be considered as surveys, or relied upon for any other purpose, nor should they be removed from, reproduced, or used apart from this report.

9. According to the November 15, 1985 National Flood Insurance Maps, subject lies within Zone C, which is an area of minimal flooding. This map is for flood insurance purposes only; it does not necessarily show all areas subject to flooding in the community or all planimetric features outside the special flood hazard areas.

10. It is assumed that all required licenses, certificates of occupancy, certificates of need, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based, including all necessary zoning approvals for any building.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015254

11. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings, if any, must not be used in conjunction with any other analysis and are invalid if so used.

12. The liability of Harps & Harps, Inc. is limited to the client only, not subsequent parties or users, and to the amount of the fee actually received by the appraisers. Further, there is no accountability, obligation or liability to any other party. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the report and the assignment. The appraisers are in no way to be responsible for any costs incurred to discover or correct any deficiencies of any type present in the property, physically, financially and/or legally. In the event the report is placed in the hands of a third party, it is required that such party be made cognizant of any and all limiting conditions resulting from the basis of appraiser's employment and discussions related thereto as well as those set forth in the report. Acceptance of and/or use of this analysis report by the client or any third party constitutes acceptance of the above conditions.

13. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the analysts, and in any event only with proper written qualification and only in its entirety.

14. The analysts herein by reason of this analysis are not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.

15. Neither all nor any part of the contents of this report (especially any conclusion as to value, the identity of the analyst, or the firm with which the analyst is connected) shall be disseminated to the public through advertising, public relations, news, sales or other media without the prior written consent and approval of the analysts.

16. The appraisers reserve the right, subject to agreement for time and fee, to make such adjustments to the analyses, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.

17. The value reported in dollars is on the basis of the currency prevailing as of the effective date of the analysis. The values estimated in this analysis are based on economic, physical and tax conditions existing as of the effective date of analysis.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015255

PART I – PURPOSE OF APPRAISAL AND GENERAL DATA

Appraisal of Lots 44 and 45 in Square 363, and Lot 31/18 in Square 416, vacant lots situated on the south side of Florida Avenue between 7th and 9th Streets, Northwest, Washington, District of Columbia.

Purpose of the Appraisal

The purpose of the appraisal is to estimate the fair market value and the fair annual rent for a long-term ground lease, subject to assumptions and conditions specified. The date of value is August 31, 2009. The function of the appraisal is to assist the client in determining a course of action involving a possible sale or lease of the property. The analysis is being presented in a summary report.

For the purposes of this analysis, market value is defined as "The most probable price as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently and knowledgeably, and assuming that neither is under duress. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) Buyer and seller are typically motivated; (2) Both parties are well informed or well advised and acting in what they consider their own best interests; (3) A reasonable time is allowed for exposure in the open market; (4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."[1] In this case the value opinion is limited by an environmental assumption that the property is not impacted by contaminants that would materially affect the ability to develop the site or materially impact demolition and/or excavation costs.

Date of Appraisal and Report

The effective date of this appraisal is August 31, 2009. The exterior of the property was inspected on July 30, 2009. The analysis was performed between July and September 2009. The date of the report is September 17, 2009.

[1] Dictionary of Real Estate Appraisal, 4th Edition, The Appraisal Institute, Chicago, Illinois, 2002, pg. xxx.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015256

Client, Intended use and Intended users

The client in this appraisal is WMATA, the owner of the property. The intended user of the report is the client. The intended use of the report is to assist the client in determining a course of action regarding the possible sale or lease of the property.

Property Rights Appraised

The property rights appraised consist of fee simple interest subject to existing WMATA easements and restrictions relating to the Metrorail tunnels and underground easements affecting the sites and an estimate of the market rent for a leasehold estate to be created. Applicable definitions are:

> Fee Simple Estate: "Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat."[2]
>
> Easement: "An interest in real property that conveys use, but not ownership, of a portion of an owner's property."[3]
>
> Leasehold: "The interest held by the lessee (the tenant or renter) through a lease transferring the rights of use and occupancy for a stated term under certain conditions."[4]

The WMATA easements are permanent underground easements for the construction, support and operation of a regional rapid rail transit system, and restrict the mass and density of any structure that may be constructed above the easement and within its zone of influence. The purpose of this analysis is to estimate the market value of the property interests free and clear of all trusts, but subject to these easements. The effect, if any, which any existing trust might have on the potential "price" of the property is not considered pertinent to the estimate of market value of the property, and all existing trusts are being disregarded.

In addition to an estimate of the land value subject to the WMATA tunnel and easements and the effects of the Inclusionary Zoning, WMATA has asked for an opinion of the Land Rent payments under three different scenarios – all with a 60 year fixed term. One – typical market long term land rent; Two – Lump sum initial payment representing the present value of the typical land rent

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[2] Dictionary of Real Estate Appraisal, 4th Edition, The Appraisal Institute, Chicago, Illinois, 2002, pg. 113.

[3] ibid, pg. 90

[4] ibid, pg. 162

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payments with a 1% participation in the gross revenue on the project and a 2% participation in the net proceeds from any sale or refinancing over the term of the lease by the leasehold estate; and Three – flat annual payments over the term of the lease (no annual escalations or revaluations) with a 1% participation in the gross revenue on the project and a 2% participation in the net proceeds from any sale or refinancing over the term of the lease by the leasehold estate.

No title report was furnished the appraisers, and it is assumed that, except for the WMATA easements as set forth herein, there are no adverse easements or encumbrances that affect the property. It is assumed for the purposes of this analysis that, except for the aforementioned WMATA easements, any other easements, rights-of-way, encroachments, projections, occupancies, etc., which exist or may be found to exist in a current or future title search of the property would have no detrimental effect on the ability of an owner to utilize the property for its highest and best use, including but not limited to assembly, development, sale, use and occupancy, or any other use.

Extent of Data Collecting, Confirming, and Reporting

The first step in the analysis was to inspect the subject property. Next, an investigation of pertinent market data was undertaken. Market surveys of comparable data were undertaken. Sales of similar properties were researched using published sources, such as Comps Inc., CoStar, MRIS and First American CoreLogic and court records. Discussions with agents, and other individuals familiar with this market and the subject property were held. The data compiled was analyzed, and the data considered susceptible of comparison was verified, where possible, by the grantees, grantors, or brokers, as well as through recorded information at the D.C. Recorder of Deeds office and other sources as specified in the report. The data was used to arrive at the estimated value of the fee simple interest of the property. Excluded from the scope are issues that are outside the scope of these appraisers' expertise, such as, but not limited to, environmental considerations and other considerations set forth in the report.

Extraordinary Assumption

This analysis utilizes two extraordinary assumptions that have a direct impact on the conclusions set forth herein. One – that any loss in value from the Inclusionary Zoning greater than the lost land value will be offset by city or federal subsidies. Two – that the extraordinary hard costs associated with building

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015258

over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA.

Personalty, Equipment and Fixtures

The sites are vacant and there are no personalty, equipment or fixtures onsite.

History of the Property

WMATA acquired the sites over 25 years ago. There have reportedly been no recent arms length sales transactions since the purchases and the properties are not on the market as of the date of valuation. In 2007 WMATA received an unsolicited bid for the sites. WMATA did not accept the bid but sent out an RFP for the sites to obtain competitive bids. In 2008 WMATA selected a bid from Banneker Ventures, LLC to develop the sites. Banneker proposed to build 104 apartments and 11,750 square feet of ground-floor retail and arts space under a 60-year ground lease. Banneker is currently in the process of renegotiating the agreement with WMATA.

Not true.

Real Estate Assessment and Taxes

Real estate taxes in the District of Columbia are paid on a Tax Year basis (October 1 through September 30), and are based on an assessment of 100% of market value as determined by the Assessor. The recent assessment history is as set forth below:

Real Estate Assessment

Square 393 Lot 44	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$1,052,590	$1,052,590	$1,052,590
Improvements	$0	$0	$0
Total	$1,052,590	$1,052,590	$1,052,590

Square 393 Lot 45	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$2,388,620	$2,388,620	$2,388,620
Improvements	$0	$0	$0
Total	$2,388,620	$2,388,620	$2,388,620

Square 416 Lot 31/18[5]	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$4,563,900	$4,563,900	$4,563,900
Improvements	$0	$0	$0
Total	$4,563,900	$4,563,900	$4,563,900

[5] Lot 31 is an assemblage of sixteen lots owned by WMATA including Lot 18, which contained 516 sq. ft. The DC Assessment still lists Lot 18 as an existing lot. Per instructions from WMATA, the total area of this parcel is set at 16,472 sq. ft. The assessment set forth above is the sum of the assessment for Lots 18 and 31 as shown on the published information.

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Looking east along the 700 and 800 blocks of Florida Avenue. Subject sites are on the right. 7/30/09

Looking south along the 1900 block of 9th Street, NW Subject on Left. 7/30/09

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015260

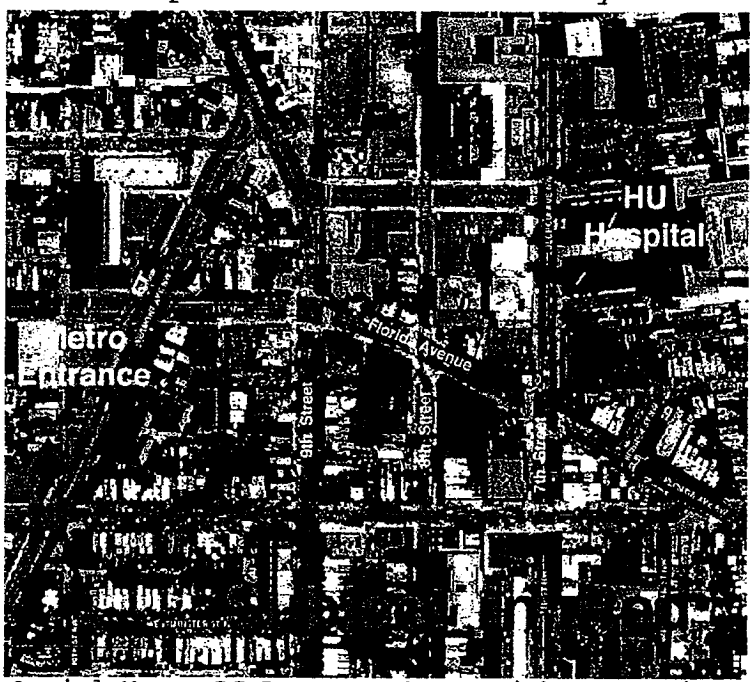
PART II – FACTUAL DATA

Legal Description

The properties are situated on three lots in two squares; Lots 44 and 45 in Square 363 and Lot 31/18 in Square 416. The sites are located on the south side of Florida Avenue between 7th and 9th Streets, NW.

Neighborhood Description

The subject sites are located in the Howard University and Shaw/U Street submarket of Northwest, DC, with the LeDroit Park neighborhood to the east and 14th Street/U Street corridor to west. The area just to the north of Florida Avenue had historically been a light industrial, storage and warehouse area, located along Georgia Avenue and Sherman Avenue, extending from Florida to the south up to Euclid Street on the north. Northeast of subject the main campus of Howard University has been the predominant landowner for over 140 years. West and north of the area, uses are typically moderate density residential (row houses, flats and apartments) with strip commercial uses along Georgia Avenue, Florida and U Streets. South of subject, the expansion eastward of the Shaw redevelopment trend continues with new and renovated residential units predominating. New and renovated commercial uses are principally located along U Street.



Aerial Map – DC Property Quest with Annotations

Subject's immediate blocks consist of the three story office building of the DC Housing Finance Agency at the northeast corner of 9th and Florida Avenue, a vacant two story boarded up commercial building at the northwest corner of 9th and Florida, small commercial row buildings along the east and west sides of 9th Street south of Florida Avenue. The north side of Florida between 7th and 9th Streets has a mixture of one, two and three story commercial structures occupied by carryout restaurants, offices and retail users. A CVS store is located

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015261

at the southwest corner of 7th and Florida Avenue. Eighth Street, south of Florida Avenue is improved with a Zipcar rental car parking lot, a new six-unit condominium, a small vacant lot for sale and several small residential row buildings. Eighth Street north of Florida Avenue is improved with a carryout restaurant, a nightclub, residential flats and parking lots. The condition of the buildings in subject's neighborhood ranges from boarded-up and vacant, to renovated and good. The commercial building at the northeast corner of 7th and Florida was recently remodeled and is currently for lease with the Douglas Development Company.

Access to the area is good. Georgia Avenue affords direct access to Montgomery County north of subject and to Downtown Washington to the south (via 7th Street). U Street and Florida Avenue offer easy east-west vehicular access. Metrobus routes along Georgia Avenue and U Street are available and the Metrorail has station entrances at 10th and U Streets, and 7th and S Street, both less than three blocks from subject.

During the late 1980s and early 1990s, the area was the focal point of a major re-zoning effort on the part of the City, during which most of the industrial zoned land (C-M-1, C-M-2 and C-M-3) in the area was changed to C-2-A, C-2-B, C-3-A and CR, all within an ARTS overlay south and west of subject, that gave bonuses for residential and preferred uses and significantly limited new industrial uses. Subject's immediate area was rezoned to C-2-B/Arts.

Howard University has occupied its campus east of Georgia Avenue for over 140 years, and continues to expand its campus area. The former Wonder Bread bakery structure, located north of subject on the east side of Georgia Avenue at Bryant Street, was converted to office and retail and subsequently acquired by the University in 1993. The University owns approximately 70% of the total private land between Georgia Avenue, V Street, Sherman Avenue and Barry Place. Two large dormitories have been constructed at Barry Place and much of the remainder is planned for residential and retail uses.

The major trend in this market continues to be the expansion and growth of the residential market, with numerous sites being developed with condominiums and apartments, and significant redevelopment and renovation of the retail commercial uses along U Street south of subject. An eight story 118 unit two-tower condominium was completed in 2008 just north of subject at 919 and 929 Florida Avenue. Broadway Management, Inc. has planned for 750 residential units in the immediate area under a planned unit development. The WMATA site at between 7th and 9th Streets on Florida Avenue is proposed for 104 apartment units and 11,750 sq. ft. of retail and arts.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015262

The trend of residential renovations and redevelopment continues, but the pace has slowed considerably in the past two years. As of the date of valuation Broadway Management, Inc. has not broken ground on their three planned developments in the neighborhood. In July 2009, a foreclosure notice was filed on a planned 29-unit condominium development at 11th and V Streets, NW. A number of developers have pulled out of the condominium market while others have converted planned condominium buildings into apartment buildings. An 11,942 sq. ft. site at 2143 9th Street was under contract to a residential developer in the summer of 2006. The developer backed out due to the sluggish residential market and the site sold a year later for 25% less than the former contract price. Sales in the past year at the 162 unit Rhapsody Condominiums just north of subject at 2120 Vermont Avenue indicate a 15% drop in sale prices since 2006. The Floridian Condominium, at 919 and 929 Florida Avenue, has seen slow sales even with deep discounts to attract purchasers. The owners of the building are currently having problems with lenders that have prevented recent buyers from settling on their purchases. The current recession and tight financial market has made it difficult for developers and purchasers to obtain financing, further slowing down development in the area.

Looking east along the 700 and 800 blocks of Florida Avenue. Subject sites are on the right. 7/30/09

Looking south along the 1900 block of 9th Street, NW Subject on Left. 7/30/09

While the condominium and residential markets have seen lower prices and less activity in the past year, subject's location near Howard University, the U Street retail corridor and within walking distance of two Metrorail stations is considered a desirable location for a mixed-use building. New development is planned for sites near subject. A new towncenter development is planned for a large site in the 2200 block of Georgia Avenue to the northeast. These new mixed-use developments will bring additional retail and foot traffic to the neighborhood. Therefore, subject's site is well situated

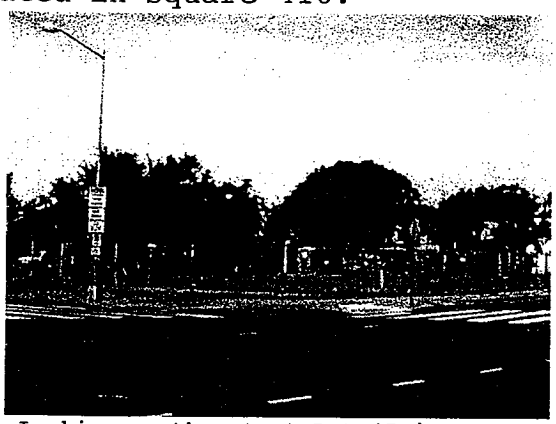
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015263

and would be a desirable location for a mixed-use property once the economy recovers from the current recession.

Site Description

Subject's sites are located on the south side of Florida Avenue between 7th and 9th Streets. Two lots are located in Square 393 and one large lot is located in Square 416.

Lot 45 in Square 393 contains 8,621 sq. ft. of irregularly shaped land with 75 feet of frontage on 8th Street, 100 feet of frontage on Florida Avenue and 108 feet along a 10-foot wide side alley to the west.

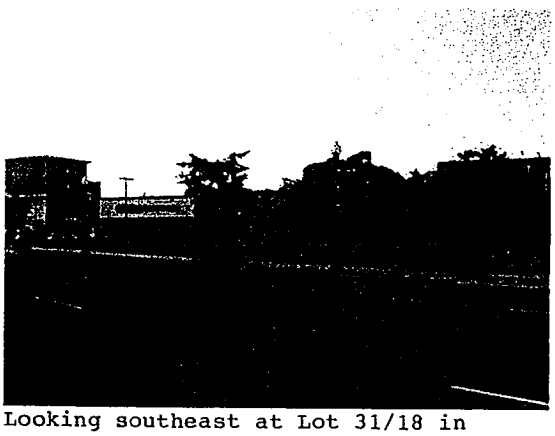


Looking southwest at Lot 45 in Square 393 on the southwest corner of 8th and Florida Avenue, NW. 7/30/09

Looking southeast at Lot 44 in Square 393. 7/30/09

Lot 44 in Square 393 contains 3,799 sq. ft. of irregularly shaped land with 100 feet of frontage on Florida Avenue, 57 feet on 9th Street and 23 feet on a 10-foot wide side alley.

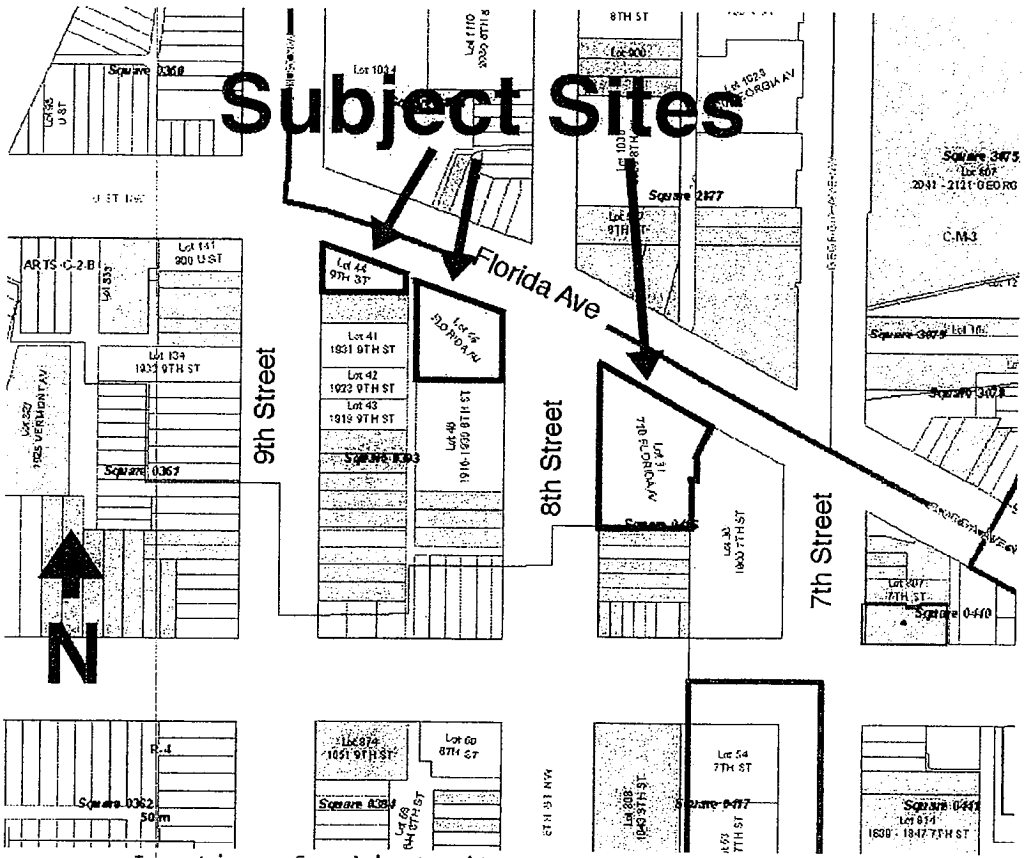
Lot 31/18 in Square 416 contains 16,472 sq. ft. of irregularly shaped land with 114 feet of frontage on Florida Avenue and 177 feet of frontage on 8th Street.



Looking southeast at Lot 31/18 in Square 416, on the southeast corner of 8th and Florida Avenue, NW. CVS in background. 7/30/09

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015264

The sites are level and on grade with street frontages. According to the most recent flood insurance rate map effective November 15, 1985, the subject sites lie within Zone C, an area of minimal flooding. The appraisers were not furnished with any report of soil conditions, and this appraisal assumes that there are no adverse soil or sub-soil conditions that would cause unusual construction problems.



Location of subject sites From DC Property Quest

No environmental information on the site was made available and the appraisers are not experts in environmental matters. The sites have been used as parking lots and used car lots. Whether the construction of the Metrorail tunnel resulted in the removal of any environmental contamination is not known. If the site were to be redeveloped by any prudent developer, the potential for environmental contamination of the soil should be considered. The conclusions set forth herein are predicated upon an environmentally clean property. If information regarding environmental factors is made available, the conclusions set forth herein are subject to change.

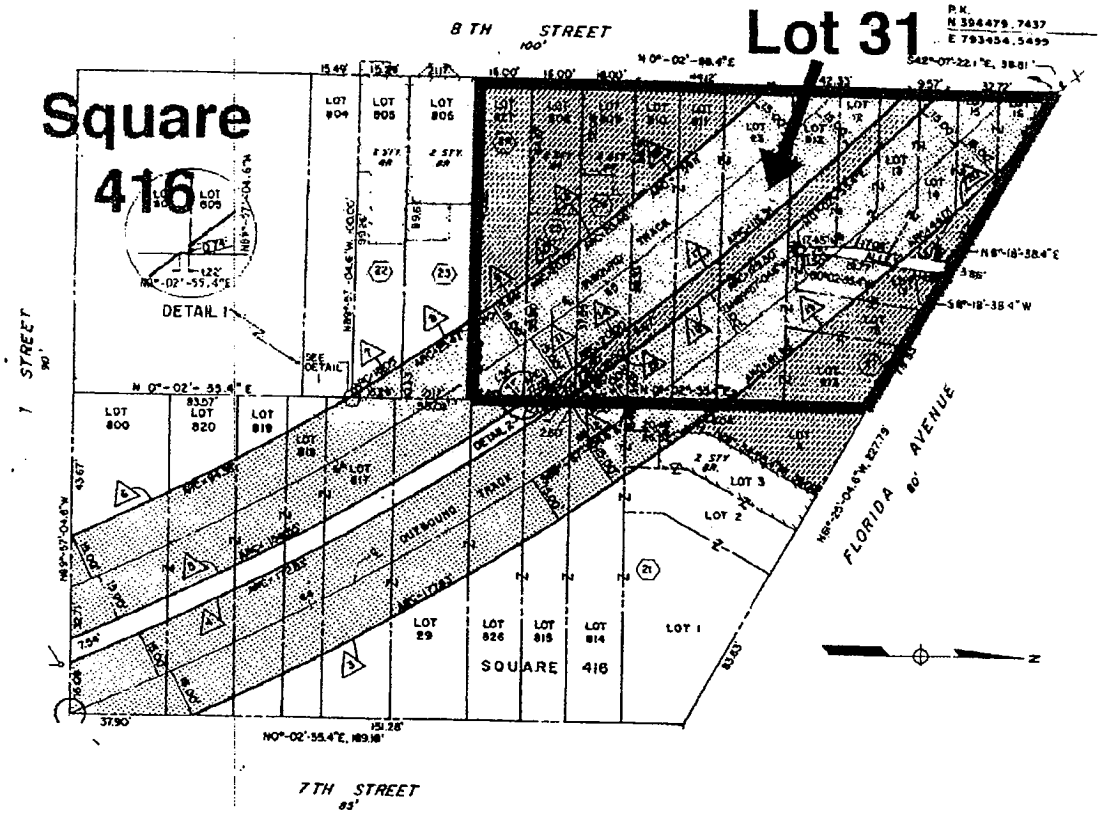
The sites appear to be served with all underground utilities. No title report was furnished to the appraiser, and

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015265

it is assumed that there are no detrimental easements or encumbrances that adversely affect the property.

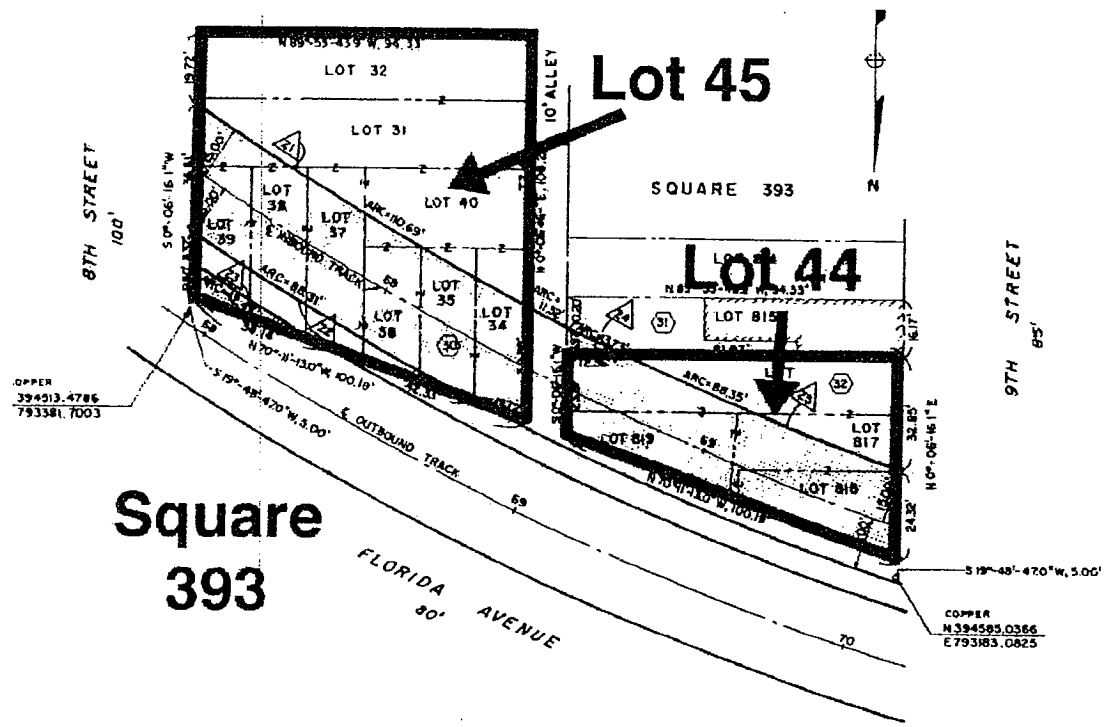
The sites are currently fenced-in along the perimeters. Seventh, Eighth and Ninth Streets and Florida Avenue are fully improved streets with sidewalks, curbs and gutters. All Streets are two-way streets. Street rights-of-way, according to Baist's Atlas for the sites, are 100 feet on 8th Street, 85 feet of 9th Street, 85 feet on 7th and 80 feet on Florida Avenue. There is a 10-foot alley separating Lots 44 and 45 in Square 393.

The principal factor affecting the subject sites is the Metrorail tunnel and easement running along the Florida Avenue frontage (northern portion) of the sites. Copies of sections of the right-of-way drawings, set forth below, show the relation of the underground easements and the sites.



On Lot 31/18 in Square 416, the two underground tunnel easements split the site from north to site.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015266



On Lot 44 in Square 393, the underground tunnel easement occupied the majority of the site and the entire frontage along Florida Avenue on the north. On lot 45 in Square 393, the underground tunnel easement occupies the majority of the northern portion of the site, with a small area between the outbound track easement and the inbound track easement available for footings or supports, subject to WMATA restrictions and on tunnel and easement impact.

The distance from the surface to the upper level of the easements on all the properties appears to range from 18 to 20 feet, allowing, according to information from WMATA, for one level of below grade structure to be placed above the underground easements, again, subject to WMATA restrictions and on tunnel and easement impact.

According to analysis of Mr. Colbert, the proximity of the tunnel and the likely reviews and restrictions on development above the tunnel will impact the maximum density that can be put above the tunnel and will cause an increase in the overall construction cost of the project. Mr. Colbert estimated that the tunnel will reduce the maximum likely density on each of the sites, taken as separate development sites, to from 3.35 FAR to 4.11 FAR, as will be shown in a later section of the report. The impact on the overall costs of the development was estimate at from 20% to 25%, i.e., the total costs of developming the three sites, due to likely special foundation requirements above

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015267

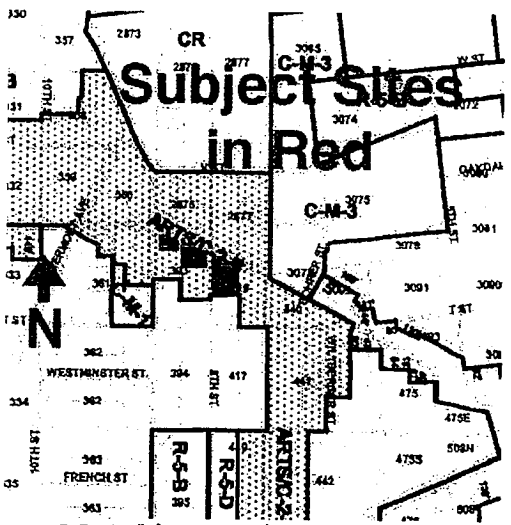
the tunnel, additional reviews, and other differences between normal mid-rise construction and construction over the tunnels.

WMATA's engineers have determined that the additional costs would be in the range of $1,770,000, in total for the project as proposed. This level of additional cost is significantly less than that envisioned by Mr. Colbert, but, is based on the proposed development of the unified sites, rather than three separate developments. Per the instruction of the client, this analysis will utilize the cost figure derived by WMATA engineers, of $1,770,000, for the additional costs of constructing over and complying with, the various WMATA tunnels, easements and requirements. It would not be unreasonable for WMATA to adjust this number to reflect actual additional costs as the project proceeds, or, in the alternative, to negotiate a fixed 'additional costs' with the developer, after further consultation with appropriate cost estimators. As stated, for the purpose of this analysis, WMATA's estimate of $1,770,000 is adopted. This estimate of additional hard costs is adjusted upward by 30% to account for all of the soft costs associated with developing these complicated properties, resulting in a total deduction of

$1,770,000 x 1.3	=	$2,301,000
Rounded to		$2,300,000

Zoning and Land Use Controls

Subject's sites are zoned Arts/C-2-B, a commercial district designed to serve commercial and residential functions similar to the C-2-A District, but with high density residential and mixed uses. The district shall be compact and located on arterial streets, in uptown centers, and at rapid transit stops. The building use may be entirely residential or a mixture of commercial and residential.



DC Online Zoning Map with annotations

The sites are also included in the Uptown Arts Overlay District. The purpose of the Arts Overlay District is to encourage a scale of development, a mixture of building uses and other attributes such as safe and efficient conditions for pedestrians and vehicular movement. Specific requirements of

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015268

the district, set forth in Chapters 7 and 19 of the Zoning Regulations, are summarized as follows:

Summary of Arts/C-2-B Zoning Requirements

Height	65 feet maximum
Floor Area Ratio (FAR)	3.5 - Apartment house or other Residential
	1.5 - other permitted uses.
FAR with Bonus for Preferred Uses	4.5
Percentage of Lot Occupancy	80% maximum for residential uses.
Rear Yard	15 ft. minimum, below 20 foot height may be measured from center line of rear alley, above 20 foot height must be measured from rear lot line.
Side Yards	None required for other than one-family detached and one-family semi-detached dwellings, but if provided 2 inches per foot of height with a 6 foot minimum.
Parking:	
Apartment	1 for each 3 dwelling units
General Office	In excess of 2,000 sf, 1 for each additional 1,800 sf GFA and cellar floor area.
Medical/Dental	Twice the number of spaces required for general office use.
Retail/Service	In excess of 3,000 sf, 1 for each 750 sf GFA and cellar floor area.
Loading-Requirements	
Office	20,000 to 50,000 sq. ft.: 1 berth-30 ft., 1 platform-100 sq. ft., 1 service space at 20 ft.
	>50,000 to 200,000 sq. ft: 2 berth-30 ft., and 2 platform-100 sq. ft., 1 service space at 20 ft.
Residential	50 or more dwelling units: 1 berth-55 ft., and 1 platform-200 sq. ft., 1 service space at 20 ft.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015269

Inclusionary Zoning

Subject's sites are also included in the Inclusionary Zoning regulations of Chapter 26 of the Zoning Regulations. Under Inclusionary Zoning there is a mandatory housing requirement for any new development consisting of 10 or more units. The developer of these sites is required to set aside a certain percentage of units for low and moderate-income households. The developer is given bonus density of 20% more than is allowed under matter of right developments to compensate for building low and moderate-income housings. As of the date of valuation the Inclusionary Zoning requirements have not been enacted. The Inclusionary Zoning requirements shall become effective on the date of publication of the notice of final rulemaking (5/15/2009) in the D.C. Register, but pursuant to and with the exception of 225, shall not become applicable until ninety days after such publication or the date on which the final Maximum Rent and Price Schedule is published in the D.C. Register, whichever is later. The earliest date would be August 13, 2009[6]. As of the date of the report, the Maximum Rent and Price Schedule had been published and 90 days had passed. As of the date of value, the impending implementation of the Inclusionary Zoning provisions was expected by the market would have been considered by any prudent purchaser.

Using the formula set forth in the Inclusionary Zoning regulations, the amount of the gross floor 'lost' to affordable housing is estimated as follows:

Inclusionary Zoning Requirement Analysis

Site (Sq/Lot)		393/44	393/45	416/31
Site Area		3,799 sf	8,621 sf	16,472 sf
Zone		Arts/C2B	Arts/C2B	Arts/C2B
1st Test – 8% of Matter-of-Right Density				
M/R Max Density		13,297 sf	30,174 sf	57,652 sf
8% of M/R	8.00%	1,064 sf	2,414 sf	4,612 sf
2nd Test – 50% of Inclusionary Zoning Bonus Density				
IZ Bonus Potential	0.7	2,659 sf	6,035 sf	11,530 sf
50% Bonus	50.00%	1,330 sf	3,017 sf	5,765 sf
Limiting Factor – Not required for less than 10 units				
Site (Sq/Lot)		393/44	393/45	416/31
Likely Residential		Less than 10 Units	More than 10 Units	More than 10 Units

[6] The "MAXIMUM RENT AND PURCHASE PRICE SCHEDULE", a copy of which is set forth in the addenda, was published August 14, 2009.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015270

IZ Density – Greater of 8% of M/R or 50% of Bonus

Site (Sq/Lot)	393/44	393/45	416/31
IZ Requirement	-0- sf	3,017 sf	5,765 sf

Total IZ Requirement:

Site Sq 393 Lot 44	-0- sf
Site Sq 393 Lot 45	3,017 sf
Site Sq 416 Lot 31	5,765 sf
Total IZ Requirement	8,782 sf

Duke Draft Development Framework for a Cultural Destination District within Washington, DC's Greater Shaw/U Street[7]

The District submitted the Duke Draft Development Framework to the DC Council for approval in February 2005. The Council adopted the document as a "small area plan" in June 2005. The plan provides guidance in public policy decision-making to District agencies and commissions on affordable housing needs, local business development, existing and new cultural facilities and programming, quality public realm investments, transportation and traffic, zoning and local resident participation. The plan calls for subject's sites to be developed with mixed-use developments with active, ground floor retail and residential or office uses above.

Does not address 3rd requirement

Land Use Element of the Comprehensive Plan

Subject's sites are located within the moderate density residential and moderate density commercial mixed use zoning category. The current zoning is not inconsistent with the Plan.

Historic Status

Subject's sites are located in the Greater U Street Historic District. The Greater U Street Historic District is a Victorian-era neighborhood, developed largely between 1862 and 1900.[8] The Greater U Street Historic District, listed in the National Register of Historic Places in 1998, extends roughly from 16th Street on the west to 7th Street on the east and from S Street on the south to Florida Avenue on the north, and includes over 1,500 historic buildings.

[7] DC Office Of Planning September 2004

[8] The District of Columbia Inventory of Historic Sites, February 23, 2004 update.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015271

PART III - DATA ANALYSIS AND VALUE CONCLUSION

Highest and Best Use

Highest and best use is defined in the text "The Appraisal of Real Estate", 13th ed., published by The Appraisal Institute, 2008, as "The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible and that results in the highest value." In this case, the value sought is of the fee simple value of the land, as if vacant and unimproved, and available for development to its highest and best use.

Subject's three sites are currently vacant and unimproved, zoned Arts/C-2-B, and impacted by underground easements benefiting WMATA for tunnels carrying the regional rapid rail transit system. As individual development sites, these three parcels contain 3,799 sq. ft. (Lot 44 in Square 393), 8,621 sq. ft. (Lot 45 in Square 393) and 16,472 sq. ft. (Lot 31/18 in Square 416).

Under the Arts/C-2-B zoning, the maximum density developable on the site is a 3.5 FAR as a matter-of-right, with the potential for up to 4.5 FAR with additional preferred, mainly residential, uses. However, with the presence of the WMATA underground easements and tunnels, and the resulting inability to place more than one level below grade, along with development restrictions on the weight and density that may be placed above the tunnel structure, the likely reasonable density that could be placed on the sites would be less than the maximum density permitted. Consultations with Mr. Eric Colbert, AIA, a well known local architect familiar with development over a Metrorail tunnel[9], yielded estimated maximum densities achievable on each of the sites as follows:

[9] Mr. Colbert is currently consulting with a developer on another site impacted by a WMATA easement in Northeast Washington, DC. Qualifications are set forth in the addenda.

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Colbert Estimate of Gross Floor Area (FAR) Subject to WMATA Tunnel and Underground Easement

1st	3,600 sf	7,621 sf	14,972 sf
AG 2nd	3,039 sf	6,100 sf	13,177 sf
AG 3rd	3,039 sf	6,100 sf	13,177 sf
AG 4th	3,039 sf	6,100 sf	13,177 sf
AG 5th		3,560 sf	6,590 sf
AG 6th		3,560 sf	6,590 sf
Max Envelop AG	12,717 sf	33,041 sf	67,683 sf
Site Area	3,799 sf	8,621 sf	16,472 sf
Maximum FAR	3.35	3.83	4.11

These densities are less than the maximum 'potential' density with bonus density permitted under the Arts/C-2-B district, but reflect the physical limitations of development. The estimates are, however, of each site as a standalone site. The current proposal for the development of these sites, according to information from the client, incorporates the thre subject sites into a larger development including additional land owned or controlled by the prospective purchaser. Under the proposed development of the combined project, a total of 157,000 sq. ft. of Gross Floor Area (FAR SF) will be constructed. Of this amount, 124,000 sq. ft., or roughly 79%, is reportedly attributable to the inclusion of the three WMATA sites. While this represents a premium of 9.3% more FAR than the three sites could generate as stand alone sites, the increase is not unreasonable considering assemblage and the ability to place gross floor area within non-impacted areas of the larger assembled site.

Additionally, the purpose of this analysis is to arrive at an opinion of the value of the site and an opinion of the appropriate land lease rate for the sites, as combined and as part of the larger development of which these sites will be a part. It is therefore appropriate to view the entirety of the development density that is generated by the subject sites as part of the larger development and not as stand alone sites.

The valuation of the three sites, therefore, will focus on the total development density generated by the WMATA sites as a part of the larger development.

The proposed development on the sites incorporates residential uses on the upper floors and retail uses along the Florida Avenue frontage of the first floor. This development scheme is consistent with the other newer developments along Florida Avenue and U Street. It is the development scheme envisioned by Mr. Colbert. It is the development scheme that is expected by the market and conforms with the market. While a full highest and best use analysis could be undertaken regarding

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development timing, the purpose of this analysis is ultimately to set the price (rent) that the developer will pay to WMATA for the inclusion of the sites into the larger development. Therefore, the highest and best use of the sites is the proposed use, as a part of the larger assembly by the developer.[10]

Finally, the issue of the Inclusionary Zoning will have an impact on the value, and rent, that the subject sites can generate. The requirement for including affordable housing units into the development create two issues that must be addressed. As set forth earlier, approximately 8,782 sq. ft. of the potential FAR will be set aside for affordable housing. This floor area has, as stated, an effective value of $-0-, as the potential for sufficient revenue to offset both the cost of construction AND return additional monies as a residual to the land is virtually non-existent. Additionally, it is highly unlikely that the return from the affordable units will actually cover the total costs associated with construction – hard, soft, financing, and entrepreneurial profit. It is my opinion, however, that the developer will be able to obtain sufficient subsidies from city or federal entities to offset any loss on the construction costs of these units, and no additional deduction, over that associated with the loss in land value, is applied in this analysis.[11]

Approaches to Value and Valuation

The property, consisting of the three sites as a development project and including the total allocated to the WMATA properties, has been valued utilizing a direct sales comparison approach to value, which is consistent with current market practices involving values of vacant, unimproved and underimproved land. Recent sales of similarly zoned unimproved sites in the general area were utilized to estimate the value of the land as if vacant and unimproved, on a per square foot basis. Analysis of these sales will result in a price per FAR for residential uses, and subject's highest and best use, assuming that the land was vacant, unimproved and available for development. This will result in an indicated land value before any adjustments for Inclusionary Zoning or WMATA tunnel and

[10] Note that the larger developer is able to generate additional density by virtue of the assembly. At the same time, the assembly is able to achieve Florida Avenue frontages by virtue of the inclusion of the WMATA sites.

[11] Please note that in the event that such subsidies are not available, the appropriate adjustment, based on the rentals and sales set forth in the Inclusionary Zoning Maximum Rent and Purchase Price Schedule and the rentals charged for the newer buildings in the general U Street and Logan Circle neighborhoods, would be between -$20 and -$30 per sq. ft. of FAR allocated to affordable units. This is in addition to the effective loss of the land value associated with those units.

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easement impact. Next, the financial impact of the Inclusionary Zoning and WMATA tunnels and easements will be applied to the unadjusted value to arrive at the value of the properties, as a unit, subject to both Inclusionary Zoning and WMATA tunnels and easements.

Sales of sites zoned Arts/C-2-B and CR, in subject's neighborhood have been researched, verified and analyzed as to price per FAR, the most applicable unit of measurement for medium and high density residential land sales. The analysis leading to the land value opinion is set forth on the following pages.

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Market Data Map

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Land Sales Analysis

Subject is generally level and on grade with Florida Avenue, 8th Street and 9th Street. One of the sites, Lot 44 in Square 393, is generally triangular, two, Lot 45 in Square 393 and Lot 31/18 in Square 416 are irregular but generally rectangular. The zoning on these sites is Arts/C-2-B. As stated earlier, the enactment of Inclusionary Zoning on August 21, 2009 will require any new developments of more than 10 units to include a percentage of affordable housing units. Additional FAR beyond the matter of right allowed on the site will be allowed to compensate for the cost of the affordable units. Adjustments to the comparable sales for the Inclusionary zoning requirement is difficult to estimate since the exact cost of providing the affordable units on each of the sites is unknown. Most brokers or developers contacted report that the Inclusionary Zoning will probably have a negative affect. As the adjustments for Inclusionary zoning will be made to the sites as after the 'base' land value is determined, no adjustments to most of the sales is required.

Other adjustments considered include adjustments for financing, location, size, site topography and site configuration. All of the comparable sales were purchased with cash or conventional financing so no adjustment will be made for financing. The six comparable sales are all level, interior sites, located in similar locations within a few blocks of subject. Comparable #4 is a sale of four noncontiguous lots and comparable #5 is a sale of very narrow site. These comparable sales would be adjusted up for inferior site configuration and lack of corner. Most of the comparables are smaller, one is larger than two of the individual subject sites but smaller than Lot 31/18, the largest.

Summary of Comparable Sales

Sale-Location	Zone	FAR	Sale Date	Land Area	$/FAR
1-2047 9th	CR	6.0	Nov-06	4,073	$102
2-2143 9th	CR	6.0	Sep-07	11,942	$46
3-1932 9th	Arts/C-2-B	3.68	Jan-08	5,436	$70
4-2004+ 8th	Arts/C-2-B	4.5	Aug-08	3,537	$50
5-2006 10th	Arts/C-2-B	4.5	Sep-08	1,142	$43
6-1912 8th	Arts/C-2-B	4.5	Contract	1,887	$45
Subject	Arts/C-2-B	4.5		4,561	

The sales above indicate prices in the range of $43 to $102 per FAR with an average of $71 FAR. The highest indication came from sale #1 at 2047 9th Street, NW. This site was purchased

50, 50 excluding 102

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almost three years ago, during the height of the residential market activity, by the adjacent property owner for future expansion of his nightclub. It is currently improved with a small warehouse used for storage and a parking lot.

As stated in the neighborhood section values have declined in the past two years. The comparable sales will therefore be adjusted down 15% per year for market conditions. Set forth on the following page is a summary of these sales adjusted for market conditions to the date of value.

Sales Adjusted for Market Conditions

Sale-Location	Zone	FAR	Sale Date	Land Area	$/FAR
1-2047 9th	CR	6.0	Nov-06	4,073	$65
2-2143 9th	CR	6.0	Sep-07	11,942	$34
3-1932 9th	Arts/C-2-B	3.68	Jan-08	5,436	$55
4-2004+ 8th	Arts/C-2-B	4.5	Aug-08	3,537	$43
5-2006 10th	Arts/C-2-B	4.5	Sept-08	1,142	$37
6-1912 8th	Arts/C-2-B	4.5	Contract	1,887	$45
Subject	Arts/C-2-B	4.5		4,561	

$46.50 CR $42.50

Comparable #1, at 2047 9th Street, is the sale of a 4,073 sq. ft. interior site on the west side of 9th Street, one block northwest of subject. This CR zoned site is similar in size and dimension to subject. It sold in November 2006 for $102 per FAR. The property was purchased by the owner of the adjacent property, the 9:30 Club, for possible expansion of the nightclub in the future. It is improved with a small warehouse and parking lot and is currently used for storage and parking. This sale would be adjusted downward for market conditions and for an owner user purchaser and up for corner.

Comparable #2, at 2143 9th Street, is an 11,942 sq. ft. site located southeast of subject on 9th Street. The site is zoned CR. It sold in September 2007 for $46 per FAR to Howard University based on an FAR of 6.0. The site is level and has frontage on both 8th Street and the rear alley. Howard University is assembling sites in the area and also owns land adjacent to this site. This site, while small, is almost three times the size of subject. This sale would be adjusted downward for market conditions and up for corner

Comparable #3, at 1932 9th Street, is a 5,436 sq. ft. interior site located one block southwest of subject. The site has 36 feet of street frontage on 9th Street and depth of 158 feet to a rear alley. This Arts/C-2-B zoned site sold in January 2008 for $70 per FAR based on a proposed 3.68 FAR mixed-use development. The price per FAR based on the maximum FAR

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allowed would be $57. The purchaser reportedly plans to build a 20,000 sq. ft. mixed use building, which equates to a 3.68 FAR. The site is located in a similar location, one-half block south of Florida Avenue. This sale would be adjusted downward for market conditions and up for corner

Comparable #4, at 2004-2008 and 2014 8th Street, is a 3,537 sq. ft. non-contiguous assembly of four lots located one block north of subject. The four lots sold for a total price of $800,000 or $50 per FAR. They are currently improved with four row houses in poor condition. According to the purchaser two of the row houses will be renovated. He is looking to assemble the remaining sites with adjacent land for a larger contiguous assembly. This sale would be adjusted downward for market conditions and upward for noncontiguous assembly and corner.

Comparable #5, at 2006 10th Street, is a 1,142 sq. ft. narrow lot located one-half block north of U Street. The site has only 13 feet of frontage on 10th street with a depth of 89 feet to a rear alley. This Arts/C-2-B zoned site sold in September 2008 for $43 per FAR. The purchaser plans a residential development on the site. The property is currently back on the market at an asking price of $350,000 or $68 per FAR but the sales broker reports no interest in the site based on this asking price. This sale would be adjusted downward for market conditions and upward for narrow lot width and corner.

Comparable #6, at 1912 8th Street, is a 1,887 sq. ft. lot located south of subject. The site has 20 feet of frontage 8th Street with a depth of 94 feet to a rear alley. This Arts/C-2-B zoned site is currently listed on the market for $385,000 or $45 per FAR. The site is located adjacent to a similarly sized site that was developed in 2009 with a 5-unit condominium. This location is similar to subject but the site is smaller and lacks a corner.

Summary of Comparables

Sale-Addr	Date	Adj Mkt	Loc	Corner	Site Area	Fr X Dpth
1-2047 9th	11/06	$65	Comp	No	Sml/Comp	40 X 101
2-2143 9th	9/07	$34	Comp	No	Comp/Lrg	118 X 101
3-1932 9th	1/08	$54	Comp	No	Sm/Comp	36 X 158
4-2004+ 8th	8/08	$43	Comp	No	Sml/Comp	Non-Contig
5-2006 10th	9/08	$37	Comp	No	Sml/Narrow	13 X 88
6-1912 8th	List	$45	Comp	No	Sml/Marrow	20 X 94

After adjustments for market conditions the comparable sales indicate an adjusted price range for subject from $34 to $65 per FAR with an average of $47 per FAR. The highest sale

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indication came from sale #1, at $65 per FAR. It is the oldest sale and was purchased by the adjacent property owner for future expansion of his nightclub. Without this sale the average of the remaining sales is $43 per FAR. Sale #5, at $37 per FAR, is the most recent sale, but it is much smaller and all of the components of subject. Sale #4, at $43 per FAR, consists of four small noncontiguous lots on an inferior street north of subject. The purchaser is looking to assemble adjacent land into a larger contiguous assembly. Sale #3 is the closest comparable sale and indicated a price of $55 per FAR after adjusting for market conditions, but lacks a corner. The purchaser reportedly plans to build a mixed-used 3.68 FAR building, although nothing has been built since the purchase and the site is currently used as a pay parking lot. If this site were developed to a maximum 4.5 FAR the adjusted sale price would be $45 per FAR. The final comparable is the listing of a small 1,887 sq. ft., C2B zoned site located south of subject on 8th Street. This site is currently on the market for $385,000 or $45 per FAR. This listing is much smaller than all of the individual sites within subject.

The average of all the sales, excluding sale #1, is $42 per FAR. The most closest sale, sale #3, indicated a price of $55 per FAR, based on a proposed development, but is much smaller than all of subject's individual sites. However, with subject's location along Florida Avenue, and the potential for retail uses along with the corner influence on all of the individual sites, it is our opinion that the unencumbered value of the sites, as a unit, would be weighted upward from sales north of Florida Avenue, resulting in an indicated value of $55 per FAR.

Based on the comparables and analysis above, the indicated value for the subject sites, as a part of the proposed development of which these properties are a part, as of August 31, 2009, would be:

Site Area	28,892 sf Land	3.92 FAR
FAR Sq. Ft. Individual Site Development	~~113,441 sf GFA~~	111,159 SF
FAR Sq. Ft. Allocated to Subject Sites	124,000 sf GFA	
Value per FAR	$55.00/FAR	$55
Unencumbered Value	$6,820,000	6.11M
Rounded to	$6,800,000	

Discounted by 25% = 40.50

$54

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Adjustment to Value: Inclusionary Zoning Effective FAR Loss

The effective area lost due to Inclusionary Zoning has been estimated at 8,782 sq. ft. of Gross Floor Area. This is equivalent to a lost land value of:

8,782 sq. ft. GFA x $55.00/FAR	= $483,010
Rounded to	$500,000

Adjustment to Value: Inclusionary Zoning Cost Deficiency

As stated above, while it appears that there may be a loss in value due to the inability to cover not only land value but part of the construction costs as well, it has been assumed for the purposes of this analysis that the developer will be able to obtain sufficient subsidies to offset this loss.

Adjustment to Value: Extraordinary Costs – WMATA Easements and Tunnels

As stated above, utilizing the costs estimates provided by WMATA, a deduction for extraordinary hard associated with building over the WMATA tunnel and easements is $1,770,000. Allowing for necessary soft costs, this results in a total deduction from the unencumbered value of $2,300,000.

Final Value of Property Subject to Inclusionary Zoning and WMATA Tunnels and Easements

Value Unencumbered	$6,800,000
Adjustment for IZ FAR Loss	-$500,000
Adjustment for Extraordinary Costs	-$2,300,000
Encumbered Value 7/31/2009	$4,000,000

Exposure Time

There have been very few land sales, except for smaller sized sites and foreclosures. Given the complexities of developing the subject site, the necessity of obtaining approvals and processing reviews and agreements relating to the WMATA easements and tunnels, and the difficulty in obtaining development financing in the current economic climate, the exposure time associated with the values set forth herein is estimated at 12 to 18 months or more.

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Fair Annual Land Rent

The second component of this analysis is to estimate the appropriate land rent for a long tern land lease under typical market terms and the appropriate land rent under specified terms provided by the client.

First, the land rent under typical market terms is estimated at a base rate of 7% of the current land value. Annual escalations in the rent are estimated at 2% per year, with a revaluation of the underlying land and a reset to 7% of the revalued land value every ten years. It would be expected that some reduction in the land rent an initial term, not to exceed 12 to 18 months, would be made as an accommodation to facilitate development approvals. These terms are utilized to compute a possible yield to the land owner under the lease, which will be the basis for estimating the land rent payments under the proposed lease term.

Land Value	$4,000,000	$4,000,000
Option 1 – Base Land Rent	7%	To Be Determined
Option 2 – Lump Sum		Lump Sum Payment no annual payment
Option 3 – Flat Annual		Flat Annual Payment, no escalations or revaluation
Annual Adjustment	2%	None
Periodic Revaluation	Every 10 Year Reset to 7%	None
Term	60 Years	60 Years
Reversion	60 Years	60 Years
Annual Increase in Land Value	Allow 4% per year on average over term	
Participation in Gross Revenue		1% of Gross Revenue
Participation in Refinancing Proceeds		2% of Net Proceeds from any refinancing
Participation in Sale Proceeds		2% of Net Proceeds from any sale of the property

Based on a market lease rate of 7% for a long term land lease with annual escalations and periodic revaluations and

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resets, the initial rent payment would be $280,000 per year (7% x $4,000,000).[12] The rent would have annual escalations, estimated at 2% of the prior year rent, and there would be periodic revaluations of the land value every 10 years, at which time the base land rent would be reset to 7% of the then current land value. The lease would have typical clauses – rent never lower than prior year, no purchase options, requirements for upkeep of improvements, reversion of land and any remaining improvements at lease expiration to the leased fee owner, leasehold owner (tenant) responsible for all expenses, taxes, municipal charges, fees, etc., as well as all other requirements and features of a typical 'triple net land lease'.

In order to estimate the appropriate rental payments under the two WMATA requested Lease Options (Lump Sum Payment with Participation and Flat Rent with Participation), it is necessary to determine the effective yield to the leased fee owner under typical market terms, as this forms the basis for determining the equivalent rent under the two lease options requested.

The following assumptions are used to set the base yield to the leasehold under a typical market lease:

Land Value Escalation	4% annual average escalation in land value over the 60 year term of the lease
Annual Rent Escalations	2% per year

Set forth on the following page is a summary of the yield analysis indicating that these term would yield a 10.5% (rounded) overall yield to the leased fee owner.

[12] Note that it would be reasonable to reduce the rent during the development approval phase of the project, with the full rent becoming effective at the receipt of development approvals from the City.

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Estimate of Yield on Typical Land Rent Terms
Option 1 Land Lease

Yr		Land Value Annual Change 4.00%	Annual Rent Escalation 2.00%	Yr		Land Value Annual Change 4.00%	Annual Rent Escalation 2.00%
1		$4,000,000	280,000	31	Reval	$12,973,590	**$908,151**
2		$4,160,000	$285,600	32		$13,492,534	$926,314
3		$4,326,400	$291,312	33		$14,032,235	$944,840
4		$4,499,456	$297,138	34		$14,593,524	$963,737
5		$4,679,434	$303,081	35		$15,177,265	$983,012
6		$4,866,611	$309,143	36		$15,784,356	$1,002,672
7		$5,061,275	$315,326	37		$16,415,730	$1,022,725
8		$5,263,726	$321,633	38		$17,072,359	$1,043,180
9		$5,474,275	$328,066	39		$17,755,253	$1,064,044
10		$5,693,246	$334,627	40		$18,465,463	$1,085,325
11	Reval	$5,920,976	**$414,468**	41	Reval	$19,204,082	**$1,344,286**
12		$6,157,815	$422,758	42		$19,972,245	$1,371,171
13		$6,404,128	$431,213	43		$20,771,135	$1,398,594
14		$6,660,293	$439,837	44		$21,601,980	$1,426,566
15		$6,926,705	$448,634	45		$22,466,059	$1,455,097
16		$7,203,773	$457,607	46		$23,364,701	$1,484,199
17		$7,491,924	$466,759	47		$24,299,289	$1,513,883
18		$7,791,601	$476,094	48		$25,271,261	$1,544,161
19		$8,103,265	$485,616	49		$26,282,111	$1,575,044
20		$8,427,396	$495,328	50		$27,333,395	$1,606,545
21	Reval	$8,764,492	**$613,514**	51	Reval	$28,426,731	**$1,989,871**
22		$9,115,072	$625,785	52		$29,563,800	$2,029,669
23		$9,479,675	$638,301	53		$30,746,352	$2,070,262
24		$9,858,862	$651,067	54		$31,976,206	$2,111,667
25		$10,253,216	$664,088	55		$33,255,254	$2,153,900
26		$10,663,345	$677,370	56		$34,585,464	$2,196,978
27		$11,089,879	$690,917	57		$35,968,883	$2,240,918
28		$11,533,474	$704,735	58		$37,407,638	$2,285,736
29		$11,994,813	$718,830	59		$38,903,944	$2,331,451
30		$12,474,606	$733,207	60	+Revn	$40,460,102	$42,838,182

With a starting value of $4,000,000, the indicted internal rate of return on the these payments would be 10.4794%, which would be rounded to 10.5%.

In order to compute the appropriate Lump Sum Payment with the proposed participations and the Flat Annual Rent with the proposed participations, additional assumptions are required, as summarized on the following page. These tests are designed to arrive at the requested Option Rents yielding the same return to the leased fee as the typical market lease shown above.

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Summary of Assumptions for Lease Option Analyses

Initial Land Value	$4,000,000
Leased Fee IRR	10.5% at market terms
Land Value Escalation	4% annual average escalation in land value over the 60 year term of the lease
Gross Rent	Based on 124,000 sf gross area, 85% net to gross ratio, $2.50 monthly rent, escalating 3% per year for the term
Net Proceeds	Estimate at an initial leasehold value of $400 per sq. ft. with a 75% loan to value ratio, 7% interest rate loan with 30 year term, monthly amortization, property value increase of 3% per year for the first 40 years then declines 1% per year through the end of the term, 5% expenses on sale with a sale every ten years and improvements value at $-0- at end of term

The Annual Participation in the Gross Revenue would therefore be, in year one of stabilization, $31,620 as shown below.

Gross Area	124,000 sf
Net/Gross	85.00%
Rentable	105,400 sf
Rent/SF/Mo	$2.50
Monthly Gr	$263,500
Annualize	12
Annual Gross	$3,162,000
Participation Rte	1.00%
Annual Participation in Gross Revenue	$31,620
Annual Increase in Rent (and participation)	3%
Discount Rate for Present Value	10.5%

The present value of the annual participation, as shown on the following page, is $415,400.

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Present Value of Annual Participation
Options 2 and 3

Year	Annual Participation Escalation 3.00%	Year	Annual Participation Escalation 3.00%
1	$31,620	31	$76,753
2	$32,569	32	$79,056
3	$33,546	33	$81,428
4	$34,552	34	$83,871
5	$35,589	35	$86,387
6	$36,657	36	$88,979
7	$37,757	37	$91,648
8	$38,890	38	$94,397
9	$40,057	39	$97,229
10	$41,259	40	$100,146
11	$42,497	41	$103,150
12	$43,772	42	$106,245
13	$45,085	43	$109,432
14	$46,438	44	$112,715
15	$47,831	45	$116,096
16	$49,266	46	$119,579
17	$50,744	47	$123,166
18	$52,266	48	$126,861
19	$53,834	49	$130,667
20	$55,449	50	$134,587
21	$57,112	51	$138,625
22	$58,825	52	$142,784
23	$60,590	53	$147,068
24	$62,408	54	$151,480
25	$64,280	55	$156,024
26	$66,208	56	$160,705
27	$68,194	57	$165,526
28	$70,240	58	$170,492
29	$72,347	59	$175,607
30	$74,517	60	$180,875
Present Value of Annual Participation at 10.5%			$415,400

Next, the periodic participation in the net sale or refinancing proceeds is estimated based on the assumptions set forth. For this component of the analysis, it has been assumed that the property would be sold every ten years.

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WMATA-INV 015286

Participation in Net Proceeds (Sale Every Ten Years)
Options 2 and 3

Yr	Leasehold Value 3% > -1%	Mortgage Balance	Sales Exp 5.00%	Net Proceeds	Participation In Net Proceeds 2.00%
1	$42,160,000	$31,620,000	$2,108,000	$8,432,000	0
2	$43,424,800	$30,954,382	$2,171,240	$10,299,178	0
3	$44,727,544	$30,585,066	$2,236,377	$11,906,101	0
4	$46,069,370	$30,189,051	$2,303,469	$13,576,850	0
5	$47,451,451	$29,764,409	$2,372,573	$15,314,469	0
6	$48,874,995	$29,309,069	$2,443,750	$17,122,176	0
7	$50,341,245	$28,820,812	$2,517,062	$19,003,371	0
8	$51,851,482	$28,297,260	$2,592,574	$20,961,648	0
9	$53,407,026	$27,735,860	$2,670,351	$23,000,815	0
10	$55,009,237	$27,133,876	$2,750,462	$25,124,899	$502,498
11	$56,659,514	$42,494,636	$2,832,976	$11,331,903	0
12	$58,359,299	$41,600,101	$2,917,965	$13,841,233	0
13	$60,110,078	$41,103,770	$3,005,504	$16,000,804	0
14	$61,913,380	$40,571,560	$3,095,669	$18,246,151	0
15	$63,770,781	$40,000,876	$3,188,539	$20,581,366	0
16	$65,683,904	$39,388,937	$3,284,195	$23,010,772	0
17	$67,654,421	$38,732,761	$3,382,721	$25,538,939	0
18	$69,684,054	$38,029,151	$3,484,203	$28,170,700	0
19	$71,774,576	$37,274,676	$3,588,729	$30,911,171	0
20	$73,927,813	$36,465,660	$3,696,391	$33,765,762	$675,315
21	$76,145,647	$57,109,235	$3,807,282	$15,229,130	0
22	$78,430,016	$55,907,056	$3,921,501	$18,601,459	0
23	$80,782,916	$55,240,029	$4,039,146	$21,503,741	0
24	$83,206,403	$54,524,783	$4,160,320	$24,521,300	0
25	$85,702,595	$53,757,831	$4,285,130	$27,659,634	0
26	$88,273,673	$52,935,437	$4,413,684	$30,924,552	0
27	$90,921,883	$52,053,591	$4,546,094	$34,322,198	0
28	$93,649,539	$51,107,997	$4,682,477	$37,859,065	0
29	$96,459,025	$50,094,046	$4,822,951	$41,542,028	0
30	$99,352,796	$49,006,796	$4,967,640	$45,378,360	$907,567
31	$102,333,380	$76,750,035	$5,116,669	$20,466,676	0
32	$105,403,381	$75,134,406	$5,270,169	$24,998,806	0
33	$108,565,482	$74,237,978	$5,428,274	$28,899,230	0
34	$111,822,446	$73,276,747	$5,591,122	$32,954,577	0
35	$115,177,119	$72,246,028	$5,758,856	$37,172,235	0
36	$118,632,433	$71,140,799	$5,931,622	$41,560,012	0
37	$122,191,406	$69,955,672	$6,109,570	$46,126,164	0
38	$125,857,148	$68,684,873	$6,292,857	$50,879,418	0
39	$129,632,862	$67,322,207	$6,481,643	$55,829,012	0
40	$133,521,848	$65,861,034	$6,676,092	$60,984,722	$1,219,694
41	$132,186,630	$99,139,973	$6,609,332	$26,437,326	0
42	$130,864,764	$97,053,024	$6,543,238	$27,268,502	0

(Continued on following page)

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015287

Participation in Net Proceeds (Sale Every Ten Years)
(Continued from prior page)

Yr	Leasehold Value 3% > -1%	Mortgage Balance	Sales Exp 5.00%	Net Proceeds	Participation In Net Proceeds 2.00%
43	$129,556,116	$95,895,085	$6,477,806	$27,183,225	0
44	$128,260,555	$94,653,438	$6,413,028	$27,194,089	0
45	$126,977,949	$93,322,032	$6,348,897	$27,307,020	0
46	$125,708,170	$91,894,379	$6,285,409	$27,528,382	0
47	$124,451,088	$90,363,521	$6,222,554	$27,865,013	0
48	$123,206,577	$88,721,997	$6,160,329	$28,324,251	0
49	$121,974,511	$86,961,807	$6,098,726	$28,913,978	0
50	$120,754,766	$85,074,373	$6,037,738	$29,642,655	$592,853
51	$119,547,218	$89,660,414	$5,977,361	$23,909,444	0
52	$118,351,746	$87,773,015	$5,917,587	$24,661,144	0
53	$117,168,229	$86,725,795	$5,858,411	$24,584,023	0
54	$115,996,547	$85,602,872	$5,799,827	$24,593,848	0
55	$114,836,582	$84,398,773	$5,741,829	$24,695,980	0
56	$113,688,216	$83,107,629	$5,684,411	$24,896,176	0
57	$112,551,334	$81,723,148	$5,627,567	$25,200,619	0
58	$111,425,821	$80,238,584	$5,571,291	$25,615,946	0
59	$110,311,563	$78,646,699	$5,515,578	$26,149,286	0
60	$109,208,447	$76,939,738	$5,460,422	$26,808,287	$40,460,102
Present Value of Participation in Net Proceeds at 10.5%					$449,947

The present value of the annual participation has been estimated at $415,400. The present value of the periodic participation in net proceeds of sale (or refinancing) has been estimated at $449,947. The value of the land and the present value of the market terms lease payments is $4,000,000. Deducting the present value of the annual participation and the present value of the net proceeds from sale (or refinancing) will leave an amount of money that represents the required present value of the Option One Lump Sum Payment, or the required present value of the Option Two Flat Annual Rental. In other words, the present value of the Option One Payment or the present value of the Option Two Flat Payments must equal the residual present value after deducting the participation amounts.

Land Value	$4,000,000
PV of Annual Participation	-$415,400
Present Value of Net Proceeds Participation	-$449,947
Balance to Capture in Rent	$3,134,654

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015288

Option Two – Lump Sum Payment

The amount of the required Lump Sum Payment that, when added to the annual and periodic participations in gross rent and net proceeds will yield the same return to the leased fee owner as the market rent terms, is equal to the Balance to Capture in Rent or $3,134,654.

Option Three – Flat Annual Rent

The amount of the required Flat Annual Rental that, when added to the annual and periodic participations in gross rent and net proceeds will yield the same return to the leased fee owner as the market rent terms, is equal to the amount to amortize, at the leased fee yield rate, the Balance to Capture in Rent ($3,134,654) at a 10.5% discount rate for a 60 year term, or $329,964 per year.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015289

CERTIFICATION

The Undersigned do hereby certify that, to the best of our knowledge and belief:

The statements of facts contained in this report are true and correct;

The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analysis, opinions and conclusions;

We have no present or prospective interest in the property that is the subject of this report, and have no personal interest with respect to the parties involved;

We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment;

Our engagement in this assignment was not contingent upon developing or reporting predetermined results;

Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal;

The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which includes the Uniform Standards of Professional Appraisal Practice;

We inspected the subject property;

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Richard R. Harps has completed the continuing education program of the Appraisal Institute.

Disclosure of the contents of this appraisal report is governed by the by-laws and Regulations of the Appraisal Institute.

Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected or the MAI or SRA designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communications without the prior written consent and approval of the undersigned.

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015290

QUALIFICATIONS OF RICHARD R. HARPS, MAI, CRE

Academic: Bachelor of Arts, Economics, The American University, Washington, D.C. 1972.

American Institute of Real Estate Appraisers courses and/or examinations: IA - Basic Principles, Methods and Techniques - 1972; IB - Capitalization Theory and Techniques - 1972; II - Urban Properties - 1973; IV - Condemnation - 1973; VI - Investment Analysis - 1980; IBA - Capitalization Theory & Techniques - 1987; 2-1 Case Studies - 1991, Highest and Best Use and Market Analysis – 1993, Advance Sales Comparison and Cost Approach - 2000

Seminars presented by AIREA, AI, GWCAR, WBR, WDCAR and other organizations.

General: 1971-1983 - John R. Pinkett, Inc., Vice President of Appraisals.
1984 to Present - HARPS & HARPS, INC., President
1996 to 2004 – HARPS & SCALLAN, LLC/INC.

Qualified as Expert in: District of Columbia Zoning Commission; District of Columbia Board of Zoning Adjustment; District of Columbia Office of Tax and Revenue Board of Real Property Assessments and Appeals; District of Columbia Alcohol Beverage Control Board; Superior Court of the District of Columbia; United States District Court for the District of Columbia; United States Bankruptcy Court for the District of Columbia; Mayor's Agent for Historic Preservation-Chief Administrative Law Judge of the District of Columbia; United States Bankruptcy Court, District of Maryland; United States District Court, District of Maryland.

District of Columbia Certified General Real Property Appraiser Certificate #10003.
Maryland Certified General Real Property Appraiser Certificate #10177
Virginia Certified General Real Estate Appraiser Certificate #003181

Appraisal/Consulting Experience: Assignments since 1971 include: houses, stores, shopping centers, office buildings, apartment buildings, hotels, unimproved land, air rights, special purpose properties; full and partial takings from office buildings, power plants, stores, houses, railroad rights-of-way, and apartment buildings; condominium conversion, relocation assistance studies, planned unit development analyses, lease analyses, fair rental studies, urban renewal re-use parcels and assessment consulting, valuation and equalization studies.

Partial Client List: , United State National Park Service, Washington Metropolitan Area Transit Authority, U.S. General Services Administration, U.S. Dept. of Justice, District of Columbia Department of Housing and Community Development, District of Columbia National Capital Revitalization Corporation, Potomac Electric Power Company, Washington Gas Light Company, Verizon, Howard University, International Monetary Fund, International Bank for Reconstruction and Development (World Bank) attorneys, financial institutions, developers and individuals.

Organizations

Appraisal Institute, successor to American Institute of Real Estate Appraisers, MAI designation - Voluntary re-certification through December 31, 2007
Minority Relations Subcommittee, 1980-1981, Vice Chairman 1981; National Education Committee, 1983-1984; Division of Courses, 1985; Division of Curriculum, 1981-1982; Board of Examiners - Examinations 1987-1989; and General Comprehensive Examination Subcommittee/General Comprehensive Examination Panel 1983-2007, Chairman 1987-1989

Washington Metropolitan Area Chapter Appraisal Institute (formed January 1991 by merger of Wash Metro Chapter # 18 AIREA and Wash Metro Chapter of SREA): President-1994

Counselors of Real Estate - CRE designation

District of Columbia Building Industry Association

Washington D.C. Association of REALTORS®: New Development/Zoning Committee 1975-90, Chrm 1981-82; Board of Directors, 1981 to 1986, 1990-1994, 1998; President, 1985

Real Estate Education Foundation (WDCAR) - President 1989

Lambda Alpha International – International Land Economics Fraternity

Real Estate Counseling Group of America – President 2005-2007

National Association of REALTORS®: Board of Directors 1985-1987, 1992; Executive Committee 1986-1987; REALTORS® Legislative Committee: 1989 Chairman Housing Subcommittee, 1990 Chairman Federal Tax Subcommittee, 1991 Vice Chairman RLC, 1992 Chairman RLC; Real Estate Finance Committee 1989-92; State and Municipal Legislative Committee 1990; Building Advisory Committee/Real Property Operations Committee 1988, 1990-1993, 2004, 2007; RPAC Trustee 1989, 1992; Real Estate Lending Working Group Chairman 1991; Public Policy Oversight Group 1993

Greater Washington Board of Trade - Board of Directors, 1985

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015291

QUALIFICATIONS OF STEPHEN C. BRENNAN

Education

1986 Graduate of Colby College, Waterville, Maine. Bachelor of Arts in Administrative Science with a minor in Economics. Graduate Real Estate courses: Principles and Practices of Real Estate, Real Estate Finance, and Appraisal 1. American Institute of Real Estate Appraisers courses and/or exams successfully completed: 1-A1 Real Estate Appraisal Principles, 1-A2 Basic Valuation Procedures, 1-B1 Capitalization Theory and Techniques Part A, and Capitalization Theory and Techniques Part B, 2-1 Case Studies in Real Estate Valuation, Report Writing and Valuation Analysis, Narrative Appraisal Report Writing, Apartment Appraisal, Appraisal Institute #I330, Standards of Professional Practice, Part B, February 2002, Evaluating Commercial Construction Seminar September 2003, National USPAP Update February 2004, and Appraisal Institute's Online Analyzing Operating Expenses, February 2004.

General Experience

Commercial Property Appraiser — 1988-Present
Harps & Harps, Inc.
Washington, D.C.

Residential Property Appraiser — 1987-1988
F. Jerome Silverstein Realty
New London, Ct.

Professional Associations and Licenses

District of Columbia, Certified General Real Property Appraiser License #10011

Maryland, Certified General Real Property Appraiser License #10178

Candidate for membership in the Appraisal Institute (MAI Designation)

Realtor Associate Member of the Washington D. C. Association of Realtors

Work Experience

Recent assignments include: appraisals of single and multifamily dwellings, condominiums, residential and commercial land, new construction, warehouses, office buildings, stores, shopping centers and apartment buildings.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015292

WMATA Scope of Work

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015293

ERIC COLBERT & ASSOCIATES PC 717 5TH STREET NORTHWEST WASHINGTON DC 20001 TELEPHONE (202) 289-6800

July 31, 2009

Mr. Richard Harps
1111 14th Street, N.W., Suite 600
Washington, D.C. 20005

Re: Square 393, Lots 44 and 45; Square 416, Lots 18 and 31

Dear Richard,

Following is the analysis you requested. First is a list of zoning restrictions:

Underlying C-2-B Zoning Requirements

- Height Limit = 65'
- FAR = 3.5, 1.5 non-residential maximum
- Maximum Lot Occupancy = 80% at all residential floors
- Rear Yard = 15'
- Required Parking = 1 per 3 dwelling units

Arts Overlay

- Up to 4.5 maximum bonus density permitted.

Inclusionary Zoning (IZ)

- 20% additional density
- 5' extra building height

The problem with the proximity of the Metro tunnel with these sites is that it exists on one side (the north) of the properties. If the Metro tunnel ran through the middle of our site, we could "bridge" the tunnel, making it easier to build higher above the tunnel. Because the tunnel is on one side, we can only build a structure that can be supported by the tunnel itself. My office is working on a project now where we have had numerous meetings with Metro regarding building over a tunnel. The maximum that Metro will allow us to (economically) build is a four-story wood structure. My best assumption is that we could possibly build a structure that has one level of underground parking and four floors above ground (above the tunnel).

FOIA CONFIDENTIAL TREATMENT REQUESTED

For Lot 44 (Square 393), the proximity of Metro to the site suggests that the entire site be limited to the restrictions I stated. This will allow a structure which has a parking garage of 3,799 square feet. Due to the small size of the lot and its awkward shape, we can probably only accommodate 8 or 9 spaces in this garage. The first floor can be entirely commercial for a gross square footage of 3,600. The actual leasable space will be much lower, however, due to the need to have a lobby for the upstairs uses plus an elevator and two fire stairs. The actual retail on this level will likely be about 2,900 square feet. Assuming that floors 2, 3, and 4 are residential use, they could occupy 80% of the lot and have 3,039 gross square feet each. An apartment building of this size will only be about 75% efficient, leaving 2,279 sellable or leasable square feet each on floors 2, 3, and 4. This gives a total rentable or sellable area of 9,737 square feet for this site.

Lot 45 in Square 393 will be more efficient to build on. Approximately half of the site could go up to 70' height, while the other half would be limited as stated for Lot 44. This will yield the following areas, assuming a building that has one full level of parking underground and one full retail level at grade. On half of the site, three more floors will be permitted, while on the other half, five more floors will be possible. Based on nearby developments, the most reasonable use for the floors above the first floor seems to be residential use.

Lot 45 Potential Building

Floor	Gross S.F.	Net Sellable/Leasable S.F.
Garage (-1)	8,621	22 Parking Spaces
1	7,621	7,000
2	6,100	5,100
3	6,100	5,100
4	6,100	5,100
5	3,560	2,850
6	3,560	2,850
Total	33,041	28,000

The same analysis used for Lot 45 in Square 393 will apply to Lot 31 in Square 416. Again, about one-half of the lot has the underground tunnel beneath it.

Lot 31 Potential Building

Floor	Gross S.F.	Net Sellable/Leasable S.F.
Garage (-1)	16,472	45 Parking Spaces
1	14,972	14,300
2	13,177	11,200
3	13,177	11,200
4	13,177	11,200
5	6,590	5,600
6	6,590	5,600
Total	84,155	59,100

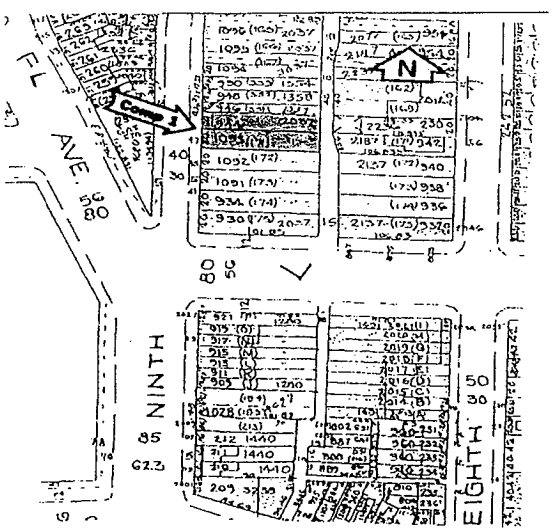
Building next to and above the Metro structures as will be required for these lots will increase construction costs by at least 20% to 25%. Being in a historic district means that there is no guarantee that a 70-foot high building will be permitted.

Sincerely,

Eric Colbert, AIA

Sale No.	1
Address	2047 9th Street, NW
Square/Lot	2875/1106
Area of Site	4,073 sq. ft.
GBA	1,940 sq. ft.
Zone	CR
FAR	6.0
Deed Dated	11/02/2006
Grantor	Ketel, LLC (Edward Needle, Manager)
Grantee	It's Mine Now, LLC (Clinton Stack)
Price	$2,500,000
Trust(s)	None recorded at time of sale
Date Recorded/Instr #	11/02/2006-#2006149549
Transfer Tax	$36,249.99
Price/sf Land	$613.80
Price/FAR	$102.30

Remarks: The property was previously part of a PUD for Broadway Development. The site was dropped from the PUD and sold to the adjacent property owner. It was bought for a possible future expansion of the adjacent property, the 9:30 Club. As of September 2007, the property is being used for parking and storage. The sale was verified with the purchaser's representative, Norm Veenster, of N12 Development on September 11, 2007 and with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection.

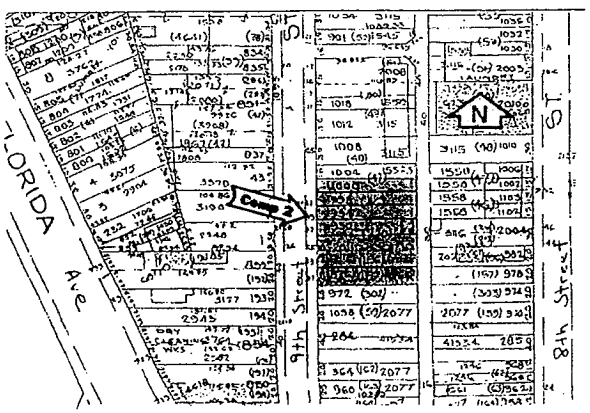


FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015297

Sale No.	2
Address	2143 9th Street, NW
Square/Lot	2875/976, 1108, 2011
Area of Site	11,942 sq. ft.
GBA	Miscellaneous Industrial
Zone	CR
FAR	6.0
Deed Dated	August 31, 2007
Grantor	Warfield and Sanford, Inc.
Grantee	Howard University
Price	$3,300,000
Trust(s)	N/A
Date Recorded/Instr #	September 6, 2007
Transfer Tax	$47,849.89
Price/sf Land	$276.34
Price/FAR	$46.06

Remarks: This is an interior site purchased by Howard University as part of an ongoing assembly of land in the neighborhood. It appears that Howard owns land on both sides of this site. The property was under contract for $4,400,000 to a residential developer in the summer of 2006. The developer reportedly backed out of the deal due to the downturn in the residential market. The sale price in September 2007 indicates a drop in price of 25% from the summer 2006 contract price. Information verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection and with broker Ed Wolynec of the W. C. Smith Companies.

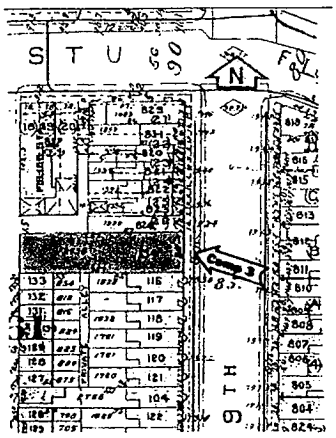


FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015298

Sale No.	3
Address	1932 9th Street, NW
Square/Lot	361/134
Area of Site	5,436 sq. ft.
GBA	Vacant land
Zone	C-2-B/Arts
FAR	4.5 Maximum with bonus
	3.68 proposed
Deed Dated	January 31, 2008
Grantor	JC Property Development, LLC (John E. Carter, Managing Member)
Grantee	PT2SO Investments, LLC
Price	$1,400,000
Trust(s)	N/A
Date Recorded/Instr #	February 7, 2008 #2008014342
Transfer Tax	$20,299.99
Price/sf Land	$257.54
Price/FAR	$57.23 (4.5 FAR Max with bonus)
	$69.98 (3.68 FAR proposed)

Remarks: This is a small interior site located south of Florida Avenue. The purchaser reportedly had planned to build a 20,000 sq. ft. five story mixed-use building on the site. As of August 2009 the site is still unimproved. This interior site is currently used as a pay parking lot. It has 36 feet of frontage on 9th Street and a depth of 158 feet to rear alley. The sale was verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection.

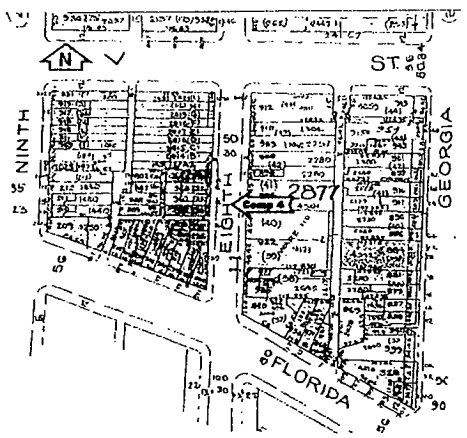


FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015299

Sale No.	4
Address	2004-2008 and 2014 8th Street, NW
Square/Lot	2875/231,234,235, and 236
Area of Site	3,537 sq. ft.
GBA	miscellaneous
Zone	C-2-B/Arts
FAR	4.5
Deed Dated	August 22, 2008
Grantor	CB 8th Street, LLC
Grantee	It's My Real Estate, LLC
Price	$800,000
Trust(s)	N/A
Date Recorded/Instr #	August 28, 2008 #2008091875+
Transfer Tax	$11,600.00
Price/sf Land	$226.18
Price/FAR	$50.26

Remarks: This is the sale of four old row houses in poor condition. The properties were purchased in four separate transactions for redevelopment into multifamily uses. The sites are not contiguous and are separated by an alley and two other row houses. Plans call for renovating two of the row houses and assembling the remaining sites with more sites to make a larger assembly. Each lot has approximately 15 feet of frontage on 8th Street and lot sizes vary from 804 to 960 sq. ft. The sale was verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection, purchaser Norm Veenstra and with Christian of Marcus and Millichap.



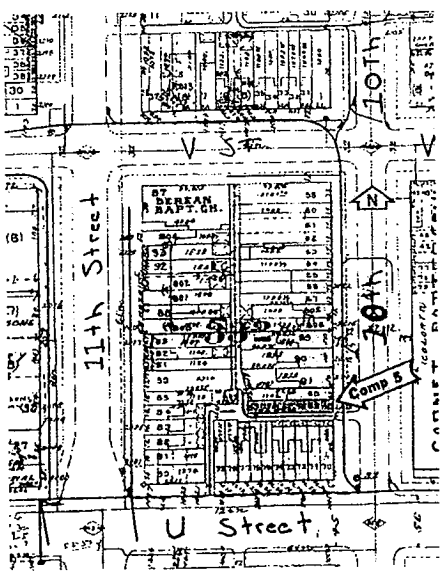
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015300

Sale No.	5
Address	2006 10th Street, NW
Square/Lot	332/69
Area of Site	1,142 sq. ft.
GBA	N/A
Zone	C-2-B/Arts
FAR Matter of Right	3.5 Max matter of right
FAR with Bonus	4.5 Max with bonus
Deed Dated	September 19, 2008
Grantor	Joseph Junior Gilliam
Grantee	Loris Williams
Price	$220,000
Price/sf Land	$192.64
$/FAR	$55.04 (Matter of right)
$/FAR w/Bonus:	$42.81 (w/bonus to 4.5 FAR)

Remarks: This is a long narrow lot located on 10th Street and a side alley one-half block north of U Street Northwest. The U Street Metro Station is located one block south at Vermont and U Streets, NW. The new owner plans to construct a residential building on the lot. The property is currently on the market for $350,000. The broker reported no interest in the property at that price.

Information verified with MRIS, Online DC Assessment data, court records, exterior inspection and with sales broker Warren Kluth of Long and Foster.



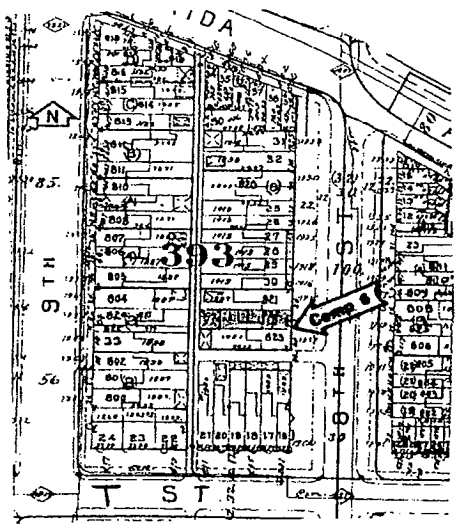
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015301

Sale No.	6
Address	1912 8th Street, NW
Square/Lot	393/822
Area of Site	1,887 sq. ft.
GBA	N/A
Zone	C-2-B/Arts
FAR Matter of Right	3.5 Max matter of right
FAR with Bonus	4.5 Max with bonus
Deed Dated	Under Contract August 2009
Grantor	Luxor Properties
Grantee	N/A
Price	$385,000 (Asking)
Asking Price/sf Land	$204.03
$/FAR	$58.29 (Matter of right)
$/FAR w/Bonus:	$45.34 (w/bonus to 4.5 FAR)

Remarks: This is an interior site located a half block south of Florida Avenue, NW. The site is 20 feet wide by 94 feet deep to a rear alley. The site is the same size as the adjacent site to the south on which a 5-unit condominium was recently built. The property has been on the market for over 6 months. It reportedly is due to close around August 21st, 2009.

Information verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, exterior inspection and with sales broker Gerard DiRuggiero of the Urban land Company, LLC.



393.44+&416.31

FOIA CONFIDENTIAL TREATMENT REQUESTED

THE DEPUTY MAYOR FOR PLANNINGAND ECONOMIC DEVELOPMENT
THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

INCLUSIONARY ZONING AFFORDABLE HOUSING PROGRAM
MAXIMUM RENT AND PURCHASE PRICE SCHEDULE

This Maximum Rent and Purchase Price Schedule is established pursuant to the Inclusionary Zoning Implementation Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*) ("the Act") and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 26 Title 11 of the DCMR. The Schedule is effective August 14, 2009.

Multi-Family Inclusionary Developments

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
Studio	1	1	$108	$250	$899	$107,500	$1,438	$190,700
1	2	1 - 2	$150	$313	$1,027	$117,700	$1,643	$212,800
2	3	2 - 4	$192	$425	$1,155	$120,100	$1,849	$227,100
3	5	4 - 6	$233	$525	$1,412	$144,300	$2,259	$275,100

Single-Family Inclusionary Developments

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
2	3	2 - 4	NC	$110	$1,155	$160,300	$1,849	$267,300
3	5	4 - 6	NC	$130	$1,412	$196,800	$2,259	$327,600
4	7	6 - 8	NC	$150	$1,669	$233,400	$2,670	$388,000

The Maximum Purchase Price or Rent is based on the Washington Metropolitan Statistical Area 2009 Area Median Income of $102,700 for a family of four (4) as published by the United States Department of Housing and Urban Development. It takes into account an ability to pay thirty percent (30%) of the benchmark income towards the housing cost.

Maximum Allowable Rent is equal to the rent published minus any utility expenses paid by the tenant for heat, air conditioning, cooking, electricity, or hot water. Utilities are estimated above. Actual costs to be deducted for each utility are as described in the District of Columbia Housing Authority's Utility Schedule.

An Inclusionary Development Owner may lower the rents or prices to achieve a larger marketing band of incomes for marketing purposes to assure occupancy.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015303

Maximum Allowable Purchase Prices use the following assumptions:

1. A conventional thirty (30) year, fixed-rate, fully amortizing mortgage at the national average mortgage rate as published by the Federal Housing Finance Agency at www.fhfa.gov (5.12% as of July 28, 2009) plus a one percent (1%) cushion to protect for future interest rate increases and a five (5%) down payment.

2. Real estate property taxes are assessed at the control price at current real estate tax rates and homestead deductions.

3. Condominium fees are estimated at fifty cents ($0.50) per square foot per month applied to the assumed unit square footages. Single-family homeowner association fees are estimated at ten cents ($0.10) per square foot per month applied to the assumed unit square footages. Estimated unit sizes are:

Multi-Family Inclusionary Development

Studio	1-Bedroom	2-Bedroom	3-Bedroom
500	625	850	1,050

Single-Family Inclusionary Development

2-Bedroom	3-Bedroom	4-Bedroom
1,100	1,300	1,500

4. Monthly hazard insurance on single-family units is estimated at one half of one percent (0.5%) of replacement value.

NOTE 1. If the actual homeowner/condominium fee for a specific Inclusionary Unit is more than ten percent (10%) higher than the fee assumed in the Maximum Price or Rent Schedule and/or hazard insurance is not included in the condominium fees, then the actual fees and insurance costs shall be used to determine the maximum sales price of the Inclusionary Unit.

NOTE 2. For unit types larger than listed above contact the Agency.

NOTE 3. NC — Not calculated. Contact the Agency.

NOTE 4. More information on Inclusionary Zoning is available at www.dhcd.dc.gov.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015304

THE DEPUTY MAYOR FOR PLANNINGAND ECONOMIC DEVELOPMENT
THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

INCLUSIONARY ZONING AFFORDABLE HOUSING PROGRAM
MAXIMUM RENT AND PURCHASE PRICE SCHEDULE

This Maximum Rent and Purchase Price Schedule is established pursuant to the Inclusionary Zoning Implementation Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*) ("the Act") and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 26 Title 11 of the DCMR. The Schedule is effective August 14, 2009.

Multi-Family Inclusionary Developments

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
Studio	1	1	$108	$250	$899	$107,500	$1,438	$190,700
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2	3	2 - 4	$192	$425	$1,155	$120,100	$1,849	$227,100
3	5	4 - 6	$233	$525	$1,412	$144,300	$2,259	$275,100

Single-Family Inclusionary Developments

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
2	3	2 - 4	NC	$110	$1,155	$160,300	$1,849	$267,300
3	5	4 - 6	NC	$130	$1,412	$196,800	$2,259	$327,600
4	7	6 - 8	NC	$150	$1,669	$233,400	$2,670	$388,000

The Maximum Purchase Price or Rent is based on the Washington Metropolitan Statistical Area 2009 Area Median Income of $102,700 for a family of four (4) as published by the United States Department of Housing and Urban Development. It takes into account an ability to pay thirty percent (30%) of the benchmark income towards the housing cost.

Maximum Allowable Rent is equal to the rent published minus any utility expenses paid by the tenant for heat, air conditioning, cooking, electricity, or hot water. Utilities are estimated above. Actual costs to be deducted for each utility are as described in the District of Columbia Housing Authority's Utility Schedule.

An Inclusionary Development Owner may lower the rents or prices to achieve a larger marketing band of incomes for marketing purposes to assure occupancy.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015305

Maximum Allowable Purchase Prices use the following assumptions:

1. A conventional thirty (30) year, fixed-rate, fully amortizing mortgage at the national average mortgage rate as published by the Federal Housing Finance Agency at www.fhfa.gov (5.12% as of July 28, 2009) plus a one percent (1%) cushion to protect for future interest rate increases and a five (5%) down payment.

2. Real estate property taxes are assessed at the control price at current real estate tax rates and homestead deductions.

3. Condominium fees are estimated at fifty cents ($0.50) per square foot per month applied to the assumed unit square footages. Single-family homeowner association fees are estimated at ten cents ($0.10) per square foot per month applied to the assumed unit square footages. Estimated unit sizes are:

Multi-Family Inclusionary Development

Studio	1-Bedroom	2-Bedroom	3-Bedroom
500	625	850	1,050

Single-Family Inclusionary Development

2-Bedroom	3-Bedroom	4-Bedroom
1,100	1,300	1,500

4. Monthly hazard insurance on single-family units is estimated at one half of one percent (0.5%) of replacement value.

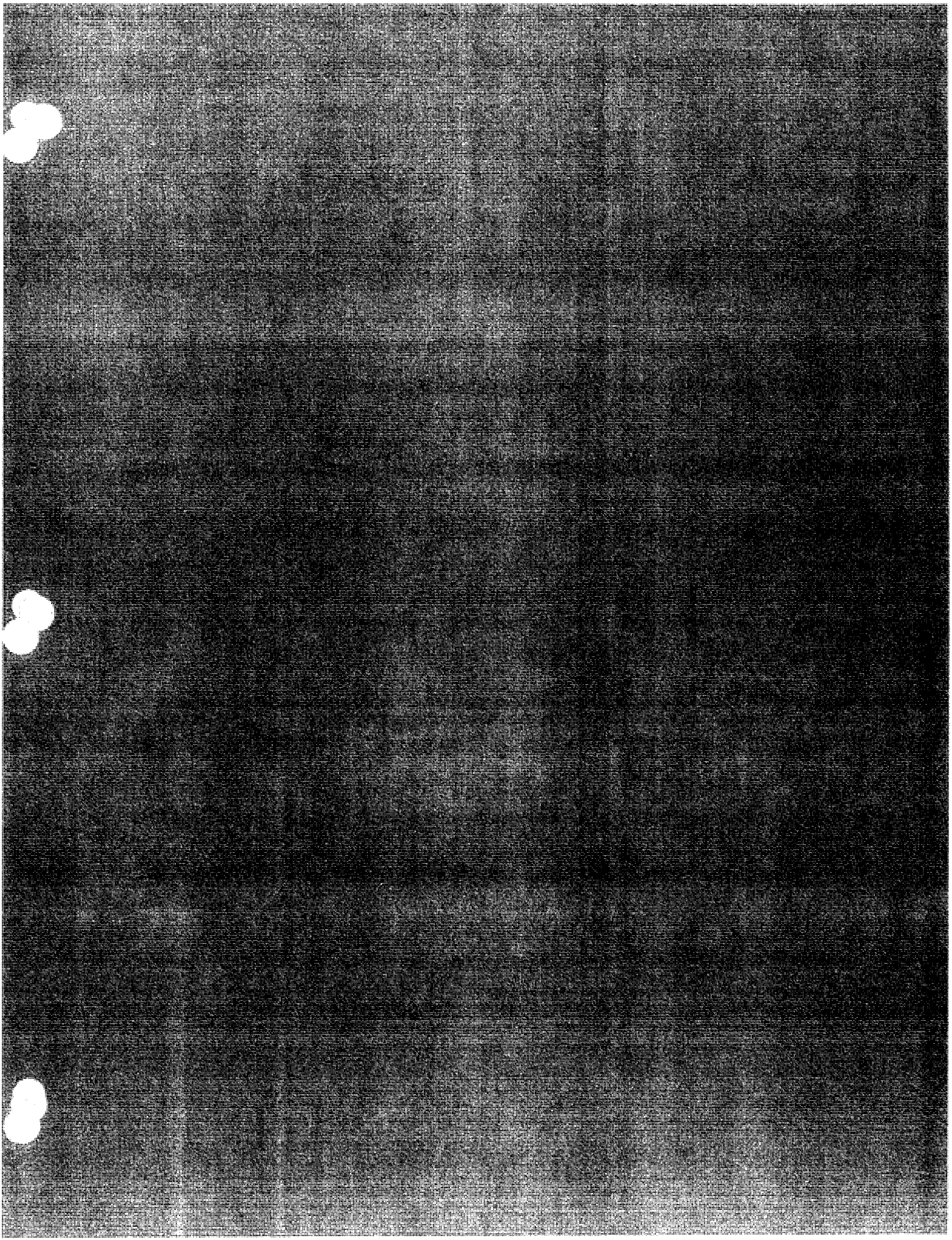
NOTE 1. If the actual homeowner/condominium fee for a specific Inclusionary Unit is more than ten percent (10%) higher than the fee assumed in the Maximum Price or Rent Schedule and/or hazard insurance is not included in the condominium fees, then the actual fees and insurance costs shall be used to determine the maximum sales price of the Inclusionary Unit.

NOTE 2. For unit types larger than listed above contact the Agency.

NOTE 3. NC — Not calculated. Contact the Agency.

NOTE 4. More information on Inclusionary Zoning is available at www.dhcd.dc.gov.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015306



Omar Karim

n: Bottigheimer, Nat <NBottigheimer@wmata.com>
ɔent: Wednesday, October 14, 2009 9:22 PM
To: Tiwana Hicks; Goldin, Steven
Cc: Maurice' 'Perry; aives@bannekerventures.com; 'Omar A. Karim'; Neil.Albert@dc.gov; Yohance S. Fuller; John' 'Hagner; Montague, Joshua W.; Doggett, Rosalyn
Subject: RE: WMATA Term Sheet Meeting

Tiwana--

Please connect directly with Steve about this. 202-962-2616 - we're trying to get things set ASAP for mailing out materials on Friday. If we can get these things hashed out tomorrow, that would be best of course, even more so as I will be away on Friday.

Thanks very much,

Nat

From: Tiwana Hicks [thicks@bannekerventures.com]
Sent: Wednesday, October 14, 2009 6:23 PM
To: Bottigheimer, Nat; Goldin, Steven
. Maurice' 'Perry; aives@bannekerventures.com; 'Omar A. Karim'; Neil.Albert@dc.gov; Yohance S. Fuller; John' Hagner; Montague, Joshua W.; Doggett, Rosalyn
Subject: WMATA Term Sheet Meeting

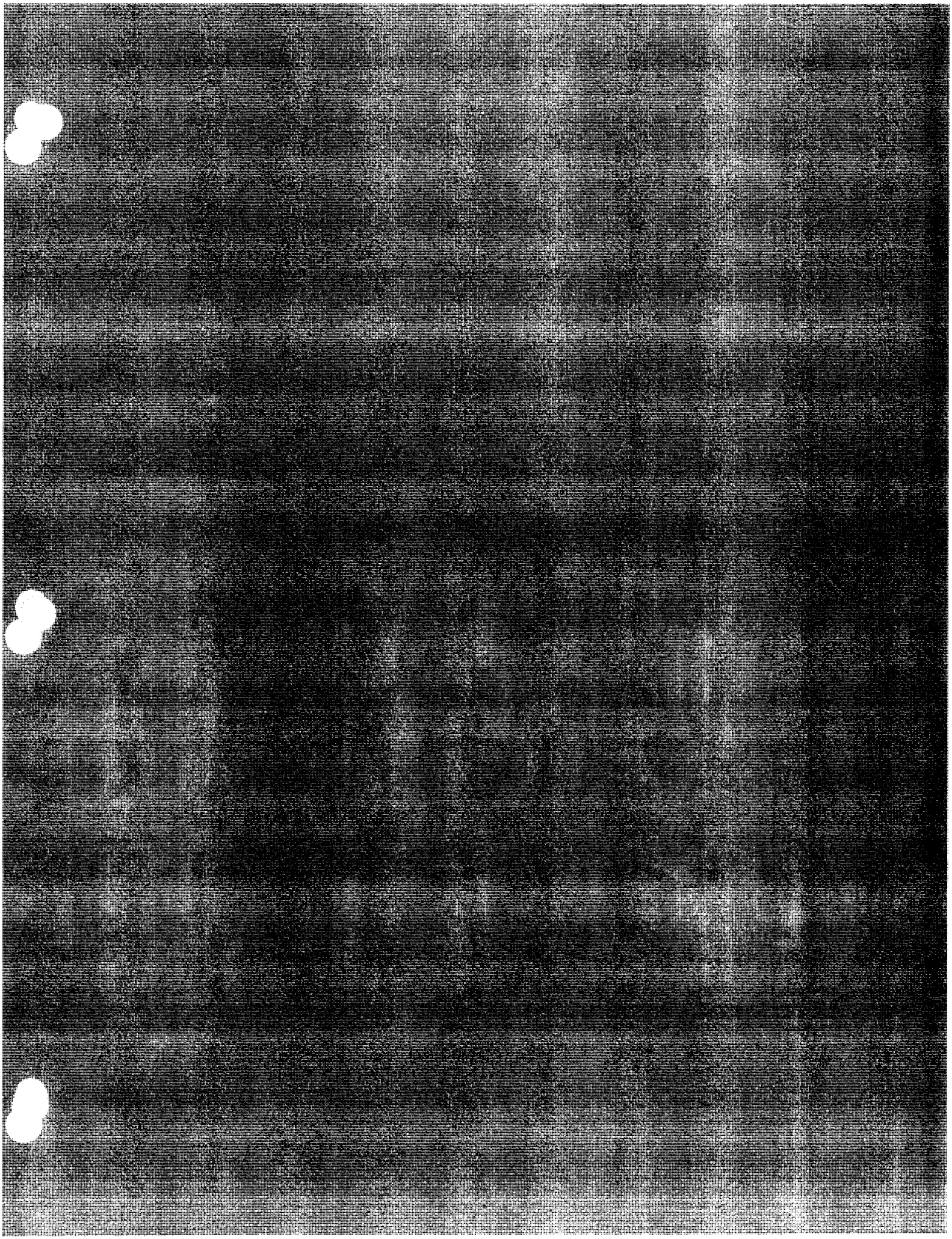
Nat and Steve,

Can we schedule a meeting tomorrow to finalize the Term Sheet? We have not made that many material changes to the Term Sheet, but rather points of clarification. Furthermore, given the impending deadline of October 22nd, we think a meeting tomorrow would be prudent such that we can hash out any last details. We are available tomorrow all day except between 10 and 11:30 a.m. Please advise us as to your availability. Thanks.

Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, D.C. 20005
T: (202) 393-5460
F: (202) 393-5462
C: (202) 486-1863
thicks@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

m:	Goldin, Steven <sgoldin@wmata.com>
Sent:	Thursday, October 15, 2009 9:20 AM
To:	'okarim@bannekerventures.com'
Subject:	Re: WMATA Term Sheet Meeting

Not avail to review prior to meeting

From: Omar Karim
To: Tiwana Hicks ; Goldin, Steven; Montague, Joshua W.; Bottigheimer, Nat
Cc: Maurice Perry ; Anthony James Ives ; Neil.Albert@dc.gov; Yohance S. Fuller; John' 'Hagner ; Doggett, Rosalyn
Sent: Thu Oct 15 09:18:04 2009
Subject: Re: WMATA Term Sheet Meeting
Josh,

Would 2 work? Maybe we can have a call to hash out any legal issues and then meet @ 4:45 in person to finalize the business terms. We can bring our laptop to the 4:45 meeting so as to finalize the document while we are all together.

Steve/Roz,

If you have any issues with the business terms, can you please email these to us prior to the meeting so that we ın expedite our review.

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Montague, Joshua W." <jwmontague@wmata.com>
Date: Thu, 15 Oct 2009 09:05:39 -0400
To: Goldin, Steven<sgoldin@wmata.com>; Tiwana Hicks<thicks@bannekerventures.com>; Bottigheimer, Nat<NBottigheimer@wmata.com>
Cc: Maurice' 'Perry<maurice.perry@bankofamerica.com>; aives@bannekerventures.com<aives@bannekerventures.com>; 'Omar A. Karim'<okarim@bannekerventures.com>; Neil.Albert@dc.gov<Neil.Albert@dc.gov>; Yohance S. Fuller<Yohance.Fuller@dc.gov>; John' 'Hagner<JHagner@wcsr.com>; Doggett, Rosalyn<RDoggett@wmata.com>
Subject: RE: WMATA Term Sheet Meeting

FOIA CONFIDENTIAL TREATMENT REQUESTED

Hi Tiwana,

not be available until after 2pm. Let me know when you are free to discuss.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message.

ɔm: Goldin, Steven
Sent: Thursday, October 15, 2009 9:03 AM
To: Tiwana Hicks; Bottigheimer, Nat
Cc: Maurice' 'Perry; aives@bannekerventures.com; 'Omar A. Karim'; Neil.Albert@dc.gov; Yohance S. Fuller; John' 'Hagner; Montague, Joshua W.; Doggett, Rosalyn
Subject: RE: WMATA Term Sheet Meeting

Tiwana

First, your legal team should call Josh Montague this morning and review the legal items in the term sheet via phone. Then circulate a revised term sheet with only the remaining business items redlined. I am booked non-stop today from 9:00 until 4:45. Am avail to meet today from 4:45-5:30 to tie things up.

Josh/Roz please make yourselves avail to meet at 4:45 PM

Thanks
Steve

From: Tiwana Hicks [mailto:thicks@bannekerventures.com]
Sent: Wednesday, October 14, 2009 6:24 PM
To: Goldin, Steven; Bottigheimer, Nat
Cc: Maurice' 'Perry; aives@bannekerventures.com; 'Omar A. Karim'; Neil.Albert@dc.gov; Yohance S. Fuller; John' 'Hagner; Montague, Joshua W.; Doggett, Rosalyn
Subject: WMATA Term Sheet Meeting
Importance: High

Nat and Steve,

Can we schedule a meeting tomorrow to finalize the Term Sheet? We have not made that many material changes to the Term Sheet, but rather points of clarification. Furthermore, given the impending deadline of October 22nd, we think a meeting tomorrow would be prudent such that we can hash out any last details. We are available tomorrow all day except between 10 and 11:30 a.m. Please advise us as to your availability. Thanks.

Tiwana

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Banneker Ventures, LLC
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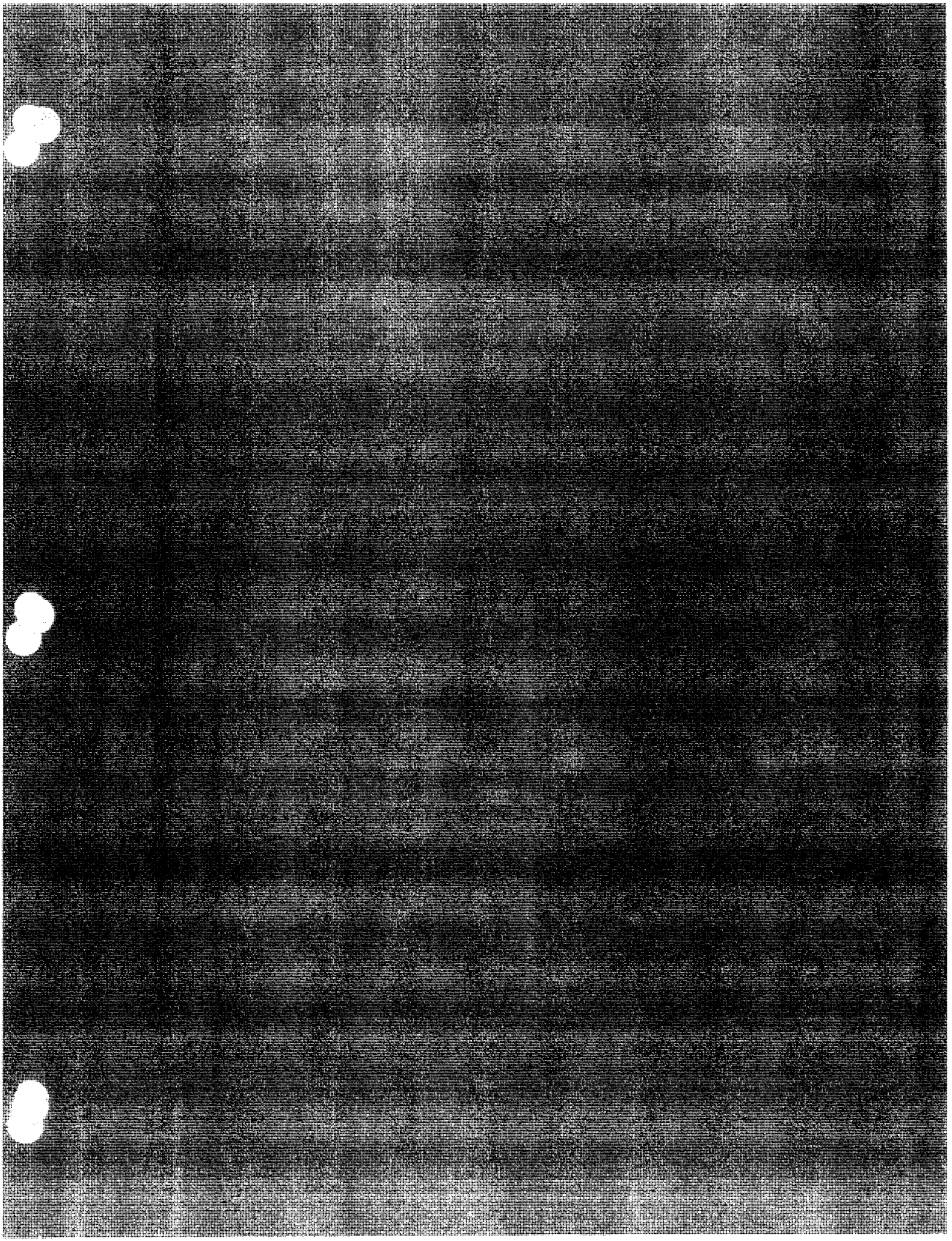
T: (202) 393-5460
F: (202) 393-5462
C: (202) 486-1863
thicks@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 015313**



Omar Karim

n:	Omar A. Karim <okarim@bannekerventures.com>
ɔent:	Friday, March 18, 2011 3:32 PM
To:	'kwamina.williford@hklaw.com'
Subject:	FW: WMATA Term Sheet for Sale of Shaw-Howard U/Florida Avenue Sites
Attachments:	WMATA Term Sheet for Sale of Shaw-Howard-U-Florida Ave Site (as of 10-16-09).doc
Importance:	High

THIS EMAIL IS VERY IMPORTANT B/C IT ESSENTIALLY CONCLUDES OUR NEGOTIATIONS. Thus, WMATA should have had no reason to further delay approval.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Friday, October 16, 2009 10:18 AM
To: 'Montague, Joshua W.'; 'Doggett, Rosalyn'
Cc: 'Perry, Maurice'; 'Hagner, John'; 'Tiwana Hicks'; 'Anthony Ives'; 'sgoldin@wmata.com'; 'Yohance S. Fuller'
Subject: WMATA Term Sheet for Sale of Shaw-Howard U/Florida Avenue Sites
Importance: High

Josh and Roz,

Attached please find the revised Term Sheet. The only change made to the document was the deletion of Section 9.8 . BACDC cannot agree to guaranteeing the "terms of the Definitive Agreement", as this leaves them open to many more items than simply completing the Project or putting the site back in original condition if work ceases during the excavation phase or any other items that will be in the CCRs. Our Counsel believes that the current language that is in the Term Sheet is more than sufficient. With the exclusion of subsection (e), we have no other issues.

We believe this concludes our negotiations of the Term Sheet and we are prepared to sign the Term Sheet upon the Board's Approval. Please confirm that the Term Sheet will be submitted for Board consideration at the October 22nd meeting. When you have finished cleaning up the document, can you please send us the final version that will be approved and that we hope when approved, we can execute following the Board meeting.

Thanks for everyone's hard work.

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 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 sale 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.

An affiliate of "DEVELOPER" (as defined in Section 1.2 below) 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"). 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" (as defined in Section 2.2 below) so that promptly after the Closing, DEVELOPER can resubdivide such Lots and the portion of the closed public alley into a single, buildable lot of approximately [21,244] square feet.[1] DEVELOPER is acquiring the "Sale Property" (as defined in Section 3 below) to develop a single, mixed-use, Transit-Oriented Development project on the combined Sale Property and DEVELOPER Property (the "Total Project").

1. Parties

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

~~1.2 Banneker Ventures, LLC ("Banneker") and Banc of America Community Development Corporation ("BACDC") 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 and BACDC (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, nor may the DEVELOPER's interest in the Sale Property, the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold prior to completion of the Project.~~

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

[1] 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 all DEVELOPER'S land in Square 393 into a single recorded lot.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015316

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 no restrictions on DEVEOPER'S composition, members, managers, leasing or financing of the Total Project.

2. Definitive Agreement

2.1 The Definitive Agreement will be a Purchase and Sale Agreement together with all related documentation upon which WMATA and DEVELOPER mutually agree ("Definitive Agreement"). The Definitive Agreement will be prepared initially by WMATA. Both parties commit to complete the Definitive Agreement so WMATA ~~will~~can present the agreed-upon Definitive Agreement to its Board for approval within two months with best efforts towards 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 sale ("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, except for those terms that survive the Definitive Agreement.

3. Property to Be Sold To DEVELOPER

WMATA will sell to DEVELOPER approximately 28,376 square feet of land area outlined in red in **Exhibit A** and attached hereto (the "Sale 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 Sale Property shall not include those property interests necessary for protection of WMATA's transit facilities, which include the existing WMATA tunnel and associated elements. DEVELOPER will prepare the survey and title.

4. Project

DEVELOPER will construct improvements on the Sale Property (the "Project"~~or "Project Improvements"~~) in the configuration shown in **Exhibit B** and attached hereto, which configuration includes the Total Project and the Project portion thereof 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:

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015317

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 ~~20,542~~10,000 gross FAR square feet of retail/arts use ~~plus~~, and approximately 10,542 gross FAR square feet of associated loading, lobbies, ramps, and residential and retail parking, per District approvals.

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

4.3 ~~WMATA shall reserve a permanent underground easement for its tunnel and associated elements on and under the Sale Property.~~ The parties shall also execute and record Conditions, Covenants and Reservations which will include but not be limited to protecting WMATA's ~~residual rights to the Sale Property~~interests in the WMATA tunnel and associated element and access thereto through existing WMATA transit facilities as well as Additional Density and transit oriented development covenants.

5. Due Diligence

5.1 Sale 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 Sale 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 Sale 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 Sale Property, substantially in the form attached hereto as **Exhibit C**.[5] DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Sale 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

[5] Please provide to DEVELOPER a copy of the Right of Entry Permit proposed to be attached as Exhibit C.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015318

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.

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 ~~final~~"Completion of the Total Project~~.~~," which is hereby defined as the issuance of one or more final certificates of occupancy for all residential apartment units and common areas, including parking, and 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.

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 Sale Price.

7.2 Purchase Price: The base purchase price ("Purchase Price") for the Sale Property shall be Two Million Two Hundred Thousand Dollars ($2,200,000.00).

7.3 Proposal Security: ~~If WMATA and DEVELOPER do not execute a Definitive Agreement within approximately two months following Board Term Sheet~~

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015319

~~Approval (as provided in Section 2 above), either party may terminate this Term Sheet and WMATA will refund DEVELOPER's full Proposal Security of One Hundred Thousand Dollars ($100,000.00) to DEVELOPER within twenty (20) business days of such termination.~~[Intentionally omitted.]

7.4 WMATA Delays: The maximum length of six hundred (600) days to Closing will be extended~~, on a day for day basis,~~ for delays caused solely by WMATA actions or failure to act, including ~~obtaining~~requesting FTA Approval in accordance with Section 8.5 below. Such extension(s) shall be for the amount of time necessary to compensate for the delay caused 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 7.5 below, will Closing be delayed, even though DEVELOPER'S schedule may take longer than anticipated. These extensions shall not be applied to any DEVELOPER-caused delays.

7.5 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 Purchase Price, as provided in Section 7.7 below, in order to maintain the net present value of the Definitive Agreement to WMATA. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

7.6 Additional Density: If prior final completion of the Project, DEVELOPER has received approval for additional density over 100,711 gross FAR square feet, DEVELOPER will adjust the Purchase Price. The measurement of gross FAR square feet shall be the highest amount generated by the Sale Property, whether used on the Sale Property or not, in (i) any final zoning approval by the District of Columbia; (ii) the building permit approval; or (iii) the amount approved in any revisions to the building permit prior to issuance of the final ~~certificate~~certificates of occupancy.

The additional density Purchase Price adjustment shall be as follows:

a) An upward adjustment in the Purchase Price by $50/gross FAR square feet for additional density generated by the Sale Property over 100,711 gross FAR square feet; and
b) After the additional density consideration in 7.6(a) is added, a downward adjustment in the Purchase Price by $80/gross FAR square

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015320

feet for such additional density generated by the Sale Property which increases the Project's affordable housing requirement pursuant to the ~~District of Columbia's~~District's mandatory Inclusionary Zoning regulations (Chapter 26 of the Zoning Regulations of the District ~~of Columbia~~) over 6,414 gross FAR square feet.

Such additional density adjustments shall include any gross FAR square feet attributable to ~~WMATA properties bordering the alley between~~ portions of the ~~Sale Property~~public alley located between 8th and 9th Streets, NW, which become part of the Sale Property in the alley closing process. [The portion of alley which will become part of the Sale Property will be highlighted in Exhibit A].

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The "Definitive Agreement" (as defined in Section 2.1 above) shall sell only the Sale Property but shall provide that any determination applicable to only the Sale 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 Sale 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.

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7.7 Additional Consideration: The Purchase Price, including any adjustments made under Section 7.6 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~~.~~ plus any delay caused by WMATA under Section 7.4. If Additional Density occurs after Closing, then only the increase in the Purchas Price for such Additional Density shall be subject to the 5.8% annual increase.

Comment [aji1]: delete

7.8 Reversion of Sale: If DEVELOPER has not commenced excavation of building foundations within twelve (12) months of Closing, fee simple title to the Sale Property shall revert to and revest in WMATA, subject to the acceptance or modification of such provision by the FHA lender under the HUD financing utilized by DEVELOPER. Upon reversion, the Security Deposit, plus interest accrued, shall automatically be forfeited to WMATA. The DEVELOPER shall have no further rights or interest in the Sale Property.

~~7.9 Unused Affordable Housing Subsidies: If the DEVELOPER applies for, and receives, subsidies on the basis of certain affordable housing attributes but does not include such attributes in the final Total Project for any reason, then DEVELOPER shall pay to WMATA an amount equal to fifty percent (50%) of such subsidies received.~~

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015321

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 ~~sixty~~ten (~~60~~10) days ~~after the~~of execution of the Definitive Agreement and prior to any final submission to the District, DEVELOPER ~~must obtain WMATA's~~shall submit to WMATA for it's approval ~~of~~ a conceptual Total Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans ~~and related improvements to the Sale Property such as streetscape, plazas, and sidewalks and landscaping~~ (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 Sale Property. ~~DEVELOPER must make its~~WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA ~~no more than ten~~within thirty (~~10~~30) days ~~after execution of the Definitive Agreement~~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 ~~WMATA Board's approval~~execution 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 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.

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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 Sale Property and DEVELOPER Property (collectively, "Approvals") required to allow construction of the Project on the Sale 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 ~~land use matters~~Approvals, including the filing of the alley closing application, lot consolidation/resubdivision application, etc. [6]

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

[6] The resubdivision of the Sale Property and DEVELOPER Property in Square 393 will not be completed until after Closing.

FOIA CONFIDENTIAL TREATMENT REQUESTED

approval of the WMATA-approved Site Plan, for development of the Sale 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 ~~subsequently~~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 DEVELOPER Improvements that materially ~~or~~and adversely affect WMATA's operations. The design and construction plans for the ~~Project~~DEVELOPER Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation, WMATA's Adjacent Construction Design Manual, Revision 3, dated December 2008, as amended and revised from time to time (collectively, "WMATA Design and Construction Standards"), except that with respect to the Approvals, the WMATA-approved Site Plan and the design and construction plans for the DEVELOPER Improvements, the applicable version of the WMATA Design and Construction Standards shall be the version in effect on the date of the Definitive Agreement without subsequent amendments or revisions. 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 ~~Project~~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) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted.

9.8 Guaranty: ~~Banc of America Community Development Corporation~~At the Closing, BACDC will execute an unconditional guaranty ("Guaranty") which guarantees to WMATA the completion of a) construction of the ~~Project~~DEVELOPER Improvements, b) infrastructure required by either the District ~~of Columbia~~ or WMATA that is not included in the Site Work, c) any

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015324

demolition and removal of DEVELOPER Improvements as and when required under the terms of the Definitive Agreement, d) ~~remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement~~[intentionally omitted], e) ~~terms of the Definitive Agreement~~ [intentionally omitted], and f) the restoration of the Sale Property to the condition it was in on the date of Closing should work cease on the excavation portion of the project above the Sale Property longer than 30 days ~~return of the Sale Property to the same condition it was in on the Effective Date of this Term Sheet in the event that this Term Sheet or the Definitive Agreement should be terminated for any reason.~~ The Guaranty will be released by WMATA upon the Completion of the Total Project. The Definitive Agreement will include a minimum financial ~~tests~~test to be met by ~~guarantors~~BACDC, which will ~~exceed~~be 100% of the estimated costs of the ~~aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin~~construction costs of the Total Project. The adequacy of security and need for this Guaranty to be further discussed in the Definitive Agreement.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the ~~Sale Property~~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 ~~DEVELOPER's~~DEVELOPER Improvements will interfere with the safety ~~of~~or operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Sale 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 ~~State of Maryland~~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, pre-Closing operations on the Sale 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 Sale 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 Sale Property will be obligated, at their sole cost and expense, to restore the Sale Property to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants who physically work on the Sale Property, 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 apply to the pre-Closing period. After the Closing, the scope and limits of such coverages and policies shall be set by the FHA lender under the HUD financing utilized by DEVELOPER, except that during the construction of the DEVELOPER Improvements, DEVELOPER shall provide WMATA with a railroad protection insurance policy issued at DEVELOPER'S sole cost and expense, to and for the benefit of WMATA and covering the liability of the DEVELOPER, and its contractors, and subcontractors for any personal injuries or deaths or any damage to WMATA's property, equipment, or facilities caused by such construction activities or other work. [7]

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.

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[7] After the Closing, WMATA no longer owns the Sale Property and WMATA's insurable interest is limited to its tunnel and associated elements. The railroad protection insurance policy covers this insurable interest.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015327

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

~~Banneker Ventures~~**The Jazz @ Florida Avenue, LLC**

By: _____

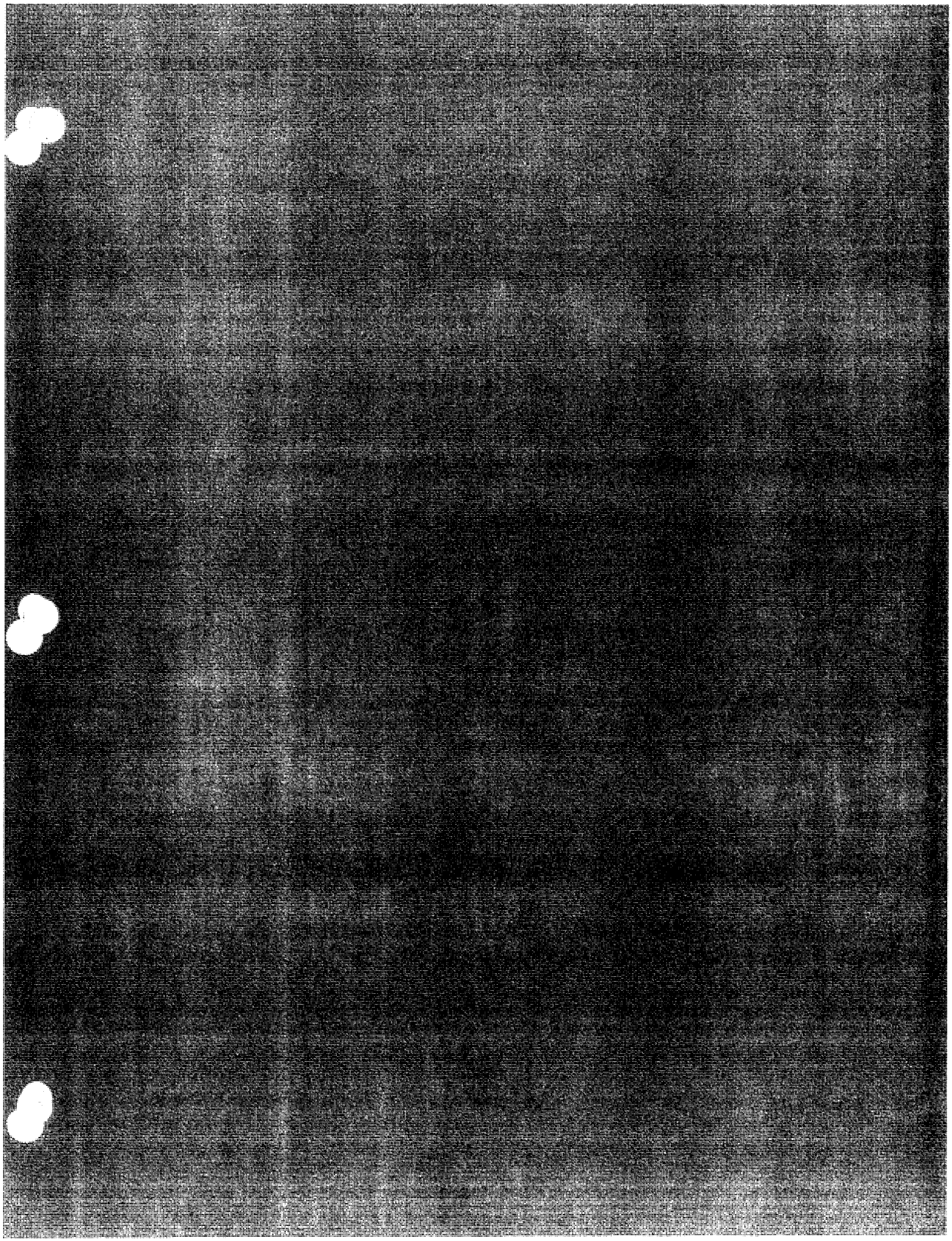
Title: _____

~~Banc of America Community Development Corporation~~

~~By:~~ _____

~~Title:~~ _____

~~WCSR 4219577v1~~



Omar Karim

ı:	Fuller, Yohance (EOM) <yohance.fuller@dc.gov>
ınt:	Monday, October 19, 2009 1:33 PM
ro:	Moneme, Emeka; okarim@bannekerventures.com; Goldin, Steven; nbottigheimer@wmata.com
Cc:	Albert, Neil (EOM)
Subject:	Jazz @ Florida -- Follow Up

Gents –

Last Friday, we discussed both parties reconvening on Monday to hash through the remaining issues on the term sheet. Specifically, the questions concerning design review/approval.

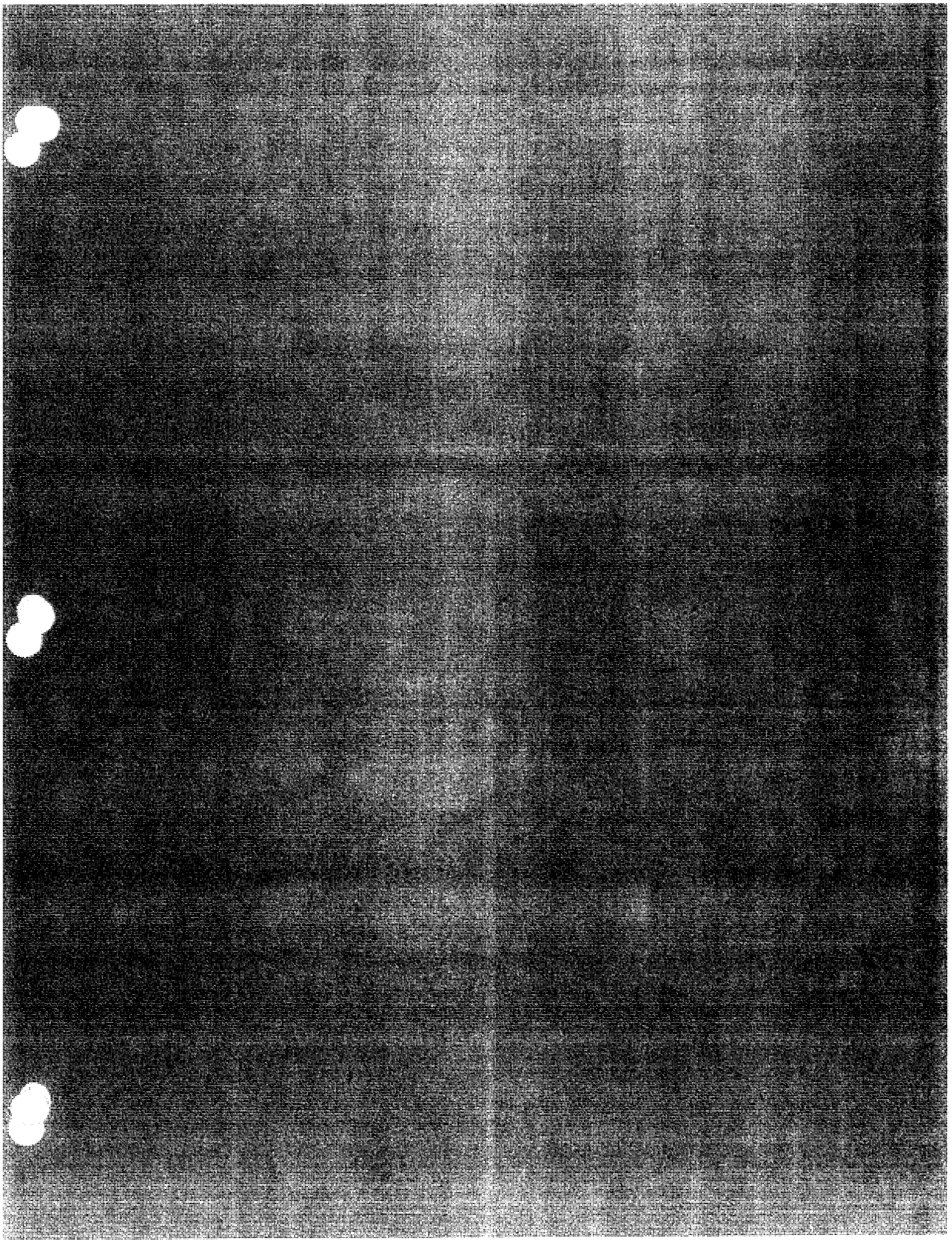
I believe the intention was to get this tied up by COB, today. Can I get an update on where we are on this?

Thanks,

Yohance

Yohance S. Fuller | Program Manager
Office of the City Administrator
Government of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 533 | Washington, DC 20004
`02.538.1278 | F 202.535.1224 | yohance.fuller@dc.gov

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015331



Omar Karim

ı:	Hagner, John <JHagner@wcsr.com>
ent:	Tuesday, October 20, 2009 4:18 PM
To:	Montague, Joshua W.; Omar A. Karim
Cc:	thicks@bannekerventures.com; Doggett, Rosalyn; Goldin, Steven
Subject:	RE: Jazz @ Florida -- Follow Up

Josh: As discussed in the conference call we just concluded, this will confirm our consent and permission as special counsel to The Jazz @ Florida Avenue, LLC for you and anyone else in WMATA's Office of General Counsel to communicate directly with our client. Please feel free to call or e-mail Mr. Omar Karim directly, with or without sending me a copy or including me on the call.

John Hagner

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: Tuesday, October 20, 2009 12:22 PM
To: Omar A. Karim
: thicks@bannekerventures.com; Yohance S. Fuller; Hagner, John; Bottigheimer, Nat; Doggett, Rosalyn; Goldin, Steven
bject: RE: Jazz @ Florida -- Follow Up

Omar,

We still have two issues. Here is a summary:

1. **Insurance (Section 12)**: The end of the last sentence should be changed to the following: ....*and (ii)add WMATA as an "additional insured" under the DEVELOPER's, General Contractor(s), and all "major" subcontractors' commercial general liability insurance policies.*

2. **Guarantor/Indemnification (Section 9.8):** WMATA cannot do this deal unless it is properly protected. Below I am going to try to explain our perspective and then address your previous statements:

    a. WMATA:
        i. *Layers are standard* – It is common in the commercial real estate field to require multiple layers of risk protection through indemnifications, insurance, bonds, etc. This type of layering is essential in transactions involving construction over our tunnel.
        ii. *Sale vs. Lease* – When this transaction was a lease, WMATA had the right to terminate the lease. Now that this transaction is a sale, we lose this protection. The covenants and indemnifications of the Definitive Agreement are all we have.
        iii. *Developer limitations* – The Jazz @ Florida Avenue, LLC (the Developer) is an SPE that is highly leveraged. On top of this fact, the Developer's lender will limit the Developer's indemnification to "surplus cash." Therefore, the Developer's ability to provide the required indemnification is extremely limited. The guarantor should fill this gap.

    b. Developer:

FOIA CONFIDENTIAL TREATMENT REQUESTED

i. *Insurance* – It was argued yesterday that insurance will give us all of the protection that we need. This is incorrect. While it is true that insurance is an essential element to the protection that we need, it is not enough by itself. Insurance lapses, cancels, expires, denies claims, has limits, etc.

ii. *Payment upfront* – Your previous email argued "*Since WMATA will be getting its cash in full up front, we do not see any issues that WMATA should be concerned about.*" The upfront payment is for the sale of the land. This will not help WMATA in the event an indemnification situation arises.

iii. *Other WMATA transactions* – The only transaction that Mr. Hagner and I discussed was a lease transaction. As described in 2(a)(ii) above, a lease affords protections that a sale does not. In any event, every transaction is different (land, considerations, risks, parties, etc.). We have to do what is right in this transaction in terms of safety and risk issues.

Please feel free to contact me with any questions or 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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From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, October 20, 2009 10:50 AM
To: Montague, Joshua W.
Cc: thicks@bannekerventures.com; Yohance S. Fuller; JHagner@wcsr.com; Bottigheimer, Nat; Doggett, Rosalyn; Goldin, Steven
Subject: Jazz @ Florida -- Follow Up

Josh,

Attached are the revised Term Sheet and a redline of the 2 changes in Section 9.5 and 9.8 that you discussed yesterday with John Hagner and mentioned in my email. There is an additional provision that you and John agreed to stating that if construction is not commenced by the third anniversary of the Definitive Agreement, then the Adjacent Construction Design Standards would be updated to include all revisions to the Design Manual since the Definitive Agreement.

Please let me know if all of the issues have been addressed and if the Term Sheet is finalized at this point.

Thank you in advance.

Omar

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
; Monday, October 19, 2009 5:33 PM
o: 'Goldin, Steven'; 'Yohance S. Fuller'; 'Moneme, Emeka'; 'Bottigheimer, Nat'
Cc: thicks@bannekerventures.com; Neil.Albert@dc.gov; Hagner, John; 'Montague, Joshua W.'
Subject: RE: Jazz @ Florida -- Follow Up
Importance: High

Steve, et. al,

I just received a call from our counsel, John Hagner, at Womble Carlyle. John informed me that Josh Montague called him to discuss a few issues from the Term Sheet. We will agree with you on the following:

(a) the guarantee including the provision that we will pay for additional density if we build beyond what is in the Term Sheet or Definitive Agreement; and
(b) Adjacent Construction Design Standards will be as of the date of the Definitive Agreement.

However, BoA cannot agree to guarantee other liabilities (indemnifications) as they are open-ended and the bank can't provide that type of guarantee. Moreover, this request is beyond what WMATA has required of other developers.

If WMATA agrees to the last issue, we it looks like we have agreed to the terms of the Term Sheet. Please advise of your position.

Josh, in the future, please call me should you have any questions about any outstanding issues.

Thank you in advance.

ar

From: Goldin, Steven [mailto:sgoldin@wmata.com]
Sent: Monday, October 19, 2009 1:59 PM
To: 'okarim@bannekerventures.com'; Yohance S. Fuller; Moneme, Emeka; Bottigheimer, Nat
Cc: 'thicks@bannekerventures.com'; Neil.Albert@dc.gov; 'JHagner@wcsr.com'
Subject: Re: Jazz @ Florida -- Follow Up

We are meeting now and will have an answer shortly

From: Omar A. Karim
To: Yohance S. Fuller; Goldin, Steven; Moneme, Emeka; Bottigheimer, Nat
Cc: 'Tiwana Hicks' ; Neil.Albert@dc.gov; John' 'Hagner
Sent: Mon Oct 19 13:35:03 2009
Subject: RE: Jazz @ Florida -- Follow Up
We sent final comments on Friday afternoon and are available to meet today to finalize any outstanding issues.

Omar

om: Fuller, Yohance (EOM) [mailto:yohance.fuller@dc.gov]
nt: Monday, October 19, 2009 1:33 PM
o: Moneme, Emeka; okarim@bannekerventures.com; Goldin, Steven; nbottigheimer@wmata.com
Cc: Albert, Neil (EOM)
Subject: Jazz @ Florida -- Follow Up

FOIA CONFIDENTIAL TREATMENT REQUESTED

Gents –

Friday, we discussed both parties reconvening on Monday to hash through the remaining issues on the term sheet. Specifically, questions concerning design review/approval.

I believe the intention was to get this tied up by COB, today. Can I get an update on where we are on this?

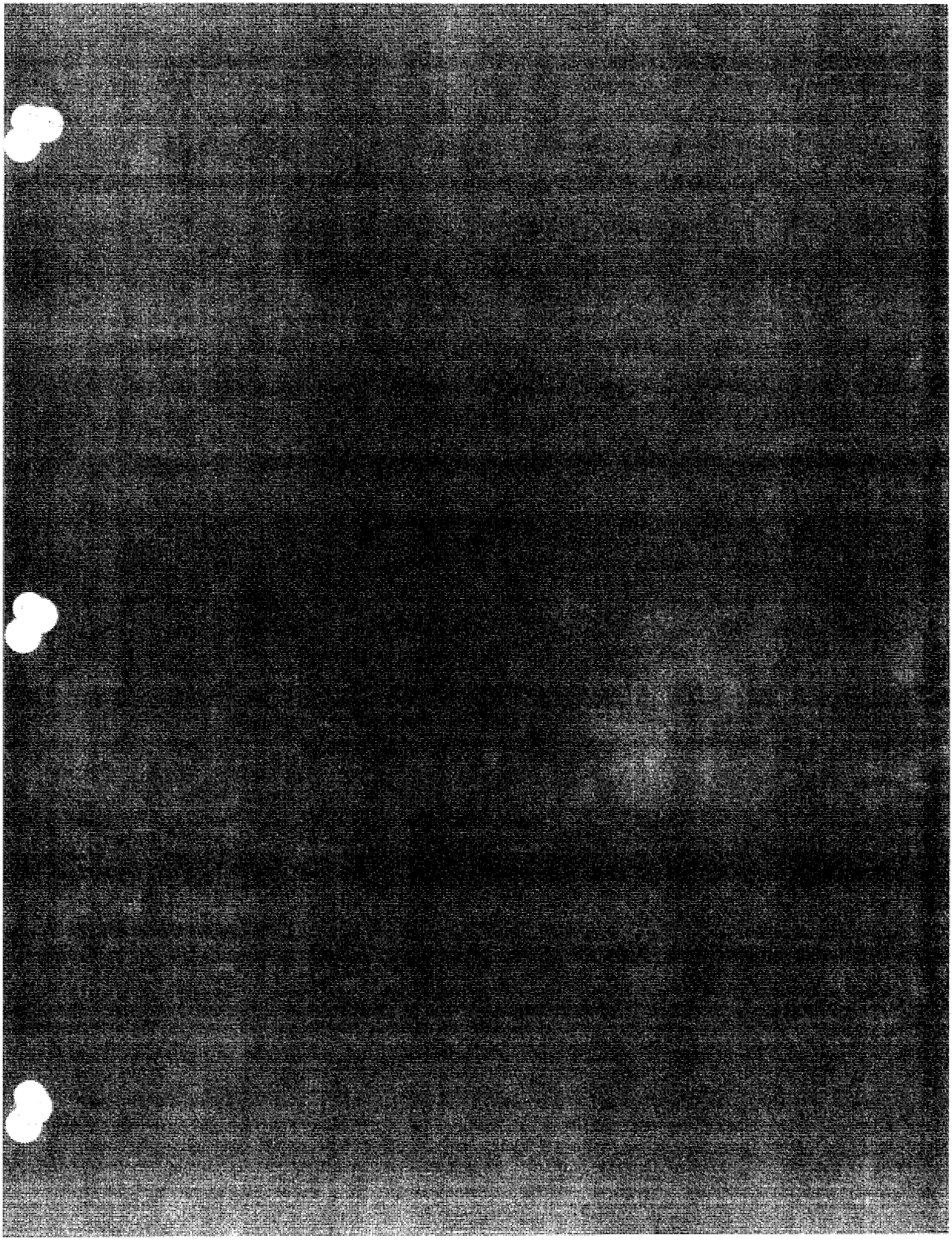
Thanks,

Yohance

Yohance S. Fuller | Program Manager
Office of the City Administrator
Government of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 533 | Washington, DC 20004
W 202.538.1278 | F 202.535.1224 | yohance.fuller@dc.gov

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by a lawyer. It may contain information that is confidential, privileged, proprietary, or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy or disseminate this message, any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.



Omar Karim

m: Montague, Joshua W. <jwmontague@wmata.com>
Sent: Tuesday, October 20, 2009 6:05 PM
To: Omar A. Karim
Cc: thicks@bannekerventures.com; Yohance S. Fuller; JHagner@wcsr.com; Bottigheimer, Nat; Doggett, Rosalyn; Goldin, Steven
Subject: RE: Jazz @ Florida -- Follow Up
Attachments: Draft FL Ave Sale Term Sheet 102009.doc

Omar,

Attached is the revised Term Sheet with the following changes:

- Section 8.1 – the WMATA response time was extended from 30 days to 45 days. Our review staff expressed the need for more time to review. This extended time allotment will provide them with the time they need to review while allowing you to manage your schedule more accurately.
- Section 9.5 – a cosmetic change to correct the name of the WMATA Adjacent Construction Manual.
- Section 9.8 – Guaranty changes per our telephone conversation today.
- Section 11- Insurance changes per our telephone conversation today.

Please let me know if you have any questions.

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: Tuesday, October 20, 2009 10:50 AM
To: Montague, Joshua W.
Cc: thicks@bannekerventures.com; Yohance S. Fuller; JHagner@wcsr.com; Bottigheimer, Nat; Doggett, Rosalyn; Goldin, Steven
Subject: Jazz @ Florida -- Follow Up

Josh,

FOIA CONFIDENTIAL TREATMENT REQUESTED

Attached are the revised Term Sheet and a redline of the 2 changes in Section 9.5 and 9.8 that you discussed yesterday with John Hagner and mentioned in my email. There is an additional provision that you and John agreed to stating that if construction is not commenced by the third anniversary of the Definitive Agreement, then the Adjacent Construction ;n Standards would be updated to include all revisions to the Design Manual since the Definitive Agreement.

.·lease let me know if all of the issues have been addressed and if the Term Sheet is finalized at this point.

Thank you in advance.

Omar

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, October 19, 2009 5:33 PM
To: 'Goldin, Steven'; 'Yohance S. Fuller'; 'Moneme, Emeka'; 'Bottigheimer, Nat'
Cc: thicks@bannekerventures.com; Neil.Albert@dc.gov; Hagner, John; 'Montague, Joshua W.'
Subject: RE: Jazz @ Florida -- Follow Up
Importance: High

Steve, et. al,

I just received a call from our counsel, John Hagner, at Womble Carlyle. John informed me that Josh Montague called him to discuss a few issues from the Term Sheet. We will agree with you on the following:

(a) the guarantee including the provision that we will pay for additional density if we build beyond what is in the Term Sheet or Definitive Agreement; and
(b) Adjacent Construction Design Standards will be as of the date of the Definitive Agreement.

However, BoA cannot agree to guarantee other liabilities (indemnifications) as they are open-ended and the bank can't ·ide that type of guarantee. Moreover, this request is beyond what WMATA has required of other developers.

.r WMATA agrees to the last issue, we it looks like we have agreed to the terms of the Term Sheet. Please advise of your position.

Josh, in the future, please call me should you have any questions about any outstanding issues.

Thank you in advance.

Omar

From: Goldin, Steven [mailto:sgoldin@wmata.com]
Sent: Monday, October 19, 2009 1:59 PM
To: 'okarim@bannekerventures.com'; Yohance S. Fuller; Moneme, Emeka; Bottigheimer, Nat
Cc: 'thicks@bannekerventures.com'; Neil.Albert@dc.gov; 'JHagner@wcsr.com'
Subject: Re: Jazz @ Florida -- Follow Up

We are meeting now and will have an answer shortly

From: Omar A. Karim
To: Yohance S. Fuller; Goldin, Steven; Moneme, Emeka; Bottigheimer, Nat
c: 'Tiwana Hicks' ; Neil.Albert@dc.gov; John' 'Hagner
ent: Mon Oct 19 13:35:03 2009
ubject: RE: Jazz @ Florida -- Follow Up
We sent final comments on Friday afternoon and are available to meet today to finalize any outstanding issues.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar

From: Fuller, Yohance (EOM) [mailto:yohance.fuller@dc.gov]
Sent: Monday, October 19, 2009 1:33 PM
To: Moneme, Emeka; okarim@bannekerventures.com; Goldin, Steven; nbottigheimer@wmata.com
Cc: Albert, Neil (EOM)
Subject: Jazz @ Florida -- Follow Up

Gents –

Last Friday, we discussed both parties reconvening on Monday to hash through the remaining issues on the term sheet. Specifically, the questions concerning design review/approval.

I believe the intention was to get this tied up by COB, today. Can I get an update on where we are on this?

Thanks,

Yohance

Yohance S. Fuller | Program Manager
Office of the City Administrator
Government of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 533 | Washington, DC 20004
T 202.538.1278 | F 202.535.1224 | yohance.fuller@dc.gov

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Omar Karim

	Goldin, Steven <sgoldin@wmata.com>
t:	Thursday, October 22, 2009 3:20 PM
o:	Goldin, Steven; 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; jkass@dccouncil.us; Yohance S. Fuller; Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc:	Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat
Subject:	RE: Florida Avenue

Additionally, as per Board direction, there will be a $100,000 reduction in the amount of the security deposit required

We are awaiting clarification on whether there will be a reversion clause included

---

From: Goldin, Steven
Sent: Thursday, October 22, 2009 3:08 PM
To: 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; jkass@dccouncil.us; Yohance S. Fuller; Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat; Sequeira, Loyda; Meister, Mark K.; Mohsberg, Sid; Wallace, Maria A
Subject: Florida Avenue

To All:

er direction from our Board, we are proceeding with preparing a term sheet for the lease of our property. The cer is to be taken up by the full Board in a special meeting in two weeks.

The lease will be as it was when a lease was first discussed (prior to my arrival): a capitalized payment at closing, an annual % participation in net operating income and a % participation upon various capital events (refinance, sale, etc). My understanding is that the participations had been 1.5% and 10% respectively.

By way of this e-mail, I am asking the following actions to be taken:

Omar: Please advise whether you as the developer are in agreement

Maurice: Please advise whether Bank of America CDC is in agreement

Jonathon: Please confirm that Chairman Graham is in agreement

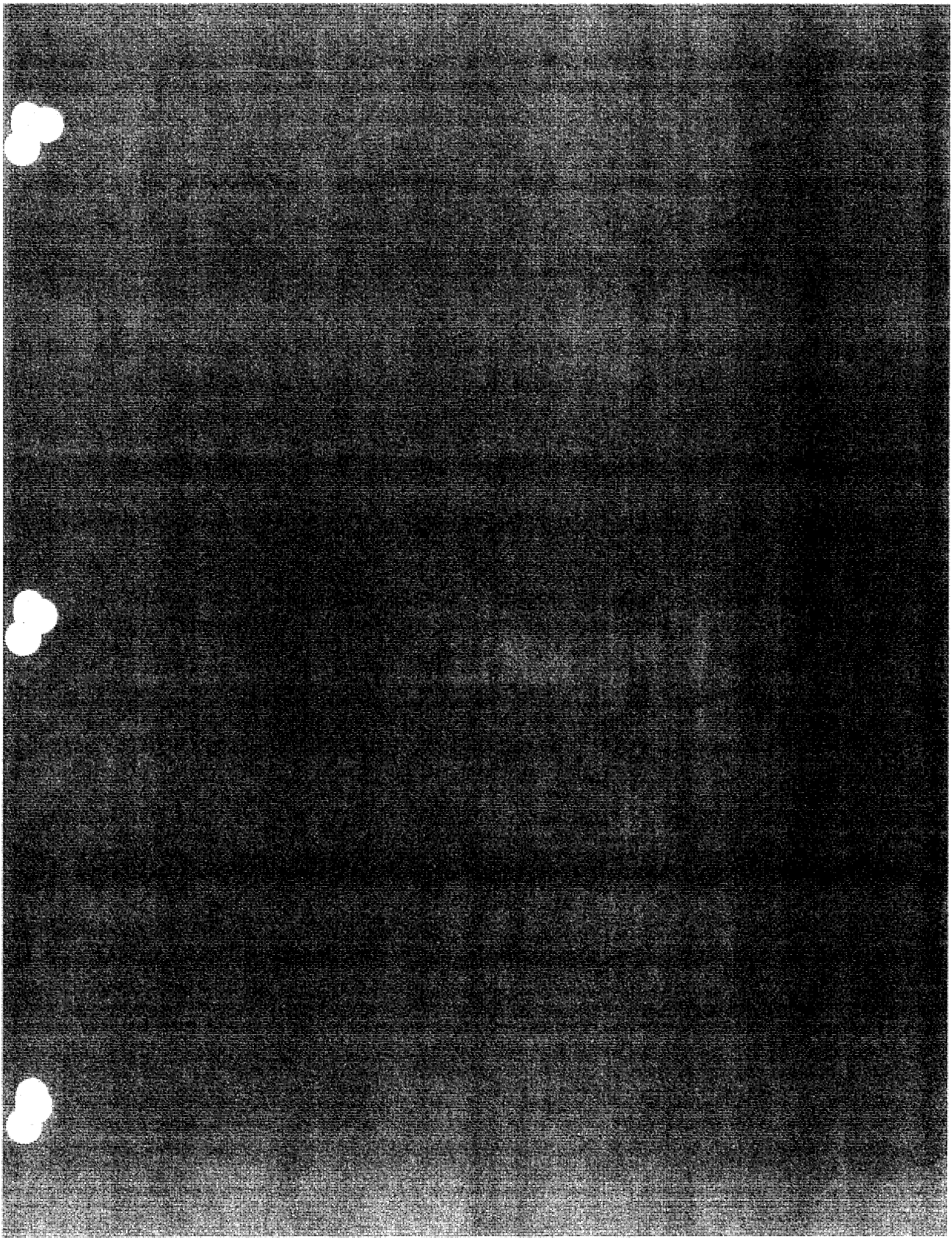
Yohance: Please Confirm that Mr. Albert is in agreement

Roz/Malcolm: Please call Richard Harps and explain that we need the updated appraisal in hand by 10/30. Please initiate a new BAIS.

Josh/John: Please revise the term sheet to reflect the lease and discuss the co-tenancy agreement

ven E. Goldin
ector, Station Area Planning & Asset Management
ashington Metropolitan Area Transit Authority
sgoldin@wmata.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015342



Omar Karim

ı: Kass, Jonathon (COUNCIL) <JKass@DCCOUNCIL.US>
ent: Thursday, October 22, 2009 4:06 PM
To: 'Goldin, Steven'; 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; Fuller, Yohance (DMPED); Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat
Subject: RE: Florida Avenue

Thanks Steve.

CM Graham agrees that staff should be preparing a term sheet to be taken up by the full Board in two weeks.

He's OK with removing the provision dealing with reversion of the property since we're back to a lease arrangement.

He expects that there would be some documentation of the $100,000 costs leading to the reduction in security deposit.

Generally, he does not think it's appropriate for him to be involved in negotiating the terms.

Jonathon Kass
Committee on Public Works and Transportation
Councilmember Jim Graham, Chair
Council of the District of Columbia
(202) 724-8152
jkass@dccouncil.us
CM Graham: www.grahamwone.com
mmittee: www.dccouncil.us/publicworksandtransportation

From: Goldin, Steven [mailto:sgoldin@wmata.com]
Sent: Thursday, October 22, 2009 3:20 PM
To: Goldin, Steven; 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; Kass, Jonathon (COUNCIL); Fuller, Yohance (DMPED); Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat
Subject: RE: Florida Avenue

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From: Goldin, Steven
Sent: Thursday, October 22, 2009 3:08 PM
To: 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; jkass@dccouncil.us; Yohance S. Fuller; Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat; Sequeira, Loyda; Meister, Mark K.; Mohsberg, Sid; Wallace, Maria A
ıbject: Florida Avenue

To All:

FOIA CONFIDENTIAL TREATMENT REQUESTED

As per direction from our Board, we are proceeding with preparing a term sheet for the lease of our property. The matter is to be taken up by the full Board in a special meeting in two weeks.

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Maurice: Please advise whether Bank of America CDC is in agreement

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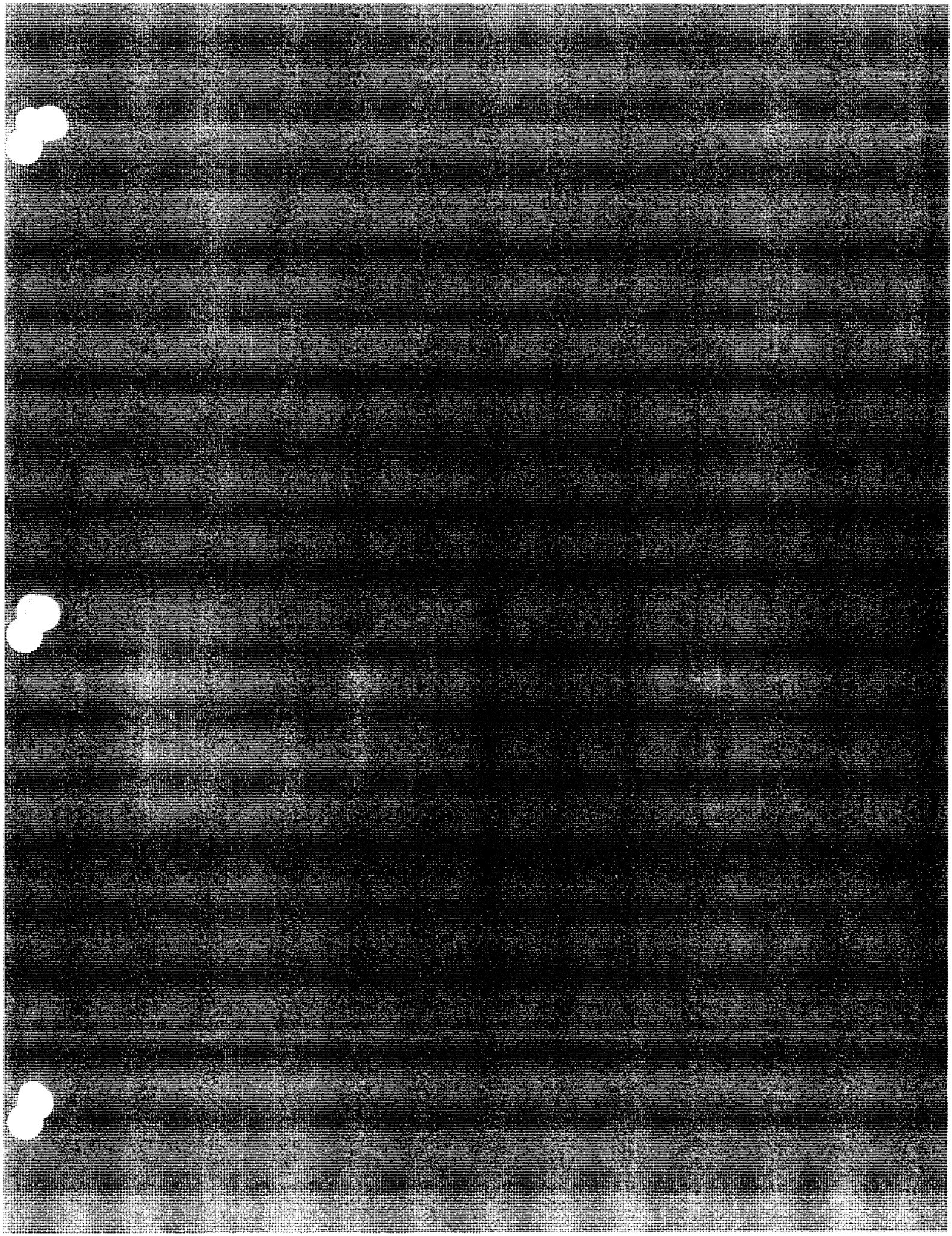
Yohance: Please Confirm that Mr. Albert is in agreement

Roz/Malcolm: Please call Richard Harps and explain that we need the updated appraisal in hand by 10/30. Please initiate a new BAIS.

Josh/John: Please revise the term sheet to reflect the lease and discuss the co-tenancy agreement

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
din@wmata.com
-962-2616

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015345



Omar Karim

n:	O'Keeffe, Carol B. <cokeeffe@wmata.com>
ent:	Wednesday, October 28, 2009 6:09 PM
To:	Omar A. Karim; Doggett, Rosalyn; Goldin, Steven; John Hagner
Cc:	aives@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Montague, Joshua W.; Bottigheimer, Nat
Subject:	RE: Short answers to Fl Ave questions

I have spoken with John at length today and we will resume tomorrow. I'm not sure what you mean by saying that the co-tenancy agreement is not an issue; I was not told that it would not be used; there really isn't much other option given the physical reality of this project, unless under a default situation you are prepared to vacate and wall-off the part of the structure that is on WMATA property.

-----Original Message-----
From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, October 28, 2009 5:49 PM
To: Doggett, Rosalyn; Goldin, Steven
Cc: aives@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; O'Keeffe, Carol B.; Montague, Joshua W.; 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

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015348

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.

anneker'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

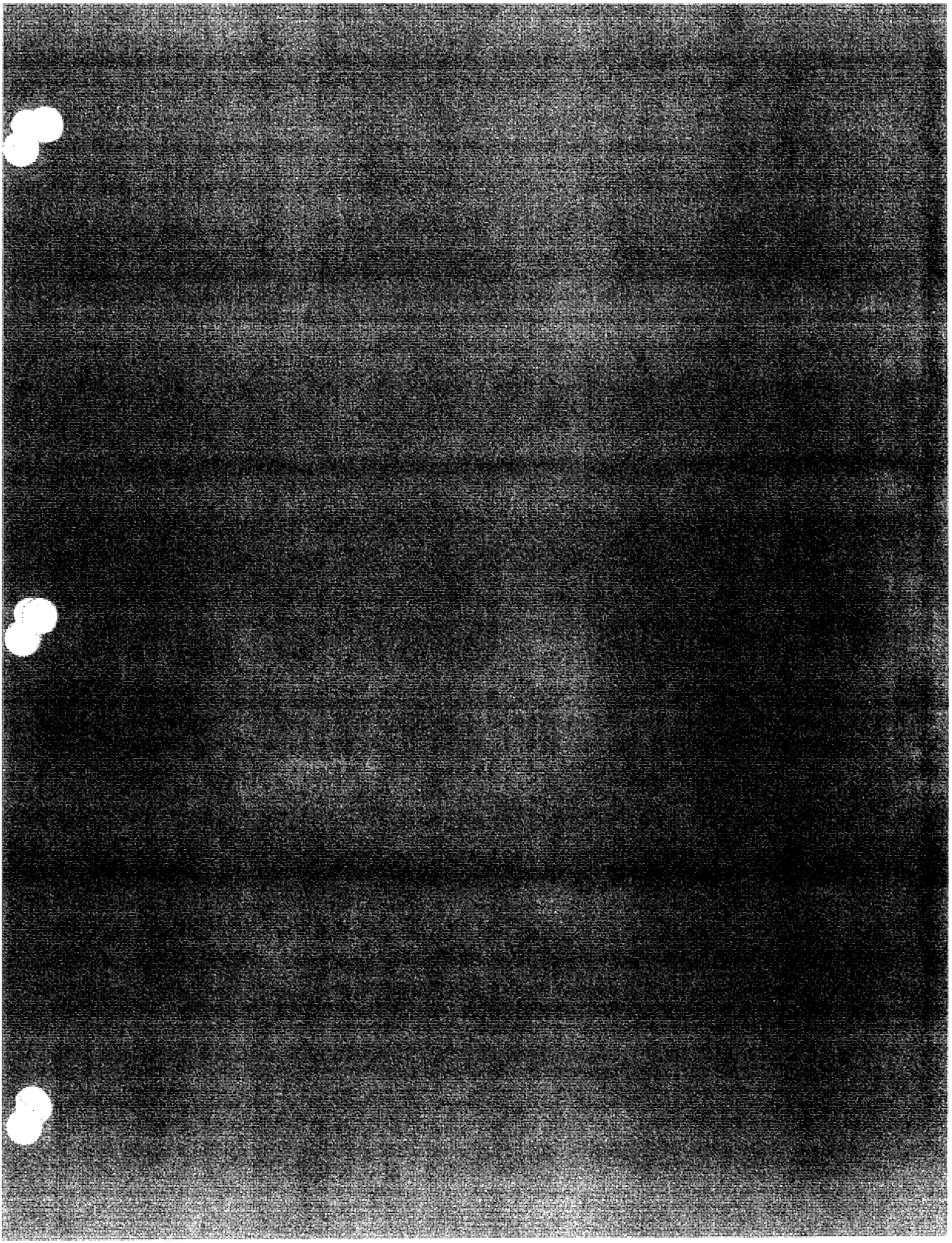
A final lease agreement - this has been partially negotiated, but stalled when we went to sale approach. This would include terms related to composition of team and their strength

CCRs - I think Omar has these from us, we but don't have a response

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



INTEGRA Realty Resources
WASHINGTON, DC
Local Expertise...Nationally

October 30, 2009

Mr. Malcolm Marshall
Washington Metropolitan Area Transit Authority
600 Fifth Street NW
Washington, District of Columbia 20001

SUBJECT: Hypothetical Ground Lease Analysis
9th Street NW & Florida Avenue NW
Washington, District of Columbia 20001
Integra Washington, DC File No. 141-2009-0440

Dear Mr. Marshall:

Per your request, Integra Realty Resources – Washington, DC has performed an analysis of market terms for a proposed ground lease in the vicinity of Florida Avenue and 9th Street NW. As discussed, our analysis stipulates to the following parameters:

- The fee simple market value of the subject site is $2,200,000;
- WMATA (lessor) proposes to lease the site for 60 years at a level annual rent;
- The lessee would have a 39-year renewal option at then-market rent upon expiration of the 60 year base lease term, with market rent to be determined at the time of renewal.

It is noted that proposed terms call for the lessor to receive additional income of 1.5% of gross income and 10% of the net proceeds of any refinancing or sale. However, at your request, we have excluded the impact of this provision from our analysis.

The purpose of our analysis is twofold: first, to develop an opinion of market rent for the 60-year base term as proposed; second, to develop an opinion of the present value of the payment stream that would be generated by the lease at the concluded market rent.

In the course of our investigation, we have spoken to several brokers and developers active in the Washington, DC land development market, including Jayne Shister of Cassidy & Pinkard Colliers, Timothy Smith of LCOR, Ari Firoozabadi of Marcus & Millichap, and John Begert of Fraser Forbes to determine an appropriate methodology for calculating annual rental payments for long-term ground leases. The responses indicate

FOIA CONFIDENTIAL TREATMENT REQUESTED

that the typical methodology is to first value the land to be leased, then estimate a desired rate of return. The rate of return, expressed as a percentage of the total land value paid annually, is analogous to a capitalization rate, which reflects the income generated in a single year expressed as a percentage of total value. The relationship between the annual rental rate (as a percentage of site value) and capitalization rate reflects the fact that a landowner would not encumber a property with a lease that reflected a lower annual percentage return of the site value than indicated by a market-derived capitalization rate.

Accordingly, we have surveyed capitalization rates reflected by land-leased sales on a national basis over the past year, as well as several current listings.

Capitalization Rate Comparables

No.	Location	Tenant	Sale Date	Annual Rent	Sale Price	Overall Cap Rate
1.	Richland, PA	Lowe's	Listing	$774,900	$11,070,000	7.00%
2.	Jacksonville, IL	Blue Cross Blue Shield	Listing	$579,158	$7,473,000	7.75%
3.	Norcross, GA	Local office user	Listing	$151,965	$1,842,000	8.25%
4.	Lawrence, KS	Taco Bell	July-09	$70,012	$920,000	7.61%
5.	Carmel, IN	Multiple (Retail & Office)	May-09	$394,785	$4,650,000	8.49%
6.	Ooltewah, TN	BB&T	May-09	$95,000	$1,461,538	6.50%
7.	Richland, PA	Multiple (Retail & Restaurant)	January-09	$388,208	$4,775,000	8.13%
8.	Upper Arlington, OH	Chase Bank	January-09	$130,000	$2,080,000	6.25%
9.	Leesburg, VA	Pizza Hut	December-08	$109,545	$1,542,888	7.10%

The sales and listings reflect a range of capitalization rates from 6.25% to 8.49%, with an average of 7.45%. These transactions reflect a range of factors that can significantly influence the capitalization rate, including creditworthiness of the tenant, rental rate escalations, length of lease term remaining, and the anticipated value of the underlying property upon reversion. In general, the lower end of the range of rates are characterized by leases with significant escalations throughout the lease term and favorable credit factors, while the high end of the range reflects shorter lease terms, weaker credit tenancy, low escalations, and/or weak location.

The hypothetical lease under consideration would reflect a mix of positive and negative factors. It would be located in the rapidly growing U Street corridor of Washington, DC, which is expected to have a very strong long-term value trend. However, the lease as proposed will not include escalations, and over a long lease period inflation will diminish the real value of the income stream. Based on a review of the comparable data and considering these factors, it appears that an annual ground rent payment for the subject site should fall in the range of 7% to 8% of site value, or $154,000 to $176,000 per year.

In order to conclude to an appropriate annual rental rate, we also consider the impact of a given rental rate on the present value of the future payment stream relative to overall site value. Timothy Smith of LCOR reports that while he has not been involved in any land lease transactions over the past year due to the general slowdown in the land development market, he has been involved in several negotiations that may ultimately result in deals as

the market recovers. According to Mr. Smith, several landowners in the DC area who had been planning to sell their properties have expressed interest in leasing their properties for 60 to 99 years in exchange for a lump sum payment in the range of 80% to 90% of what they believe to be the fee simple market value. Deals structured in this manner would allow the property owner to eliminate carrying costs and receive a substantial payoff for the land, while allowing the lessee to acquire a site at a discount in exchange for losing rights to the property in the distant future. Accordingly, we have tested a range of discount and rental rates (as a percentage of land value) to determine an annual rental rate that results in a present value of the payment stream equivalent to 80% to 90% of the stipulated market value.

To discount the stream of payments to present value, we rely primarily on the Kopacz Real Estate Investor Survey published by PriceWaterhouseCoopers. Korpacz reports a range of discount rates employed by investors as of Q3 2009 at 7.50% to 13.00%, with an average of 9.24%, for CBD office properties nationally. For Washington, DC, the range is from 7.00% to 8.11%. Suburban Maryland and Virginia capitalization rates are significantly higher, ranging up to 12.00%. Because the subject is located outside the CBD of Washington, DC, it is our opinion that a rate at the upper end of the CBD range is most appropriate. We therefore apply a discount rate of 9% in our analysis.

Using a discount rate of 9%, the lump sum value of payments at annual rental rates ranging from 7% to 8% of land value result in the following ratios of payment stream present value to land value:

Rental Rate %	6.50%	6.75%	7.00%	7.25%	7.50%	7.75%	8.00%
PV of Payments at 9%	$1,722,050	$1,788,283	$1,854,516	$1,920,748	$1,986,981	$2,053,214	$2,119,447
Land Value	$2,200,000	$2,200,000	$2,200,000	$2,200,000	$2,200,000	$2,200,000	$2,200,000
PV/Land Value Ratio	78.3%	81.3%	84.3%	87.3%	90.3%	93.3%	96.3%

Based on our conversations with Mr. Timothy Smith, we conclude that an appropriate rental rate should result in a present value to land value ratio of 80% to 90%. We therefore conclude to a range of rental rates from 6.75% to 7.50% or land value is appropriate.

Our analysis of capitalization rates extracted from sales indicated a range from 7% to 8%, while the analysis of the ratio of the present value of the payment stream to land value indicates that a reasonable range is from 6.75% to 7.50%. Viewing both methodologies together, it appears that a rate from 7.0% to 7.5%, the overlap range, is appropriate for the subject lease.

We perform an additional test of reasonableness to conclude to a percentage rental rate within this range. This test recognizes that a prudent landowner would not lease their property on a long-term basis unless the present value of the rental payments plus an expected reversion upon expiration is equal to the current land value. Using a discount

rate of 9%, we test a range of percentage rental rates to determine what level of escalation in the value of the subject site would be required to create a sufficient reversion value that, when added to the present value of the income stream, exceeds the current value of the site.

At a rental rate of 6.75% of land value, the underlying site would be required to appreciate at an average rate of 5.95% per year (compounding) in order to meet this hurdle. Investor expectations of rental rate growth over the next 7 to 10 years range from 2% to 4% (average 2.44%) for Washington, DC office properties and from 0% to 5% (average 2.56%) for office properties. While expected income growth in the subject submarket is expected to allow for appreciation somewhat in excess of these parameters, average appreciation of 6% is clearly unreasonable. Required land price escalation to achieve feasibility within the range of rental rates from 7% to 8% is shown below:

Rental Rate %	7.00%	7.25%	7.50%	7.75%	8.00%
Required Land Value Escalation	5.65%	5.25%	4.75%	4.10%	3.10%

This analysis indicates that the range of feasible rental rates is somewhat higher than indicated by our present value to land value ratio analysis. Given that typical investor expectations of 60-year average appreciation are in the range of 3%, a rental rate of 8% of land value appears reasonable. However, our analysis does not consider the value of a possible reversion of improvements to the landowner upon expiration, which is typical for the marketplace. In addition, some investors utilize lower discount rates when calculating acceptable rates of return on land holdings as opposed to income streams. Accordingly, the required appreciation to meet feasibility for the landowner may be overstated slightly in this analysis. This methodology, however, illustrates the significant detrimental impact of level rents on a long-term lease from the landowner's perspective, as the value of the future payments diminishes significantly in the later years of the lease. As Jayne Shister of Cassidy & Pinkard Colliers noted, "escalation terms are the most difficult aspect of negotiating a ground lease," and long-term leases at level rent are highly unusual. This final analysis indicates that a somewhat higher rental rate is required to account for the level rent stipulated in the hypothetical lease terms.

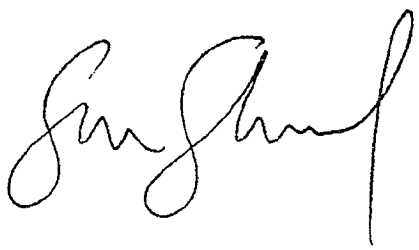
Considering all of these factors, it is our opinion that a market rental rate for the subject site, at the stipulated land value and lease terms, is **7.75% of land value, or $170,500 annually**.

Applying the previously utilized discount rate of 9% to a 60-year stream of annual payments of $170,500, paid in advance, results in a lump sum present value indication of the stream of rental payments at **$2,050,000** ($2,053,214, rounded).

A schedule of present value calculations supporting our analysis is appended to this letter. Thank you for the opportunity to be of service.

Best regards,

Patrick C. Kerr, MAI, MRICS, SRA
Managing Director
Certified General Real Estate Appraiser
DC Certificate #GA00010274



Samuel D. Sherwood
Analyst

Land Value	$2,200,000
Capitalization Rate	7.75%
Annual Payment	$170,500
Discount Rate	9.00%
Net PV	$2,053,214

Year	Payment	PV Factor	PV
1	$170,500	1.000	$170,500
2	$170,500	0.917	$156,422
3	$170,500	0.842	$143,506
4	$170,500	0.772	$131,657
5	$170,500	0.708	$120,786
6	$170,500	0.650	$110,813
7	$170,500	0.596	$101,664
8	$170,500	0.547	$93,269
9	$170,500	0.502	$85,568
10	$170,500	0.460	$78,503
11	$170,500	0.422	$72,021
12	$170,500	0.388	$66,074
13	$170,500	0.356	$60,619
14	$170,500	0.326	$55,613
15	$170,500	0.299	$51,022
16	$170,500	0.275	$46,809
17	$170,500	0.252	$42,944
18	$170,500	0.231	$39,398
19	$170,500	0.212	$36,145
20	$170,500	0.194	$33,160
21	$170,500	0.178	$30,422
22	$170,500	0.164	$27,911
23	$170,500	0.150	$25,606
24	$170,500	0.138	$23,492
25	$170,500	0.126	$21,552
26	$170,500	0.116	$19,773
27	$170,500	0.106	$18,140
28	$170,500	0.098	$16,642
29	$170,500	0.090	$15,268
30	$170,500	0.082	$14,007
31	$170,500	0.075	$12,851
32	$170,500	0.069	$11,790
33	$170,500	0.063	$10,816
34	$170,500	0.058	$9,923
35	$170,500	0.053	$9,104
36	$170,500	0.049	$8,352
37	$170,500	0.045	$7,662
38	$170,500	0.041	$7,030
39	$170,500	0.038	$6,449
40	$170,500	0.035	$5,917
41	$170,500	0.032	$5,428
42	$170,500	0.029	$4,980
43	$170,500	0.027	$4,569
44	$170,500	0.025	$4,192

45	$170,500	0.023	$3,846
46	$170,500	0.021	$3,528
47	$170,500	0.019	$3,237
48	$170,500	0.017	$2,969
49	$170,500	0.016	$2,724
50	$170,500	0.015	$2,499
51	$170,500	0.013	$2,293
52	$170,500	0.012	$2,104
53	$170,500	0.011	$1,930
54	$170,500	0.010	$1,771
55	$170,500	0.010	$1,624
56	$170,500	0.009	$1,490
57	$170,500	0.008	$1,367
58	$170,500	0.007	$1,254
59	$170,500	0.007	$1,151
60	$170,500	0.006	$1,056

Omar Karim

n:	Hagner, John <JHagner@wcsr.com>
ent:	Monday, November 02, 2009 7:01 PM
To:	'cokeeffe@wmata.com'
Cc:	'okarim@bannekerventures.com'
Subject:	Fw: Comments to Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites
Attachments:	WMATA Term Sheet for Lease of Shaw-Howard Florida Ave Sites (Final Mark Up).doc; WMATA Term Sheet for Lease of Shaw-Howard Florida Ave Sites (clean version).doc
Importance:	High

Carol: I'm forwarding this in case you were not copied. I can't tell from my Blackberry if you were copied.
John
John D. Hagner
Womble Carlyle Sandridge & Rice, PLLC
202.857.4404 Direct
Sent from my Blackberry. Please excuse typos.

From: Omar A. Karim <okarim@bannekerventures.com>
To: 'Montague, Joshua W.' <jwmontague@wmata.com>; 'Doggett, Rosalyn' <RDoggett@wmata.com>
Cc: 'Goldin, Steven' <sgoldin@wmata.com>; 'Meister, Mark K.' <MMeister@wmata.com>; 'Bottigheimer, Nat' <NBottigheimer@wmata.com>; 'Yohance S. Fuller' <Yohance.Fuller@dc.gov>; Neil.Albert@dc.gov eil.Albert@dc.gov>; Hagner, John; 'Tiwana Hicks' <thicks@bannekerventures.com>; mckinney@bannekerventures.com <mmckinney@bannekerventures.com>; aives@bannekerventures.com <aives@bannekerventures.com>
Sent: Mon Nov 02 18:19:53 2009
Subject: Comments to Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites
Josh and Roz,

As discussed with Josh a few minutes ago, we attach for your review our final comments to the Term Sheet which are within:

1. Revised Amended and Restated Term Sheet; and
2. Redline of the Amended and Restated Term Sheet against the draft provided by Josh to John Hagner on Oct 29,. 2009 at 12:37pm

Please call or email me with any questions.

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 015359

IRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this unication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal evenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

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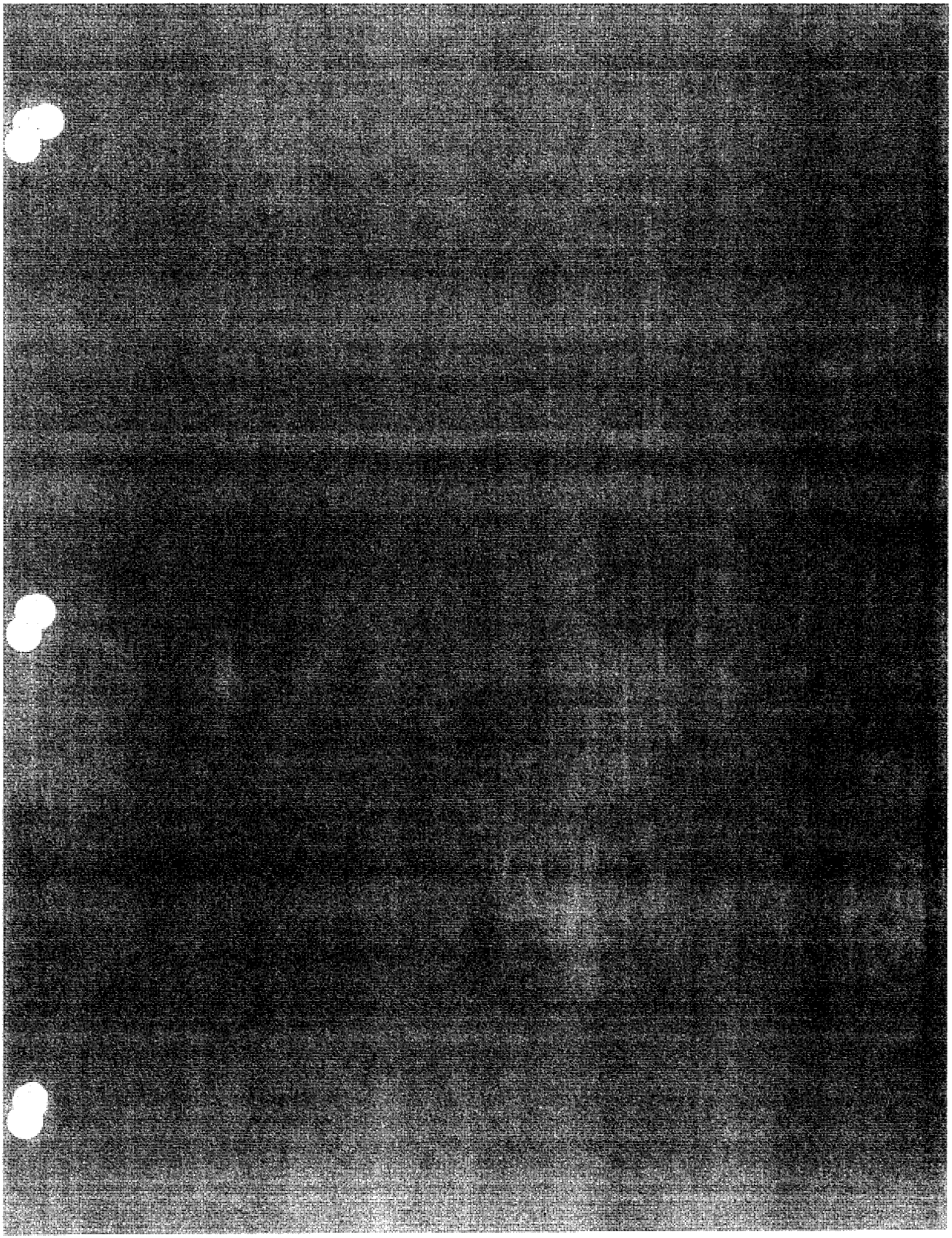
FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

.n: Omar A. Karim <okarim@bannekerventures.com>
.ent: Tuesday, November 03, 2009 10:45 PM
To: 'Goldin, Steven'
Cc: 'Bottigheimer, Nat'; 'Montague, Joshua W.'; 'O'Keeffe, Carol B.'; 'Doggett, Rosalyn'; Neil.Albert@dc.gov; 'Yohance S. Fuller'; 'John Hagner'; alves@bannekerventures.com; 'Tiwana Hicks'; mmckinney@bannekerventures.com
Subject: Shaw-Howard/Florida Avenue Term Sheet - Recap

Importance: High

Steve,

Thank you for reaching out this evening. Per your request, this email serves as a recap of our discussion:

Agreed to Items:

1. Co-tenancy Agreement – John Hagner and the Developers spoke this evening and we are in agreement with the terms of the conversation that John had with Carol this afternoon. John will send over an updated Term Sheet tomorrow by noon with these changes, along with the ones below as well.
2. $100,000 Expense Credit from going to Lease from Sale – The Developer will provide further back-up for our legal bills with the days and amount of time on the bills being shown but not the confidential description of the work as this is attorney-client privilege.

.en Issues:

3. Guarantee – Developer proposes $1.5M.
4. Capital Event Participation – Developer proposes that WMATA receive 1.5% of gross proceeds; this is a change from the 20% IRR that Developer was to receive previously before WMATA would begin sharing in the proceeds.
5. Term of Lease – Developer proposes 99 year straight lease as this is what was agreed to between the Developer and Mr. Graham in order to go from a sale to a lease. Discussions to be held with Mr. Graham in the morning to finalize term.

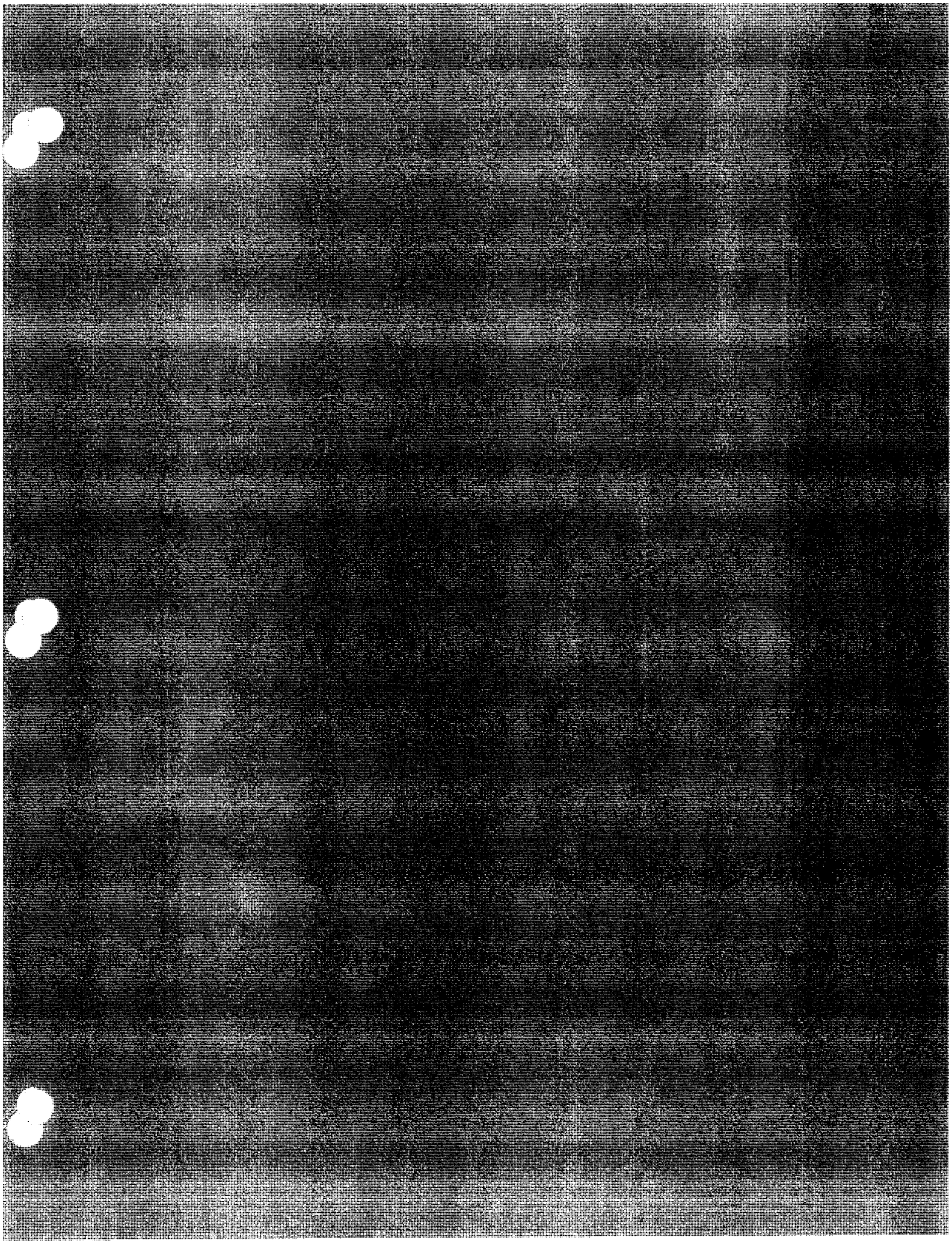
We look forward to finalizing these few issues by noon or 1pm (ET) tomorrow.

Have a great night.

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



Omar Karim

m: Kass, Jonathon (COUNCIL) <JKass@DCCOUNCIL.US>
ent: Wednesday, November 04, 2009 11:27 AM
To: Fuller, Yohance (DMPED); okarim@bannekerventures.com; nbottigheimer@wmata.com; sgoldin@wmata.com
Cc: aives@bannekerventures.com; mmckinney@bannekerventures.com; thicks@bannekerventures.com; Albert, Neil (DMPED); JHagner@wcsr.com; cokeeffe@wmata.com; jwmontague@wmata.com; RDoggett@wmata.com
Subject: RE: Shaw-Howard/Florida Avenue Term Sheet - Recap

CM Graham has spoken to Mr. Albert about this.

Thanks,

Jonathon Kass
Committee on Public Works and Transportation
Councilmember Jim Graham, Chair
Council of the District of Columbia
(202) 724-8152
jkass@dccouncil.us
CM Graham: www.grahamwone.com
Committee: www.dccouncil.us/publicworksandtransportation

From: Fuller, Yohance (EOM) [mailto:yohance.fuller@dc.gov]
Sent: Wednesday, November 04, 2009 11:04 AM
To: okarim@bannekerventures.com; nbottigheimer@wmata.com; sgoldin@wmata.com
Cc: aives@bannekerventures.com; mmckinney@bannekerventures.com; thicks@bannekerventures.com; Albert, Neil (DMPED); JHagner@wcsr.com; cokeeffe@wmata.com; jwmontague@wmata.com; RDoggett@wmata.com; Kass, Jonathon (COUNCIL)
Subject: Re: Shaw-Howard/Florida Avenue Term Sheet - Recap

Lease terms will be 75 year with 24 year option.

Jonathon - will you please verify this with Board Member Graham and respond to the group?

Thanks.

From: Omar A. Karim <okarim@bannekerventures.com>
To: 'Bottigheimer, Nat' <NBottigheimer@wmata.com>; 'Goldin, Steven' <sgoldin@wmata.com>
Cc: aives@bannekerventures.com <aives@bannekerventures.com>; mmckinney@bannekerventures.com <mmckinney@bannekerventures.com>; 'Tiwana Hicks' <thicks@bannekerventures.com>; Albert, Neil (EOM); Fuller, Yohance (EOM); 'John Hagner' <JHagner@wcsr.com>; 'O'Keeffe, Carol B.' <cokeeffe@wmata.com>; 'Montague, Joshua W.' <jwmontague@wmata.com>; 'Doggett, Rosalyn' <RDoggett@wmata.com>; Kass, Jonathon (COUNCIL)
Sent: Wed Nov 04 10:51:56 2009
Subject: RE: Shaw-Howard/Florida Avenue Term Sheet - Recap

Nat,

FOIA CONFIDENTIAL TREATMENT REQUESTED

Thanks for the information. We appreciate it. As previously discussed, the conversation that Mr. Graham and I had was to go from a sale to a 99 year flat lease. In the worst economy in more than 50 years, as a Joint Development Deal, having terms that would allow WMATA's development partner to secure as flexible financing on an on-going basis would be the most beneficial use to all parties involved, including WMATA as a participant in annual cash flow as well as Capital events. A 60 year base lease would reduce the value of the deal since we are using HUD financing which is a 40 year term plus a requirement that any lease have at least 10 years beyond the loan term. Thus, under a 60 year lease, we would be prohibited from re-financing the project in just 10 years from now, which is a great detriment to the project. As a compromise, we would be prepared to enter into a 75 yr + 24 year option. Would this be acceptable to you?

Omar

From: Bottigheimer, Nat [mailto:NBottigheimer@wmata.com]
Sent: Wednesday, November 04, 2009 10:30 AM
To: Omar A. Karim; Goldin, Steven
Cc: aives@bannekerventures.com; mmckinney@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; 'John Hagner'; O'Keeffe, Carol B.; Montague, Joshua W.; Doggett, Rosalyn; jkass@dccouncil.us
Subject: RE: Shaw-Howard/Florida Avenue Term Sheet - Recap
Importance: High

Regarding the lease term, and a question from Mr. Albert about the feasibility of lease terms other than 99 years, I'm attaching a list of examples of long-term leases that include a base term of less than 99 years plus option periods.

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

Thanks very much,

Nat

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, November 03, 2009 10:45 PM
To: Goldin, Steven
Cc: aives@bannekerventures.com; mmckinney@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Bottigheimer, Nat; 'John Hagner'; O'Keeffe, Carol B.; Montague, Joshua W.; Doggett, Rosalyn
Subject: Shaw-Howard/Florida Avenue Term Sheet - Recap
Importance: High

Steve,

Thank you for reaching out this evening. Per your request, this email serves as a recap of our discussion:

FOIA CONFIDENTIAL TREATMENT REQUESTED

Agreed to Items:

1. Co-tenancy Agreement – John Hagner and the Developers spoke this evening and we are in agreement with the terms of the conversation that John had with Carol this afternoon. John will send over an updated Term Sheet tomorrow by noon with these changes, along with the ones below as well.
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Open Issues:

3. Guarantee – Developer proposes $1.5M.
4. Capital Event Participation – Developer proposes that WMATA receive 1.5% of gross proceeds; this is a change from the 20% IRR that Developer was to receive previously before WMATA would begin sharing in the proceeds.
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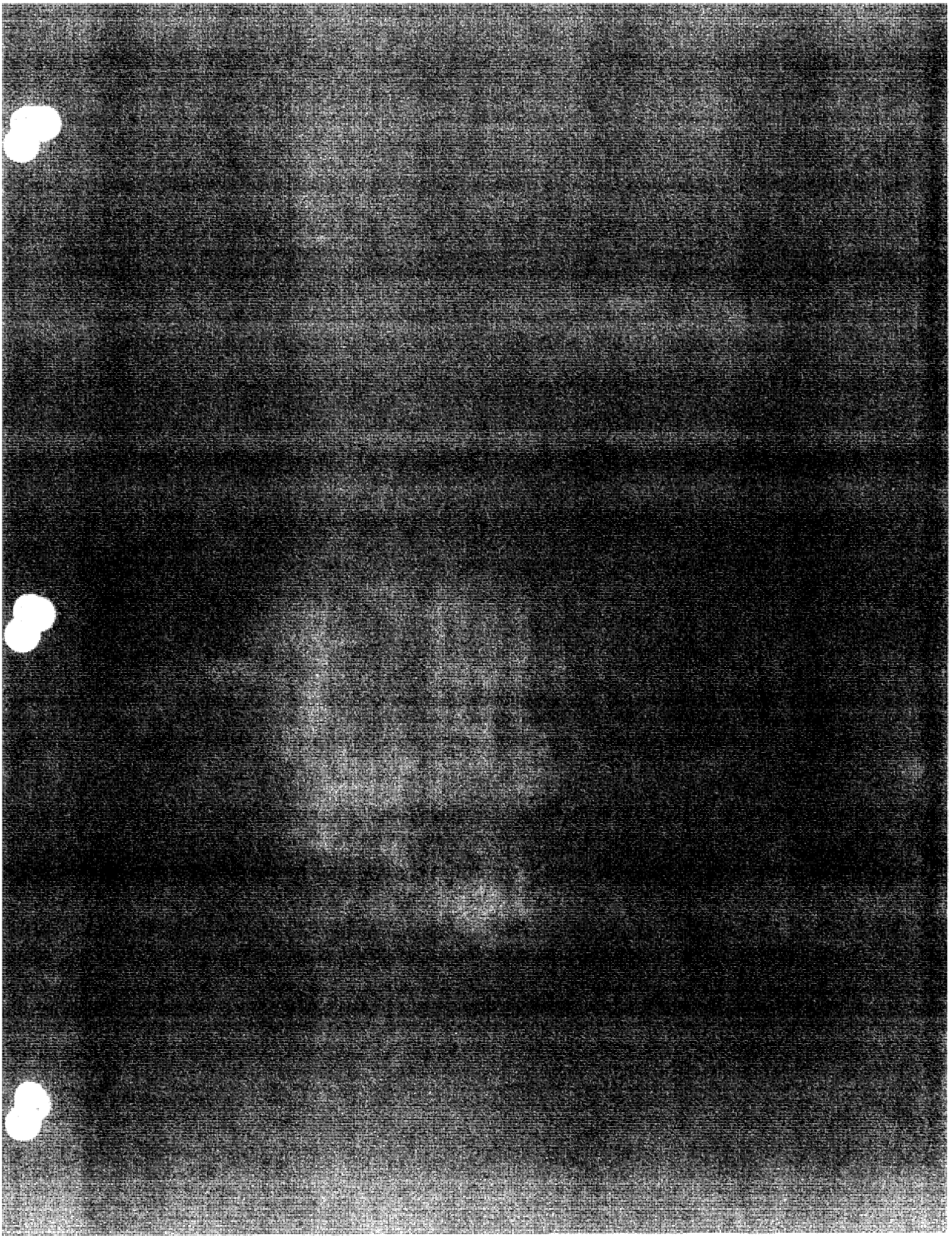
We look forward to finalizing these few issues by noon or 1pm (ET) tomorrow.

Have a great night.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
ashington, DC 20005
202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015366



Omar Karim

n: Fuller, Yohance (EOM) <yohance.fuller@dc.gov>
ent: Wednesday, November 04, 2009 5:22 PM
To: Omar A. Karim; Montague, Joshua W.
Cc: Bottigheimer, Nat; O'Keeffe, Carol B.; Goldin, Steven; Doggett, Rosalyn; Albert, Neil (EOM); John Hagner; Tiwana Hicks; mmckinney@bannekerventures.com; aives@bannekerventures.com
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
bject: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites
portance: 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" 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.

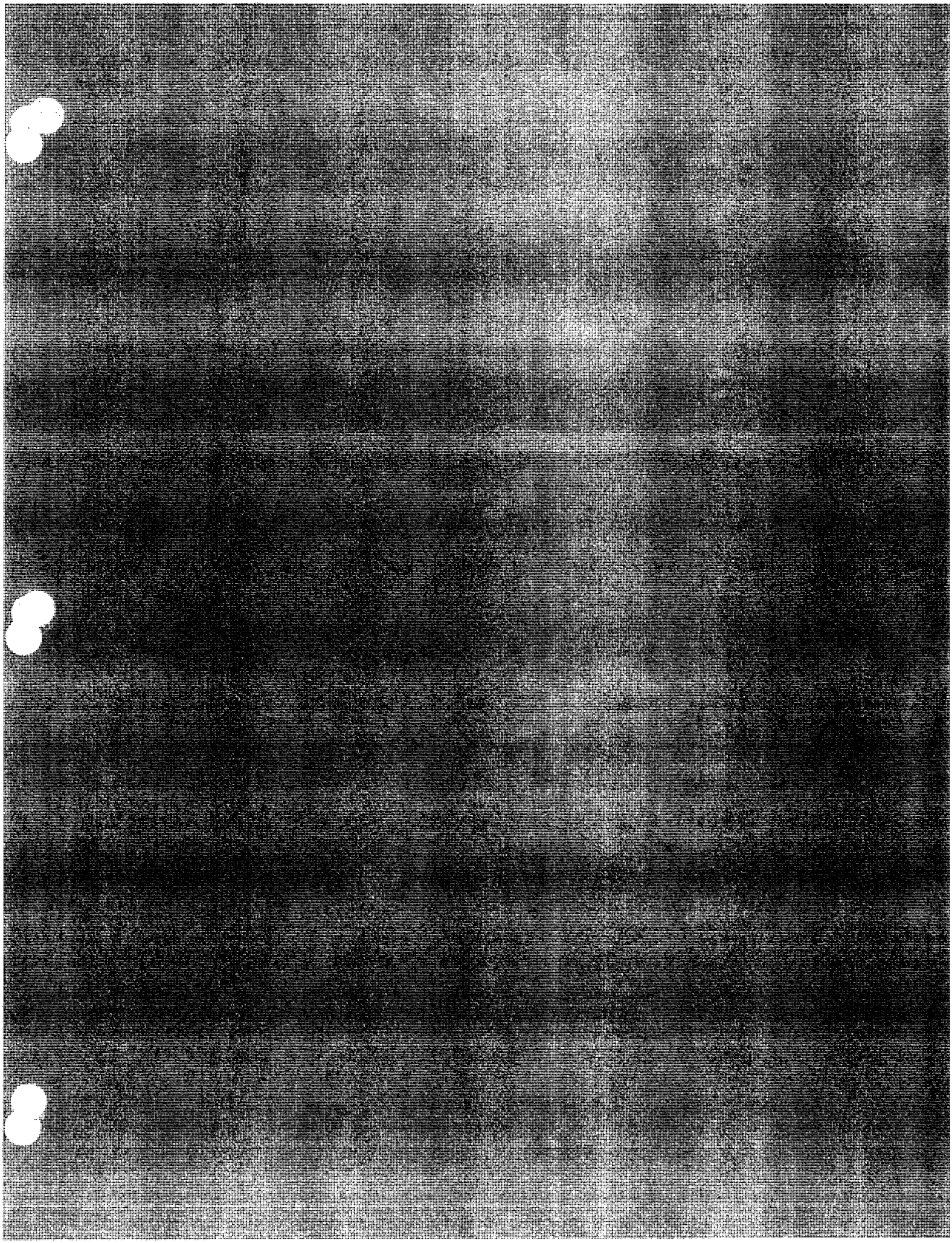
Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax

FOIA CONFIDENTIAL TREATMENT REQUESTED

(301) 523-1810 cell
okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

n:	Hagner, John <JHagner@wcsr.com>
ent:	Thursday, November 05, 2009 2:16 AM
To:	Bottigheimer, Nat; O'Keeffe, Carol B.; Montague, Joshua W.; aives@bannekerventures.com; okarim@bannekerventures.com; thicks@bannekerventures.com
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

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 turn on its land. In my experience, institutional investors consider their "total return" on their vestments, 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.

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

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.

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.

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."

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.

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

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.

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.

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.

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 landowner, 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Other premises:

winbrook, we negotiated a lease with JBG with precisely the terms we proposed.***[Hagner, John]*** DID JBG HAVE ...E 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.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED

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 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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015375

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,

FOIA CONFIDENTIAL TREATMENT REQUESTED

In preparation of tomorrow's Board meeting, attached are the following:

\mended and Restated Term Sheet revised in accordance with the discussions since Monday, which finalizes our ıderstanding; 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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Minutes
Planning, Development and Real Estate Committee
November 5, 2009

The meeting was called to order at 9:21 a.m. Present were:

Committee members:

Mr. Neil Albert, Chairman
Ms. Elizabeth Hewlett, Vice Chair
Mr. Jim Graham
Mr. Peter Benjamin
Mrs. Catherine Hudgins
Mr. Christopher Zimmerman
Mr. Gordon Linton
Mr. Jeff McKay
Mr. Anthony Giancola
Mr. Marcell Solomon
Mr. William D. Euille

Mr. Benjamin moved, seconded by Mrs. Hudgins, that the Committee convene in Executive Session at 9:22 a.m. The Committee voted unanimously in favor of the motion.

The Committee meeting reconvened in Public Session at 11:47 a.m.

Action Items

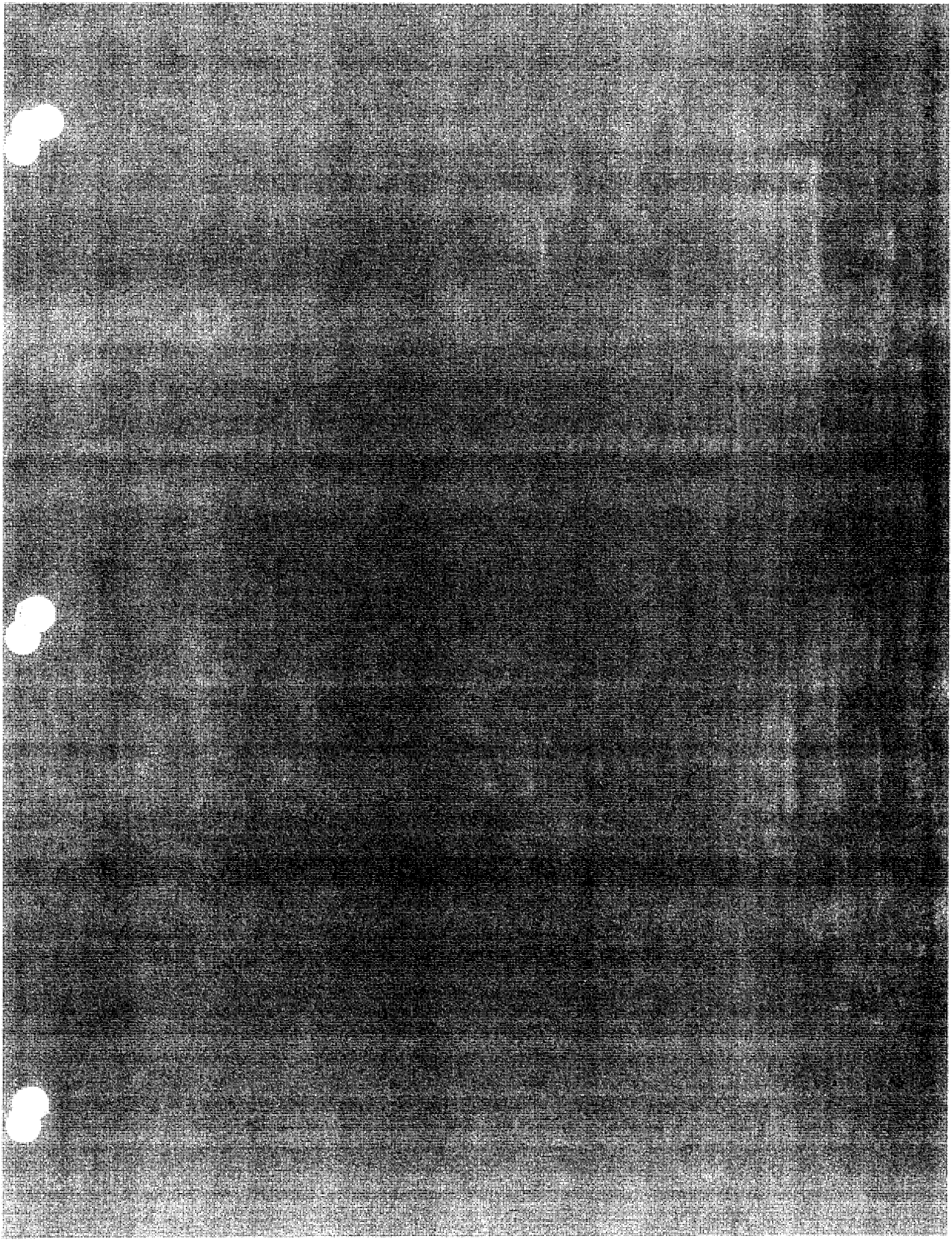
A1. Sale of Excess Metro Property at Chillum Place NE, Washington, DC

Mr. Albert moved, seconded by Ms. Hewlett, to defer the sale of excess Metro property at Chillum Place, NE, Washington, DC. The Committee voted unanimously in favor of the motion.

A2. Approve Amended Term Sheet for Lease of Shaw-Howard/Florida Avenue Joint Development Site

Mr. Albert moved, seconded by Ms. Hewlett, to defer the approval of an amended term sheet for lease of Shaw-Howard/Florida Avenue joint development site. The Committee voted unanimously in favor of the motion.

The meeting adjourned at 11:48 a.m.



Omar Karim

m: Hagner, John <JHagner@wcsr.com>
Sent: Thursday, November 05, 2009 4:17 PM
To: okarim@bannekerventures.com
Subject: RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites

Omar: What happened at today's Board meeting?

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: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, November 04, 2009 10:42 PM
To: Bottigheimer, Nat; O'Keeffe, Carol B.; Montague, Joshua W.; Anthony James Ives; Tiwana Hicks; Hagner, John
Cc: Steve Goldin; Rosslyn Doggett; Mark K. Meister; Marshall, Malcolm; jkass@dccouncil.us; Yohance Fuller
Subject: Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites

Nat,

Thanks for your thoughts. We appreciate them. For purposes of tomorrow, we accept the Term Sheet as sent to s this evening.

Following approval of the Term Sheet, we will give more thought to this particular issue to help come up with a way to meet your goals. Should we be able to come up with an agreeable solution prior to finalizing the JDA and Lease, we could include the solution in these docs. Alternatively, there is probably even more time bt approval of these docs and execution of the Lease prior to Closing to come up with solutions. In either case, we promise to provide you and your team with some solutions to address the concerns of all parties.

Thanks for working so hard on this. Finalizing the JDA and Lease should now be a piece of cake.

Omar
Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Bottigheimer, Nat" <NBottigheimer@wmata.com>
Date: Wed, 4 Nov 2009 21:01:52 -0500
To: O'Keeffe, Carol B.<cokeeffe@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>; aives@bannekerventures.com<aives@bannekerventures.com>;

FOIA CONFIDENTIAL TREATMENT REQUESTED

okarim@bannekerventures.com<okarim@bannekerventures.com>;
thicks@bannekerventures.com<thicks@bannekerventures.com>; jhagner@wcsr.com<jhagner@wcsr.com>
Cc: Goldin, Steven<sgoldin@wmata.com>; Doggett, Rosalyn<RDoggett@wmata.com>; Meister, Mark <MMeister@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>;
jkass@dccouncil.us<jkass@dccouncil.us>; Yohance S. Fuller<Yohance.Fuller@dc.gov>
Subject: RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

John--

I heard a problem and I didn't hear a solution. Also, for the reasons laid out below, I don't understand at all your concept that we're making an above market imposition on the Developer.

Here are our premises:

It's our land.

Long-term real estate values in the DC region have grown faster than 3%. A location on U Street in between U Street and Shaw/Howard stations has growth potential and value stability unlike the vast majority of property in the region, and its long-term appreciation value is significant.

Agreeing to a lease that is based on an escalation rate less than the the property's probable long-term appreciation rate is selling ourselves short. Marking to market each decade and then holding constant for each 10-year period while property values and lease-rates available to building owners appreciate is leaving significant value on the table each year in a decade.

Without going to a spreadsheet, if we were simply to mark to market each decade, in year one of any given decade we'd get 4% less than the rental income available to a building owner on average. The next year we'd get 8% less than full value, the next year 12% less than full value, each year the same until the last year of the decade, when we'd be getting 2% 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.

Other premises:

At Twinbrook, we negotiated a lease with JBG with precisely the terms we proposed.

Long-term leases are finance-able at terms less than 99 years.

If you have a concern about lender certainty and project finance-ability, as you suggest you do, we are open to proposals that do not systematically erode Metro's ability to realize the value of its land over the period 60-99. We're open to a capitalization of future rent at year 60 for the period 60-99, and we're open to rent levels re-set every decade to be constant for the decade, but if rent levels are reset to be constant for a decade for the purpose of certainty, then they should be set above market for the first five years of the decade with the expectation that they'd be below market the second half. Maybe you have other thoughts.

Until we hear a counter that protects our value in a market-rate setting from years 60-99, the proposal we've made is our final proposal.

Respectfully,

Nat

From: John Hagner [mailto:JHagner@wcsr.com]
Sent: Wednesday, November 04, 2009 6:24 PM

FOIA CONFIDENTIAL TREATMENT REQUESTED

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.

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To: Hagner, John
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Attached is the updated Term Sheet described below.

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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Subject: RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

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Subject: Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

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John
John D. Hagner
Womble Carlyle Sandridge & Rice, PLLC
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Sent from my Blackberry. Please excuse typos.

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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>
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Yohance

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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

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2. "Redline...#157; of the Amended and Restated Term Sheet against the version that we provided to WMATA on November 2, 2009 at 6:20p.

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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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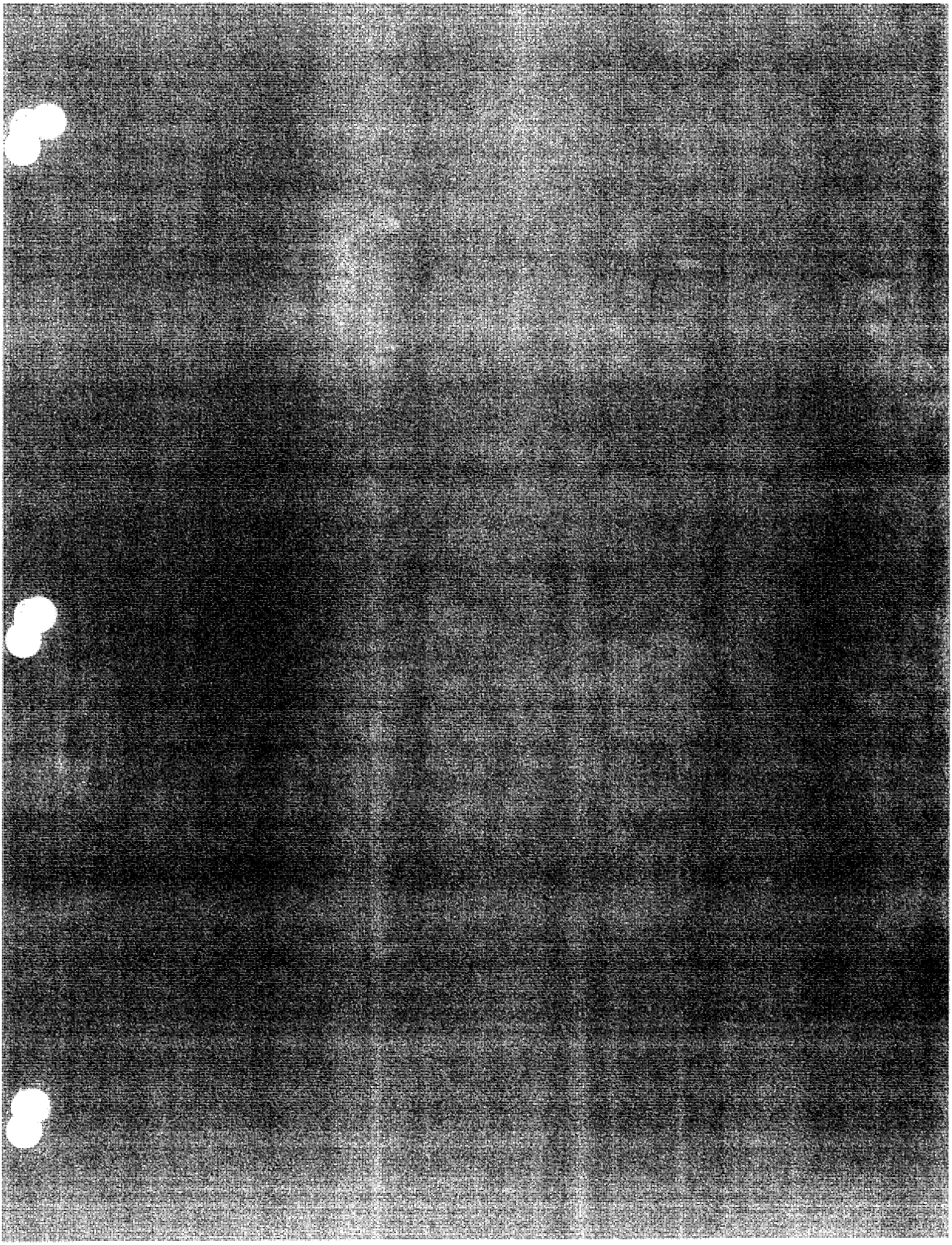

November 6, 2009

MEMORANDUM FOR: Chairman and Members of the Board

SUBJECT: Supplementary Information Regarding Shaw-Howard/Florida Avenue Joint Development Project

During the Planning, Development and Real Estate Committee Executive Session on November 5, 2009, staff was requested to provide information relative to the full value of the Shaw-Howard/Florida Avenue joint development project to Metro. Attached is the response to that request.

Please let me know if you have further questions.

John B. Catoe, Jr.
General Manager

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

M E M O R A N D U M

SUBJECT: Supplementary Information Regarding Shaw-Howard/Florida Avenue Joint Development Project

DATE: November 6, 2009

FROM: PLJD – Nat Bottigheimer

TO: GMGR – John B. Catoe

At yesterday's meeting of the Planning, Development and Real Estate Committee, committee members requested supplementary information regarding the full value of the Shaw-Howard/Florida Avenue joint development project to Metro.

The materials below provide staff's estimate of the value to Metro of Metro's participation in income from the Shaw-Howard/Florida Avenue project and of Metro's participation in capital events related to this project.

Summary

$5,080M

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Potential Value from additional development density	1,250,000
Net Present Value (NPV) of Rents, Years 61-99	70,000
NPV of participating rent (effective gross income)	280,000
NPV of participation in capital events	630,000
Total potential value	$3,030,000 - $4,280,000
Land appraised value	$2,200,000 - $3,450,000

Washington Metropolitan Area Transit Authority

Base Value

The base value to Metro of the Shaw-Howard/Florida Avenue project is a capitalized lease payment of $2,050,000, due no later than 20 months after execution of a joint development agreement between Metro and The Jazz at Florida Avenue (the "Developer"). This payment covers lease payments for the first 60 years of the lease. In addition, the Developer has agreed to compensate Metro on a pro rata basis for additional development density that may be achievable through the entitlements process. This could add an additional $1,250,000 to the capitalized lease payment.

FOIA CONFIDENTIAL TREATMENT REQUESTED

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The terms proposed between Metro and the Developer include three additional significant sources of revenue to Metro: market-rate rents on the project as a whole beginning in the 61st year of the lease; participating rent through a percentage of project "effective gross income;" and capital event participation, through percentages of sales, assignments, or refinances.

Market-based Rent for Years 61-99

The net present value (NPV) to Metro of the expected stream of market rate rents beginning in Year 61 of the lease is approximately $67,000. This is the present value of a future income stream expected to total about $170,000,000 in current year dollars.

Participating Rent – Effective Gross Income

The NPV to Metro of the expected stream of effective gross income is about $278,000. Effective gross income is calculated as Metro's share (1.5%) of the gross rent, plus any ancillary revenues received by the Developer from the Project (*e.g.,* advertising, vending, laundry machines, etc.). This rental income participation is expected to begin generating about $34,000 annually beginning in the fourth year of the lease (when the improvements are completed and leased), and to escalate thereafter with project rents. Over the first 60 years of the lease, effective gross income participation is expected to generate about $3,000,000 to Metro in current year dollars.

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The NPV to Metro of its expected participation in capital events is approximately $630,000. Capital events include (i) assignments of the joint development agreement or the lease; (ii) sales or refinancing of the Developer's improvements; and (iii) other dispositions, transfers and conversions that change the makeup of the Developer to add new members not originally included as of the execution date of the Joint Development Agreement. Capital event participation is expected to generate revenues to Metro nine times over the life of the 99-year lease for an estimated total of about $14,000,000 in current year dollars. It should be emphasized that there is a large potential variability in this expected value, as it depends on the number of discrete capital events that actually happen over a 99-year period.

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Other Value Considerations

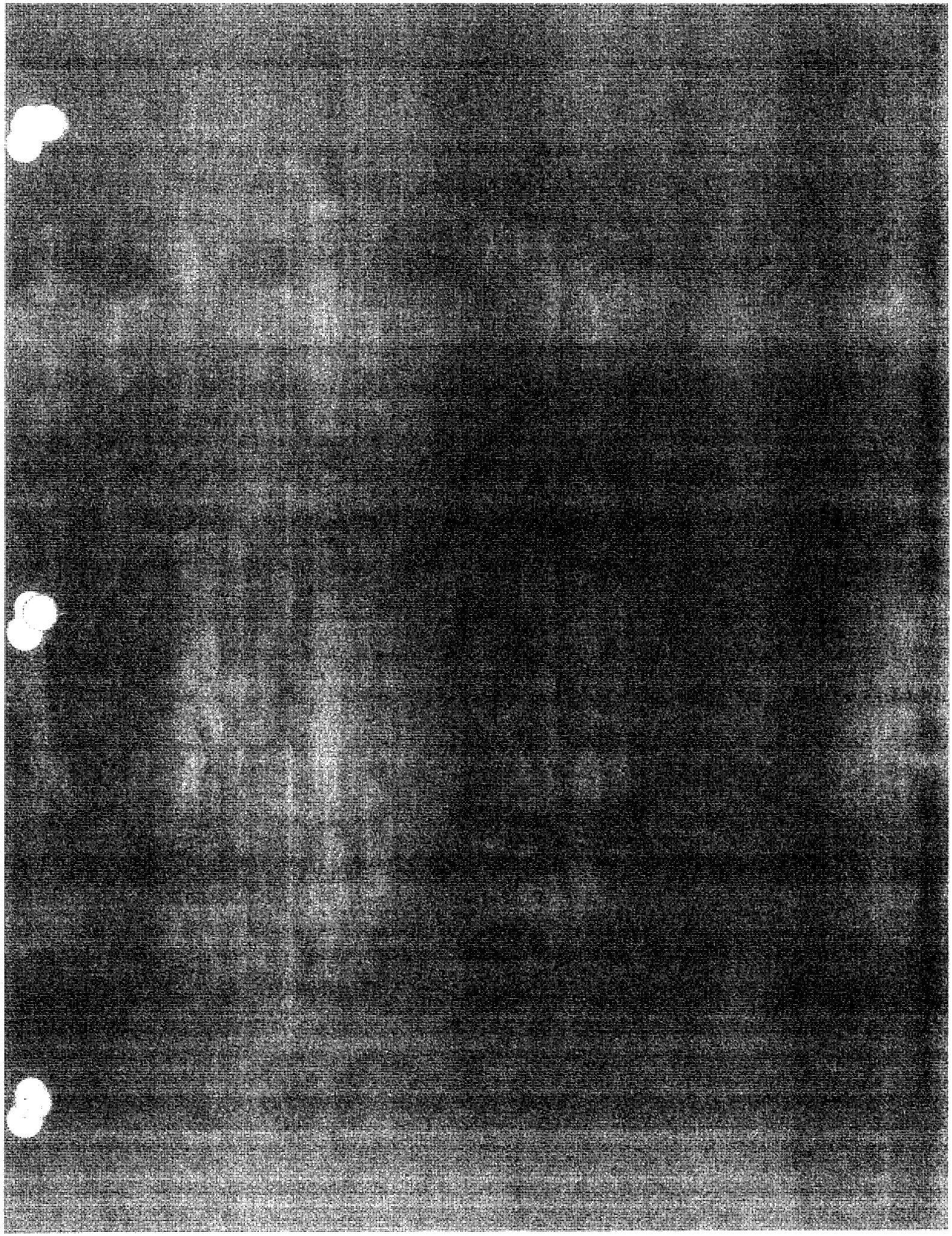
Additionally, at the end of the lease term, Metro would own the land and the structures on the land, subject to the terms of the co-tenancy agreement in place. The land would have an appreciated value, and the structure could be sold for its value at that time, or re-leased.

Recap

As noted in the committee meeting yesterday, the appraised value of the Shaw-Howard/Florida Avenue property is $2,200,000, after reflecting affordable housing requirements and the impacts on land value of the extraordinary construction costs of building over a rail tunnel, and up to $3,450,000 if additional density could be achieved. The present value of all the revenue opportunities available to Metro over the term of its lease ranges between $3,030,000 and $4,280,000, numbers that exceed the current appraised value.

If you have further questions concerning this information, please do not hesitate to contact me directly.

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

m: Bottigheimer, Nat <NBottigheimer@wmata.com>
Sent: Sunday, November 08, 2009 4:26 PM
To: okarim@bannekerventures.com; jhagner@wcsr.com; Yohance S. Fuller; jkass@dccouncil.us
Cc: Goldin, Steven; Doggett, Rosalyn; O'Keeffe, Carol B.; Bottigheimer, Nat
Subject: FW: Shaw-Howard Florida Avenue Joint Development Project
Attachments: Shaw_Howard FL Ave JD Proj Value Sup Info.pdf

Omar et al--

fyi, this is the material that went out to the Board on Friday afternoon. I will be contacting Board members this week to ask them if they have follow-up questions that we can answer.

The materials sent out establish that the expected revenue stream for the transaction exceeds the current appraised value. We may receive questions about the details of the value to Metro of this deal, but I don't think these questions are the most important to address for the Board to feel comfortable acting on this.

The question that will most directly confront Board members -- in my view -- is the question of timing. Why should the Board approve this deal in this market, when in a few years the value of the land may significantly increase relative to today's value?

This timing question will, again in my view, require input from the District that Metro staff can not speak to as well as District representatives. For example, what is the policy imperative of moving forward at this time rather than in a few years? It is certainly the case that this property does not support an attractive streetscape at Florida and 9th, and eyesore properties can depress markets and slow revitalization. There may also be local economic development momentum that this project would help sustain. However, these are items that, as I said, District representatives can speak most strongly to in addressing the timing question with their Board colleagues.

I hope this information is helpful.

Best wishes,

Nat

From: Catoe, John B.
Sent: Friday, November 06, 2009 5:12 PM
To: agiancol@naco.org; catherine.hudgins@fairfaxcounty.gov; cz.arl@verizon.net; czimmerman@arlingtonva.us; ehewlett@shhpa.com; jeff.mckay@fairfaxcounty.gov; jim@grahamwone.com; linton_200@msn.com; mbrown@dccouncil.us; Neil.Albert@dc.gov; nomolos@verizon.net; peter.metro@verizon.net; Sequeira, Loyda; william.euille@alexandriava.gov; wmeuille@wdeuille.com
Cc: Bottigheimer, Nat; Green, Jennifer A.; Pant, Shiva K.; Sequeira, Loyda
Subject: Shaw-Howard Florida Avenue Joint Development Project

Dear Chairman and Members of the Board:

Attached is a memo that responds to the Planning, Development and Real Estate committee executive session request for information relative to the value of the Shaw-Howard Florida Avenue joint development project.

Please let me know if you have additional questions.

FOIA CONFIDENTIAL TREATMENT REQUESTED

John

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar Karim

:n: O'Keeffe, Carol B. <cokeeffe@wmata.com>
Sent: Friday, November 06, 2009 10:15 AM
To: 'okarim@bannekerventures.com'; Meister, Mark K.; Bottigheimer, Nat
Cc: 'aives@bannekerventures.com'; 'mmckinney@bannekerventures.com'; 'thicks@bannekerventures.com'; Neil.Albert@dc.gov; Yohance S. Fuller; Montague, Joshua W.; Doggett, Rosalyn; Goldin, Steven
Subject: Re: Shaw-Howard/Florida Avenue Term Sheet Answers to Board Questions

Not quite an attorney for each document; that would be counterproductive, but two attorneys.

Sent using BlackBerry

From: Omar A. Karim
To: Meister, Mark K.; Bottigheimer, Nat
Cc: aives@bannekerventures.com ; mmckinney@bannekerventures.com ; 'Tiwana Hicks' ; Neil.Albert@dc.gov; Yohance S. Fuller; O'Keeffe, Carol B.; Montague, Joshua W.; Doggett, Rosalyn; Goldin, Steven
Sent: Fri Nov 06 09:36:57 2009
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

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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

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:

FOIA CONFIDENTIAL TREATMENT REQUESTED

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 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.

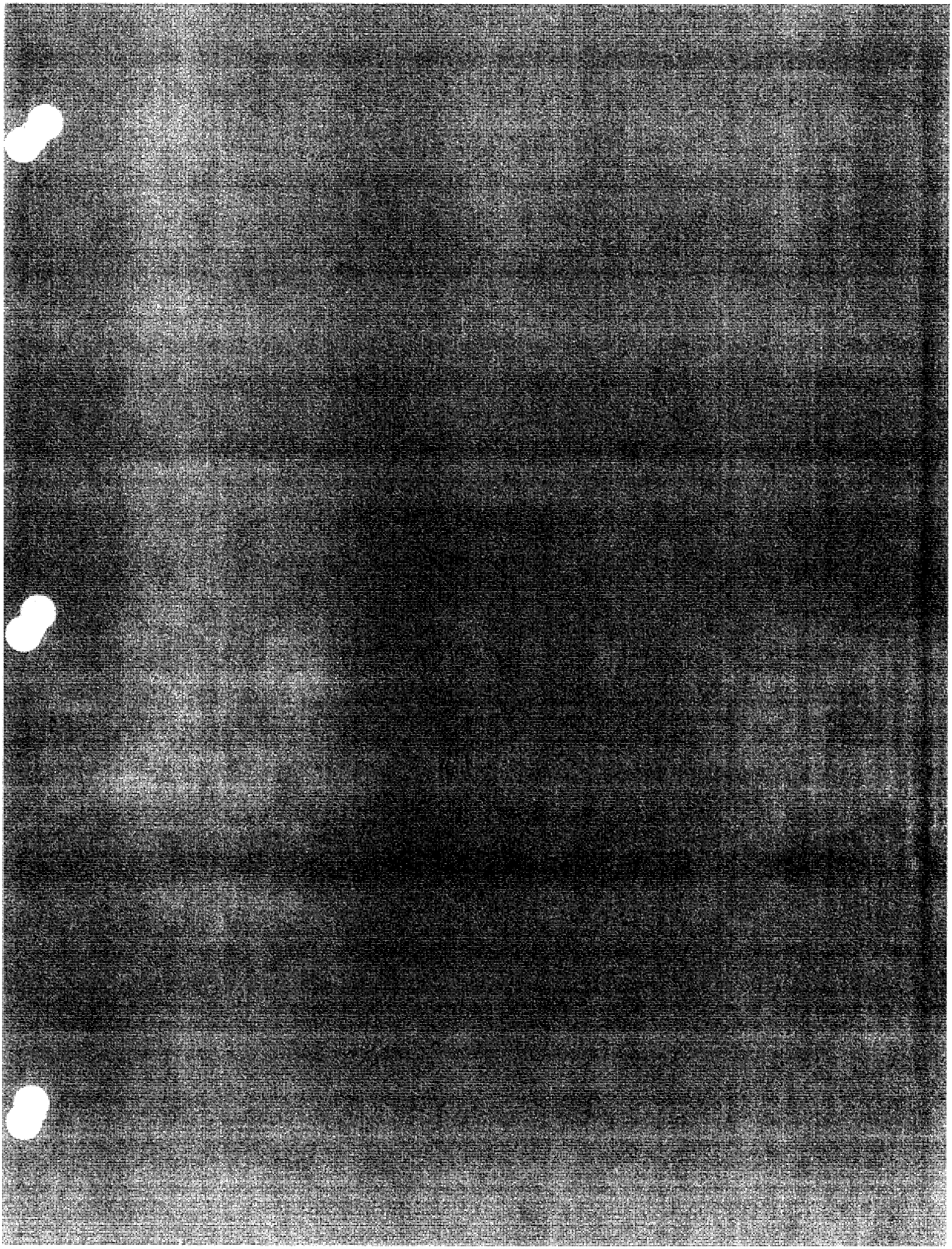
Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax

FOIA CONFIDENTIAL TREATMENT REQUESTED

(301) 523-1810 cell
okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED



November 6, 2009

MEMORANDUM FOR: Chairman and Members of the Board

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Please let me know if you have further questions.

John B. Catoe, Jr.
General Manager

Washington Metropolitan Area Transit Authority

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A District of Columbia, Maryland and Virginia Transit Partnership

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Washington Metropolitan Area Transit Authority

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FOIA CONFIDENTIAL TREATMENT REQUESTED

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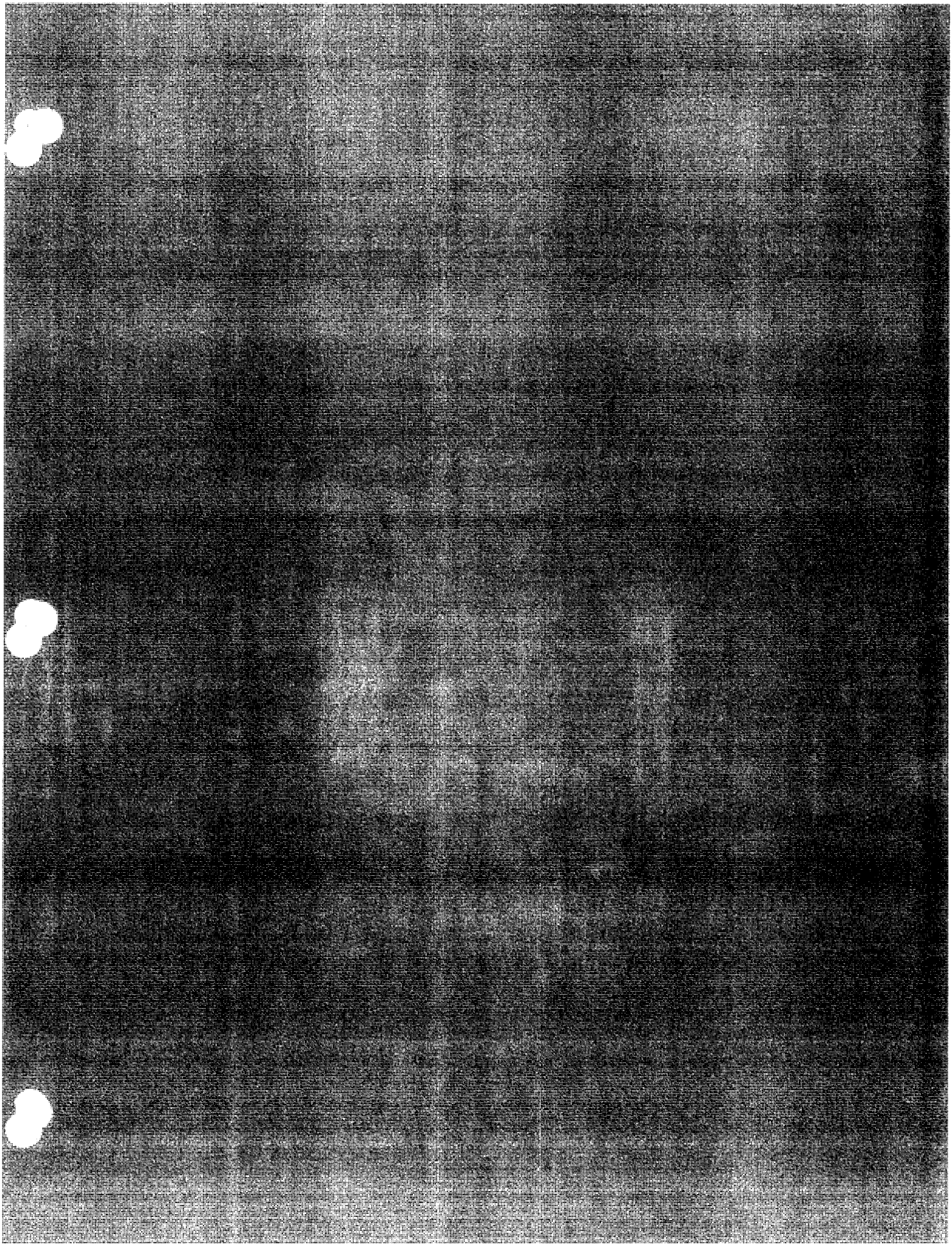

Omar Karim

From: Fuller, Yohance (EOM) <yohance.fuller@dc.gov>
Sent: Monday, November 09, 2009 2:28 PM
To: Bottigheimer, Nat; okarim@bannekerventures.com; jhagner@wcsr.com; Kass, Jonathon (COUNCIL)
Cc: Goldin, Steven; Doggett, Rosalyn; O'Keeffe, Carol B.; Albert, Neil (EOM)
Subject: RE: Shaw-Howard Florida Avenue Joint Development Project

Nat et al.,

Thanks for sending over the additional material. I think it effectively summarizes the critical deal points. Neil is unfortunately out of town for the rest of the week, but I will coordinate with him once he returns. Specifically, to discuss the District's rationale on timing of this project.

In the mean time, can you please detail the next steps for getting this project in front of the committee and/or board? Outside of the District's rationale, are there any other deliverables, milestones, etc. that need to be produced in order to bring this before the board again. I assume that we are trying to get this on the agenda for November's Board meeting? Please advise.

Thanks for all your hard work thus far.

Yohance

From: Bottigheimer, Nat [mailto:NBottigheimer@wmata.com]
Sent: Sunday, November 08, 2009 4:26 PM
To: okarim@bannekerventures.com; jhagner@wcsr.com; Fuller, Yohance (EOM); Kass, Jonathon (COUNCIL)
Cc: Goldin, Steven; Doggett, Rosalyn; O'Keeffe, Carol B.; Bottigheimer, Nat
Subject: FW: Shaw-Howard Florida Avenue Joint Development Project

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Best wishes,

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To: agiancol@naco.org; catherine.hudgins@fairfaxcounty.gov; cz.arl@verizon.net; czimmerman@arlingtonva.us; ehewlett@shhpa.com; jeff.mckay@fairfaxcounty.gov; jim@grahamwone.com; linton_200@msn.com; mbrown@dccouncil.us; Neil.Albert@dc.gov; nomolos@verizon.net; peter.metro@verizon.net; Sequeira, Loyda; william.euille@alexandriava.gov; wmeuille@wdeuille.com
Cc: Bottigheimer, Nat; Green, Jennifer A.; Pant, Shiva K.; Sequeira, Loyda
Subject: Shaw-Howard Florida Avenue Joint Development Project

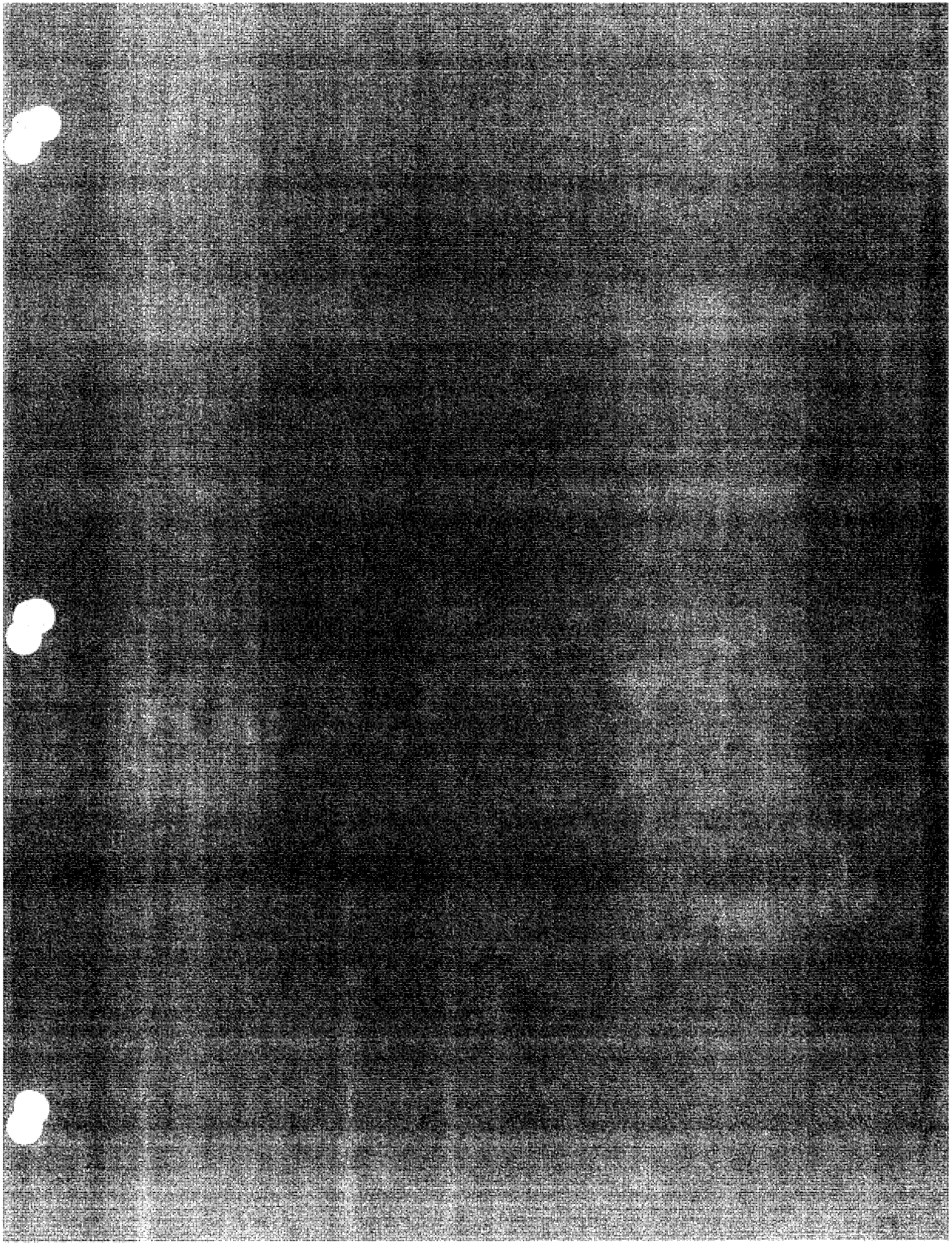
Dear Chairman and Members of the Board:

Attached is a memo that responds to the Planning, Development and Real Estate committee executive session request for information relative to the value of the Shaw-Howard Florida Avenue joint development project.

Please let me know if you have additional questions.

John

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015406



1250 Connecticut Ave., NW, Ste. 550 Washington, DC 20036
TELEPHONE 202.887.8475 FAX 202.887.5286
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LOVE FUNDING

KNOWLEDGE. INTEGRITY. RESULTS.

November 10, 2009

Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, D.C. 20005

Re: The Jazz at Florida Avenue
132-Unit Multifamily Development Project
Section 221(d)(4) New Construction Loan

Dear Banneker Ventures:

This engagement letter ("Letter Agreement") sets forth our understanding and agreement concerning the preparation and filing by Love Funding Corporation ("LFC") of an application by the "Borrower" (as defined below) to obtain a firm commitment ("Firm Commitment") from the U.S. Department of Housing and Urban Development ("HUD") to insure a combination construction/permanent mortgage loan ("Loan") secured by the above referenced property, which LFC understands based on information provided by or on behalf of the Borrower currently is or will be owned by Borrower. "Borrower" means [TBD Single Asset Entity], or a to-be formed limited partnership, limited liability company or other entity permitted to act as a mortgagor under HUD guidelines to be identified to LFC and reflected in the firm commitment application submitted to HUD. The Loan, if approved by HUD, will be insured in accordance with the provisions of the National Housing Act.

The following terms and conditions will apply to this proposed financing:

1.	Section of National Housing Act Application is made pursuant to	**221(d)(4)**

LFC will prepare Borrower's application and underwriting package in accordance with applicable HUD regulations and requirements, including as applicable, HUD's Multifamily Accelerated Processing (MAP) program. LFC will monitor progress of the application through the applicable HUD Office and intervene when appropriate to expedite the completion of Borrower's application. LFC will engage third party contractors for the market study, environmental studies, appraisal reports and Architectural and Engineering (A&E) and Cost Review functions as required under the HUD program. LFC will have the exclusive right to represent Borrower in its application to HUD in connection with this project for the purpose of obtaining Section 221(d)(4) mortgage insurance for the Loan. In addition, all meetings and correspondence with HUD will be accomplished solely through LFC. Borrower agrees to secure the fullest cooperation of the attorneys, accountants, and other professionals engaged by Borrower to ensure that they make available promptly and in proper form all exhibits, statements, and other documents required by LFC or HUD.

Loans insured under Section 221(d)(4) require both (i) an "Initial Closing" when the required loan and other documents are executed and delivered and at which time HUD initially "endorses" the Loan for mortgage insurance and (ii) a "Final Closing" following completion of the required new construction, delivery to and approval by LFC and HUD of a "cost certification" (e.g., a construction cost audit prepared for both the Borrower and its general contractor by a third-party CPA firm according to HUD requirements), when additional documents are executed and delivered as necessary

Borrower/Additional Obligor Initials ____/____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015408

and at which time, the Loan is finally endorsed for mortgage insurance by HUD in the original Loan amount, or in an adjusted principal amount as required or permitted by HUD.

2.	Estimated Loan amount	**$26,648,000**

This estimated Loan amount is based on the HUD underwriting requirements as of the date of this Letter Agreement based on the information provided to LFC by Borrower and HUD's criteria for determining maximum mortgage amounts. LFC will adjust the estimated Loan amount, if necessary, at the completion of underwriting. However, Borrower understands that the actual Loan amount will be determined by HUD's Firm Commitment review of LFC's underwriting.

3.	Estimated interest rate	**5.75%**

This estimated interest rate is consistent with the range of interest rates for FHA-insured loans of this type of loan as of the date of this Letter Agreement. The estimated interest rate further reflects the range of prepayment lock-out periods and prepayment fees for FHA-insured loans of this type as of the date of this Letter Agreement. **The actual interest rate of the Loan will depend on market conditions at or following the issuance of the Firm Commitment and LFC cannot "lock" the final interest rate until after the issuance of HUD's Firm Commitment. Following LFC's and Borrower's acceptance of the Firm Commitment, Borrower will execute a separate rate lock authorization in which the Borrower specifically approves the final interest rate and prepayment terms.**

Extension fees may be due and payable to the Loan investor if either the Initial Closing or Final Closing is delayed beyond the dates set forth in the rate lock authorization. An entity or individual that is reasonably approved by LFC, **which must be a person or entity other than the Borrower itself ("Additional Obligor"),** must agree to pay and/or guarantee the payment of these extension fees for failure to achieve either Initial Closing or Final Closing of the Loan by the dates required and to execute the rate lock authorization and an Extension Fee Agreement or similar document as required by LFC to further evidence such agreement. Borrower and each Additional Obligor must also agree to pay any damages incurred by LFC in the event that LFC fails to deliver the Loan to the Loan investor in reliance on its agreement with Borrower. If the Additional Obligor(s) have not been identified as of the date of this Letter Agreement, Borrower and LFC shall cooperate to indentify them as soon as possible after execution of this Letter Agreement and once identified, Borrower shall cause each Additional Obligor to execute and initial this Letter Agreement in places provided.

In addition to the principal and interest payments, the Loan requires the payment to HUD of a Mortgage Insurance Premium (MIP) as follows: (i) 0.90% due at the Initial Closing and (ii) 0.45% due annually thereafter but payable each month along with the monthly Loan payment in an amount equal to $1/12^{th}$ of the annual MIP. The initial MIP payment paid at Initial Closing is a mortgageable cost -meaning the fee can be included in the Loan amount and reimbursed from Loan proceeds. All other MIP payments are paid to LFC monthly as an operating cost to the Project and are held in escrow until paid to HUD.

4.	Rate Lock Commitment "Good Faith Deposit"	**0.50%**

Upon the execution of the rate-lock authorization following issuance of the Firm Commitment, Borrower must post a "Good Faith Deposit" in the percentage set forth above of the Loan amount reflected in the Firm Commitment in order to lock the interest rate. The Ginnie Mae Mortgage-

Borrower/Additional Obligor Initials ____/____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015409

Backed Securities that will be issued to finance the Loan can then be sold for later delivery, and the interest rate available in the market at that time as agreed to by Borrower can be permanently locked. The Good Faith Deposit is credited in full back to the Borrower at Initial Closing. If the Loan does not close as required under the rate-lock authorization letter, the Good Faith Deposit is forfeited to the Loan investor in addition to any other liabilities owed to LFC or the Loan investor.

5.	Permanent term of the Loan is estimated to be	**40**	years

This permanent Loan term is subject to the third party reports and LFC's underwriting to determine the validity of the remaining useful life of the property. In addition, the Loan will have an interest only period prior to the permanent term equal to the approved period to complete the new construction plus two (2) months to permit delivery and approval of the HUD required cost certifications and to achieve Final Closing of the Loan. If for any reason, the Loan fails to achieve Final Closing by the date set forth in the Firm Commitment, principal and interest payments will nonetheless commence as scheduled.

6.	FHA Application Fee	**0.30%**

The Application Fee in the percentage set forth above times the Loan amount reflected in the application to HUD must accompany the firm commitment application and must be paid by Borrower upon completion of LFC's underwriting. The Application Fee is non-refundable. However, it is a mortgageable expense – meaning the fee can be included in the Loan amount and reimbursed from Loan proceeds.

7.	Third Party Expense Deposit	**$TBD**

Because the processing of this Loan requires the engagement of third party contractors to comply with HUD's requirements, Borrower must pay the agreed-upon fees to LFC in advance of engagement with third party contractors for all third party reports required for this Loan including: the market study, appraisal reports, A&E and Cost Review and a Phase I Environmental Report. Upon execution of this Letter Agreement, Borrower must pay a non-refundable Third-Party Expense Deposit of $TBD. Any amounts not used will be refunded or credited to the Borrower at the Initial Closing. If any other third party reports are required by HUD, amounts for such additional reports must be paid to LFC. No third party contracts will be entered into without Borrower's consent.

8.	Non-refundable Processing Fee	**$5,000**

Upon execution of this Letter Agreement, Borrower must pay a non-refundable Processing Fee to cover LFC's staff time and travel in processing Borrower's application. The Processing Fee is a mortgageable expense - meaning the fee can be included in the Loan amount and reimbursed from Loan proceeds.

9.	Financing Fee	**1.5%**

Borrower must pay LFC a Financing Fee equal to the percentage stipulated above times the final Loan amount reflected in the Firm Commitment. This fee is a mortgageable expense - meaning the fee can be included in the Loan amount and reimbursed from Loan proceeds. Borrower agrees that the Financing Fee will have been earned in full upon receipt of the Firm Commitment; however, LFC agrees to defer collection of the Financing Fee until the earlier to occur of (i) the Initial Closing or (ii)

Borrower/Additional Obligor Initials ____/____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015410

60 days following issuance of the Firm Commitment. So long as the Firm Commitment is issued, Borrower and Additional Obligor shall be responsible for the payment of the Financing Fee whether or not the Loan closes.

Borrower represents to LFC that no other financial intermediaries, brokers, or referral parties have been engaged by Borrower or other persons to find financing in connection with this Project or otherwise to represent Borrower's interest in connection with the Loan and are entitled to make any claim on LFC for a fee or commission. Borrower agrees to indemnify LFC with respect to any costs, fees or other amounts from any such claims by any parties.

10.	Permanent Placement Fee	**1.0%**

Borrower will pay a Permanent Placement Fee equal to the percentage stipulated above times the final Loan amount and will be due to LFC for direct and overhead expenses related to the placement of the Loan in the secondary market. This encompasses the expenses associated with issuing Ginnie Mae securities (the Ginnie Mae Commitment Fee noted in paragraph 10 above is in addition to the Permanent Placement Fee), as well as other related costs incurred by LFC. The Permanent Placement Fee is a mortgageable expense - meaning the fee can be included in the Loan amount and reimbursed from Loan proceeds. Borrower agrees that the Permanent Placement Fee will have been earned in full upon receipt of the Firm Commitment; however, LFC agrees to defer collection of the Permanent Placement Fee until the earlier to occur of (i) the Initial Closing or (ii) 60 days following issuance of the Firm Commitment. So long as the Firm Commitment is issued, Borrower and Additional Obligor shall be responsible for the payment of the Permanent Placement Fee whether or not the Loan closes.

11.	Ginnie Mae Fees	**$5,700**

In the current market, the lowest interest rates for FHA insured loans are generally obtained by selling Ginnie Mae Mortgage-Backed Securities to investors instead of loan participations. Therefore, it is anticipated that the Loan will be financed through the issuance by LFC of Ginnie Mae Mortgage Backed Securities. Borrower will pay the Ginnie Mae Commitment Fee, which is $500 for the first $1,500,000 of loan proceeds and an additional $200 per million or part thereof thereafter. The Ginnie Mae Fees are a mortgageable expense - meaning the fee can be included in the Loan amount and reimbursed from Loan proceeds.

12.	Legal Fees and Costs	**$20,000 Estimated**

Borrower agrees to pay the legal fees and costs incurred by LFC in connection with both the Initial and Final Closings of the Loan. Borrower agrees to make a deposit of $7,500 ("Legal Fee Deposit") to be applied to LFC's legal fees upon the filing of the Firm Application package to HUD. The Borrower shall pay LFC's actual reasonable legal fees and costs. The balance of the legal fees and costs over the Legal Fee Deposit shall be due and payable at the Initial Closing or Final Closing, as applicable. If the Borrower shall fail to close the Loan for any reason, then in addition to any other amounts due to LFC, Borrower and Additional Obligor shall be responsible for the payment of all legal fees and costs incurred by LFC in connection with the Loan that are in excess of the Legal Fee Deposit.

Borrower/Additional Obligor Initials ____/____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015411

13.	Additional Costs Payable by Borrower

All costs and expenses in connection with processing the application to HUD, the issuance of the Firm Commitment, closing this Loan and otherwise in connection with this project shall be paid by Borrower including, but not limited to, recording, title expenses, survey costs, architect's fees, construction costs, inspection fees due to HUD as reflected in the Firm Commitment, Borrower legal fees and LFC's legal expenses in accordance with Paragraph 12 above. The majority of these expenses are mortgageable costs and can typically be included in the Loan and reimbursed from Loan proceeds.

LFC and HUD shall establish an annual deposit to be made into the Reserve for Replacements required under the Loan that is funded in monthly installments required to be made at the time of monthly Loan payments. LFC will hold the Reserve for Replacements in an account insured by the Federal government as required under HUD and Ginnie Mae requirements. The Reserve for Replacements will be invested as permitted by HUD and Ginnie Mae guidelines.

LFC and HUD shall require the establishment of escrow accounts for real estate taxes, insurance and MIP, all to be funded in monthly installments required to be made at the time of monthly Loan payments. LFC will hold the escrow accounts for real estate taxes, insurance and MIP in non-interest bearing accounts insured by the Federal government as required under HUD and Ginnie Mae requirements.

Escrow amounts required to be paid monthly are operating expenses of the Project and are not mortgageable costs.

If the Loan is to be funded through the issuance of tax-exempt financing and/or involve the syndication by Borrower of low-income housing tax credits, Borrower shall pay any and all costs associated with the issuance of such tax-exempt financing or syndication of low-income housing tax credits, including without limitation, any increased legal fees and all other costs incurred by LFC because of same.

14.	Transfer of Project and Assumption of Loan

Borrower shall be permitted to transfer the project or to transfer interests in the Borrower and/or to have a purchaser assume the Loan following Final Closing if Borrower and its purchaser comply with HUD's Transfer of Physical Assets (TPA) requirements, HUD's Previous Participation (2530) requirements and other applicable HUD requirements. In addition to any fees due to HUD, Borrower shall pay to LFC a reasonable processing fee to be determined at the time of the assumption request, and pay LFC's legal fees related to the transfer of the project or interests in the Borrower and assumption of the Loan by the purchaser.

15.	Additional Obligations of the Parties and Additional Provisions

(i) If Borrower decides to curtail the processing of this Loan with LFC or rejects a firm commitment issued by HUD, LFC will remain the HUD mortgagee of record for the property for twelve (12) months during the re-filing of any application to HUD.

(ii) Each party agrees to the use of binding arbitration to resolve any claim for damages related to or arising from this Letter Agreement, the Firm Commitment or documents executed in connection

Borrower/Additional Obligor Initials ____/____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015412

with closing the Loan (the "Loan Documents"). Any controversy or claim arising out of or relating to this Letter Agreement, the Firm Commitment or the Loan Documents, or the alleged breach thereof, will be settled by arbitration administered by the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction over such award. Borrower, Additional Obligor and LFC each hereby waives its rights to a trial by jury and agrees not to file any complaint for damages, engage in any legal action or proceeding in any court, or appeal the outcome of a final and binding arbitration.

(iii) This Letter Agreement will be enforced, construed under and subject to the laws of the District of Columbia.

(iv) Subsequent to Loan closing, LFC will have the right to issue press releases, advertisements and other promotional materials describing LFC's participation in the transaction.

(v) Nothing in this Letter Agreement will be construed as a guarantee or warranty on the part of LFC that it can or will obtain a Firm Commitment having the terms and conditions as set forth n this Letter Agreement or, on any other terms and conditions whatsoever. LFC may, at its sole option, assign its rights and obligations under any Firm Commitment to another HUD-approved mortgagee for closing.

(vi) The party executing this Letter Agreement on behalf of the Borrower represents and warrants to LFC that: (i) such party has the power and authority to enter into this Letter Agreement on behalf of Borrower; (ii) the proposed Loan transaction described in this Letter Agreement is not the subject of a commitment or engagement letter from another lender; (iii) no other party has a right of refusal or other option which could cause the Loan not to be consummated; and (iv) neither such party nor the Borrower or any of Borrower's affiliates or principals have been a party to any bankruptcy, insolvency or similar proceedings.

(vii) Each party executing this Letter Agreement as a Additional Obligor represents and warrants to LFC that: (i) such party has the power and authority to enter into this Letter Agreement on its behalf; and (ii) neither such party nor or any of its affiliates or principals have been a party to any bankruptcy, insolvency or similar proceedings.

(viii) Borrower approves and authorizes LFC to obtain financial statements and credit reports on Borrower and any other related parties involved in the Loan, and to provide copies of these reports and statements to HUD in connection with LFC's processing of this Loan. Except to the extent required by HUD for processing, all non-public information conveyed to LFC by Borrower and parties associated with the Loan will be treated as confidential and will not be used by LFC for any purposes other than the performance of services to be provided to Borrower pursuant to the terms and conditions of this Letter Agreement, unless Borrower directs or requests in writing. Unless required by law or legislative process, nothing contained in this Letter Agreement or resulting from any financial or other advice provided by LFC may be disclosed to any competitor of LFC, or to any client or potential client of LFC, or to any other party (with the exception of representatives from HUD and authorized third party contractors) in any manner without LFC's prior written approval.

(ix) Borrower represents and warrants that the factual statements and other information provided by Borrower in the processing of this Loan are (or will be) true, complete and accurate as of the date of their submittal. Borrower further agrees to notify LFC in writing immediately of any material change in the information provided to LFC for this Loan.

Borrower/Additional Obligor Initials ____/____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015413

(x) Consistent with the USA Patriot Act, LFC obtains, verifies, and records information that identifies each person and entity which is not an affiliate of LFC and with whom LFC enters into a business relationship. Verification may include (without limitation) the name, address, federal tax identification number, date of birth, and any other information that allows LFC to identify such person or entity. LFC may also require authorizing resolutions or other identifying documents from Borrower.

(xi) During the term of the Loan, Borrower agrees to simultaneously provide to LFC all reports and documents that Borrower is obligated to provide to HUD, including, without limitation, audited financial statements, and all notices of default or deficiency, REAC and other inspection reports, and management reviews provided to Borrower by HUD.

(xii) This Letter Agreement sets forth and is intended to be an integration of all of the promises, agreements, conditions, understandings, warranties and representations, oral or written, expressed or implied, between the parties with respect to the terms of this Letter Agreement, and there are no other promises, agreements, conditions, understandings, warranties, and representations, oral or written, expressed or implied, between them with respect to the terms of this Letter Agreement.

(xiii) The rights, obligations and remedies of the parties to this Letter Agreement will in no way affect the validity or enforceability of the provisions of this Letter Agreement. If any provision of this Letter Agreement is held invalid for any reason, then such provision will be deemed severable from the remaining provisions of this Letter Agreement and will not affect the validity or enforceability of the other provisions of this Letter Agreement to the extent permitted by applicable law. This Letter Agreement shall survive the issuance of the Firm Commitment and continue throughout the term of the Loan provided that if any provisions of this Letter Agreement shall conflict with any terms of the Firm Commitment or other requirements of HUD, such terms of the Firm Commitment of requirements of HUD, as applicable, shall govern.

16.	Additional Obligors

By executing this Letter Agreement in the place provided below, each and every Additional Obligor hereby agrees to execute and deliver an Extension Fee Agreement or similar document as required by LFC to evidence the obligation to pay extension fees under Paragraph 3 of this Letter Agreement and absolutely, unconditionally and irrevocably guarantees to LFC the full and prompt payment when due of all other amounts due to LFC from Borrower under this Letter Agreement. If more than one Additional Obligor executes this Letter Agreement, the obligations of those persons under this Letter Agreement shall be joint and several.

[Signatures on the following page]

Borrower/Additional Obligor Initials ____/____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015414

LFC looks forward to the successful funding and closing of your Loan.

Sincerely,

Joshua S. Hausfeld
Assistant Vice President

cc: Karen Ford, Senior Vice President
Jonathan S. Camps, Senior Vice President – FHA Chief Underwriter
Pat Bly, Controller

[Signatures Continue on Following Page]

Borrower/Additional Obligor Initials ____/____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015415

Please sign your acceptance of the terms and conditions of this engagement letter below and return one copy of this Letter Agreement, along with the required LFC Processing Fee, Third Party Expense Deposit, and completed Exhibit A attached to this Letter Agreement.

The terms of this offer will expire and be invalid unless Borrower returns a fully executed original with retainer to LFC within two weeks of the date of this letter. This Letter Agreement shall be binding on LFC only after LFC has executed and returned the Acknowledgement and Acceptance attached to this Letter Agreement.

Agreed and Accepted by Borrower:

By: _____

Name: _____

Title: _____

Date: _____

Agreed and Accepted by Additional Obligors:

By:_____

Name: _____

Title: _____

Date: _____

[Add more if necessary]

Borrower/Additional Obligor Initials ____/____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015416

ACKNOWLEDGMENT AND ACCEPTANCE

Subject to the foregoing terms and conditions, LFC acknowledges receipt on _____, 200__ of the foregoing Letter Agreement, together with the (i) Processing Fee of $5,000, (ii) Third Party Expense Deposit in the amount of $_____, and (iii) the fully completed Exhibit A- Borrower, Additional Obligor and Project Information.

LOVE FUNDING CORPORATION

By: _____
Name: _____
Title: _____

Date: _____, 200__

Borrower/Additional Obligor Initials ____/____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015417

LOVE FUNDING
KNOWLEDGE. INTEGRITY. RESULTS.

1250 Connecticut Ave., NW, Ste. 550 Washington, DC 20036
TELEPHONE 202.887.8475 FAX 202.887.5286
www.lovefunding.com

EXHIBIT A

BORROWER, ADDITIONAL OBLIGOR AND PROJECT INFORMATION

[Attached]

Borrower/Additional Obligor Initials ____/____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015418

Omar Karim

From: Doggett, Rosalyn <RDoggett@wmata.com>
Sent: Monday, November 16, 2009 8:54 AM
To: Omar A. Karim
Subject: FW: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites

Omar, once again the term sheet was sent out to the Board on Friday for its consideration on Thursday November 16.

Please note the two points below in Josh Montague's e-mail, which we will adhere to. If you want further explanation, which does not appear necessary to us because we have already given you reasons, do feel free to give me a call.
Many thanks,
Roz

From: Goldin, Steven
Sent: Friday, November 13, 2009 6:33 PM
To: Montague, Joshua W.; Doggett, Rosalyn; Bottigheimer, Nat
Subject: Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites

Agreed. Roz; please advise Omar next Monday.
Steve

From: Montague, Joshua W.
To: Goldin, Steven; Doggett, Rosalyn
Sent: Fri Nov 13 18:29:16 2009
Subject: FW: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites
Per our meeting today, this is a reminder that we should inform the developer of the following:

1. There will be no more negotiating of the terms after the board approves the Term Sheet; and

2. The Developer must work off of the Florida Ave Lease draft that was sent to them by WMATA on 7/24/09. We cannot work off of the Rhode Island Ave Lease for reasons previously provided to John Hagner and Omar Karim.

Have a good weekend,

Josh

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, November 04, 2009 10:42 PM
To: Anthony James Ives; Tiwana Hicks; Montague, Joshua W.; John Hagner; O'Keeffe, Carol B.; Bottigheimer, Nat
Cc: Yohance S. Fuller; jkass@dccouncil.us; Marshall, Malcolm; Meister, Mark K.; Doggett, Rosalyn; Goldin, Steven
Subject: Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites

Nat,

Thanks for your thoughts. We appreciate them. For purposes of tomorrow, we accept the Term Sheet as sent to us this evening.

Following approval of the Term Sheet, we will give more thought to this particular issue to help come up with a

FOIA CONFIDENTIAL TREATMENT REQUESTED

way to meet your goals. Should we be able to come up with an agreeable solution prior to finalizing the JDA and Lease, we could include the solution in these docs. Alternatively, there is probably even more time bt ›roval of these docs and execution of the Lease prior to Closing to come up with solutions. In either case, we ›mise to provide you and your team with some solutions to address the concerns of all parties.

Thanks for working so hard on this. Finalizing the JDA and Lease should now be a piece of cake.

Omar
Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Bottigheimer, Nat" <NBottigheimer@wmata.com>
Date: Wed, 4 Nov 2009 21:01:52 -0500
To: O'Keeffe, Carol B.<cokeeffe@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>; aives@bannekerventures.com<aives@bannekerventures.com>; okarim@bannekerventures.com<okarim@bannekerventures.com>; thicks@bannekerventures.com<thicks@bannekerventures.com>; jhagner@wcsr.com<jhagner@wcsr.com>
Cc: Goldin, Steven<sgoldin@wmata.com>; Doggett, Rosalyn<RDoggett@wmata.com>; Meister, Mark ..<MMeister@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>; jkass@dccouncil.us<jkass@dccouncil.us>; Yohance S. Fuller<Yohance.Fuller@dc.gov>
Subject: RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

John--

I heard a problem and I didn't hear a solution. Also, for the reasons laid out below, I don't understand at all your concept that we're making an above market imposition on the Developer.

Here are our premises:

It's our land.

Long-term real estate values in the DC region have grown faster than 3%. A location on U Street in between U Street and Shaw/Howard stations has growth potential and value stability unlike the vast majority of property in the region, and its long-term appreciation value is significant.

Agreeing to a lease that is based on an escalation rate less than the the property's probable long-term appreciation rate is selling ourselves short. Marking to market each decade and then holding constant for each 10-year period while property values and lease-rates available to building owners appreciate is leaving significant value on the table each year in a decade.

Without going to a spreadsheet, if we were simply to mark to market each decade, in year one of any given decade we'd get 4% less than the rental income available to a building owner on average. The next year we'd get 8% less than full value, the next year 12% less than full value, each year the same until the last year of the decade, when we'd be getting 42% below full value. That's a lot of value to leave on the table by marking to market each decade and holding constant for 10 years. Having a 3% escalation rate each year through the decade is intended to keep the rent to us, the land-owner, comparable but slightly below the long-term average increase in value until the next reset. The language we've

FOIA CONFIDENTIAL TREATMENT REQUESTED

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.

---- er premises:

At Twinbrook, we negotiated a lease with JBG with precisely the terms we proposed.

Long-term leases are finance-able at terms less than 99 years.

If you have a concern about lender certainty and project finance-ability, as you suggest you do, we are open to proposals that do not systematically erode Metro's ability to realize the value of its land over the period 60-99. We're open to a capitalization of future rent at year 60 for the period 60-99, and we're open to rent levels re-set every decade to be constant for the decade, but if rent levels are reset to be constant for a decade for the purpose of certainty, then they should be set above market for the first five years of the decade with the expectation that they'd be below market the second half. Maybe you have other thoughts.

Until we hear a counter that protects our value in a market-rate setting from years 60-99, the proposal we've made is our final proposal.

Respectfully,

Nat

From: John Hagner [mailto:JHagner@wcsr.com]
Sent: Wednesday, November 04, 2009 6:24 PM
To: O'Keeffe, Carol B.; Montague, Joshua W.
Cc: Anthony (Tony) James Ives(aives@bannekerventures.com); Omar A. Karim Esquire (karim@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.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED

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 ant. As you would expect, the tenant sued the landlord to modify the ground lease. I can't nare anymore because the litigation settled under a strict confidentiality agreement. However, the "lesson learned" from this experience is that ground leases with short-term periodic repricing of the ground rent can't be refinanced on the long-term basis needed for major renovations and improvements.

I respectfully believe the last change vitiates the benefit of a lease over 60 years.

John

John D. Hagner
Womble Carlyle Sandridge & Rice, PLLC | 1401 Eye St., NW | Suite 700 | Washington, DC 20005-2225
T: 202.857.4404 | F: 202.261.0004 | E: jhagner@wcsr.com | W: www.wcsr.com

From: Montague, Joshua W. [mailto:jwmontague@wmata.com]
Sent: Wednesday, November 04, 2009 5:57 PM
To: Hagner, John
Cc: O'Keeffe, Carol B.
Subject: FW: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

Attached is the updated Term Sheet described below.

Sincerely,

.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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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

'ohn, 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

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:

FOIA CONFIDENTIAL TREATMENT REQUESTED

1. Amended and Restated Term Sheet revised in accordance with the discussions since Monday, which finalizes our understanding; and
2. Deadline...#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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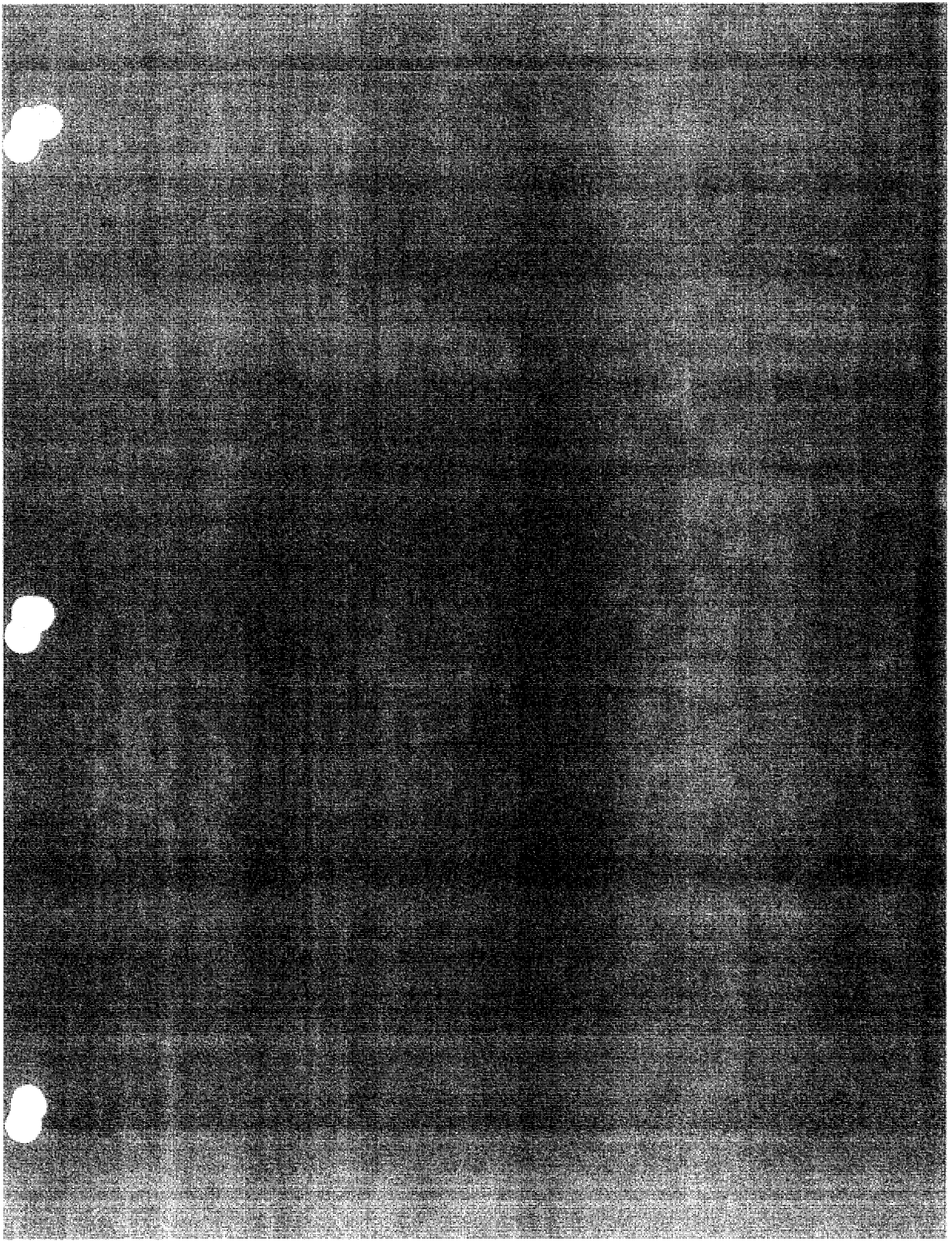


Omar Karim

From: Omar A. Karim <okarim@bannekerventures.com>
Sent: Thursday, November 19, 2009 6:50 PM
To: 'neilalbert@yahoo.com'
Subject: FW: Florida Avenue

Neil,

Please help. As you recall, on 11/04/09, Nat sent an email (see below) with a list of 11 projects that WMATA has done with mostly a 50 year lease term. We can't do a re-setting/re-valuing of the land every 10 years because our lender's guidelines (HUD) will not allow this. WMATA has done multiple deals where HUD provided the loan and from our initial proposal through date, we have made it crystal clear that our project would be financed by HUD, and even included a letter of interest from DCHFA in our proposal which supports our intent to use HUD financing. Not even sure if we can increase our offer. We will have to run some numbers, but know we can't do anything significantly more than what we offered. Also, Steve mentioned that the Board wanted to do a BAFO but that he's not going to do it. Is there anything that can be done?

Omar

From: Bottigheimer, Nat [mailto:NBottigheimer@wmata.com]
Sent: Wednesday, November 04, 2009 10:30 AM
To: Omar A. Karim; Goldin, Steven
Cc: aives@bannekerventures.com; mmckinney@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; 'John Hagner'; O'Keeffe, Carol B.; Montague, Joshua W.; Doggett, Rosalyn; jkass@dccouncil.us
Subject: RE: Shaw-Howard/Florida Avenue Term Sheet - Recap
Importance: High

Regarding the lease term, and a question from Mr. Albert about the feasibility of lease terms other than 99 years, I'm attaching a list of examples of long-term leases that include a base term of less than 99 years plus option periods.

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

Thanks very much,

Nat

FOIA CONFIDENTIAL TREATMENT REQUESTED

From: Goldin, Steven [mailto:sgoldin@wmata.com]
Sent: Thursday, November 19, 2009 5:22 PM
To: Omar A. Karim
Cc: Bottigheimer, Nat; O'Keeffe, Carol B.; Doggett, Rosalyn
ıbject: Florida Avenue

Omar

The Board took no action today after discussing the matter. Following the meeting, staff has been directed to submit a memo to the Board on Wednesday 11/25/09, addressing these issues in order for the Board to reconsider the approval of a term sheet for the lease on 11/30/09:

1) The initial capitalized lease payment was deemed insufficient and must be increased.
2) The lack of a payment "reset" for the first 60 years was deemed unacceptable. The Board wants to see earlier resets and we propose a reset every ten years as a starting point for discussion.

The Real Estate TOD Team and attorneys in the Counsel's Office will be in a work session all day tomorrow. Understanding the short time frame in which we have to resolve this matter, or not, please get back to me on Monday 11/23/09.

Thank you

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
?02-962-2616

FOIA CONFIDENTIAL TREATMENT REQUESTED

Minutes
Planning, Development and Real Estate Committee
November 19, 2009

The meeting was called to order at 11:12 a.m. Present were:

Committee members:

Mr. Neil Albert, Chairman
Ms. Elizabeth Hewlett, Vice Chair
Mr. Jim Graham
Mr. Peter Benjamin
Mrs. Catherine Hudgins
Mr. Christopher Zimmerman
Mr. Gordon Linton
Mr. Jeff McKay
Mr. Anthony Giancola
Mr. William D. Euille

Approval of Agenda

Mr. Albert moved, seconded by Mr. Benjamin, to defer approval of the amended term sheet for lease of the Shaw-Howard/Florida Avenue joint development site. The Committee voted unanimously in favor of the motion.

Action Item

A1. Sale of Excess Metro Property at Chillum Place, NE, Washington, DC

Mr. Graham moved, seconded by Mr. Zimmerman, to approve the sale of excess Metro property to the Mt. Calvary Holy Church of Deliverance. The Committee voted unanimously in favor of the motion.

The meeting adjourned at 11:14 a.m.

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 the November 19th meeting of the Planning, Development and Real Estate Committee, Committee members requested that staff obtain from the developer of the Shaw-Howard/Florida Avenue Joint Development Project responses to the following 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.

Since the committee expressed these concerns, staff have met with the developer and received a substantially improved proposal. The revised proposal includes two principal elements:

a. The developer has persuaded his investor group to reduce their return requirements, thereby allowing him to increase his capitalized lease payment from $2,050,000 to $2,800,000 (an increase of $750,000 or 36%)

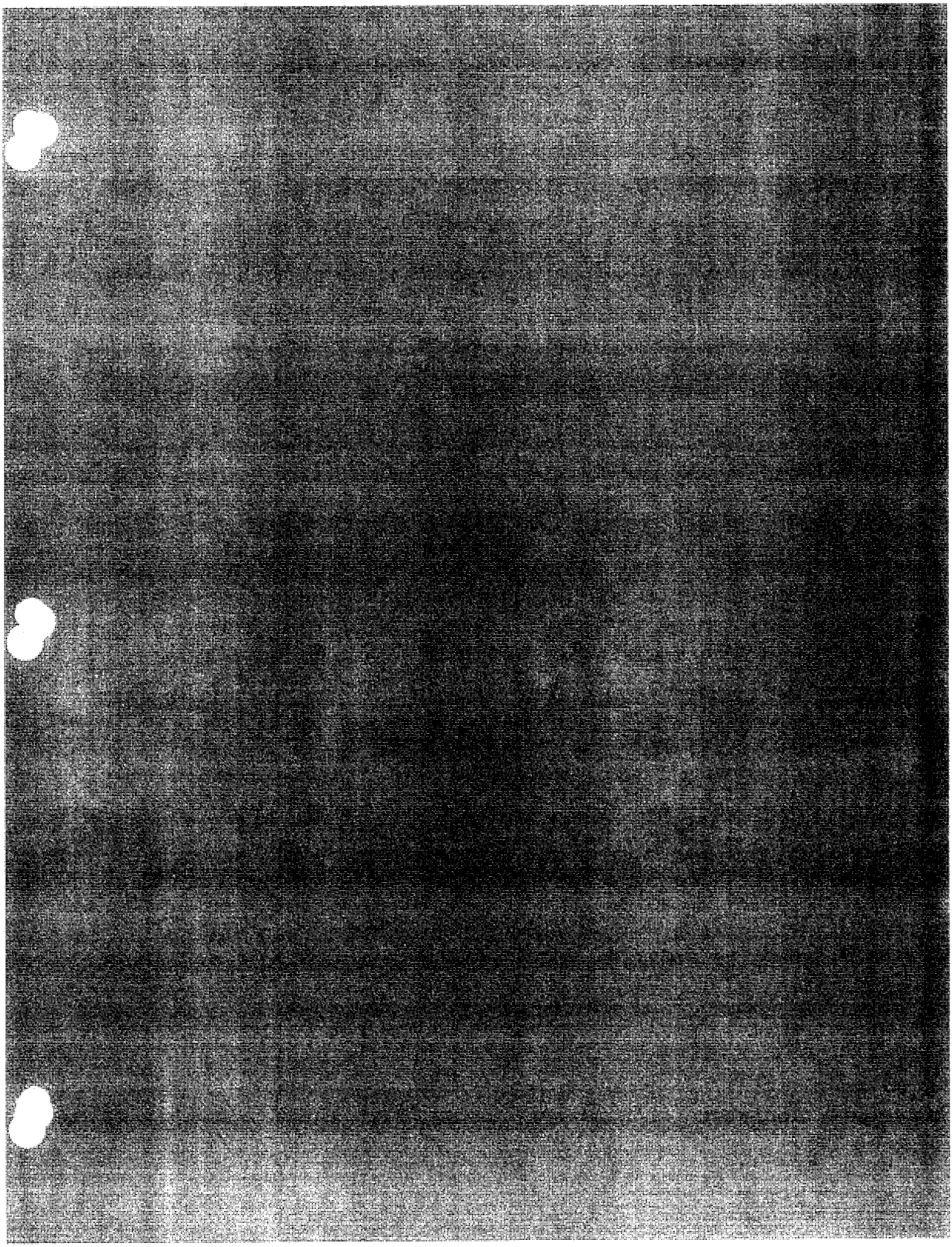
b. The developer has agreed to an initial term of 50 years with resets keyed to market value every 10 years thereafter to a complete lease term of 99 years. The developer's original proposal was for a lease of 60 years, with a 39-year option period containing similar decadal resets to market value. As previously discussed with Committee members, FHA loan regulations do not allow for a reset of rental rates during the first 50 years, so the 50-year point represents the earliest possible reset to market value that would be possible with an FHA loan.

Washington Metropolitan Area Transit Authority

SUMMARY

Based on the improved offer presented to Metro by the developer, I recommend this item be returned to the Planning, Development and Real Estate Committee for consideration at the earliest possible date.

FOIA CONFIDENTIAL TREATMENT REQUESTED



M E M O R A N D U M

DATE: November 30, 2009

SUBJECT: Can Metro Request a Best and Final Offer from Other Proposers on the Florida Avenue Project?

FROM: COUN - Carol B. O'Keeffe

TO: GMGR – John B. Catoe, Jr.

The Board of Directors has asked that I review the Joint Development Solicitation for the Florida Avenue Project (the "Project") to determine whether Metro could request a Best and Final Offer (BAFO) from the three final proposers on the Project. As discussed below, that option is not available until the current negotiation period has expired.

Metro issued the Solicitation for the Project in October 2007. The Solicitation established guidelines and procedures for the joint development proposal process. Pursuant to the terms of the Solicitation, the selected developer has the exclusive right to negotiate a lease agreement with Metro, upon the execution of the Term Sheet. Only upon expiration or termination of the Term Sheet may Metro negotiate with other developers or re-advertise the Project.

Following the Solicitation process, Metro selected the Banneker Ventures development team (the "Selected Developer"). Metro and the Selected Developer negotiated a Term Sheet, which was approved by Metro's Board of Directors in June 2008. Section 12 of the Term Sheet provides that the Selected Developer has the exclusive right to negotiate a lease agreement with Metro during the prescribed negotiation period which the Solicitation establishes as 150 days following the approval of the Term Sheet. In September 2009, the Board of Directors extended the negotiating period until December 17, 2009.

Absent the termination of the Term Sheet or a waiver by the Selected Developer, Metro cannot negotiate with other parties until after December 17, 2009. Taking into consideration the (1) amount of time that has elapsed since the original submission of proposals; (2) the fact that the proposal securities submitted by the other two developers have been returned following the designation of Banneker Ventures as the Selected Developer; and (3) the significant market change since the proposals were submitted, reopening the Solicitation for a BAFO after the expiration of the current negotiating period on December 17th may not be practical, but if the other two original proposers were willing to re-submit a proposal security, there is no legal bar.

Washington Metropolitan Area Transit Authority

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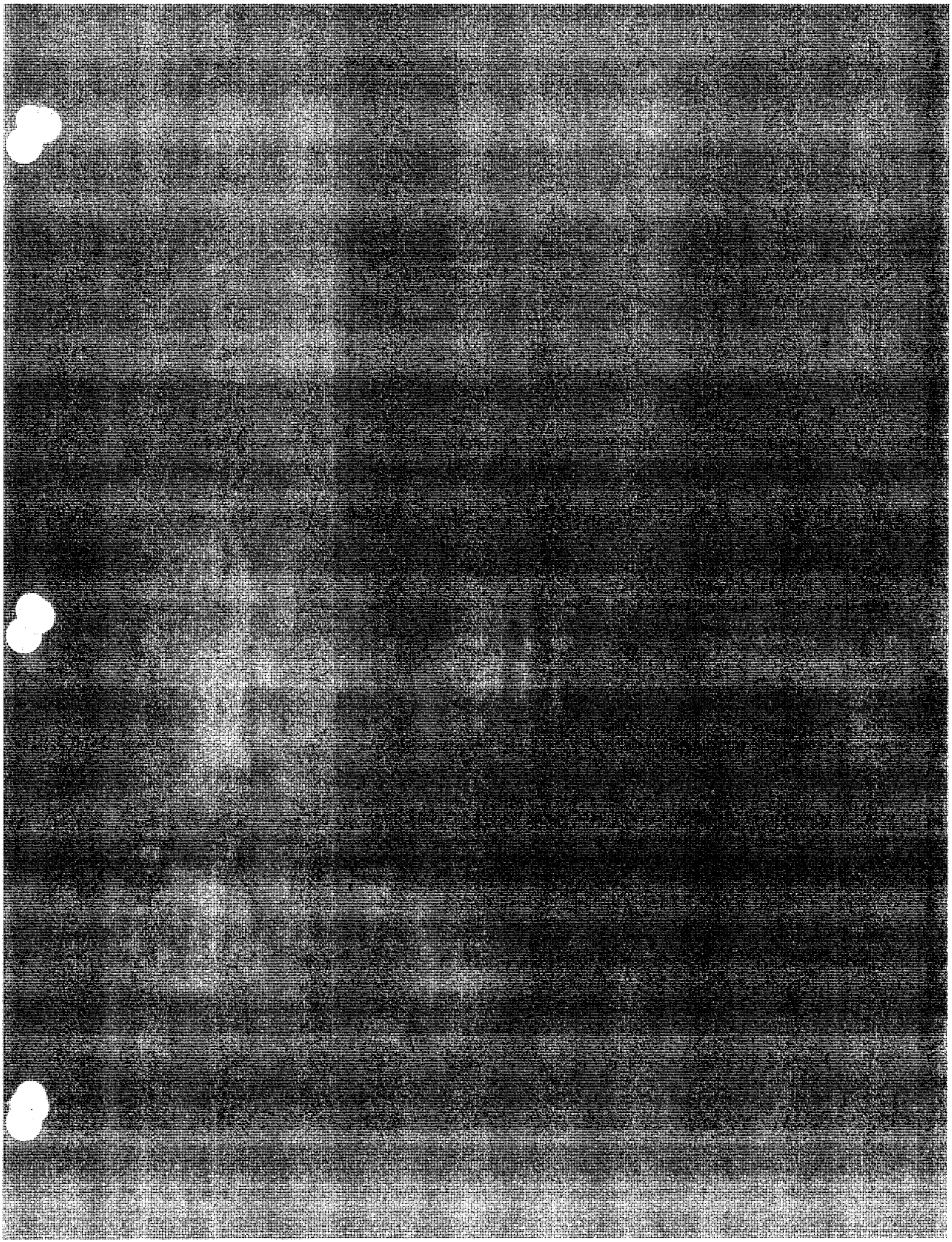

Omar Karim

rom: Albert, Neil (EOM) <Neil.Albert@dc.gov>
Sent: Monday, November 30, 2009 7:52 PM
To: okarim@bannekerventures.com
Cc: Tiwana Hicks; Anthony James Ives; John Catoe
Subject: Re: Howard-Shaw/Florida Avenue Sites

Mr. Karim - I'm copying General Manager Catoe to assist you in getting a meeting with his staff.

Neil Albert

On Nov 30, 2009, at 7:48 PM, "Omar Karim" <okarim@bannekerventures.com> wrote:

> Mr. Albert,
>
> I am writing to request your help in expediting the year and a half
> delay that we have spent negotiating a Term Sheet and JDA/Lease with
> WMATA Staff and the Board for the Howard-Shaw/Florida Avenue Sites.
> Since receiving an email from Steve Goldin following last month's
> Board meeting requesting that we increase the price that we had agreed
> with WMATA staff to lease the sites for, as well as change other
> financial terms of the deal, we have requested two meetings with WMATA
> staff. Unfortunately, one request went ignored and the other was
> turned down. Can you help us in getting a meeting with the staff so
> that we can once again finalize the terms of a deal. To date, we have
> spent almost $1M to get the project to where it is today and are
> committed to finalizing terms of a deal in the coming days if possible
> with the hopes that the Board could support our deal.
>
> Thank you for your assistance to this important matter.
>
> Omar
>
> Omar A. Karim
> Banneker Ventures, LLC
> 729 15th Street, NW, Suite 400
> Washington, DC 20005
> (202) 393-5460 office
> (202) 393-5462 fax
> (301) 523-1810 cell
> okarim@bannekerventures.com
>

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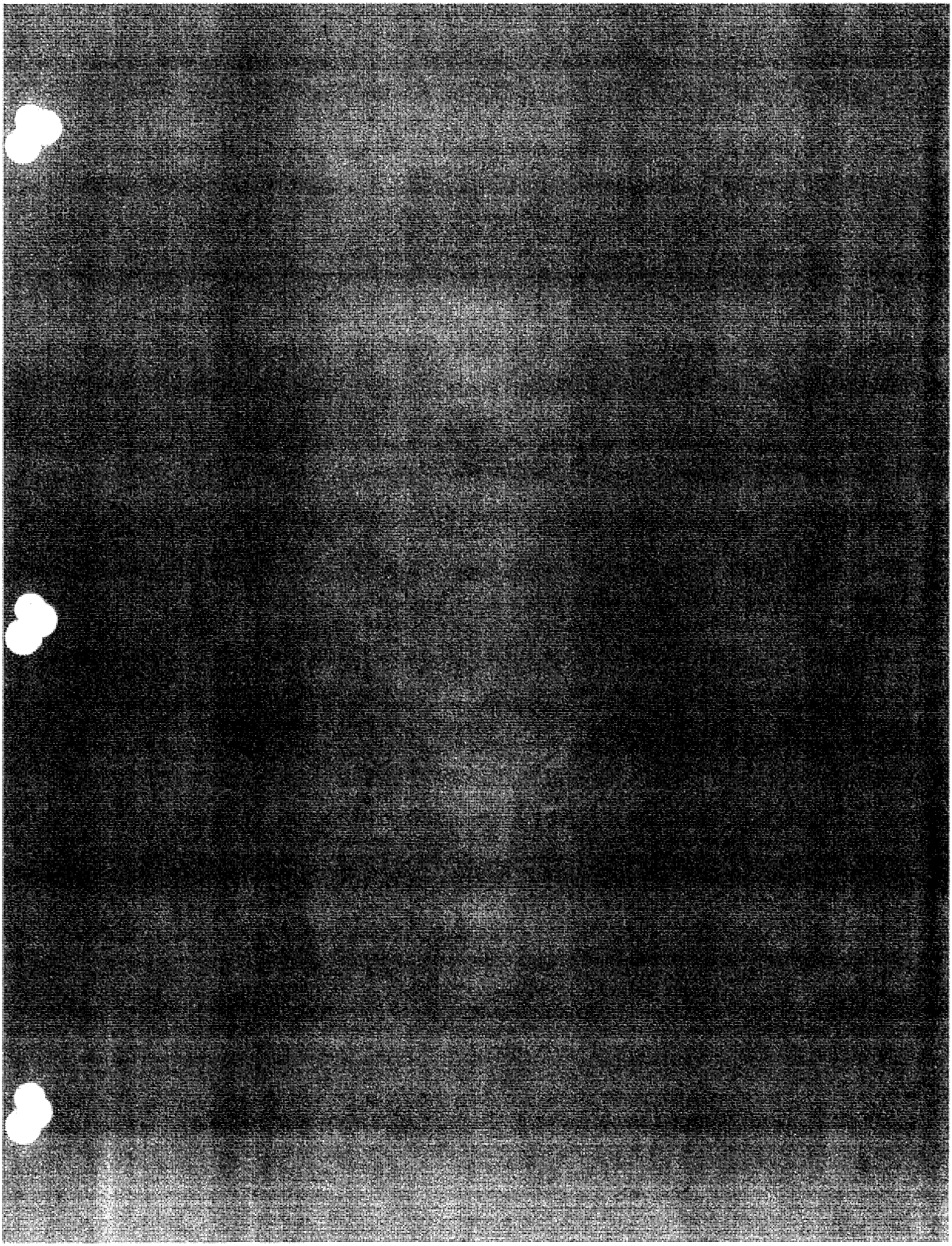

Omar Karim

om: Catoe, John B. <jbcatoe@wmata.com>
Sent: Tuesday, December 01, 2009 1:55 PM
To: Neil.Albert@dc.gov; okarim@bannekerventures.com
Cc: Anthony James Ives; Tiwana Hicks; Bottigheimer, Nat
Subject: RE: Howard-Shaw/Florida Avenue Sites

Neil,

Mr. Nat Bottigheimer will call Mr. Karim to arrange a meeting ASAP.

John Catoe
General Manager

-----Original Message-----
From: Neil (EOM) Albert [mailto:Neil.Albert@dc.gov]
Sent: Monday, November 30, 2009 7:52 PM
To: okarim@bannekerventures.com
Cc: Anthony James Ives; Tiwana Hicks; Catoe, John B.
Subject: Re: Howard-Shaw/Florida Avenue Sites

Mr. Karim - I'm copying General Manager Catoe to assist you in getting a meeting with his staff.

Neil Albert

On Nov 30, 2009, at 7:48 PM, "Omar Karim"
<okarim@bannekerventures.com> wrote:

> Mr. Albert,
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> Since receiving an email from Steve Goldin following last month's
> Board meeting requesting that we increase the price that we had agreed
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> financial terms of the deal, we have requested two meetings with WMATA
> staff. Unfortunately, one request went ignored and the other was
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> that we can once again finalize the terms of a deal. To date, we have
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> committed to finalizing terms of a deal in the coming days if possible
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>
> Thank you for your assistance to this important matter.
>
> Omar

FOIA CONFIDENTIAL TREATMENT REQUESTED

>
> Omar A. Karim
> Banneker Ventures, LLC
:9 15th Street, NW, Suite 400
· Washington, DC 20005
> (202) 393-5460 office
> (202) 393-5462 fax
> (301) 523-1810 cell
> okarim@bannekerventures.com
>

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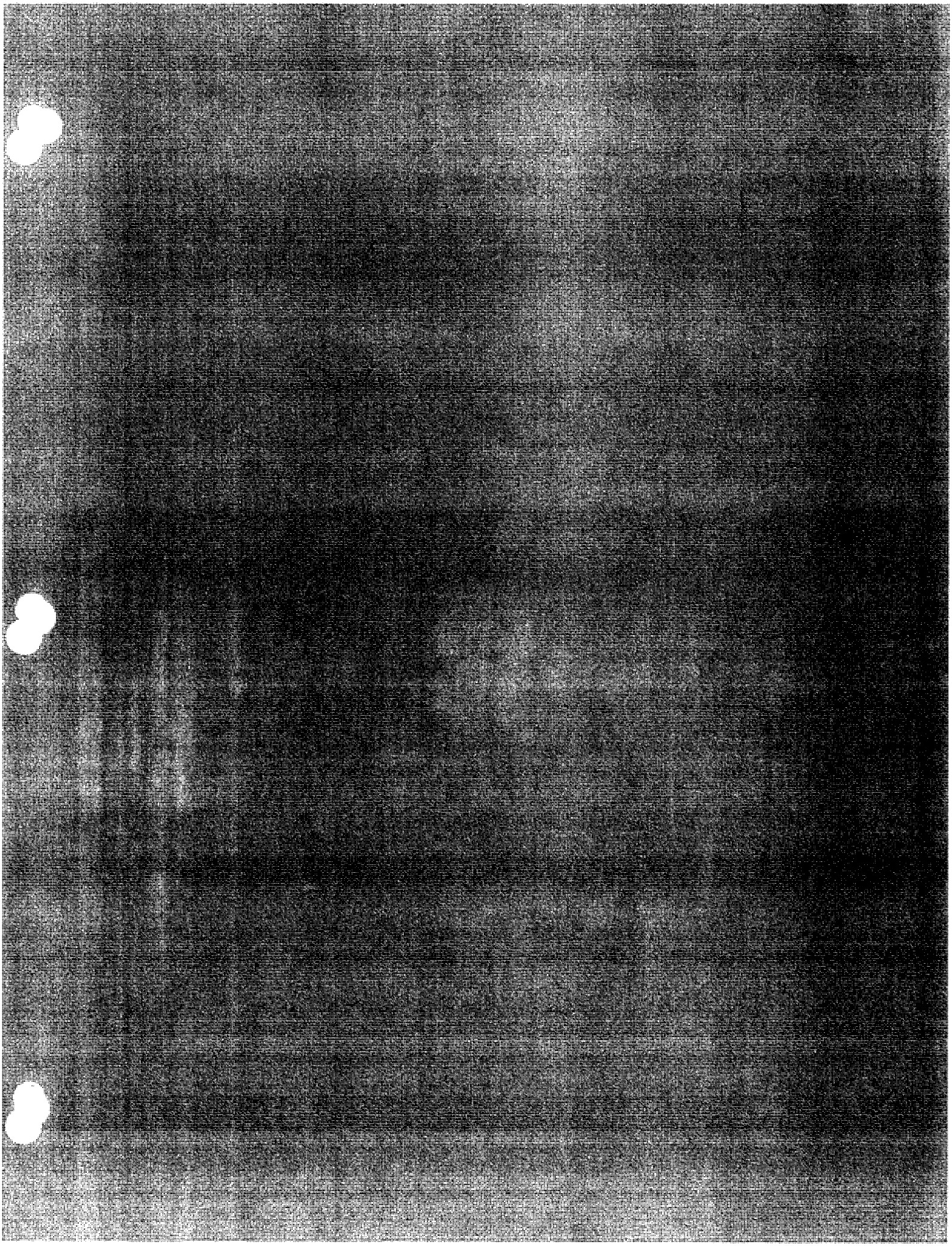


Omar Karim

'om: Goldin, Steven <sgoldin@wmata.com>
Sent: Tuesday, December 01, 2009 4:20 PM
To: okarim@bannekerventures.com
Cc: Anthony James Ives; Tiwana Hicks; Neil.Albert@dc.gov; Yohance S. Fuller; Catoe, John B.; Montague, Joshua W.; Welch, Kermit A.; Bottigheimer, Nat; Doggett, Rosalyn
Subject: RE: Florida Ave

Omar

The only knowledge we have regarding the Board's position is what I had conveyed to you in full last week via e-mail. Nat had taken your response to their requests and forwarded same to the Board Secretary for distribution. We have not heard back from the Board, hence, Nat's response to Tiwana Hicks yesterday regarding a meeting. That being said, we remain prepared to meet with you tomorrow at noon.

Steve

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, December 01, 2009 2:26 PM
To: Goldin, Steven
Cc: Anthony James Ives; Tiwana Hicks; Neil.Albert@dc.gov; Yohance S. Fuller; Catoe, John B.; Montague, Joshua W.; Welch, Kermit A.; Bottigheimer, Nat; Doggett, Rosalyn
Subject: Re: Florida Ave

Steve,

Thanks for your email. We will see you tomorrow @ noon. Can you provide us with your thoughts on the response we sent you last week so that we can make the meeting as productive as possible.

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Goldin, Steven" <sgoldin@wmata.com>
Date: Tue, 1 Dec 2009 14:05:26 -0500
To: Omar A. Karim<okarim@bannekerventures.com>
Cc: Montague, Joshua W.<jwmontague@wmata.com>; Welch, Kermit A.<KWelch@wmata.com>; Doggett, Rosalyn<RDoggett@wmata.com>
Subject: Florida Ave

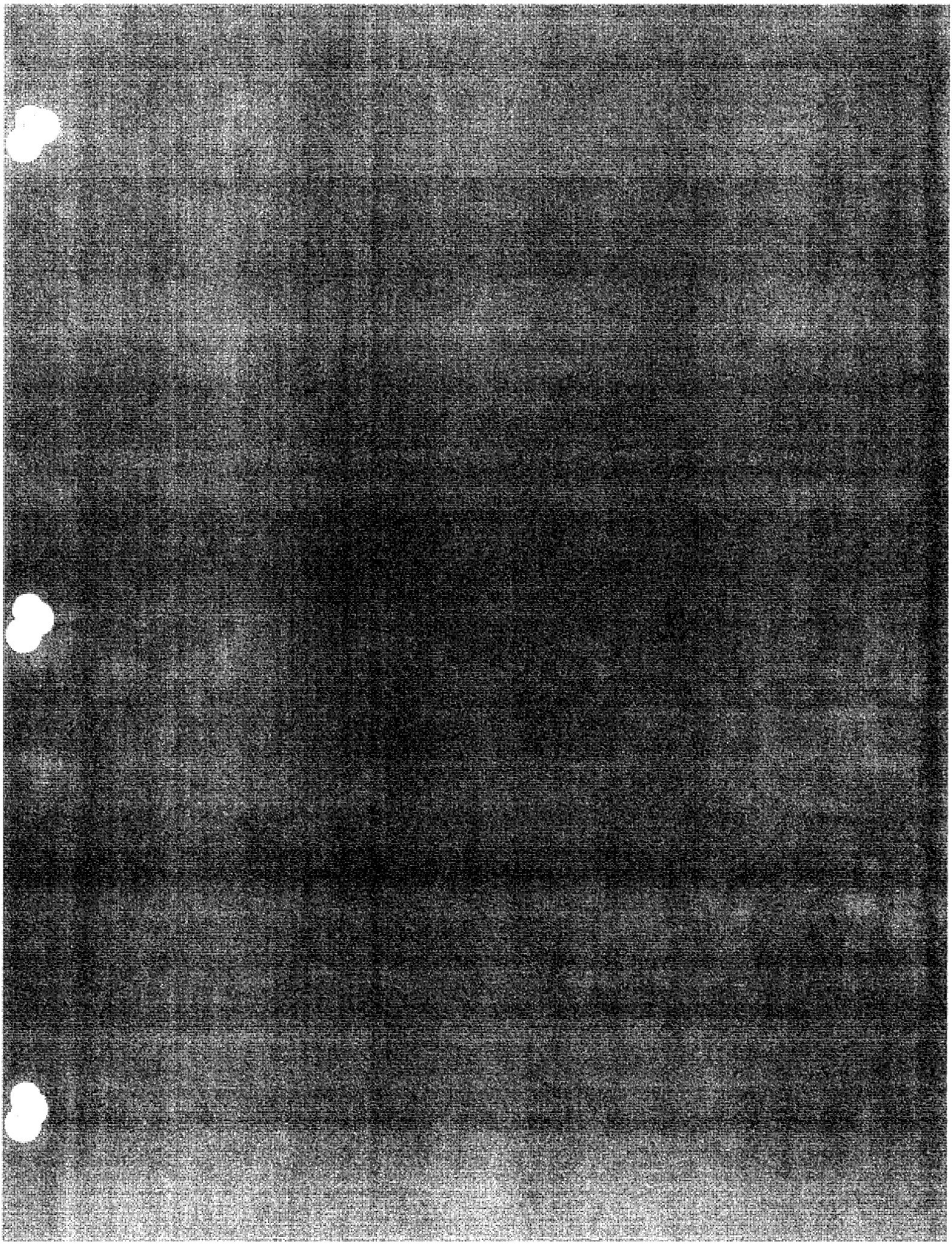
FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar

› are available to meet with you tomorrow, Wednesday 12/2, at noon at our offices. Please advise

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 015443



Omar Karim

›m: Doggett, Rosalyn <RDoggett@wmata.com>
›ent: Thursday, December 17, 2009 11:06 AM
To: Omar A. Karim
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Goldin, Steven
Subject: RE: Banneker Financial Information

The term sheet is on the agenda for the Jan 14, 2010 Planning Development & Real Estate Committee meeting, Executive Session, along with a request to extend time to negotiate an agreement. I will not know the Board's response until then.

Tuesday is fine for providing that information.

Thanks again
R.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, December 17, 2009 10:50 AM
To: Doggett, Rosalyn
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Goldin, Steven
Subject: RE: Banneker Financial Information

's. Doggett,

Thank you for your email. Our accountants should be able to provide us with our 3Q08 statements by next week. Would COB next Tuesday be okay to provide you all the statements and sources and uses? Can you provide information as to where we are with the Term Sheet? What was the Board's response to the information that you provided them following our last meeting? As we've discussed, these delays have and continue to cause us significant delays in our schedule.

Thank you in advance.

Omar

From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Thursday, December 17, 2009 10:33 AM
To: Omar A. Karim
Cc: Goldin, Steven
Subject: Banneker Financial Information

Good morning, Omar,

Given the amount of time that has elapsed since your initial submission, and anticipating possible Board questions, I have been asked to request from you the most recent balance sheet, income statement and sources and uses of funds statement for Banneker Ventures (the items requested in the original proposal submission requirements). Please let me know when we might receive these.

Thanks very much

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015445

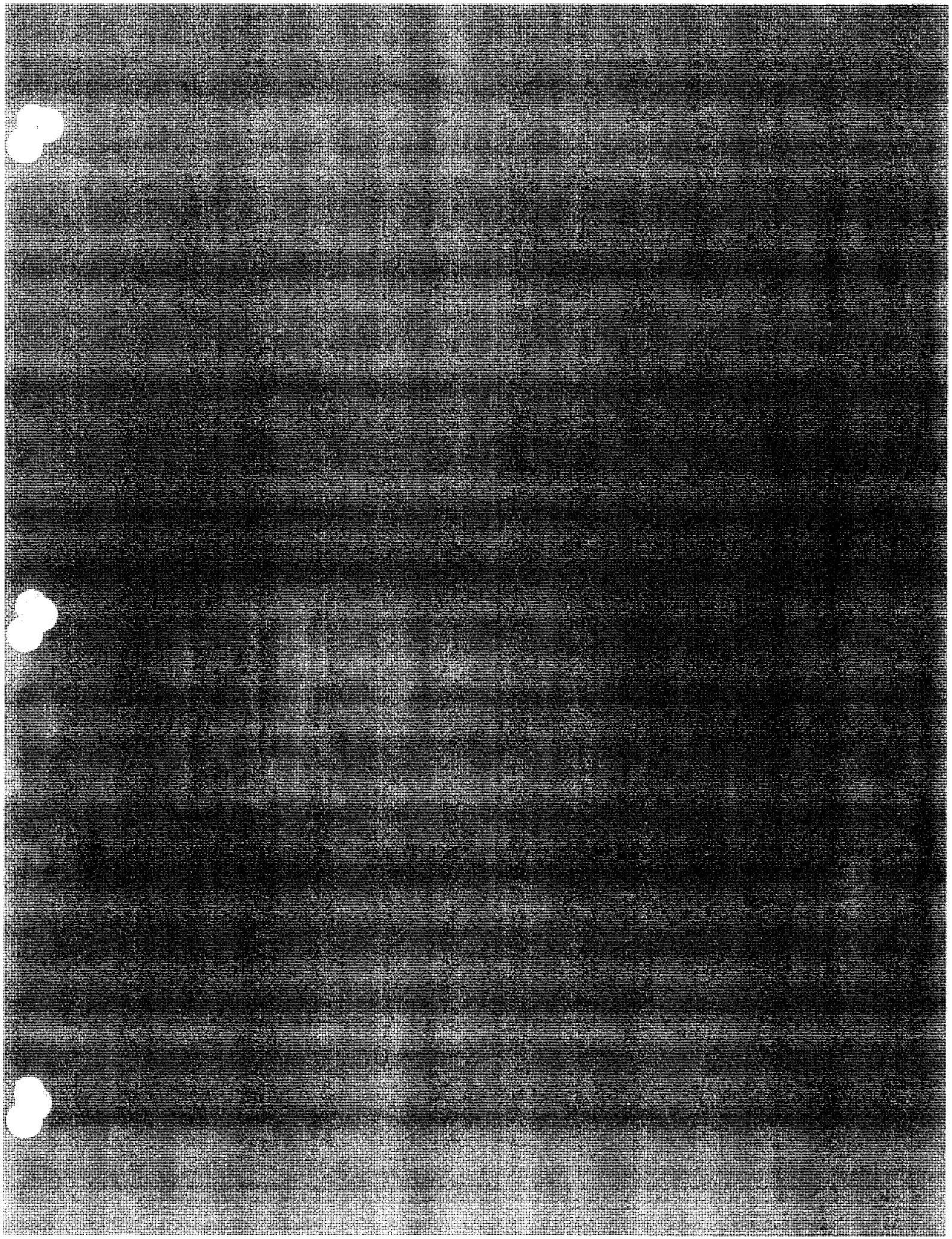
Happy Holidays

Rosalyn

Rosalyn P. Doggett
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

rdoggett@wmata.com
202-962-2208 phone
202-962-2396 fax

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

'om:	Doggett, Rosalyn <RDoggett@wmata.com>
ɔent:	Thursday, December 17, 2009 4:29 PM
To:	okarim@bannekerventures.com
Cc:	Goldin, Steven; Montague, Joshua W.
Subject:	RE: Banneker Financial Information
Attachments:	Shaw-Howard Fr Bottigheimer.pdf; ShawHoward FL AveTerm Sheets Comparison Revised 12-09.xlsx

Here is the change in terms that was sent forward for transmission to the Board and the comparison table that will be made available to them in January

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, December 17, 2009 12:55 PM
To: Doggett, Rosalyn
Cc: Anthony James Ives; Tiwana Hicks; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Goldin, Steven
Subject: Re: Banneker Financial Information

Roz,

Can you send us the updated term sheet with the latest offer, along with the summary of the term sheet you expect to send the Board.

mar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Doggett, Rosalyn" <RDoggett@wmata.com>
Date: Thu, 17 Dec 2009 11:05:36 -0500
To: Omar A. Karim<okarim@bannekerventures.com>
Cc: 'Anthony James Ives'<aives@bannekerventures.com>; 'Tiwana Hicks'<thicks@bannekerventures.com>; Neil.Albert@dc.gov<Neil.Albert@dc.gov>; Yohance.Fuller@dc.gov<Yohance.Fuller@dc.gov>; Goldin, Steven<sgoldin@wmata.com>
Subject: RE: Banneker Financial Information

The term sheet is on the agenda for the Jan 14, 2010 Planning Development & Real Estate Committee meeting, Executive Session, along with a request to extend time to negotiate an agreement. I will not know the Board's esponse until then.

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FOIA CONFIDENTIAL TREATMENT REQUESTED

Thanks again
R.

rom: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, December 17, 2009 10:50 AM
To: Doggett, Rosalyn
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Goldin, Steven
Subject: RE: Banneker Financial Information

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Cc: Goldin, Steven
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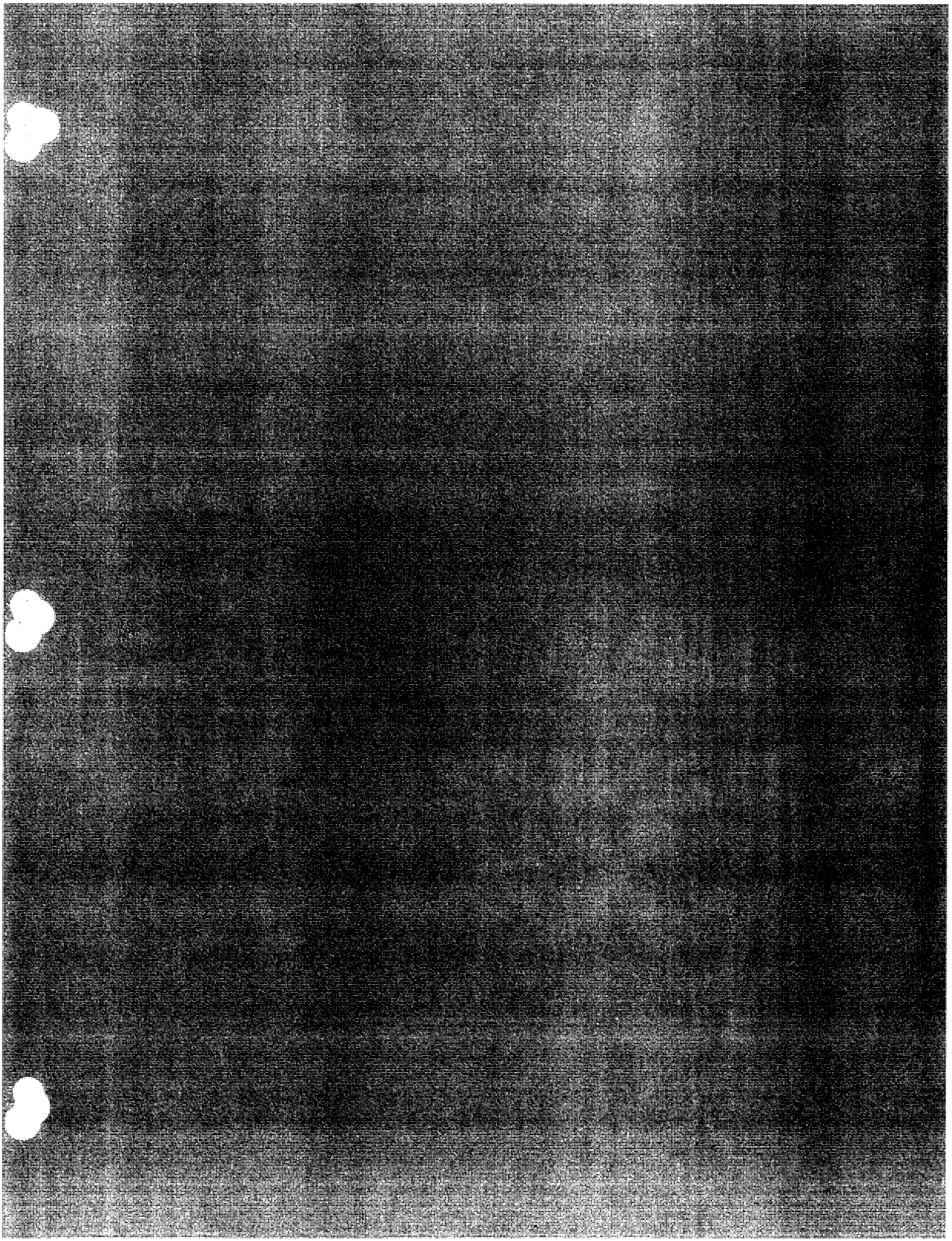
Thanks very much
Happy Holidays

Rosalyn

Rosalyn P. Doggett
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

rdoggett@wmata.com
202-962-2208 phone
202-962-2396 fax

FOIA CONFIDENTIAL TREATMENT REQUESTED



Minutes
Planning, Development and Real Estate Committee
January 14, 2010

The meeting was called to order at 9:18 a.m. Present were:

Committee members:

Mr. Neil Albert, Chairman
Ms. Elizabeth Hewlett, Vice Chair
Mr. Jim Graham
Mr. Peter Benjamin
Mrs. Catherine Hudgins
Mr. Christopher Zimmerman
Mr. Michael Brown
Mr. Gordon Linton
Mr. Jeff McKay
Mr. Anthony Giancola

Mr. Albert moved, seconded by Mr. Zimmerman, that the Committee convene in Executive Session at 9:19 a.m. The Committee voted unanimously in favor of the motion.

The Committee meeting reconvened in Public Session at 10:28 a.m.

Approval of Agenda

The agenda was approved as submitted by unanimous consent.

Approval of Minutes

Mr. Albert moved, seconded by Mr. Benjamin, to approve the October 8, 2009, November 5, 2009 and November 19, 2009 minutes as submitted. The Committee voted unanimously in favor of the motion.

Action Items

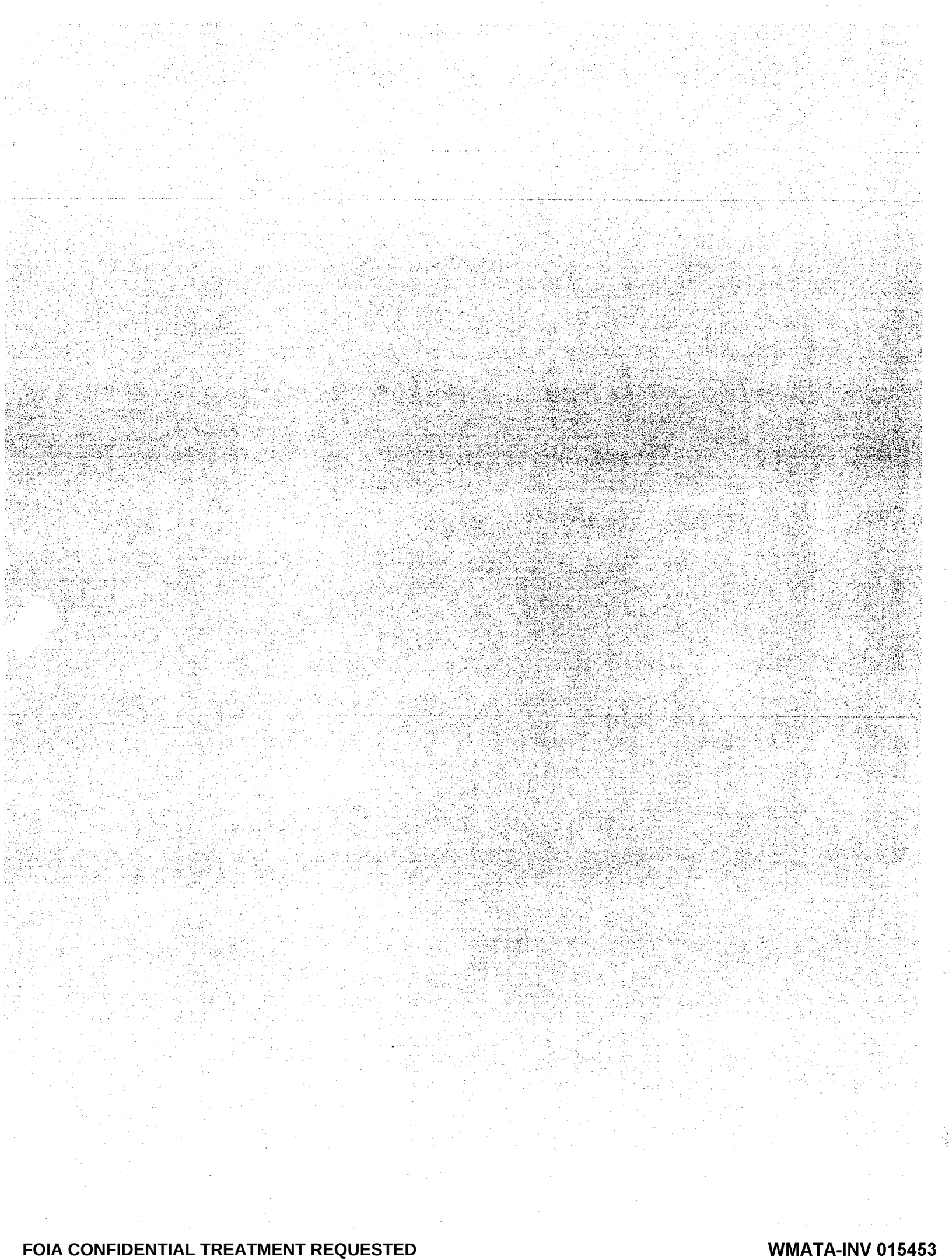
A1. Sale of Excess Property at 6th Street and Puerto Rico Avenue NE, Washington, DC

Mr. Albert moved, seconded by Mr. Benjamin, approval for the sale of excess Metro property to the Capital Area Food Bank for $170K and that the funds will be placed in the capital budget. The Committee voted unanimously in favor of the motion.

A2. Time Extension for Negotiation and Amended Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

Mr. Albert moved, seconded by Mr. Giancola, approval for a time extension for an amended term sheet for the Shaw-Howard U./Florida Avenue joint development site to be brought to the Board by March 31, 2010. The Committee voted in favor of the motion. Mr. Benjamin abstained. Mr. Brown voted no.

The meeting adjourned at 10:32 a.m.



Omar Karim

...n: Goldin, Steven <sgoldin@wmata.com>
...ent: Wednesday, January 06, 2010 9:55 AM
To: okarim@bannekerventures.com
Cc: Bottigheimer, Nat; Doggett, Rosalyn
Subject: Financials

Omar

I know that someone on the Board is likely to inquire as to where on the financial statements you submitted, ending 9/30/09, the anticipated revenue from the DC contracts is located. I'm assuming that the recent newspaper articles, which appeared post 9/30, means that some of the revenue shown on the statements will not be realized. Please advise

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar Karim

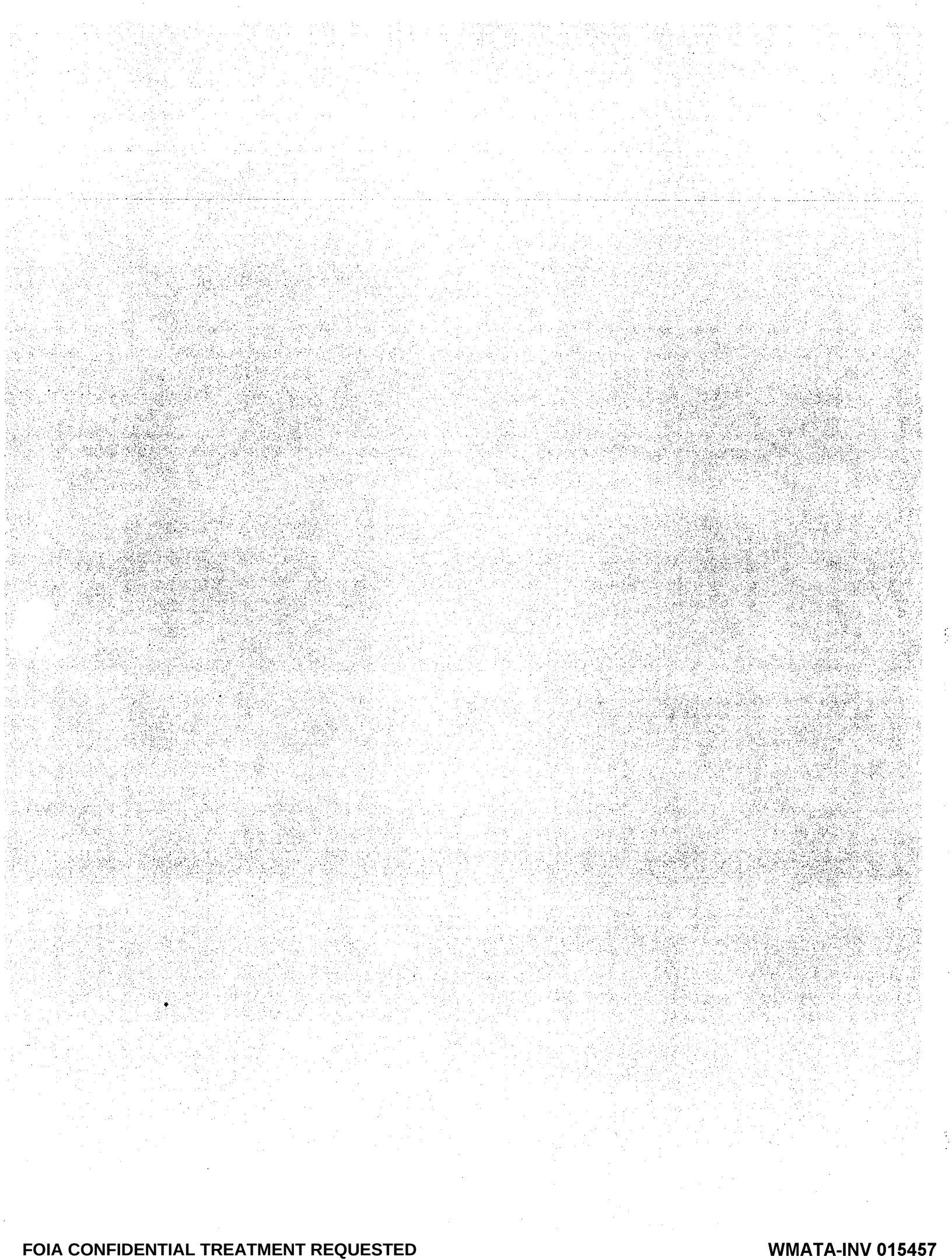
ı:	Goldin, Steven <sgoldin@wmata.com>
ent:	Thursday, January 14, 2010 2:44 PM
To:	Omar A. Karim
Cc:	Bottigheimer, Nat; Doggett, Rosalyn; Marshall, Malcolm
Subject:	Florida Avenue

Omar

At this morning's meeting of the Metro Board Real Estate Committee, they indicated their dissatisfaction with the proposed purchase price. Please advise if that is your last and final offer or if you are willing to negotiate further. I should add that the Committee also made clear that they were seeking more than incremental movement in the purchase price.

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIDENTIAL TREATMENT REQUESTED



Agenda
Planning, Development and Real Estate Committee
January 14, 2010
9 a.m.

I. Executive Session

A. Sale of Excess Property at 6th Street and Puerto Rico Avenue NE, Washington, DC (N. Bottigheimer)
B. Time Extension for Negotiation and Amended Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site (N. Bottigheimer)

Washington Metropolitan Area Transit Authority

Committee Members
Neil Albert, Chair
Elizabeth Hewlett, Vice Chair
Jim Graham
Peter Benjamin
Catherine Hudgins
Christopher Zimmerman
Michael Brown
Gordon Linton
Jeff McKay
Anthony Giancola
Marcell Solomon
William D. Euille

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar Karim

From: Goldin, Steven <sgoldin@wmata.com>
Sent: Wednesday, January 06, 2010 11:54 AM
To: Omar A. Karim
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Doggett, Rosalyn
Subject: RE: Financials

Omar

The other question that will come up is whether Bank of America is still your financial partner. A certification from you would address this issue most directly.

Steve

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, January 06, 2010 11:29 AM
To: Goldin, Steven
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Doggett, Rosalyn
Subject: RE: Financials
Importance: High

eve,

hanks for your email. 100% of the revenue shown on our 9/30/09 financial statements, including the $1.7M in accounts receiveables, have been realized and received by Banneker. We did not show any long-term receiveables/anticipated revenues for the park and recreation center work for any period that we had not completed work for under the contract with DC Housing Enterprises, which the DC Council unlawfully cancelled, and for which we are considering all of our legal options.

As of date, Banneker's financial status is stronger than it has ever been, and with our current cash on hand, coupled with our experienced staff, current and anticipated work load, and team of experts working on the Jazz, we are extremely confident that we will be able to complete this project in a timely manner and bring significant short and long term financial resources to WMATA, which based on the news accounts we've read, is needed at this time. Moreover, since a majority of the equity needed for the project is coming from other sources besides Banneker (private equity, HUD-insured loan, TIF, PILOT, etc), this further reduces any risk that any WMATA Board member may have about our ability to financially perform. In fact, unlike many other developers who can't get a construction or perm loan these days, since we have our lender and other sources lined up, the Board should consider this project as strong as, if not stronger, than any Joint Development Project that WMATA currently has in the pre-development stages and should feel confident about moving forward with us.

Please let me know if you have any further questions.

My best,

Omar

Omar A. Karim
Banneker Ventures, LLC

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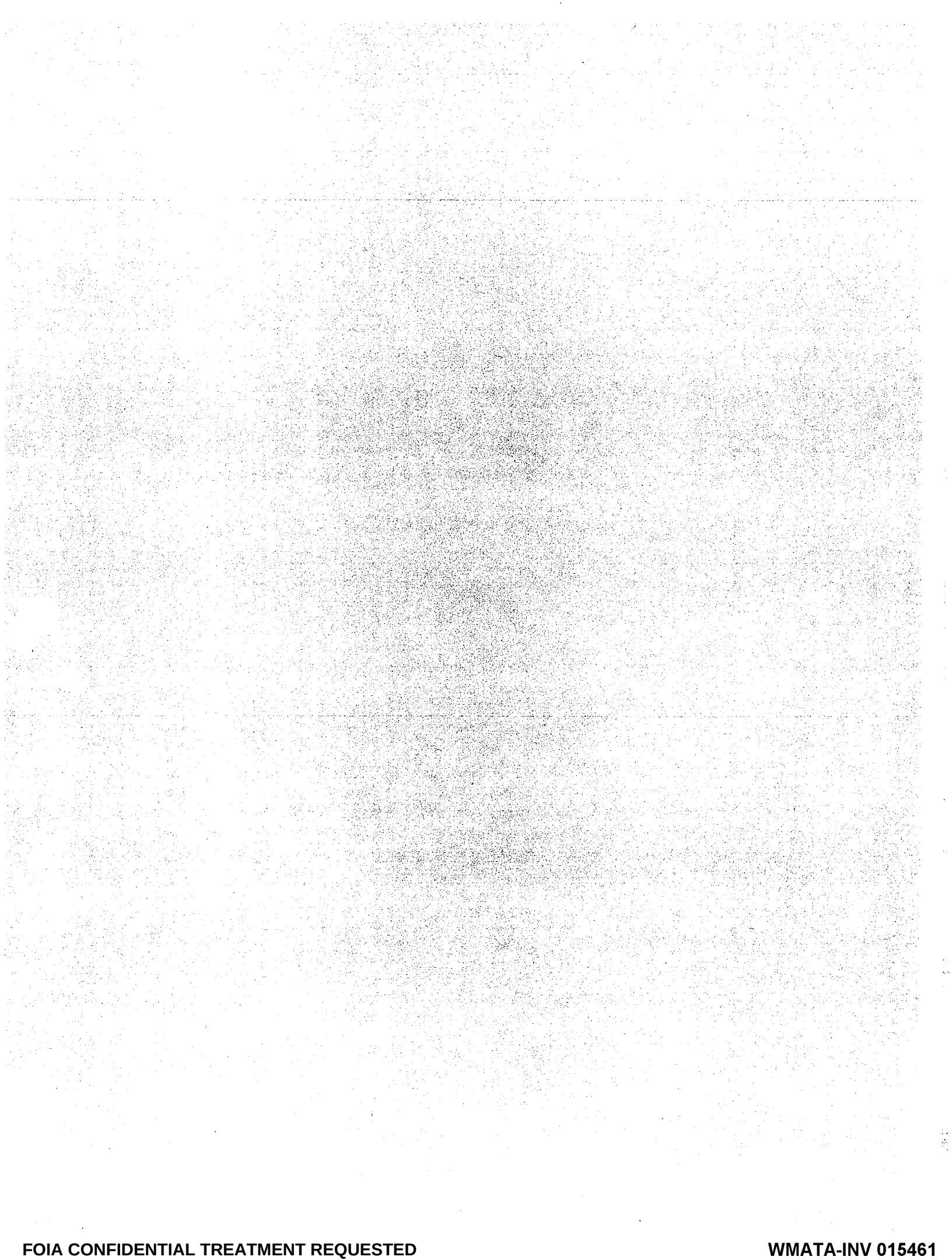

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My best,

Omar

Omar A. Karim
Banneker Ventures, LLC

FOIA CONFIDENTIAL TREATMENT REQUESTED

729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
) 393-5462 fax
01) 523-1810 cell
okarim@bannekerventures.com

From: Goldin, Steven [mailto:sgoldin@wmata.com]
Sent: Wednesday, January 06, 2010 9:55 AM
To: okarim@bannekerventures.com
Cc: Bottigheimer, Nat; Doggett, Rosalyn
Subject: Financials

Omar

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Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIDENTIAL TREATMENT REQUESTED

From the Washington Business Journal
:http://www.bizjournals.com/washington/blog/breaking_ground/2010/02/shoveling_in_campaign_contributions.html

D.C. Economic Development

Jim Graham shovels in campaign contributions

Washington Business Journal by Jonathan O'Connell, Reporter

Date: Friday, February 12, 2010, 10:12am EST

Jonathan O'Connell
Reporter
Email

It's no accident that in 11 years on the D.C. Council, Jim Graham has overseen a remarkable amount of new development in the neighborhoods of Ward 1, especially Adams Morgan, U Street and Columbia Heights. Graham deals in earmarks, grants, tax breaks and tax increment financing better than most of his colleagues, and his office is literally filled with ceremonial shovels from groundbreaking ceremonies.

This is convenient come campaign time – which is now.

D.C. attempts to limit the effect of corporations on elections by capping contributions from corporations at $500, same as for individuals, and all donations from a corporation's subsidiaries count against its max.

The good news for Graham and other city politicos, is that LLCs – limited liability corporations – each have their own contribution limits. So what do some developers do? Contribute the max for each one of their companies. Thus, condo master PN Hoffman Inc. and its related principals and companies gave Graham the max a dozen times, for $6,000, according to Graham's campaign finance report. Developer Lakritz Adler did so 10 times ($5,000), Donatelli Development Inc. nine times ($4,500) and Horning Brothers seven times ($3,500).

In the race to retain his seat, Graham raised $171,391 by the end of January – more than three times what any other candidate for a ward seat took in, with the Democratic primary a little more than six months off.

"Ward 1 has been the site of some of the most dramatic development in the city, and Jim has helped pave the way for that," said Graham campaign advisor Chuck Thies. "I think developers see him as someone who understands both the need for development and how developers help work with the community in a way that benefits the ward."

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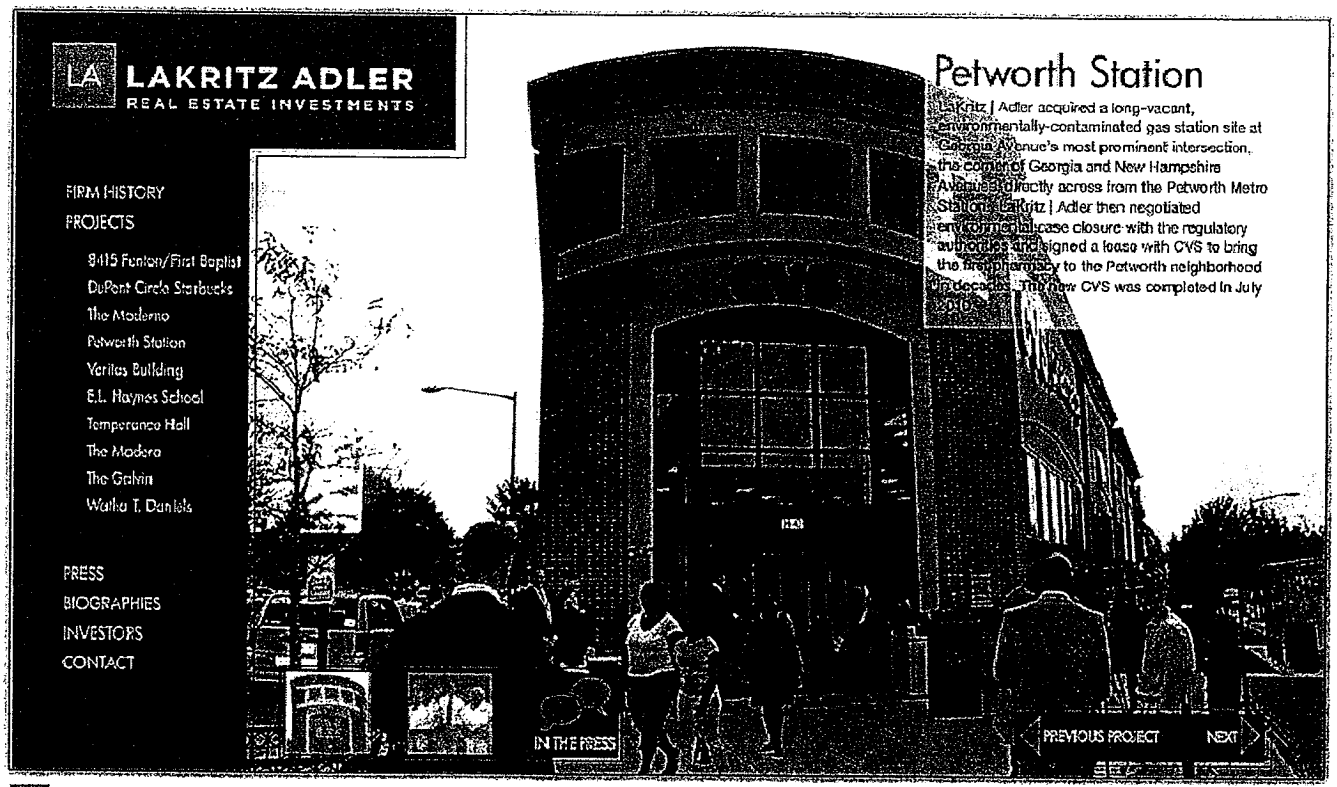
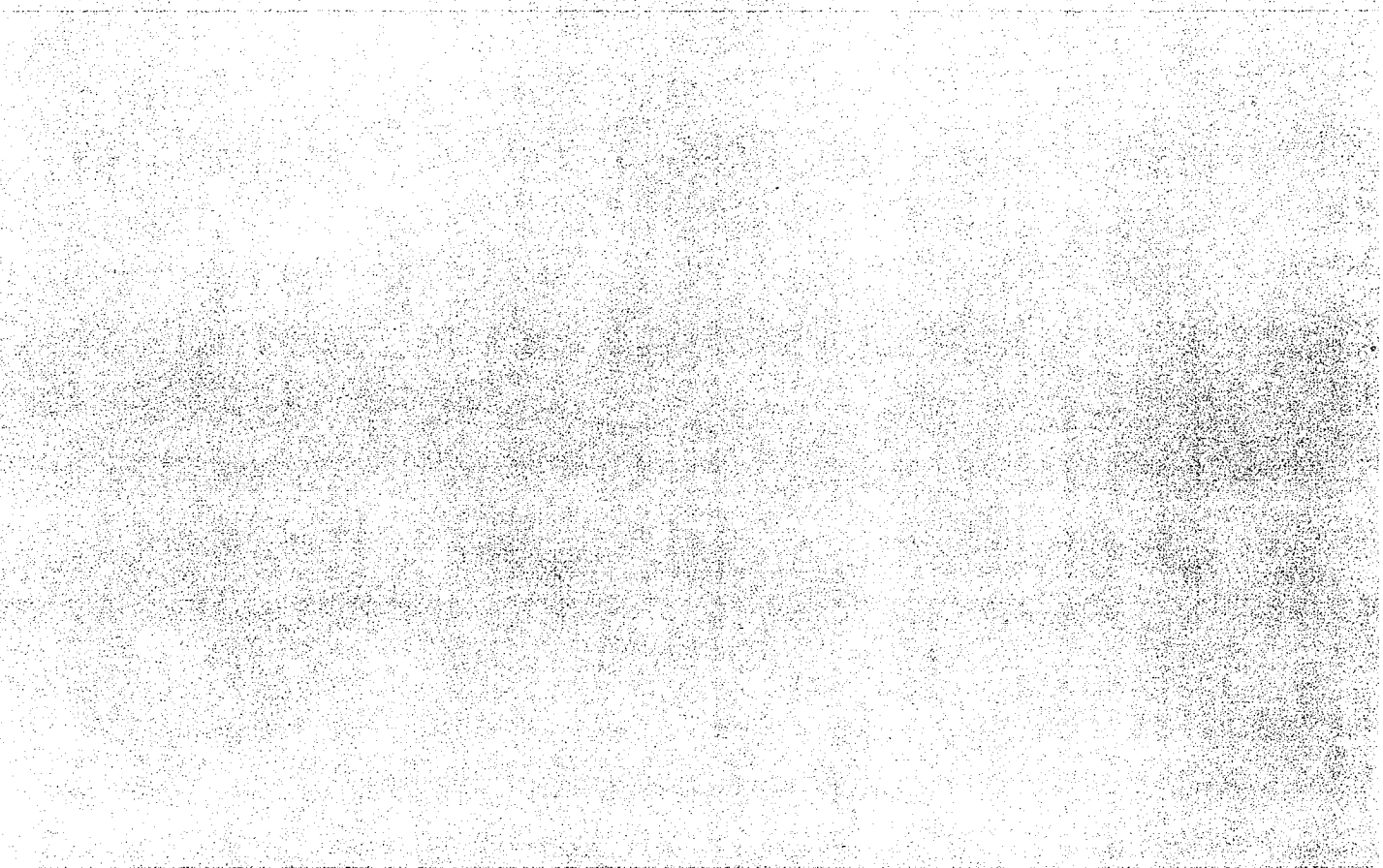


LAKRITZ ADLER
REAL ESTATE INVESTMENTS

Real Estate Investment and Development in the Washington, D.C. Area

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015466



Omar Karim

From: Omar A. Karim <okarim@bannekerventures.com>
Sent: Tuesday, February 23, 2010 4:54 PM
To: 'Doggett, Rosalyn'
Cc: 'Goldin, Steven'; 'Bottigheimer, Nat'; 'Yohance S. Fuller'; Neil.Albert@dc.gov; 'Tiwana Hicks'; 'Anthony James Ives'
Subject: Follow-up re Jazz @ Florida Avenue

Importance: High

Roz,

Per our call this morning, Banneker, our develop partner and investors for The Jazz @ Florida Avenue project (collectively, the "Developer") are prepared to increase our offer to WMATA as follows:

1. Make a capitalized lease payment of **$5.2M** at Closing. This is a 130% increase in value over WMATA's appraised value of $2.2M, and a 70% increase in value over our previous base offer of $3.03M, which includes the NPV of the capitalized lease plus the NPV of the EGI payments. This base offer is inclusive of the projected **$2.8M loss in land value** (as calculated by WMATA's appraiser Richard Harps) due to the 8% IZ requirement and the additional hard and soft costs incurred by the Project as a result of building over the WMATA tunnel.

2. Because of some of the concerns raised by WMATA staff, we would are prepared to move forward with developing the Project solely on the WMATA parcels (28,347 SF). We will forgo our purchase of the adjacent 9th Street parcels, thereby relieving any potential complications that would arise with the necessity of a Co-Tenancy Agreement, also allowing us to free up capital that would have been used toward purchasing those parcels, and instead use these funds to pay WMATA more funds at Closing. We will also not pursue an alley closing.

3. We will build the project at 4.5 FAR (as of right if not for the mandatory IZ rules that went into effect after our selection) plus the 20% bonus (0.9 FAR) that we would get because of the IZ units, bringing the total FAR to 5.4 FAR. The Project will consist of 153,000 GSF, with 137 residential units (with 12 IZ units), 14,000 SF and 41 parking spaces. Developer would pay WMATA an agreed upon rate of $ per FAR for any SF that it builds above the 153,000 SF.

4. The initial term of the lease will be for 50 years, with a 49 year option and resets to market value every 10 years after the initial 50 year term.

5. All other terms will remain consistent (i.e., participation in Capital Events, etc.).

A $5.2M upfront, non-contingent payment to WMATA is significantly higher than the recent appraisal completed by WMATA and close to our initial offer to WMATA in 2007, excluding the imposition of the IZ units and market conditions. Based on our analysis of our initial offer, **the NPV of the offer, using reasonable interest rate assumptions, would have been about $11M,** which is no where close to the $14M that WMATA staff informed us that this is what they calculated our offer to be. If this is the case, assuming that the market conditions brought the value down by 20% (which is conservative), this would bring the offer from $11M to $8.8M. Because we have to build IZ units, which force us to go from a stick build construction type to a light gauge steel product, and at the same time loose money on all of the IZ units as they do not support themselves without a subsidy, which the District does not provide for IZ units, this increases 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

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.

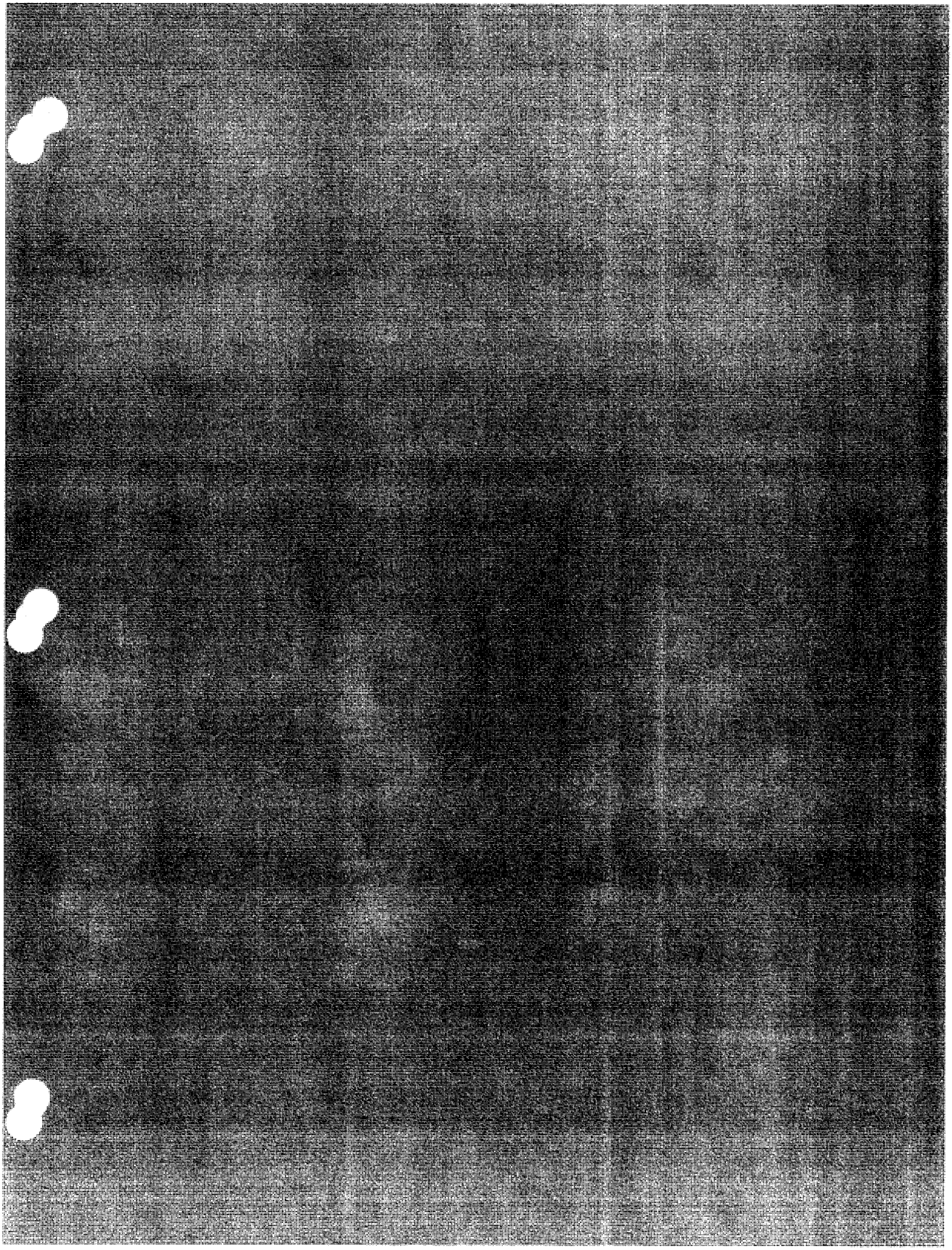
Warmest regards, I remain

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



Omar Karim

From: Doggett, Rosalyn <RDoggett@wmata.com>
Sent: Wednesday, February 24, 2010 4:47 PM
To: Omar A. Karim
Subject: RE: Follow-up re Jazz @ Florida Avenue

Omar, thanks very much for the response and for the effort that has gone in to improve the offer. I would like to ask you to send as supplemental information a new site plan and elevations showing the configuration and building heights by parcel that you are anticipating. We will need this as soon as possible as we will be reviewing this project with principals of the agency on Monday. Similarly, we will need revised development and operating pro formas as we will most certainly be questioned about whether we have reviewed the numbers and think that they are feasible. Some time has now gone by since receipt of the last set, and the construction method has changed. Both the plans/elevations and pro formas will be needed in order to make the best possible case for the revised offer.

Thanks in advance for your cooperation. Please call me if you need further detail or want to discuss.
Roz

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, February 23, 2010 4:54 PM
To: Doggett, Rosalyn
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: Follow-up re Jazz @ Florida Avenue
Importance: High

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4. The initial term of the lease will be for 50 years, with a 49 year option and resets to market value every 10 years after the initial 50 year term.

FOIA CONFIDENTIAL TREATMENT REQUESTED

5. All other terms will remain consistent (i.e., participation in Capital Events, etc.).

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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

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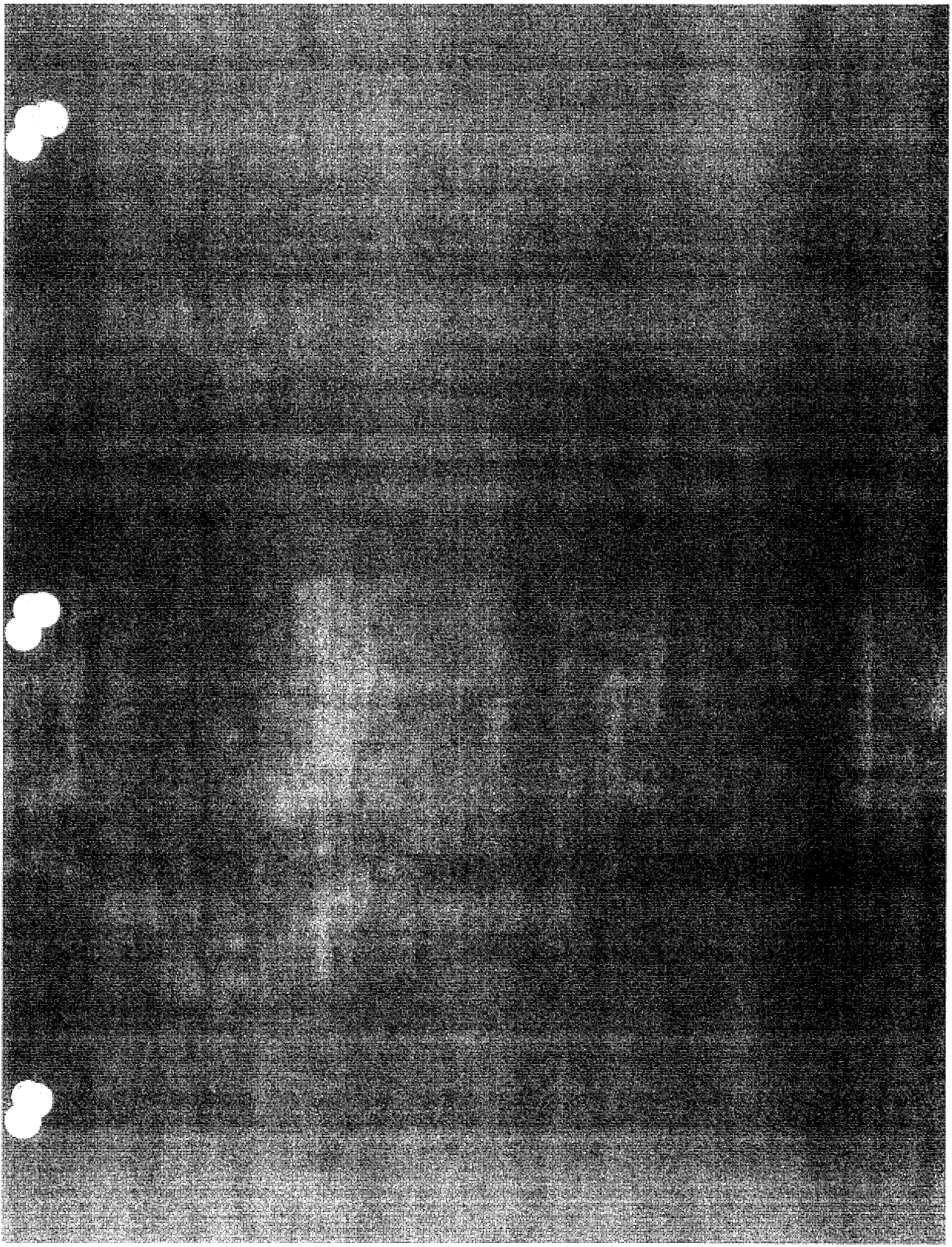


Omar Karim

From: Doggett, Rosalyn <RDoggett@wmata.com>
Sent: Thursday, February 25, 2010 1:52 PM
To: Omar A. Karim; aives@bannekerventures.com; 'Tiwana Hicks'
Cc: Goldin, Steven; eric.smart@bolansmart.com; Montague, Joshua W.; Bushnaq, Tariq
Subject: Followup on Florida Avenue

Good afternoon, Omar. Per our staff review this morning, we have the following comments/requests:

1. Parking feasibility- where will the 41 spaces go, precisely, and how will you be able to justify only 41 spaces for 153,000 gsf of residential and retail vis a vis zoning regulations and market?
2. What type of foundation system are you using to support the light gauge steel construction? The question, of course, relates to how you will span our tunnels.
3. We think that with a 20% IRR to the developer, the return on adjusted gross income from capital event refinancing proceeds should be 10% of adjusted gross proceeds. Also, exclusions from capital events should be limited to estate transfers and to inclusion of equity/debt partners where no profit to participants is involved. They should definitely not include transfers among partners.
4. From discussions with other developers and comments from time to time from our board members, we believe that a 70 year lease would be sufficient and are requesting a reduction from 99 years.
5. Please reaffirm that BACDC is still in the deal as a development/financial partner.
6. On the cost credit for your consideration of a sale vs. lease this past Sept/Oct, please provide certification that Mr. Catoe or Mr. Graham offered that adjustment. Secondly, please be aware that from what you sent us previously, we can validate at best $30,000 if you still want to include this item in a term sheet.
7. We still need a development guaranty from a third party rated at least AA.
8. Please attach an updated schedule. We will include language in our agreement, per Board request, that if a foundation to street level is not provided by a date x , the project will revert to WMATA.
9. I want to reiterate the need for the pro formas and elevations/plans and, also, itemized sources of funds for development which I did not ask for yesterday.

Items 8 and 9 are important to get ASAP because the project has changed.

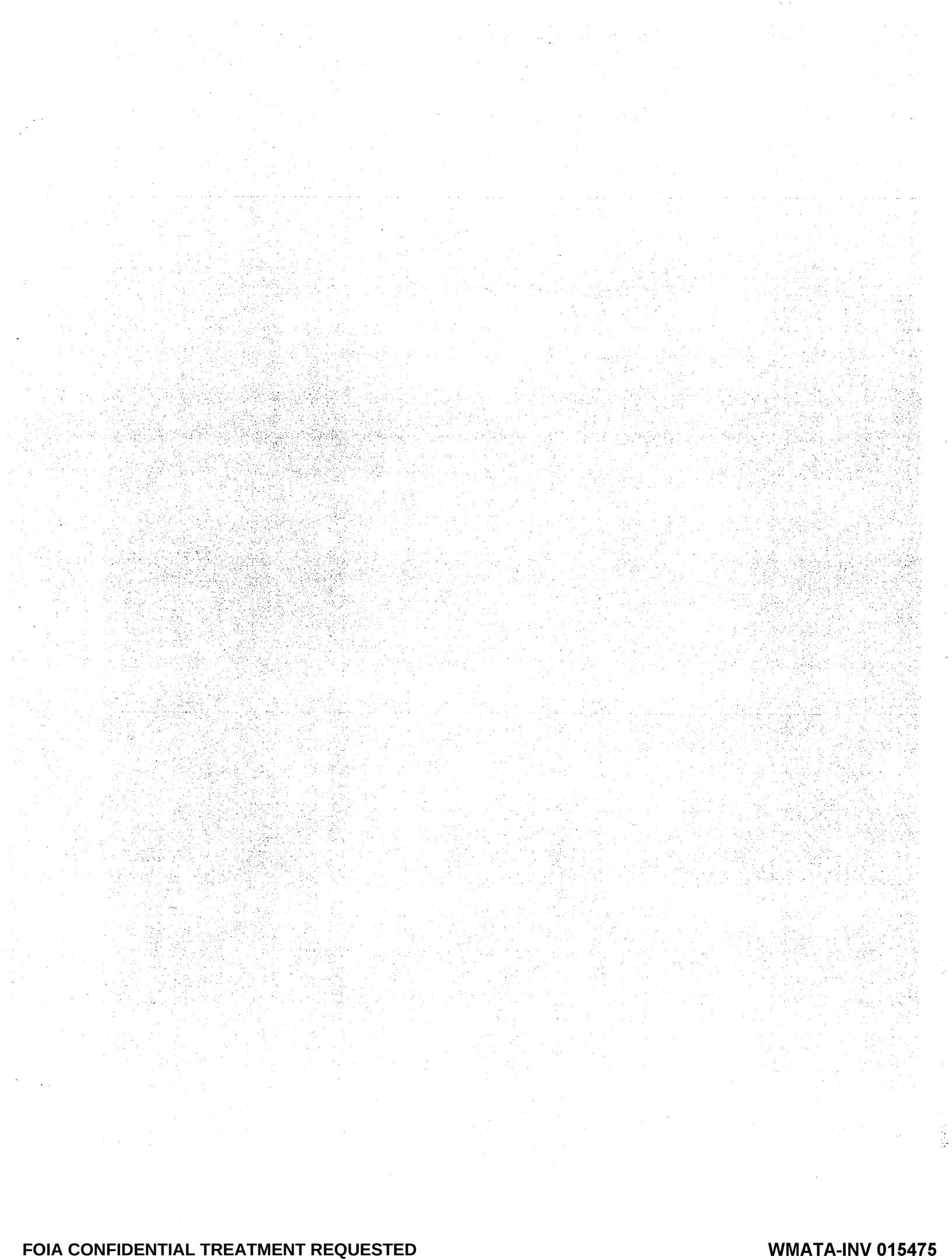
On a happy note, congratulations on your new son. Great news!

I look forward to your response.
Roz

Rosalyn P. Doggett
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

rdoggett@wmata.com
202-962-2208 phone
202-962-2396 fax

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015474



Tiwana Hicks

.n: Omar Karim [okarim@bannekerventures.com]
ent: Thursday, February 25, 2010 3:50 PM
o: Rosslyn Doggett; Anthony James Ives; Tiwana Hicks
Cc: Steve Goldin; Eric Smart; Montague, Joshua W.; Bushnaq, Tariq; Yohance Fuller; Neil Albert
Subject: Re: Followup on Florida Avenue

Roz,

When do you need responses for these items? As you know, bc of the birth of my child, I will be out for a few days and we will need to coordinate with the GC, our legal counsel and investor re 2, 3, 8 and 9. The balance of the responses are below:

1. The location of the spaces haven't been finalized yet as we are considering either having (a) 1 level of parking under each of the larger bldgs which we proposed in our initial submittal, or (b) use a mechanical system at level G1 of one bldg which would accommodate the 41 spaces. Based on the 153,000 sf, zoning would require 55 spaces. However, we met with OP and they expressed their interest in having us build less parking spaces for the project, even less than what zoning requires. This could be accomplished either through the BZA or Zoning Commission through a PUD, which they fully support.

4. 70 yrs is fine.

Yes. However, as previously discussed, bc Graham wanted us to do a lease vs a sale, he and I, and then Catoe l the staff, agreed that we would replace BACDC in the future as they were comfortable with a sale but not a ase.

6. Graham agreed to the adjustment and Catoe was fine with it. We will review what we sent you re the adjustment amount.

7. Ok. Our GC will provide a bond from an insurer of at least AA similar to what you've seen on other wmata projects.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Doggett, Rosalyn" <RDoggett@wmata.com>
ate: Thu, 25 Feb 2010 13:51:49 -0500
o: Omar A. Karim<okarim@bannekerventures.com>;
aives@bannekerventures.com<aives@bannekerventures.com>; 'Tiwana Hicks'<thicks@bannekerventures.com>

FOIA CONFIDENTIAL TREATMENT REQUESTED

Cc: Goldin, Steven<sgoldin@wmata.com>; eric.smart@bolansmart.com<eric.smart@bolansmart.com>; Montague, Joshua W.<jwmontague@wmata.com>; Bushnaq, Tariq<TBushnaq@wmata.com>
ject: Followup on Florida Avenue

ood afternoon, Omar. Per our staff review this morning, we have the following comments/requests:

1. Parking feasibility- where will the 41 spaces go, precisely, and how will you be able to justify only 41 spaces for 153,000 gsf of residential and retail vis a vis zoning regulations and market? OK answer.
2. What type of foundation system are you using to support the light gauge steel construction? The question, of course, relates to how you will span our tunnels. Spread footings
3. We think that with a 20% IRR to the developer, the return on adjusted gross income from capital event refinancing proceeds should be 10% of adjusted gross proceeds. Also, exclusions from capital events should be limited to estate transfers and to inclusion of equity/debt partners where no profit to participants is involved. They should definitely not include transfers among partners.
4. From discussions with other developers and comments from time to time from our board members, we believe that a 70 year lease would be sufficient and are requesting a reduction from 99 years. Want to see at least 75yr
5. Please reaffirm that BACDC is still in the deal as a development/financial partner. OK
6. On the cost credit for your consideration of a sale vs. lease this past Sept/Oct, please provide certification that Mr. Catoe or Mr. Graham offered that adjustment. Secondly, please be aware that from what you sent us previously, we can validate at best $30,000 if you still want to include this item in a term sheet. OK
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8. Please attach an updated schedule. We will include language in our agreement, per Board request, that if a foundation to street level is not provided by a date x , the project will revert to WMATA.
9. I want to reiterate the need for the pro formas and elevations/plans and, also, itemized sources of funds for development which I did not ask for yesterday.

Items 8 and 9 are important to get ASAP because the project has changed.

On a happy note, congratulations on your new son. Great news!

I look forward to your response.
Roz

Rosalyn P. Doggett
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

rdoggett@wmata.com
202-962-2208 phone
202-962-2396 fax

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar Karim

...n:	Doggett, Rosalyn <RDoggett@wmata.com>
...nt:	Thursday, February 25, 2010 5:17 PM
To:	okarim@bannekerventures.com; Anthony James Ives; Tiwana Hicks
Cc:	Eric Smart; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Montague, Joshua W.; Goldin, Steven; Bushnaq, Tariq
Subject:	RE: Followup on Florida Avenue

In response to your first question, by the middle of next week, let's say midday Wednesday. In fact, I have just been informed that the meeting I referred to in yesterday's e-mail was moved forward to the week of March 8. But assuming that there will be some back and forth questions, I think that it would be best to get your material midweek next week. Let me know if that presents any problems.
Regards,
Roz

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, February 25, 2010 3:50 PM
To: Anthony James Ives; Tiwana Hicks; Doggett, Rosalyn
Cc: Eric Smart; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Montague, Joshua W.; Goldin, Steven; Bushnaq, Tariq
Subject: Re: Followup on Florida Avenue

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4. 70 yrs is fine.

5. Yes. However, as previously discussed, bc Graham wanted us to do a lease vs a sale, he and I, and then Catoe and the staff, agreed that we would replace BACDC in the future as they were comfortable with a sale but not a lease.

6. Graham agreed to the adjustment and Catoe was fine with it. We will review what we sent you re the adjustment amount.

7. Ok. Our GC will provide a bond from an insurer of at least AA similar to what you've seen on other wmata ...rojects.

...mar

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar A. Karim
Banneker Ventures, LLC
7[illegible] 15th Street, NW, Suite 400
[illegible]ington, DC 20005
.02) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Doggett, Rosalyn" <RDoggett@wmata.com>
Date: Thu, 25 Feb 2010 13:51:49 -0500
To: Omar A. Karim<okarim@bannekerventures.com>; aives@bannekerventures.com<aives@bannekerventures.com>; 'Tiwana Hicks'<thicks@bannekerventures.com>
Cc: Goldin, Steven<sgoldin@wmata.com>; eric.smart@bolansmart.com<eric.smart@bolansmart.com>; Montague, Joshua W.<jwmontague@wmata.com>; Bushnaq, Tariq<TBushnaq@wmata.com>
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I look forward to your response.
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salyn P. Doggett
.ation Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington, DC 20001

rgett@wmata.com
-962-2208 phone
02-962-2396 fax

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar Karim

From: Doggett, Rosalyn <RDoggett@wmata.com>
Sent: Friday, February 26, 2010 9:27 AM
To: okarim@bannekerventures.com; Anthony James Ives; Tiwana Hicks; Goldin, Steven
Cc: Eric Smart; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Montague, Joshua W.; Bushnaq, Tariq; Wallace, Maria A; Johnson, Shariyka
Subject: RE: Followup on Florida Avenue

Let's make it 3:30 on Tuesday as I am supposed to be at the BZA on another project at 1.

I will ask Maria or Shariyka to send out a notice.

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, February 25, 2010 6:35 PM
To: Anthony James Ives; Tiwana Hicks; Doggett, Rosalyn; Goldin, Steven
Cc: Eric Smart; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Montague, Joshua W.; Bushnaq, Tariq
Subject: Re: Followup on Florida Avenue

Great. Please let us know if Tues at 3pm is okay with you all. If so, see you all then.

Omar A. Karim
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okarim@bannekerventures.com

From: "Goldin, Steven" <sgoldin@wmata.com>
Date: Thu, 25 Feb 2010 18:19:38 -0500
To: okarim@bannekerventures.com<okarim@bannekerventures.com>; Anthony James Ives<aives@bannekerventures.com>; Tiwana Hicks<thicks@bannekerventures.com>; Doggett, Rosalyn<RDoggett@wmata.com>
Cc: Eric Smart<eric.smart@bolansmart.com>; Neil.Albert@dc.gov<Neil.Albert@dc.gov>; Yohance.Fuller@dc.gov<Yohance.Fuller@dc.gov>; Montague, Joshua W.<jwmontague@wmata.com>; Bushnaq, Tariq<TBushnaq@wmata.com>
Subject: RE: Followup on Florida Avenue

Tuesday afternoon is best for me

SG

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, February 25, 2010 5:58 PM
To: Anthony James Ives; Tiwana Hicks; Doggett, Rosalyn
Cc: Eric Smart; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Goldin, Steven; Montague, Joshua W.; Bushnaq, Tariq
Subject: Re: Followup on Florida Avenue

FOIA CONFIDENTIAL TREATMENT REQUESTED

Roz and Steve,

Thanks for the congratulations on the birth of my son earlier today. Means a lot to me. I understand that Steve will be on the Hill tomorrow and therefore won't be able to meet. As such, we were thinking that it might be more productive to reschedule the mtg for a time when he would be present. Would Mon, Tues or Wed work? If so, we will make ourselves available anytime, except 12-1 on Tues. Please let us know if this works. Thanks.

Omar

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729 15th Street, NW, Suite 400
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okarim@bannekerventures.com

From: "Doggett, Rosalyn" <RDoggett@wmata.com>
Date: Thu, 25 Feb 2010 17:17:23 -0500
To: okarim@bannekerventures.com<okarim@bannekerventures.com>; Anthony James Ives<aives@bannekerventures.com>; Tiwana Hicks<thicks@bannekerventures.com>
Cc: Eric Smart<eric.smart@bolansmart.com>; Neil.Albert@dc.gov<Neil.Albert@dc.gov>; Yohance.Fuller@dc.gov<Yohance.Fuller@dc.gov>; Montague, Joshua W.<jwmontague@wmata.com>; Goldin, Steven<sgoldin@wmata.com>; Bushnaq, Tariq<TBushnaq@wmata.com>
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Cc: Eric Smart; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Montague, Joshua W.; Goldin, Steven; Bushnaq, Tariq
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FOIA CONFIDENTIAL TREATMENT REQUESTED

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(301) 523-1810 cell
okarim@bannekerventures.com

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Date: Thu, 25 Feb 2010 13:51:49 -0500
To: Omar A. Karim<okarim@bannekerventures.com>; aives@bannekerventures.com<aives@bannekerventures.com>; 'Tiwana Hicks'<thicks@bannekerventures.com>
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FOIA CONFIDENTIAL TREATMENT REQUESTED

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I look forward to your response.
Roz

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Washington Metropolitan Area Transit Authority
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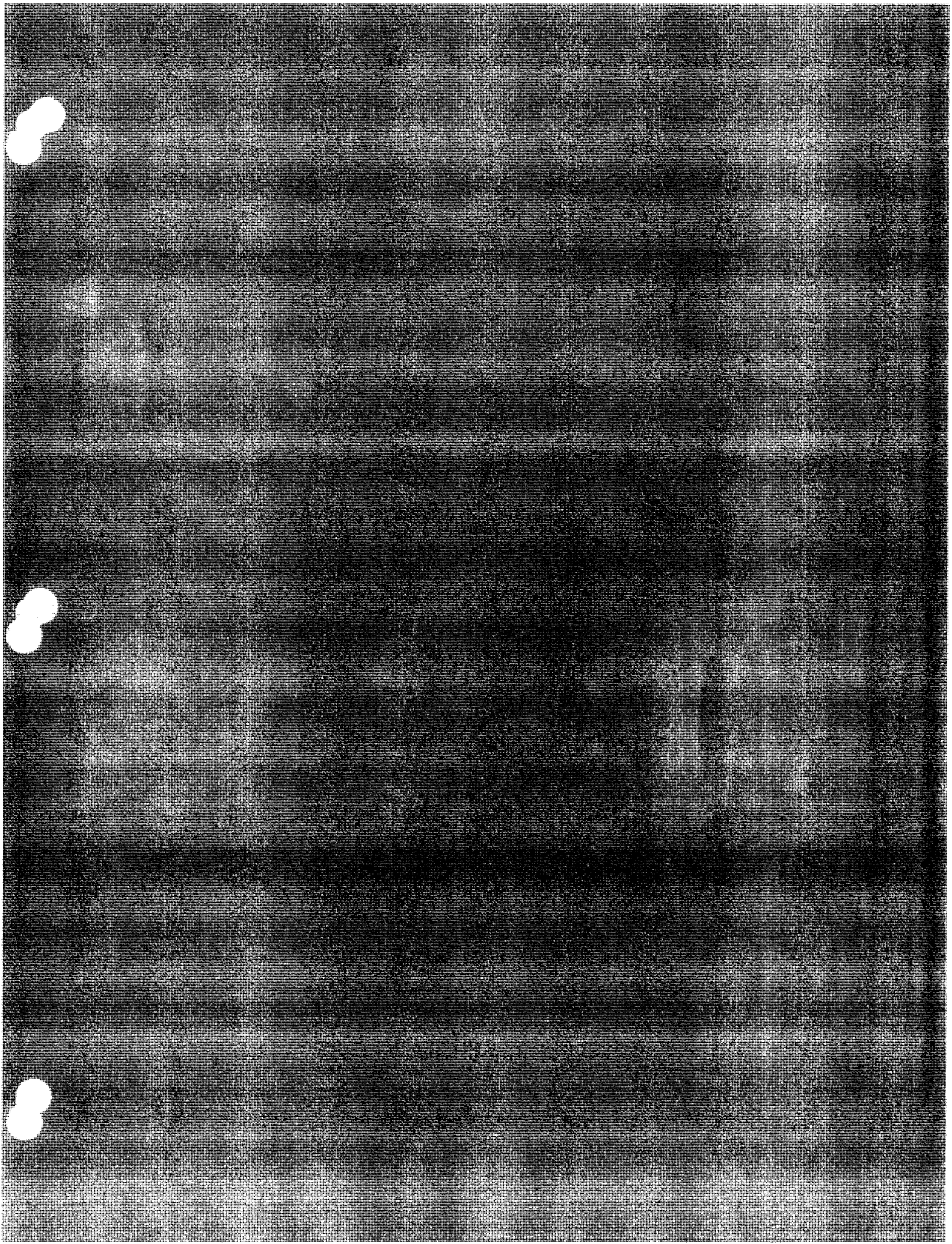
Washington, DC 20001

rdoggett@wmata.com
202-962-2208 phone
202-962-2396 fax

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015486



Tiwana Hicks

m: Omar Karim [okarim@bannekerventures.com]
ent: Tuesday, March 02, 2010 11:55 AM
To: Tiwana Hicks
Subject: Fw: Florida Avenue - Guaranty alternatives

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Doggett, Rosalyn" <RDoggett@wmata.com>
Date: Tue, 2 Mar 2010 11:40:41 -0500
To: Omar A. Karim<okarim@bannekerventures.com>
Subject: FW: Florida Avenue - Guaranty alternatives

---

om: Montague, Joshua W.
ent: Monday, March 01, 2010 5:35 PM
To: Doggett, Rosalyn
Subject: Florida Avenue - Guaranty alternatives

Possible alternatives to get WMATA the security to restore the property or complete construction (which is what we asked for in previous Term Sheet):

1. Guaranty agreements – As we discussed previously, this needs to be from an individual or a company that is not simply a shell (e.g., BACDC). The guarantor should meet certain financial tests to ensure that they can actually deliver. Also, this is a very flexible document that could be applied to other JDA and/or Lease terms.

2. Indemnity agreement – this is like a guaranty agreement except that it has security attached to it. WMATA can recover against the security if the indemnifier does not deliver. E.g., a 2nd mortgage on another property.

3. Letter of credit – a letter of credit which would cover the costs of replacing the site to the condition it was prior to the Developer's acts. We could structure the LOC so that it lasts only until Developer gets "out of the ground" or until construction is completed. Could possibly use a LOC to help with the indemnification limitations that might be part of this transaction.

4. Escrow account –
    a. Developer – Developer/Contractor/Investors put up money up front that covers the cost of restoration or construction. Money is held by 3rd party. Money cannot be distributed until WMATA authorizes.
    b. Lender – Construction lender holds money in escrow until Developer reaches construction goals. In the event of default, construction lender must let WMATA access these funds to restore or construct.

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5. Completion bonds – This is the best option to WMATA and the worst option to the Developer. Bonding company will complete construction or restoration. Unlike performance bonds, WMATA can enforce these without having to come out of pocket. They are expensive for Developer and so may not be financially possible here.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar Karim

.n: Doggett, Rosalyn <RDoggett@wmata.com>
ent: Friday, March 05, 2010 11:52 AM
To: Omar A. Karim
Cc: aives@bannekerventures.com; 'Tiwana Hicks'; eric.smart@bolansmart.com; Goldin, Steven; Montague, Joshua W.; Bushnaq, Tariq
Subject: RE: Jazz Schedule

Omar, this schedule shows a closing on a ground lease on 8/17/12 some 24.5 months after the execution of the jda on 7/30/10. This is considerably more than the 18 months we talked about on Tuesday and the 600 days in the current term sheet for a less complicated project (we don't have to deal with the adjacent property) and seems too long to me. Can you explain why? It looks like arranging financing is what is extending the date. Can't that be done conterminously with construction reviews/permitting?

In the reverter clause, i.e., the site going back to WMATA if foundations are not finished to street level by a date certain, the date I would use in your schedule, subject to Tariq's concurrence, is item 72, garage construction/grade complete 3/1/13, 6.5 months after lease execution, which seems reasonable to me.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, March 04, 2010 5:13 PM
To: Doggett, Rosalyn
Cc: aives@bannekerventures.com; 'Tiwana Hicks'; eric.smart@bolansmart.com; Goldin, Steven
Subject: Jazz Schedule

oz,

Attached please find our most updated schedule for the Jazz @ Florida Avenue project. Please note that the date for closing with WMATA is contingent on Board approval of the revised term sheet on 3/25/10, JDA and lease on 7/22/10 and execution of the JDA by 7/30/10.

Please let us know if you have any questions.

Thanks.

Omar

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Washington, DC 20005
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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015491

Omar Karim

From: Doggett, Rosalyn <RDoggett@wmata.com>
Sent: Friday, March 05, 2010 1:35 PM
To: okarim@bannekerventures.com
Subject: RE: Jazz Schedule

You do not need to add 90 days as there is a "force majeure" and a separate "WMATA delay" provision in the term sheet. As for the 18 months, you consistently agreed to 600 days (20 months) to closing in the existing term sheets. Your schedule shows building permit receipt for 3/29/12 which is slightly under 20 months from jda execution. There seems little reason to keep pushing the schedule out with a simpler project unless (and I know I'm giving you an opening here), PILOT and TIF cannot be accomplished in the 20 months; I suspect that they can be, however.

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Friday, March 05, 2010 12:40 PM
To: Doggett, Rosalyn
Cc: Anthony James Ives; Tiwana Hicks; Eric Smart; Montague, Joshua W.; Goldin, Steven; Bushnaq, Tariq
Subject: Re: Jazz Schedule

The 18 mons is for zoning, wmata reviews and design time. The financing is separate from this and is included in the 6 mons from mos 19-24 where drawings are complete and we go through permitting which takes 4 mos. This is very short. Eric stated that the zoning and drawings takes 18-20 mos and the permitting, completion of drawings and closing on our loan should take another 6 mos. This is consistent with our schedule as well. The longest times on the schedule is for wmata reviews with Tariq confirmed with us just yesterday was 30 business days for each review. If wmata agrees to shorten its review time, we could save about 2-3 mons in the schedule and close with wmata in 21 mos which would be great.

As for the reverter clause, what have you seen for getting up to ground level? If its for any reversion, we should put some cushion in the schedule. We will add 90 days to it just in case something happens, such as snow, etc. Since we are building over a tunnel, seems prudent. We will send a revised schedule showing the additional 90 days.

Omar

Omar A. Karim
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729 15th Street, NW, Suite 400
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From: "Doggett, Rosalyn" <RDoggett@wmata.com>
Date: Fri, 5 Mar 2010 11:51:48 -0500
To: Omar A. Karim<okarim@bannekerventures.com>
Cc: aives@bannekerventures.com<aives@bannekerventures.com>; 'Tiwana Hicks'<thicks@bannekerventures.com>; eric.smart@bolansmart.com<eric.smart@bolansmart.com>; Goldin,

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Steven<sgoldin@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>; Bushnaq, Tariq<TBushnaq@wmata.com>
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Thanks.

Omar

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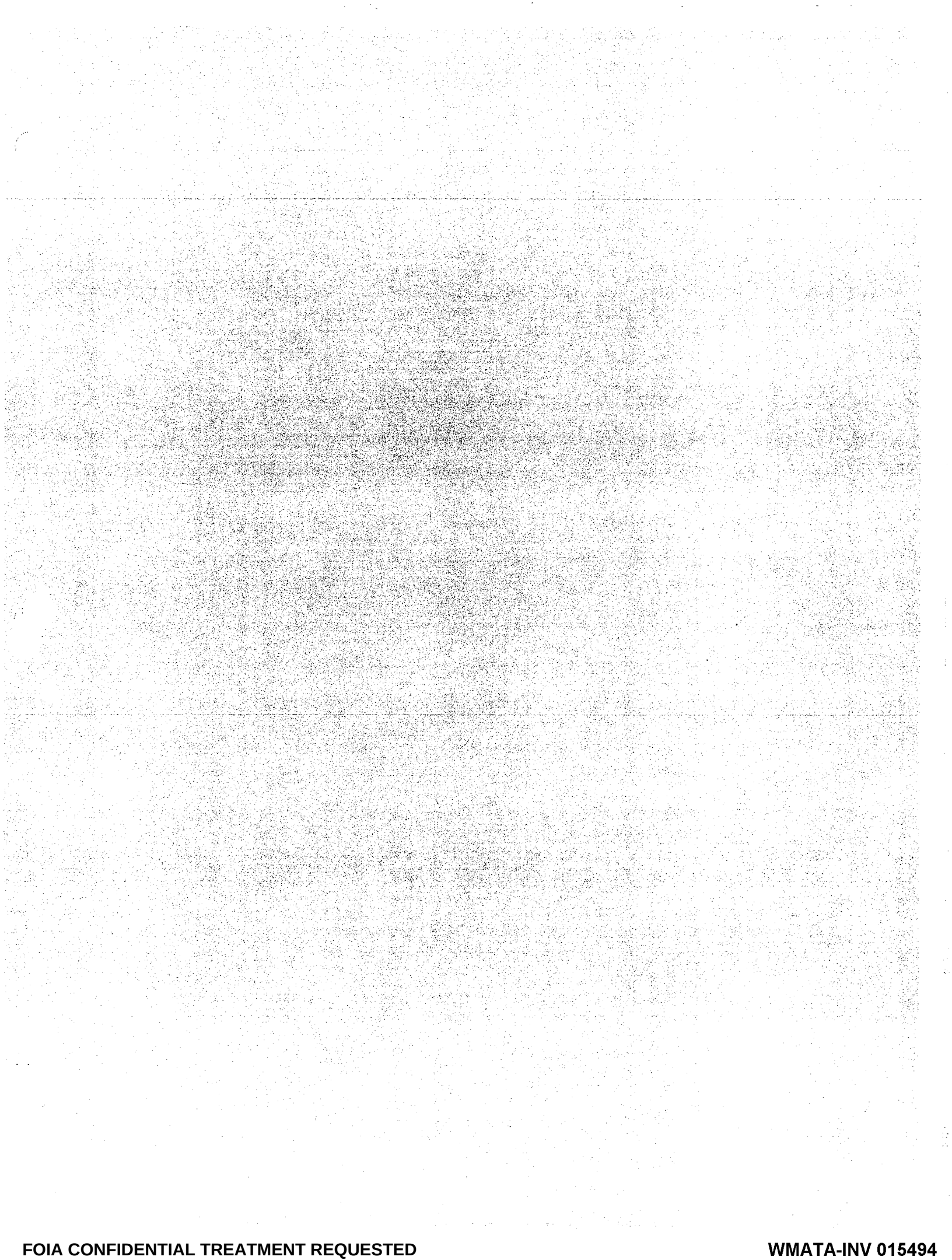
okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

From: Omar A. Karim <okarim@bannekerventures.com>
Sent: Thursday, March 04, 2010 3:18 PM
To: 'ken.nealy@mail.house.gov'
Subject: Follow up from today's call
Attachments: Drawings for Jazz @ Florida Avenue (as of 3-4-10).pdf

Importance: High

Jeremiah,

Thanks for speaking with me earlier.

As discussed, we would like to get Congressman Carson's assistance with the nearly 2 year Washington Metropolitan Area Transit Authority (WMATA) delay in moving our joint development project with WMATA forward. As background, in March 2008, after almost a year-long competition, a Banneker Ventures-led team (which I am principal of) was selected as the developer of three parcels on Florida Avenue, NW, at the entrance to the Historic U Street corridor in Northwest Washington. The project includes 138 mixed-income apts and 15,000 SF of retail space. **The project will create 150 new jobs, including 75 new jobs for District residents** and include a $44M private investment in the Shaw neighborhood. On March 25, 2010, WMATA's Board of Directors will vote on a revised term sheet that WMATA staff is proposing that the Board approve. **If Congressman Carson could call Congresswoman Eleanor Norton and ask her to call District of Columbia Ward 1 Councilman Jim Graham who is also on WMATA's Board and (1) tell Graham that she supports Board approval of our term sheet; and (2) ask that Graham vote for the term sheet, I would be most grateful.** The name of our project is The Jazz @ Florida Avenue and a copy of what the project looks like is attached.

Please call me with any questions.

Thanks for your support.

Omar

Omar A. Karim
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Silver Spring, MD 20910
(301) 565-4980 office
(301) 565-4982 fax
(301) 523-1810 cell
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FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar Karim

...d: Doggett, Rosalyn <RDoggett@wmata.com>
...nt: Tuesday, March 09, 2010 12:18 PM
To: okarim@bannekerventures.com
Cc: Goldin, Steven; Montague, Joshua W.; eric.smart@bolansmart.com; 'Tiwana Hicks'; aives@bannekerventures.com
Subject: FW: Jazz @ Florida Avenue - $100K credit

Omar, please the email below. Josh and I reviewed the invoices. If you can provide more detail, where we have questions, we will gladly review it.
Thanks,
Roz

We intend to respond on other items later this afternoon.

From: Montague, Joshua W.
Sent: Tuesday, March 09, 2010 12:14 PM
To: Doggett, Rosalyn
Subject: FW: Jazz @ Florida Avenue - $100K credit

These are the same documents that we reviewed in November 2009.

...highest Additional Costs Credit that we could reasonably ascertain was **$29,622**.

...at number is based on the following:

1. **9/18 to 10/21**: The sale was initially offered at a meeting on 9/18. On the morning of 10/22, we received word that this project was back to a lease.

2. **John Hagner's invoices**: All of John's invoices were redacted to protect attorney-client privilege. But, assuming that all work done between 9/18 and 10/21 was solely addressing the lease-sale issue, John Hagner spent 25.0 hours working on this issue. At $531 per hour plus a $14 reimbursement for a taxi ride, this amounts to **$13,289**.

3. **Banneker salaries**: The developer claims that 50% of the salaries for three employees during the relevant time period should be included in the credit. Assuming this claim is true, then over September and October, this amount equals $29,166. When prorated for the 9/18 to 10/21 period, this amounts to **$16,333**.

4. **Holland and Knight**: This invoice was not included because there is no indication of relevant time or work. As we understand it, Holland and Knight is the developer's zoning attorney. It is not clear what additional work the zoning attorney would have to do because of the proposed switch to a sale.

5. **Torti Gallas**: This invoice was not included because there is no indication of relevant time or work. Torti Gallas is the providing architectural services. It is not clear what additional work the architects would have to do because of the proposed switch to a sale.

FOIA CONFIDENTIAL TREATMENT REQUESTED

m: Omar A. Karim [okarim@bannekerventures.com]
ent: Friday, March 05, 2010 8:54 PM
To: Doggett, Rosalyn
Cc: aives@bannekerventures.com; 'Tiwana Hicks'; Goldin, Steven
Subject: Jazz @ Florida Avenue - $100K credit

Roz,

Below please find the email that we sent to Nat and Steve on November 4, 2009 detailing the expenses that we incurred as a result of the change from a lease to a sale and now back to a lease. The total expenses are $115,308.76. As agreed with Messrs. Graham and Catoe, we will reduce the amount owed to WMATA by the $100k. For ease of the transaction, we will reduce the security deposit due at execution of the JDA (originally $250k) by this amount.

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
arim@bannekerventures.com

From: Tiwana Hicks [mailto:thicks@bannekerventures.com]
Sent: Friday, March 05, 2010 12:46 PM
To: 'Omar A. Karim'
Subject: Email regarding $100K credit

From: Tiwana Hicks [mailto:thicks@bannekerventures.com]
Sent: Wednesday, November 04, 2009 2:49 PM
To: 'NBottigheimer@wmata.com'; 'sgoldin@wmata.com'
Cc: 'Omar A. Karim Esquire (okarim@bannekerventures.com)'; 'Fuller, Yohance (EOM)'
Subject:

Nat,

Attached please find the following documents as further support of the $100,000 expense credit in connection with the change of the deal from a sale to a lease:

1. Developer Staff Salaries and Description of Work Performed in connection with change of deal from sale to lease. Total = $ 29,166.66
2. Womble Carlyle Sandridge & Rice, PLLC Billing Statements for legal services rendered in connection with change of deal from sale to lease. Total = $ 64,567.60

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3. Torti Gallas and Partners Invoice Statement for architectural and engineering services performed in connection with preparation of Term Sheet Exhibits, Preliminary Development Plans, etc. Total = $ 19,800
4. Holland & Knight LLP Statement of Outstanding Balance for legal services rendered in connection with change of deal from sale to lease. Total = $ 1,774.50

Total Expenses incurred by Developer = $ 115,308.76. Please contact us with any questions. Thanks in advance for your consideration.

Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, D.C. 20005
T: (202) 393-5460
F: (202) 393-5462
C: (202) 486-1863
thicks@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015499

Omar Karim

From: Rosalyn Doggett <rdoggett@wmata.com>
Sent: Monday, March 10, 2008 11:20 AM
To: okarim@bannekerventures.com
Subject: Florida Avenue Term Sheet

Good Morning, Omar

I have a briefing with my dept. head tomorrow a.m. and need to know that the Term Sheet is acceptable, particularly financial aspects which cannot go lower aftter I take to Board, and that your team is locked in.

Please advise.

Thanks, Rosalyn

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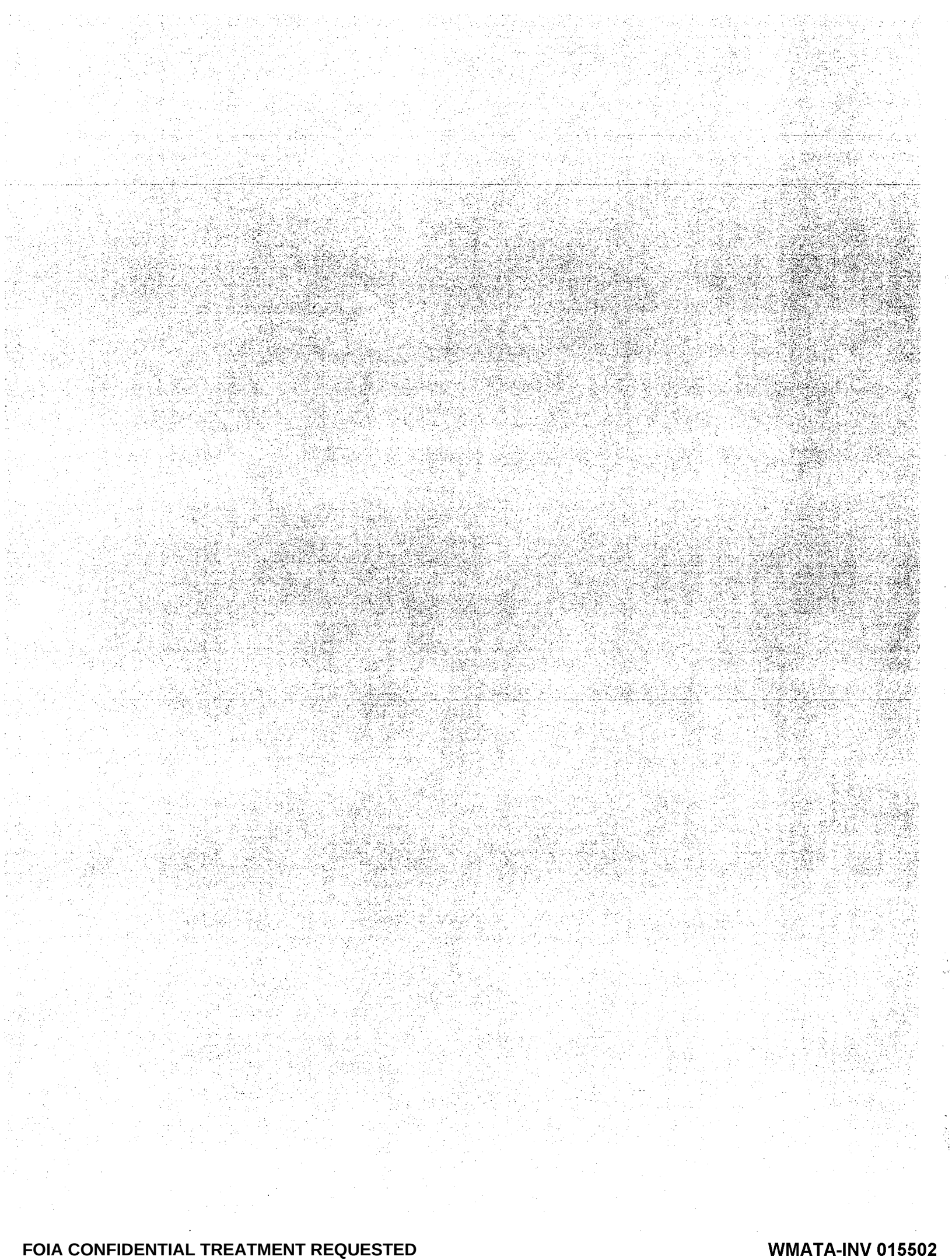

Omar Karim

:	Rosalyn Doggett <rdoggett@wmata.com>
nt:	Monday, March 10, 2008 1:29 PM
To:	selfar@tortigallas.com; sfarrel@tortigallas.com; shaung@tortigalls.com; boloney@tortogallas.com
Cc:	okarim@bannekerventures.com
Subject:	florida avenue site plan

Please send me ASAP today a jpeg of the Jazz at Florida Avenue site plan dated 10/7/07. I have copied everyone since I am not sure who might be in the office. If questions please call me at 202 962 2208 or e-mail back.
Thanks, Rosalyn

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Omar Karim

.:	Rosalyn Doggett <rdoggett@wmata.com>
nt:	Monday, March 10, 2008 5:10 PM
To:	okarim@bannekerventures.com
Cc:	Marc E. Biondi
Subject:	term sheet discussion

Marc Biondi, Office of General Counsel, and I have scheduled time to review your markup at 9:30 on March 12. We have scheduled a call or meeting with you on March 13 at 9:30.

If your markups are very few, perhaps-- but I don't promise at all-- we could accomplish both on March 12. We will have to see.

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Omar Karim

n: Rosalyn Doggett <rdoggett@wmata.com>
nt: Friday, March 14, 2008 12:51 PM
To: okarim@bannekerventures.com
Subject: Re: WMATA Project Schedule (as of March 2008).pdf - AdobeAcrobat Professional

Omar, as I conveyed in our phone conversation, please note that the rental payments to reach "status quo ante" would be

Pre-stabilization rent
$100,000/ year(pro-rated) for first 15 months
$115,000 for subsequent year
$130,000/year thereafter, pro-rated to the "outside date" for stabilization (45 months after definitive agreement execution)

First base rent paynent $597,000
Base rent scalated for first 10 years of lease payments at 1.5%/year Base rent escalated thereafter at 3%/year

Please note also that in section 7.9 any payments for additional density would be $60/FAR sf x 7% escalated annually from the date of development agreement execution until first base rent payment, when it is simply added to base rent.

I have to leave now. I hope I have covered the bases. Look forward to talking to you on Monday.
`salyn

>> "Omar A. Karim" <okarim@bannekerventures.com> 3/13/2008 1:05 PM >>>
Great. Monday @ 9am it is. Seth will send out a dial-in #.
------Original Message------
From: Rosalyn Doggett
Sender:
To: Omar A. Karim
To: Marc E. Biondi
Cc: Guy' 'Flynn
Cc: Seth Bryant
Sent: Mar 13, 2008 12:55 PM
Subject: Re: WMATA Project Schedule (as of March 2008).pdf - AdobeAcrobat Professional

My Monday morning is open; I can converse any time and suggest 9 a.m.

>>> "Omar A. Karim" <okarim@bannekerventures.com> 3/13/2008 9:41 AM >>>
Hello,

Attached you will find the updated project Schedule as of March 2008.

hanks

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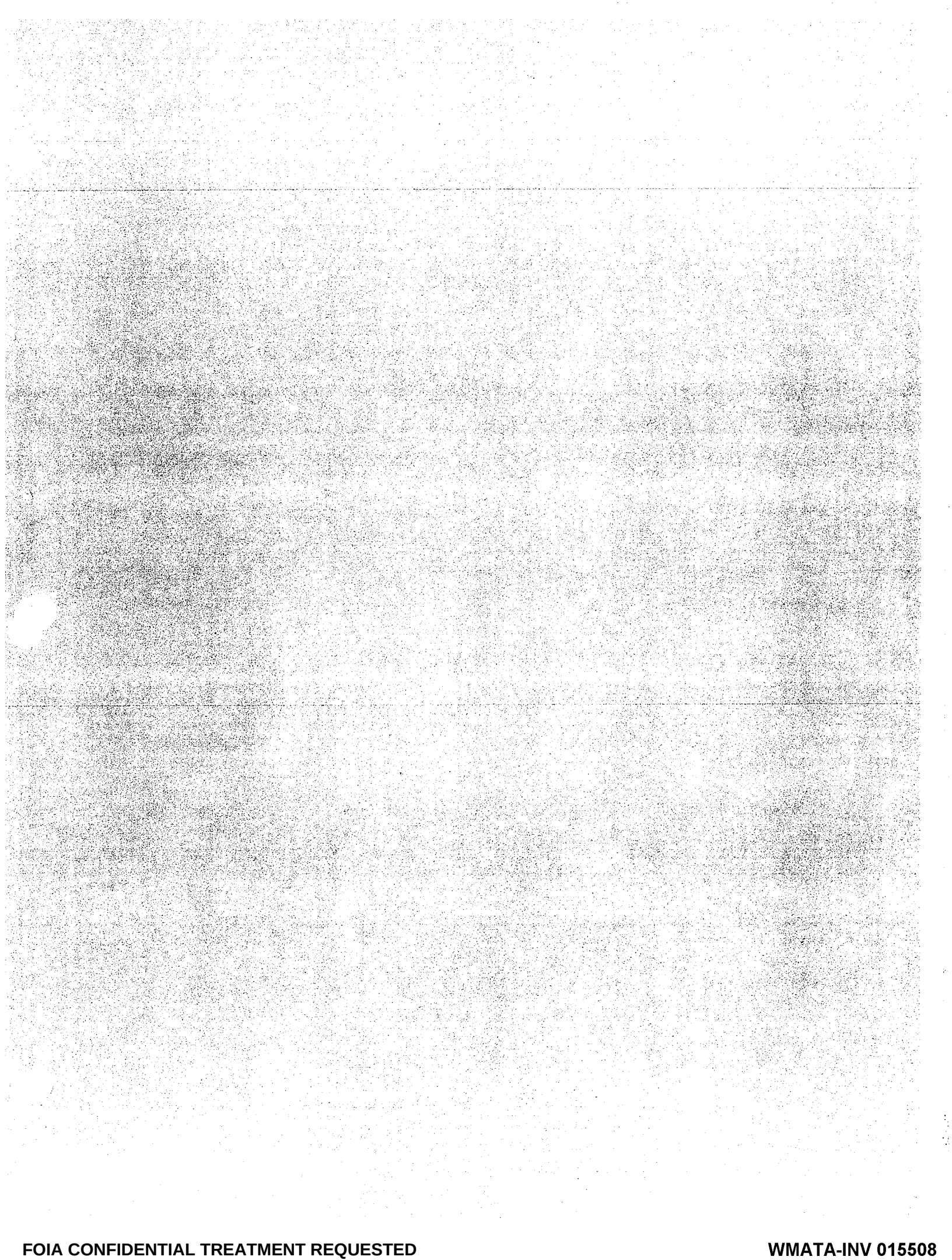

Omar Karim

	Rosalyn Doggett <rdoggett@wmata.com>
nt:	Monday, March 17, 2008 2:38 PM
To:	Omar A. Karim
Subject:	Re: Executed copy of Outline of Operating Agreement b/t Members of Jazz @ Florida Avenue

thank you

>>> "Omar A. Karim" <okarim@bannekerventures.com> 3/17/2008 1:52 PM >>>
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

arim@bannekerventures.com

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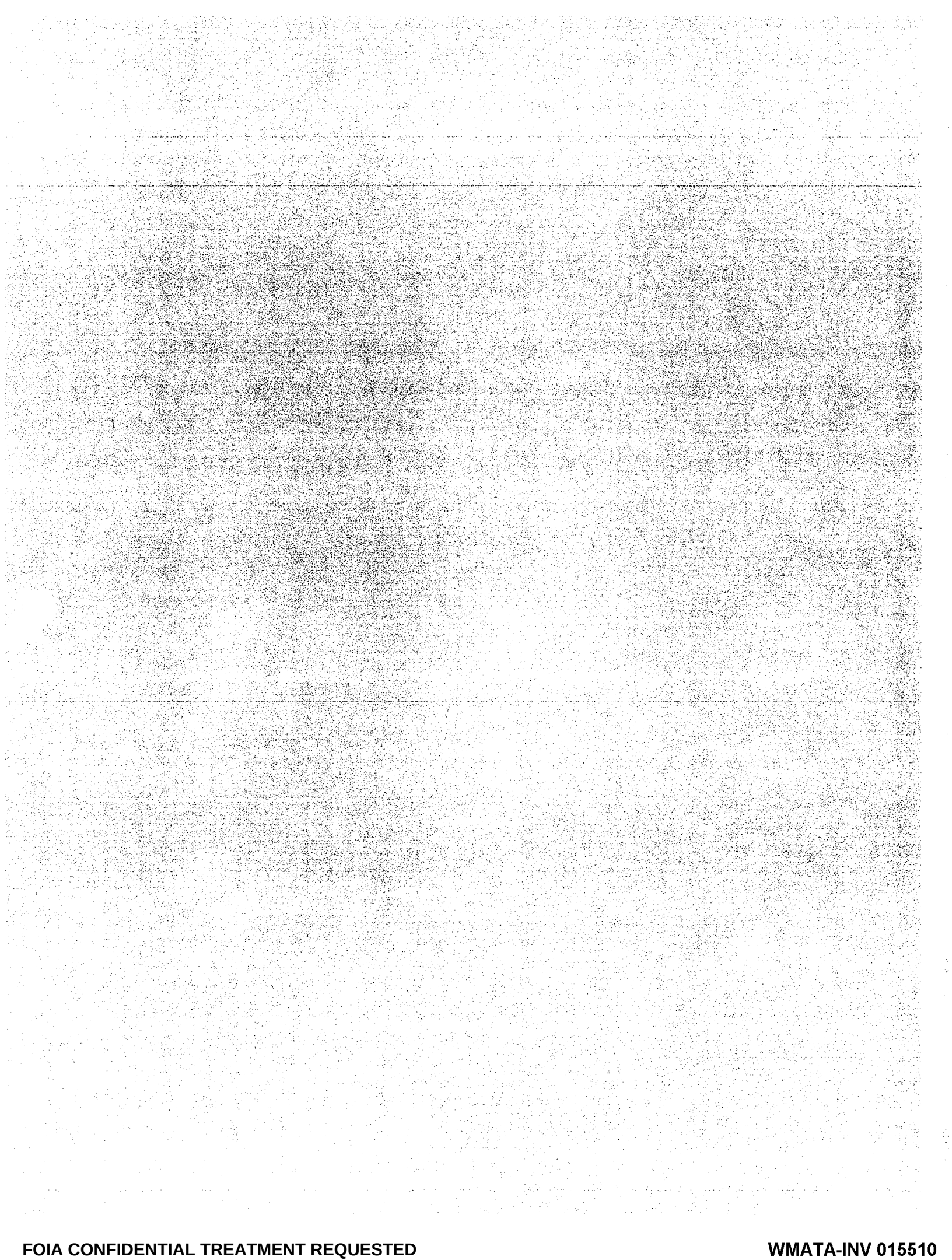

Omar A. Karim

...: Doggett, Rosalyn [RDoggett@wmata.com]
...: Tuesday, March 16, 2010 4:03 PM
...: Omar A. Karim
Cc: Goldin, Steven; Montague, Joshua W.; Bottigheimer, Nat
Subject: RE: Florida Avenue - Term Sheet

Omar,

We have reviewed your points below as well as the "blue line" you sent us and have the following to relate:

We will accept your comments on items 1, 2 and 4. On item 1, you are correct, in your e-mail about increasing your offer to $5.2 million indicated that you were including the value of Effective Gross Income (EGI) participation. On item 2, we have no problem with keying the deadline to lease closing. On item 4, which you newly raise, we can agree as we will value the land as if vacant in year 50 (per draft lease language) and have a 3% annual escalation per the term sheet. Just to be clear on item 4, we are talking about a total 75-year lease: a 50 year initial term and 25 year extension.

With respect to item 3, we hold to the language that we sent you and reiterate the reasoning that Josh gave you . The capital event exclusions that you had-- transfers among existing members and to wholly owned entities and transfer of interests in publicly traded entities-- could all be profitable events in which WMATA should participate. Hence, we cannot agree to excluding them. And, in a refinancing we are talking about getting only 2% of proceeds after original senior project mortgage debt, which debt according to your pro forma represents 70% of project cost. So given that we are getting no EGI, we do not think it reasonable to further water down the 2% refinancing proceeds that we participate in and cannot agree to do so.

e are available to discuss further if need be.

Roz

Sent: Tuesday, March 16, 2010 11:17 AM
To: Montague, Joshua W.; 'Tiwana Hicks'
Cc: Doggett, Rosalyn; Goldin, Steven; 'Anthony Ives'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov
Subject: RE: Florida Avenue - Term Sheet
Importance: High

Josh,

Attached please find our comments to the Term Sheet. All comments are consistent with our recent emails and meeting a few weeks ago. Three points of note:

1. Getting our investors to increase the capitalized lease from $2.8M to $5.2M required us to remove the EGI participation in order to made the deal work;
2. Getting to grade will be based on a certain number of days from Closing as oppose to execution of the JDA;
3. The terms that we previously negotiated on what triggers Capital Event participation (transfers, etc.) must remain the same; and
4. Since we decreased the lease from 99 years to 75 years, our investors require one option period of 25 years as oppose to several which the term sheet was unclear about.

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Can we meet this week to finalize the document? We are available tomorrow after 10, Thursday after 12 and Friday except 1-2:30.

anks.

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

From: Montague, Joshua W. [mailto:jwmontague@wmata.com]
Sent: Friday, March 12, 2010 9:08 AM
To: okarim@bannekerventures.com; Tiwana Hicks
Cc: Doggett, Rosalyn; Goldin, Steven
Subject: RE: Florida Avenue - Term Sheet

Attached is a redline version of this document.

ease feel free to contact me with any questions.

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 Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, March 11, 2010 5:46 PM
To: Montague, Joshua W.; Tiwana Hicks
Cc: Doggett, Rosalyn; Goldin, Steven
Subject: Re: Florida Avenue - Term Sheet

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Josh,

Thanks for the term sheet. Can you forward this as a redline to the last version. Would make it much easier for go to the changes made versus having our counsel comb through the entire agreement line by line.

Thanks in advance.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Montague, Joshua W." <jwmontague@wmata.com>
Date: Wed, 10 Mar 2010 16:44:09 -0500
To: Omar A. Karim<okarim@bannekerventures.com>; 'Tiwana Hicks'<thicks@bannekerventures.com>
Cc: Doggett, Rosalyn<RDoggett@wmata.com>; Goldin, Steven<sgoldin@wmata.com>
Subject: RE: Florida Avenue - Term Sheet

r and Tiwana,

ne updated draft of the Term Sheet is attached hereto.

We have incorporated the lease execution and foundation completion dates in the second schedule that Tiwanna sent us (this shows 21, instead of 20 months as in the Nov term sheet, to get to lease closing and 7 months after that to get to foundation completion, the latter not having been addressed in the Nov term sheet).

We have eliminated exclusions from the capital events definition that seem to us to be the equivalent of profit making events in which WMATA should share,
namely transfers among existing members and to wholly-owned entities and transfers of interests in publicly traded entities—all of which allow buyouts by partners, which *are* capital events. Given Metro's modest 2% stake in capital events, we cannot see that this is at issue.

We have clarified net capital event proceeds to exclude any payouts below the retirement of original senior mortgage debt. This again is to eliminate carve outs that further reduce Metro's limited 2% participation.

Please do not hesitate to contact me with any questions.

Sincerely,

Josh Montague

sistant General Counsel
shington Metropolitan Area Transit Authority
00 Fifth Street, N.W.
Washington, DC 20001

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phone: (202) 962-1275

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sender by reply email and destroy all copies of the original message.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, March 09, 2010 11:29 PM
To: 'Tiwana Hicks'; Montague, Joshua W.
Cc: Doggett, Rosalyn
Subject: RE: Florida Avenue - Term Sheet

Thanks Josh.

From: Montague, Joshua W. [mailto:jwmontague@wmata.com]
Sent: Tuesday, March 09, 2010 6:55 PM
To: okarim@bannekerventures.com; Tiwana Hicks
Cc: Doggett, Rosalyn
Subject: Florida Avenue - Term Sheet

Omar and Tiwana,

e were hoping to provide the updated draft of the Term Sheet by COB today. Unfortunately, we are still waiting for principals to approve.

I hope to have for you tomorrow morning. Please feel free to call me with any questions.

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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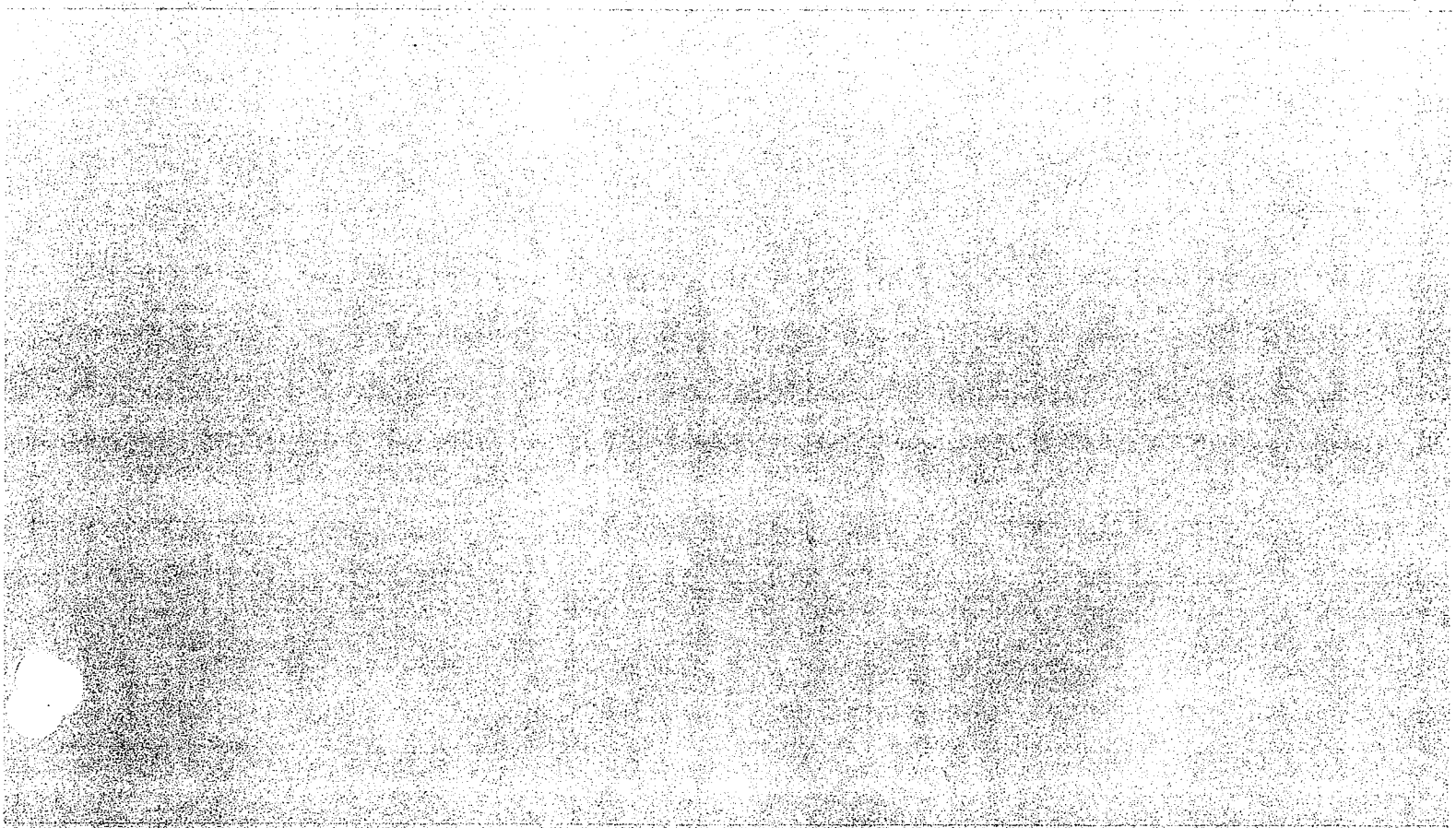

Amended and Restated
WMATA Term Sheet
Shaw-Howard/Florida Avenue Sites

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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WMATA-INV 015516

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.

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 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015518

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 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.

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 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 Two Hundred Fifty Thousand Dollars ($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 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015520

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 Fifty Thousand Dollars ($2,050,000) less the Additional Costs Credit at Closing. 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 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.

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. In Capital 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 received by the DEVELOPER (and any affiliated entities receiving income from 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 on the DEVELOPER Improvements 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015522

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 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015523

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015524

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.

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 Total Project. The Definitive Agreement will include a minimum financial

test to be met by the guarantor which will be $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.

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.

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: _____

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015530

Omar Karim

From: Omar A. Karim <okarim@bannekerventures.com>
Sent: Thursday, March 18, 2010 10:06 AM
To: mlogan@dccouncil.us
Cc: jgraham@dccouncil.us
Subject: Meeting request

Importance: High

Ms. Logan,

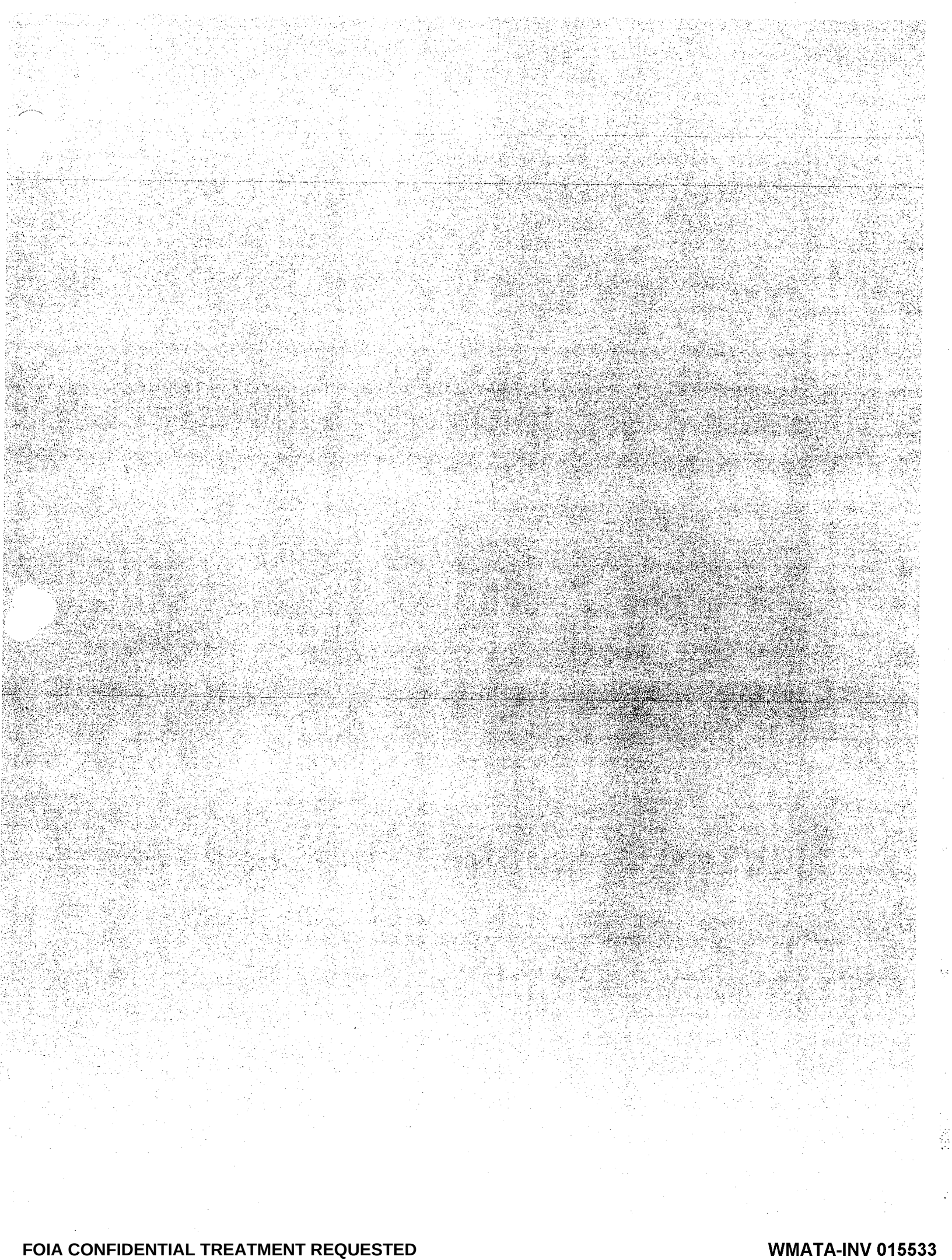
I am writing to request a meeting with Councilman Graham to discuss the project that our firm was awarded by WMATA on the 700 and 800 blocks of Florida Avenue, NW. Would like to discuss our jobs plan with him for Ward 1 residents for the project and get his counsel on whether he knows anyone in the neighborhood whom we could hire for the project. I would like to meet with the Councilmember before next Wednesday.

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



Omar Karim

From: Doggett, Rosalyn <RDoggett@wmata.com>
Sent: Tuesday, March 16, 2010 4:03 PM
To: Omar A. Karim
Cc: Goldin, Steven; Montague, Joshua W.; Bottigheimer, Nat
Subject: RE: Florida Avenue - Term Sheet

Omar,

We have reviewed your points below as well as the "blue line" you sent us and have the following to relate:

We will accept your comments on items 1, 2 and 4. On item 1, you are correct, in your e-mail about increasing your offer to $5.2 million indicated that you were including the value of Effective Gross Income (EGI) participation. On item 2, we have no problem with keying the deadline to lease closing. On item 4, which you newly raise, we can agree as we will value the land as if vacant in year 50 (per draft lease language) and have a 3% annual escalation per the term sheet. Just to be clear on item 4, we are talking about a total 75-year lease: a 50 year initial term and 25 year extension.

With respect to item 3, we hold to the language that we sent you and reiterate the reasoning that Josh gave you . The capital event exclusions that you had-- transfers among existing members and to wholly owned entities and transfer of interests in publicly traded entities-- could all be profitable events in which WMATA should participate. Hence, we cannot agree to excluding them. And, in a refinancing we are talking about getting only 2% of proceeds after original senior project mortgage debt, which debt according to your pro forma represents 70% of project cost. So given that we e getting no EGI, we do not think it reasonable to further water down the 2% refinancing proceeds that we participate in and cannot agree to do so.

We are available to discuss further if need be.

Roz

Sent: Tuesday, March 16, 2010 11:17 AM
To: Montague, Joshua W.; 'Tiwana Hicks'
Cc: Doggett, Rosalyn; Goldin, Steven; 'Anthony Ives'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov
Subject: RE: Florida Avenue - Term Sheet
Importance: High

Josh,

Attached please find our comments to the Term Sheet. All comments are consistent with our recent emails and meeting a few weeks ago. Three points of note:

1. Getting our investors to increase the capitalized lease from $2.8M to $5.2M required us to remove the EGI participation in order to made the deal work;
2. Getting to grade will be based on a certain number of days from Closing as oppose to execution of the JDA;
3. The terms that we previously negotiated on what triggers Capital Event participation (transfers, etc.) must remain the same; and

FOIA CONFIDENTIAL TREATMENT REQUESTED

4. Since we decreased the lease from 99 years to 75 years, our investors require one option period of 25 years as oppose to several which the term sheet was unclear about.

. we meet this week to finalize the document? We are available tomorrow after 10, Thursday after 12 and Friday except 1-2:30.

Thanks.

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

From: Montague, Joshua W. [mailto:jwmontague@wmata.com]
Sent: Friday, March 12, 2010 9:08 AM
To: okarim@bannekerventures.com; Tiwana Hicks
Cc: Doggett, Rosalyn; Goldin, Steven
Subject: RE: Florida Avenue - Term Sheet

Attached is a redline version of this document.

Please feel free to contact me with any questions.

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 Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, March 11, 2010 5:46 PM
To: Montague, Joshua W.; Tiwana Hicks

FOIA CONFIDENTIAL TREATMENT REQUESTED

Cc: Doggett, Rosalyn; Goldin, Steven
Subject: Re: Florida Avenue - Term Sheet

sh,

Thanks for the term sheet. Can you forward this as a redline to the last version. Would make it much easier for us to go to the changes made versus having our counsel comb through the entire agreement line by line.

Thanks in advance.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Montague, Joshua W." <jwmontague@wmata.com>
Date: Wed, 10 Mar 2010 16:44:09 -0500
To: Omar A. Karim<okarim@bannekerventures.com>; 'Tiwana Hicks'<thicks@bannekerventures.com>
Cc: Doggett, Rosalyn<RDoggett@wmata.com>; Goldin, Steven<sgoldin@wmata.com>
ubject: RE: Florida Avenue - Term Sheet

Omar and Tiwana,

The updated draft of the Term Sheet is attached hereto.

We have incorporated the lease execution and foundation completion dates in the second schedule that Tiwanna sent us (this shows 21, instead of 20 months as in the Nov term sheet, to get to lease closing and 7 months after that to get to foundation completion, the latter not having been addressed in the Nov term sheet).

We have eliminated exclusions from the capital events definition that seem to us to be the equivalent of profit making events in which WMATA should share,
namely transfers among existing members and to wholly-owned entities and transfers of interests in publicly traded entities—all of which allow buyouts by partners, which *are* capital events. Given Metro's modest 2% stake in capital events, we cannot see that this is at issue.

We have clarified net capital event proceeds to exclude any payouts below the retirement of original senior mortgage debt. This again is to eliminate carve outs that further reduce Metro's limited 2% participation.

Please do not hesitate to contact me with any questions.

Sincerely,

osh Montague

Assistant General Counsel

FOIA CONFIDENTIAL TREATMENT REQUESTED

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: Tuesday, March 09, 2010 11:29 PM
To: 'Tiwana Hicks'; Montague, Joshua W.
Cc: Doggett, Rosalyn
Subject: RE: Florida Avenue - Term Sheet

Thanks Josh.

From: Montague, Joshua W. [mailto:jwmontague@wmata.com]
Sent: Tuesday, March 09, 2010 6:55 PM
To: okarim@bannekerventures.com; Tiwana Hicks
Cc: Doggett, Rosalyn
Subject: Florida Avenue - Term Sheet

Omar and Tiwana,

We were hoping to provide the updated draft of the Term Sheet by COB today. Unfortunately, we are still waiting for principals to approve.

I hope to have for you tomorrow morning. Please feel free to call me with any questions.

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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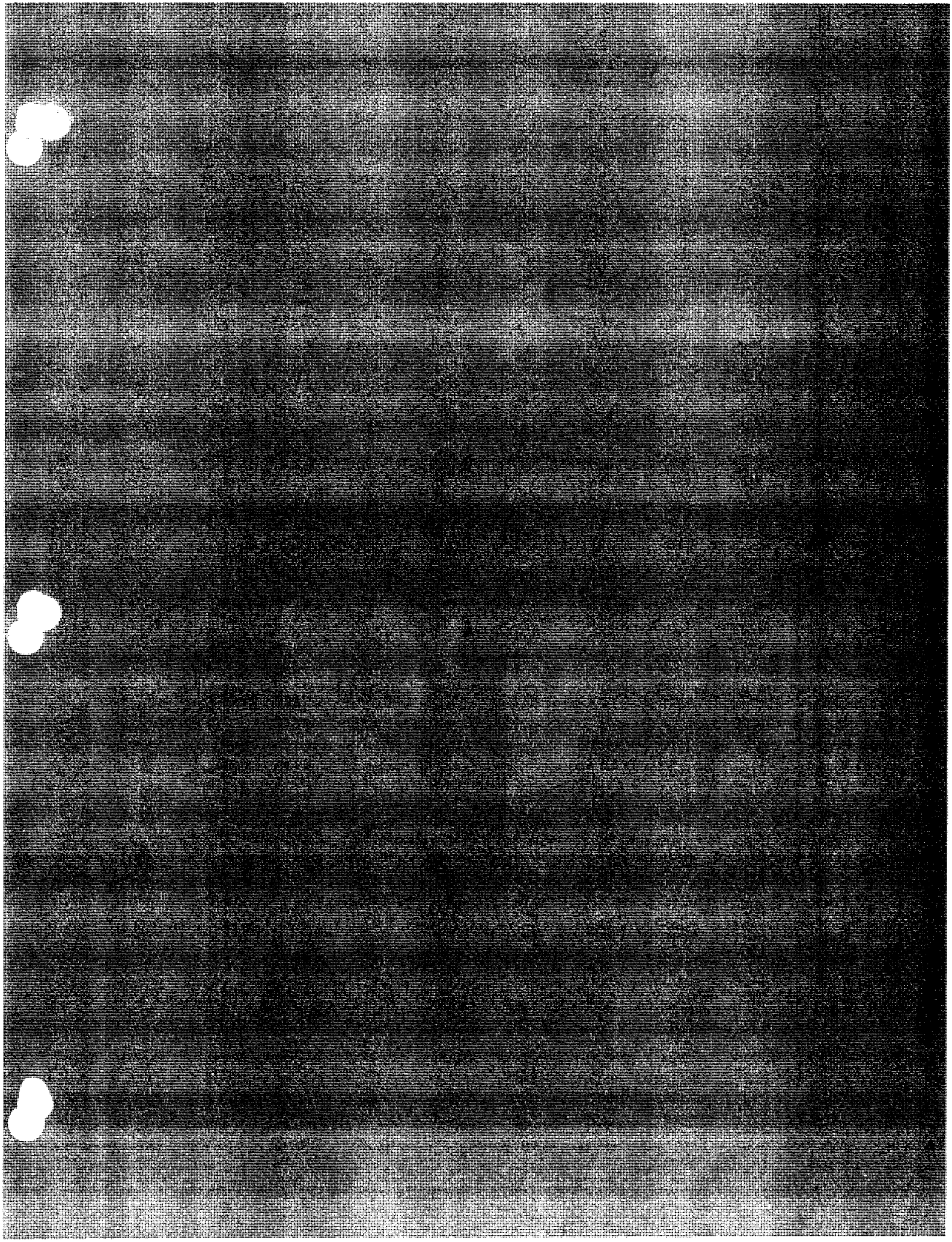


Omar Karim

om: Goldin, Steven <sgoldin@wmata.com>
Sent: Thursday, March 18, 2010 5:31 PM
To: Omar A. Karim
Cc: Doggett, Rosalyn; thicks@bannekerventures.com; Yohance.Fuller@dc.gov; Neil.Albert@dc.gov
Subject: RE: Info on Banneker Ventures

Omar

This is very helpful. Can you have 20 copies delivered here early next week?

Steve

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, March 18, 2010 5:09 PM
To: Goldin, Steven
Cc: Doggett, Rosalyn; thicks@bannekerventures.com; Yohance.Fuller@dc.gov; Neil.Albert@dc.gov
Subject: Info on Banneker Ventures

Steve,

As discussed with you and Roz earlier today, attached please find some more information on our firm including our firm's capability statement.

Additionally, answers to the two questions that were raised during your briefing with Mr. Graham yesterday are below:

1. Banneker removed the 2 adjacent parcels b/c of legal issues raised by WAMTA's General Counsel about a co-tenancy agreement that would have to be executed as part of the project. In removing the parcels, the Developer is now able to pay WMATA more money as part of the capitalized lease payment because more of its cash was freed up.
2. Banneker and Metropolis agreed that Metropolis would leave the partnership because Metropolis' principal became ill with brain cancer, which ultimately led to the company closing down. Banc of America CDC will be replaced because Mr. Graham wanted us to change our deal from a sale to a lease. Unfortunately, BoA was comfortable with a sale but not with a lease. Mr. Graham and I agreed that we would replace BoA at a suitable time and with a suitable replacement partner because of the change that Mr. Graham wanted.

I hope that this information is helpful.

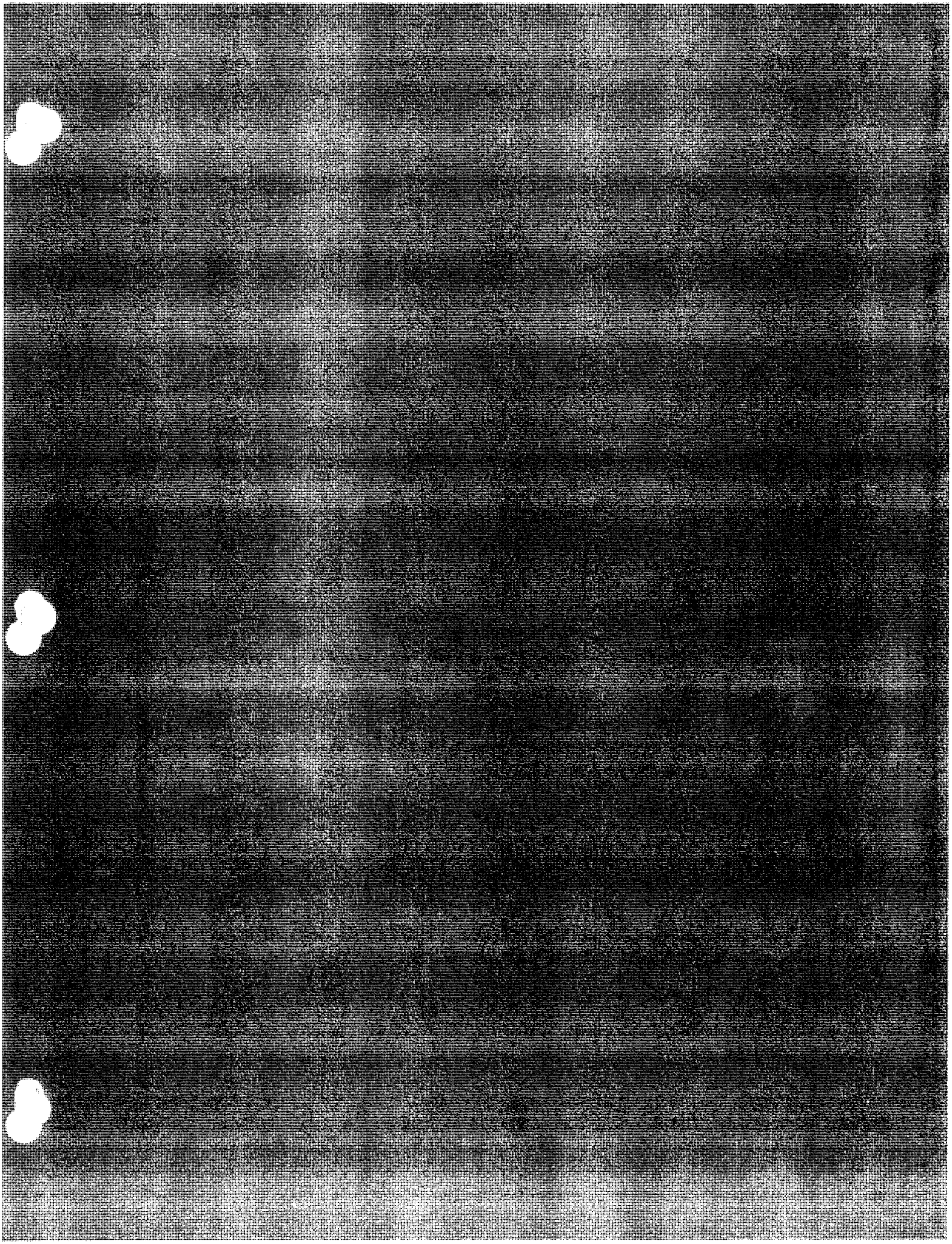
Omar

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

okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED



Omar Karim

om: Goldin, Steven <sgoldin@wmata.com>
Sent: Monday, March 22, 2010 11:59 AM
To: Omar A. Karim
Cc: Doggett, Rosalyn; Bottigheimer, Nat; Catoe, John B.; Sarles, Richard; peter.metro@verizon.net; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; thicks@bannekerventures.com; aives@bannekerventures.com
Subject: RE: Info on Banneker Ventures

Omar,

Since this is now a matter involving the Board calendar, I have forwarded your e-mail to our Board Secretary for review.

Steve Goldin

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, March 22, 2010 11:47 AM
To: Goldin, Steven
Cc: Doggett, Rosalyn; Bottigheimer, Nat; Catoe, John B.; Sarles, Richard; peter.metro@verizon.net; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; thicks@bannekerventures.com; aives@bannekerventures.com
Subject: RE: Info on Banneker Ventures
Importance: High

teve,

As we understand it, the Revised Term Sheet between Banneker and WMATA, which has been fully negotiated and agreed to by WMATA Staff and Banneker, has been removed from the March 25, 2010 Agenda of the Planning, Development and Real Estate Committee. Can you advise when the matter will be put back on the Agenda. I believe that at the January 28, 2010 meeting of the WMATA Board, the Board stated that the amended Term Sheet should be brought to the Board by March 31, 2010. Are you expecting that the item will be put back on Thursday's agenda or put on another agenda prior to March 31, 2010? As we discussed at our last meeting, within 60 days, HUD will be changing its guidelines to finance projects such as ours. The changes will have an adverse effect on our project if we do not finalize our deal (vis-à-vis the amended Term Sheet) with WMATA in the coming days. Our lender has advised us that if we don't file our pre-application with HUD by the end of April/early May, the new guidelines will go into effect and therefore, we will need several million more dollars in equity to finance this project, making this project difficult to do given the amount of money we are paying WMATA for the capitalized lease. As you recall, we have already lost $6M in low income housing tax credits that we were awarded last year because the term sheet/lease wasn't approved by WMATA's Board prior to December 31, 2009. In reviewing this project's timeline this morning, we noticed that it has been more than 2 years (Feb 28, 2008 to be exact), since we were first advised by WMATA that it had selected the Banneker lead team to develop the Florida Avenue sites. Any further delays by WMATA's Board to approve the financial terms of the deal will greatly harm the deal.

Thank you in advance for attention to this matter.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington, DC 20005
(202) 393-5460 phone
'202) 393-5462 fax
1) 523-1810 cell
)karim@bannekerventures.com

From: Goldin, Steven [mailto:sgoldin@wmata.com]
Sent: Thursday, March 18, 2010 5:52 PM
To: 'okarim@bannekerventures.com'
Cc: Doggett, Rosalyn; 'thicks@bannekerventures.com'; Yohance.Fuller@dc.gov; Neil.Albert@dc.gov
Subject: Re: Info on Banneker Ventures

To me...front and back

From: Omar A. Karim
To: Goldin, Steven
Cc: Doggett, Rosalyn; thicks@bannekerventures.com ; Yohance.Fuller@dc.gov; Neil.Albert@dc.gov
Sent: Thu Mar 18 17:39:44 2010
Subject: RE: Info on Banneker Ventures
We can have20 copies hand delivered first thing in the morning. Should the package be addressed to you? Should it be front and back (1 page) or 2 pages?

om: Goldin, Steven [mailto:sgoldin@wmata.com]
nt: Thursday, March 18, 2010 5:31 PM
To: Omar A. Karim
Cc: Doggett, Rosalyn; thicks@bannekerventures.com; Yohance.Fuller@dc.gov; Neil.Albert@dc.gov
Subject: RE: Info on Banneker Ventures

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FOIA CONFIDENTIAL TREATMENT REQUESTED

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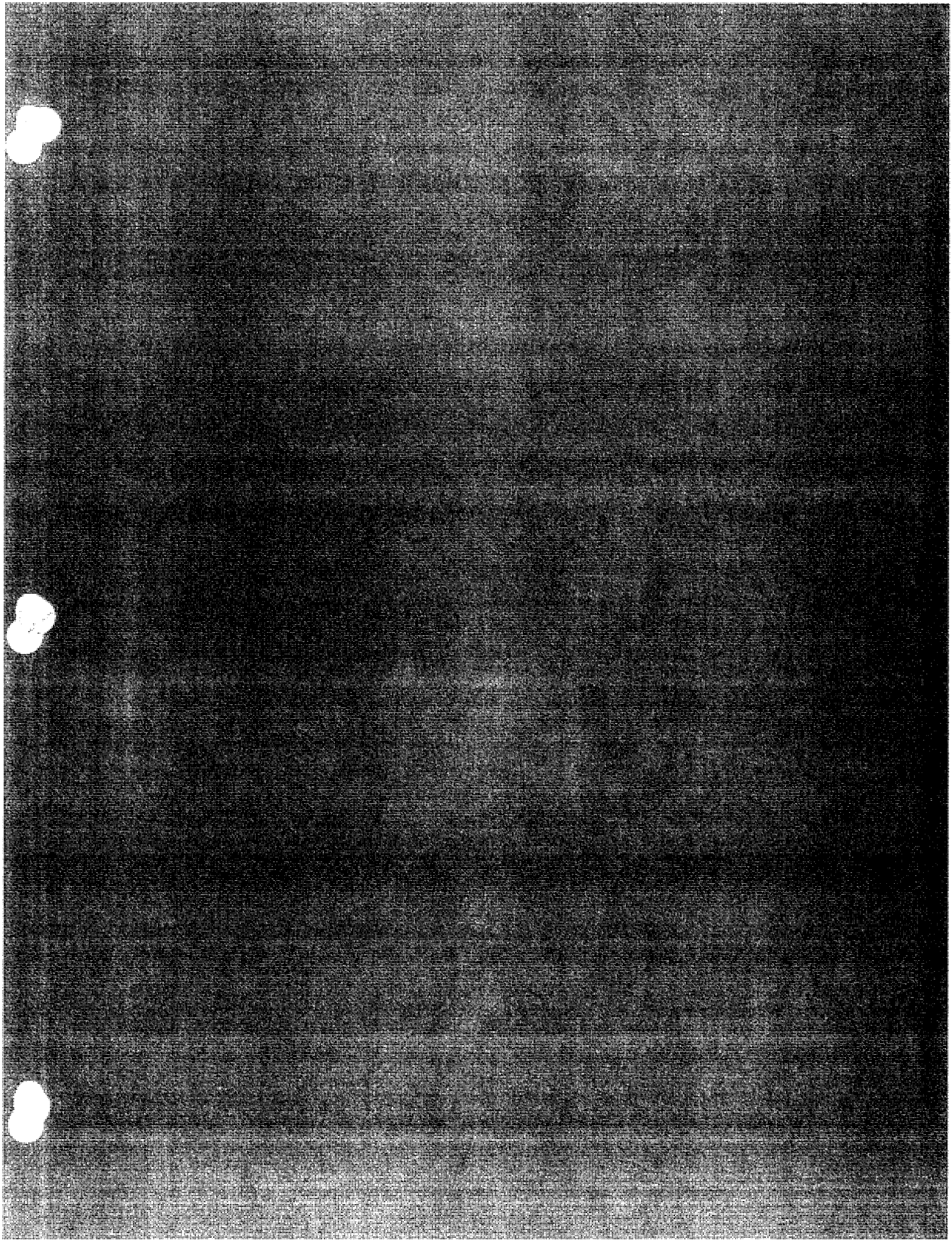
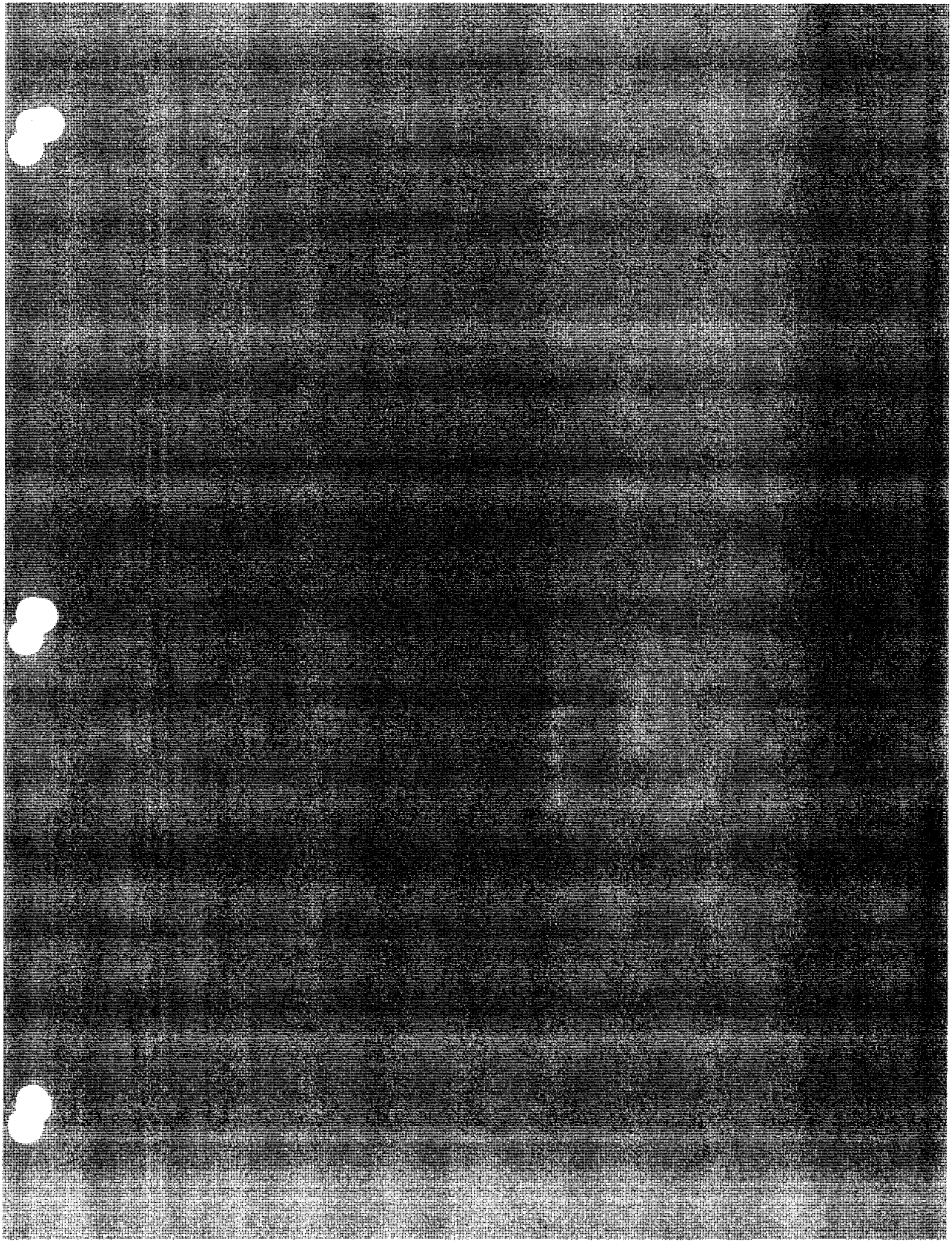


Omar Karim

.n: Gomez, Jenny <jgomez@wmata.com>
Sent: Wednesday, March 24, 2010 2:58 PM
To: okarim@bannekerventures.com
Subject: Outdated - Board Meeting Agenda on March 25, 2010
Attachments: 03-25-10 Agenda Working7.doc

FOIA CONFIDENTIAL TREATMENT REQUESTED



Agenda
1350th Meeting of the Board of Directors
March 25th, 2010
1 p.m.

I. Call to Order

II. Public Comment Period

III. Approval of Agenda ..... Mr. Benjamin

IV. Approval of Minutes ..... Mr. Benjamin
- A. January 28, 2010 Board Meeting
- B. February 25, 2010 Board Meeting
- C. March 4, 2010 Special Board Meeting

V. Report by Riders' Advisory Council ..... Mr. DeBernardo

VI. Report by General Manager ..... Mr. Catoe
- A. General Manager's Monthly Report
- B. Employee Spotlight: Michael Gamble, Train Operator

VII. Report by Customer Service, Operations and Safety ..... Mr. Zimmerman
- A. Approval of Bus Stop Guidelines

VIII. Report by Joint Development and Real Estate Committee ..... Mr. Graham
- A. Approval to Negotiate and Execute an Easement Agreement with the District of Columbia for Rhode Island Avenue
- B. Approval to Negotiate and Execute a Memorandum of Understanding with the City of Alexandria and The Hoffman Company for Eisenhower Avenue station
- C. Florida Avenue Term Sheet and Time Extension to Negotiate a Joint Development Agreement (pending Executive Session discussion)

Washington Metropolitan Area Transit Authority

600 Fifth Street, NW
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Routes D1, D3, D6, P6, 70, 71, 80, X2

District of Columbia, Maryland and Virginia Transit Partnership

FOIA CONFIDENTIAL TREATMENT REQUESTED

IX. Report by Finance and Administration Committee ..... Mrs. Hudgins
   A. Approval to Award Contract for 7000 Series Railcar Procurement

X. Administrative Items
   1. Approval to Initiate & Award a Contract for Maps at Rail Stations and Bus Shelters ..... Mr. Kubicek

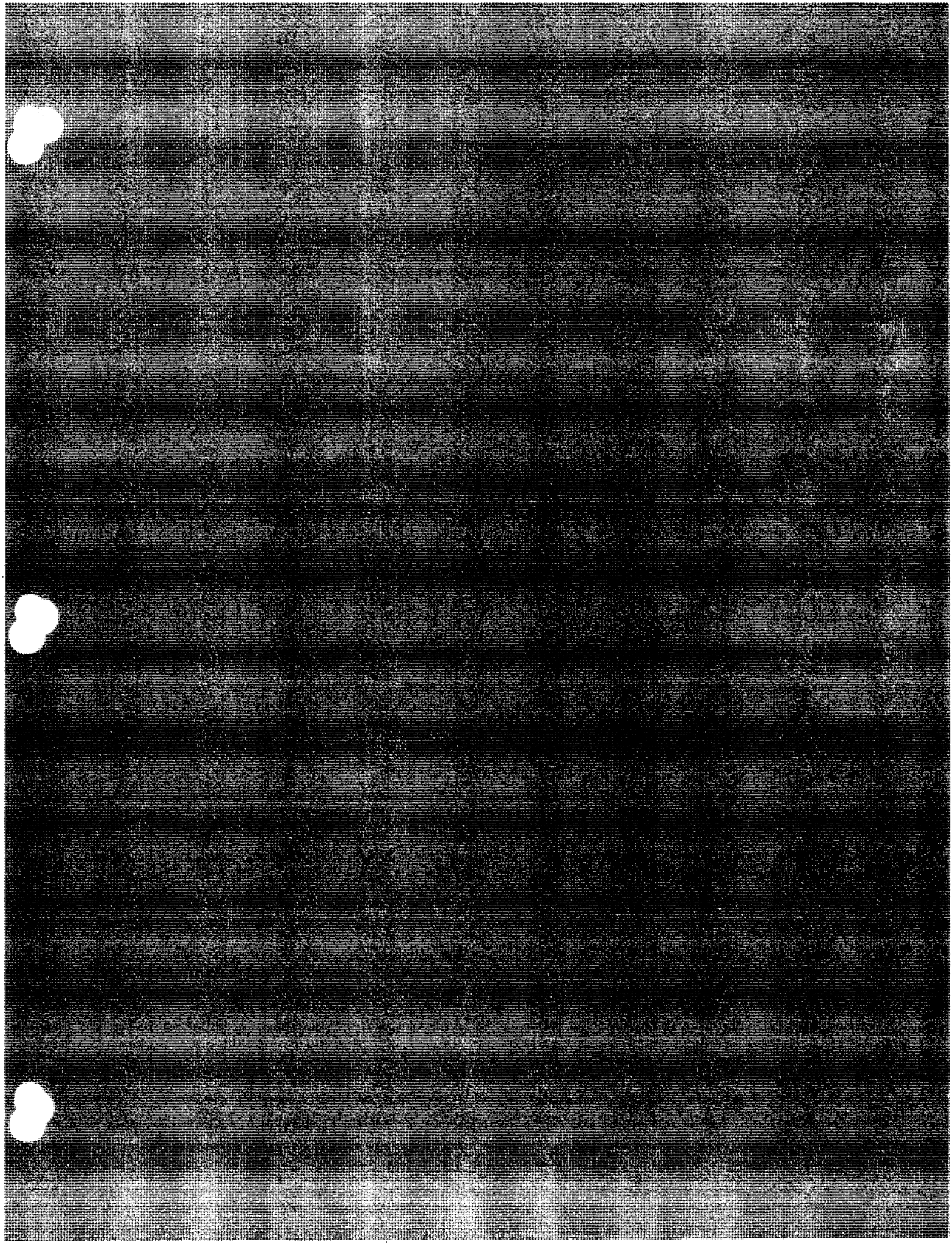
   2. Approval to Increase Job Order Contracts (III) Program Authority ..... Mr. Kubicek

   3. Approval to Establish Job Order Contracts (IV) Program ..... Mr. Kubicek

   4. Approval of Successor Agreement with Local 922 ..... Ms. Burnside

XI. Reports by D.C. ..... Mr. Albert
   WSTC ..... Mr. Solomon
   NVTC ..... Mrs. Hudgins
   Federal Government ..... Mr. Downey

XII. Adjournment



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trict of Columbia, ryland and Virginia Transit Partnership

FOIA CONFIDENTIAL TREATMENT REQUESTED

A. Approval to Award Contract for 7000 Series Railcar Procurement

X. Administrative Items

1. Approval to Initiate & Award a Contract for Maps at Rail Stations and Bus Shelters ..... Mr. Kubicek

2. Approval to Modify Contract Authority to Repair/Rehab Projects System Wide (JOC III) ..... Mr. Kubicek

3. Approval to Initiate and Award Contract to Repair/Rehab Projects System Wide (JOC IV) ..... Mr. Kubicek

4. Approval of Successor Agreement with Local 922 ..... Ms. Burnside

XI. Reports by D.C. ..... Mr. Albert
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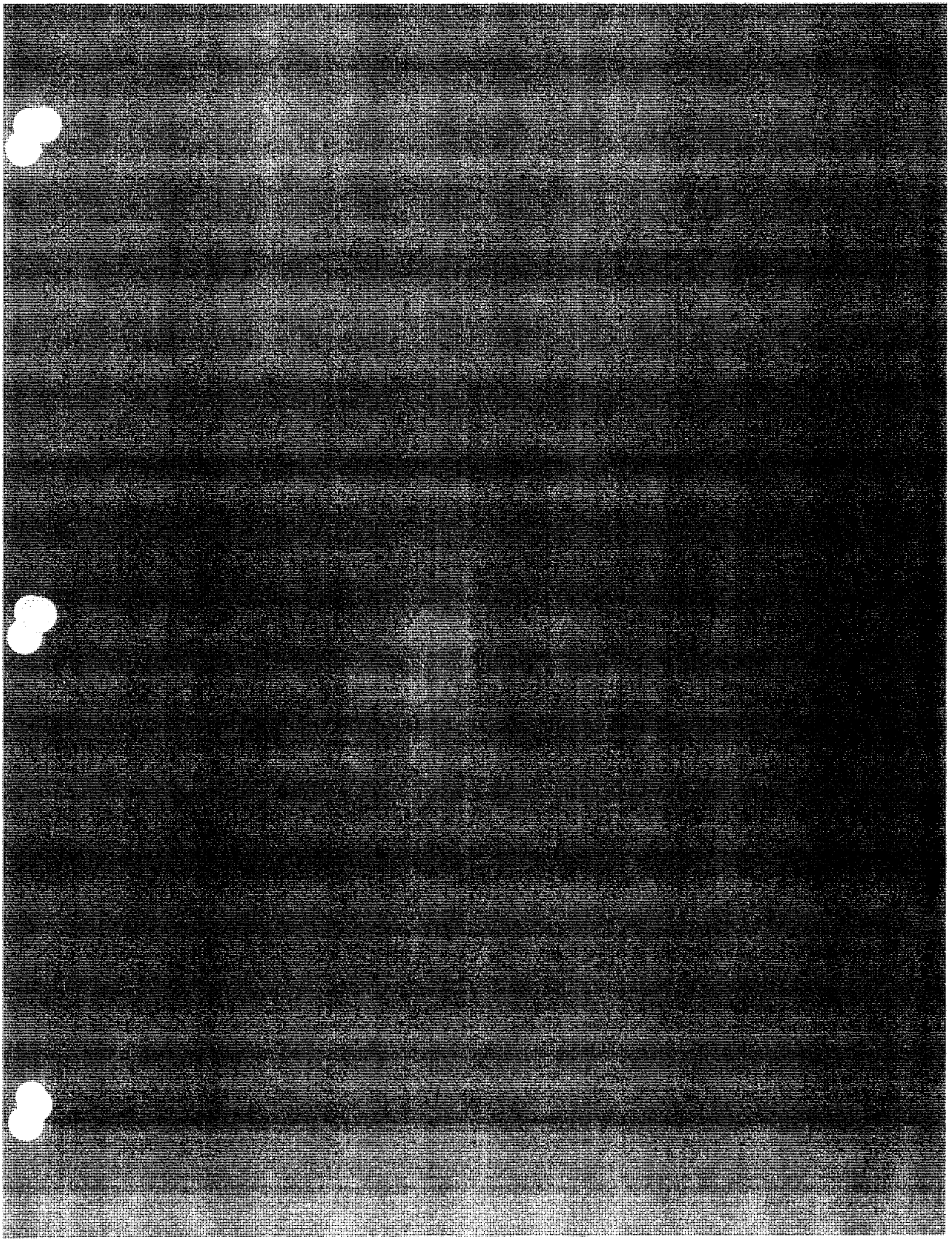
XII. Adjournment



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

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

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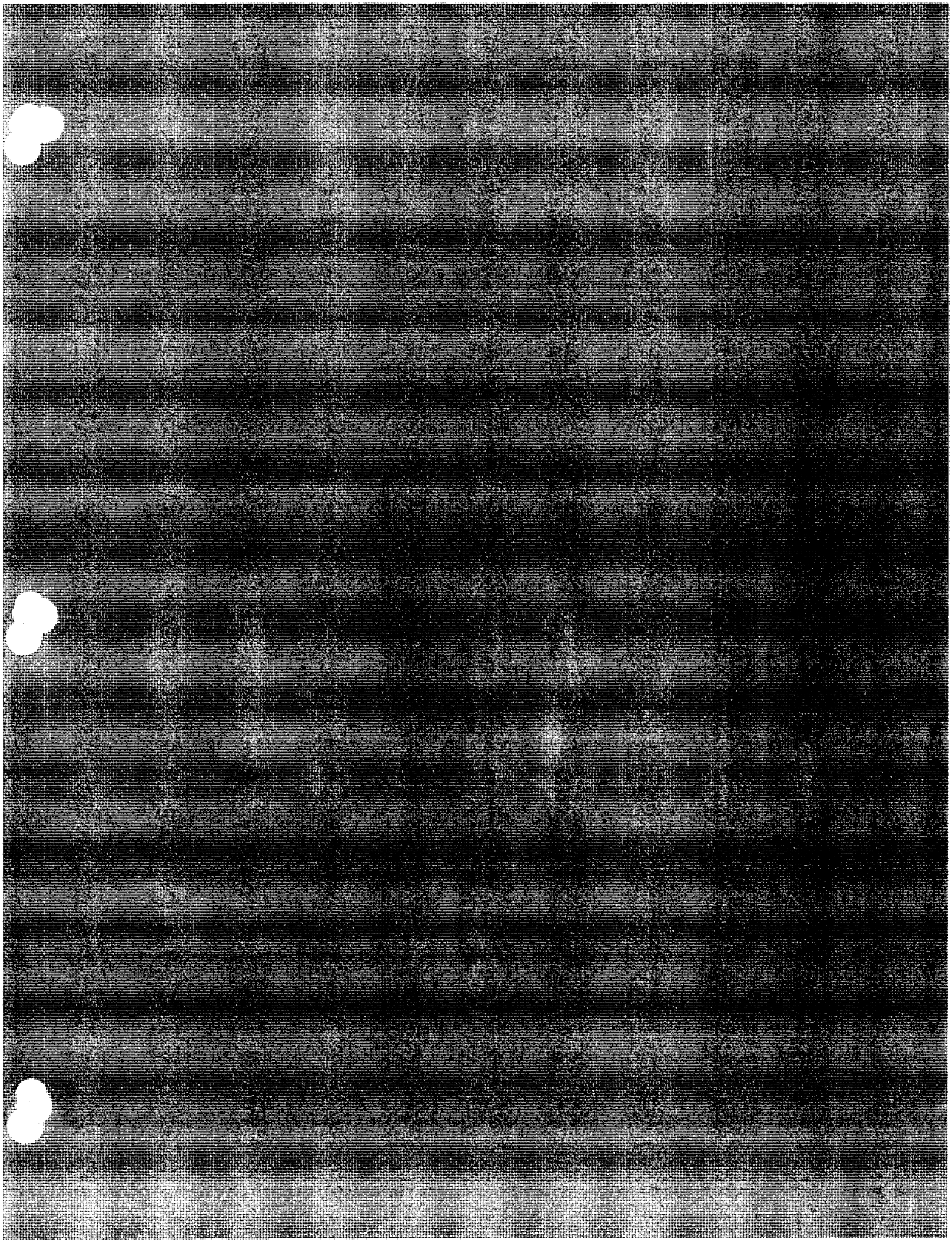
Routes D1, D3, D6, P6, 70, 71, B0, X2

A District of Columbia, Maryland and Virginia Transit Partnership

FOIA CONFIDENTIAL TREATMENT REQUESTED



Minutes

1350th Meeting of the Board of Directors
March 25, 2010

Chairman Benjamin called the meeting to order at 1:06 p.m. Present were:

Directors	Alternate Directors
Mr. Peter Benjamin	Mr. Gordon Linton
Mrs. Catherine Hudgins	Mr. Jeffrey McKay
Mr. Neil Albert	Mr. Michael Brown
Ms. Elizabeth Hewlett	Mr. Marcell Solomon
Mr. Christopher Zimmerman	Mr. William Euille
Mr. Jim Graham	Mr. Tony Giancola
Mr. Mortimer Downey	

Board Secretary Loyda Sequeira-Castillo was also present.

Approval of Agenda:

The agenda was approved as amended by unanimous consent with the addition of a new item, Florida Avenue Joint Development Proposal, as the first item in the Report by Joint Development and Real Estate Committee.

Approval of Minutes:

The minutes of the January 28, 2010 Board meeting; February 25, 2010 Board meeting; and the March 4, 2010 Special Board meeting were approved as presented.

Report by Customer Service, Operations and Safety Committee

A. Approval of Bus Stop Guidelines

Mr. Zimmerman moved, seconded by Mrs. Hudgins, approval of a resolution to adopt guidelines for the design and placement of transit (bus) stops. This motion was unanimously approved. A copy of the approved Resolution (2010-15) has been made a part of the official file.

Washington Metropolitan Area Transit Authority

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District of Columbia, Maryland and Virginia Transit Partnership

FOIA CONFIDENTIAL TREATMENT REQUESTED

Ayes: 7 - Mr. Benjamin, Mrs. Hudgins, Mr. Albert, Ms. Hewlett, Mr. Zimmerman, Mr. Graham and Mr. Downey

Report by Finance and Administration Committee

A. Florida Avenue Joint Development Proposal

Mr. Graham moved, seconded by Mr. Downey, approval to provide staff additional time to July 30, 2010 to negotiate a joint development agreement and lease for the Florida Avenue joint development site. Mr. Albert moved, seconded by Mr. Brown, to table the item. The motion to table the item was unanimously approved.

Ayes: 7 - Mr. Benjamin, Mrs. Hudgins, Mr. Albert, Ms. Hewlett, Mr. Zimmerman, Mr. Graham and Mr. Downey

B. Approval to Negotiate and Execute an Easement Agreement with the District of Columbia for Rhode Island Avenue

Mr. Graham moved, seconded by Mr. Albert, approval to negotiate and execute a no-cost easement agreement with the District of Columbia for a bicycle/pedestrian bridge at Rhode Island Ave-Brentwood Metro station. This motion was unanimously approved.

Ayes: 7 - Mr. Benjamin, Mrs. Hudgins, Mr. Albert, Ms. Hewlett, Mr. Zimmerman, Mr. Graham and Mr. Downey

C. Approval to Negotiate and Execute a Memorandum of Understanding with the City of Alexandria and The Hoffman Company for Eisenhower Avenue station

Mr. Graham moved, seconded by Mr. Zimmerman, approval of a resolution to negotiate and execute a Memorandum of Understanding with the City of Alexandria and The Hoffman Company for Esienhower Avenue Metro station improvements and to amend the General Plans for the Eisenhower Avenue Metro station. The resolution was unanimously approved. A copy of the approved Resolution (2010-16) has been made a part of the official file.

Ayes: 7 - Mr. Benjamin, Mrs. Hudgins, Mr. Albert, Ms. Hewlett, Mr. Zimmerman, Mr. Graham and Mr. Downey

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015557

Administrative Actions

1. Approval to Initiate & Award a Contract for Maps at Rail Stations and Bus Shelters

Mr. Downey moved, seconded by Mr. Albert, approval to initiate and award a competitive one-year base contract to develop, design, produce, update, install, and maintain maps for the bus and rail systems, and to give staff authority to exercise four one-year options. This motion was unanimously approved.

Ayes: 7 - Mr. Benjamin, Mrs. Hudgins, Mr. Albert, Ms. Hewlett, Mr. Zimmerman, Mr. Graham and Mr. Downey

2. Approval to Modify Contract Authority to Repair/Rehab Projects System Wide (JOC III)

Mr. Zimmerman moved, seconded by Mrs. Hudgins, approval to increase the JOC III program authority by $10 million to accommodate the last option year of the contract. This motion was unanimously approved.

Ayes: 7 - Mr. Benjamin, Mrs. Hudgins, Mr. Albert, Ms. Hewlett, Mr. Zimmerman, Mr. Graham and Mr. Downey

3. Approval to Initiate & Award Contract to Repair/Rehab Projects System Wide (JOC IV)

Mrs. Hudgins moved, seconded by Mr. Zimmerman, approval to initiate and award one or more multi-year Job Order Contracts for a base period of three years plus two one-year options for a new Metro JOC program, at a not-to-exceed amount of $15 million for FY2011 and $60 million for FY2012-2015. This motion was unanimously approved.

Ayes: 7 - Mr. Benjamin, Mrs. Hudgins, Mr. Albert, Ms. Hewlett, Mr. Zimmerman, Mr. Graham and Mr. Downey

4. Approval of Successor Agreement with Local 922

Mr. Albert moved, seconded by Ms. Hewlett, approval of a resolution accepting the Memorandum of Understanding between Metro and Local 922 and authorizing the General Manager to execute a new Collective Bargaining Agreement completing the terms of the 2008-2012 Labor Agreement. The

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015558

resolution was unanimously approved. A copy of the approved Resolution (2010-17) has been made a part of the official file.

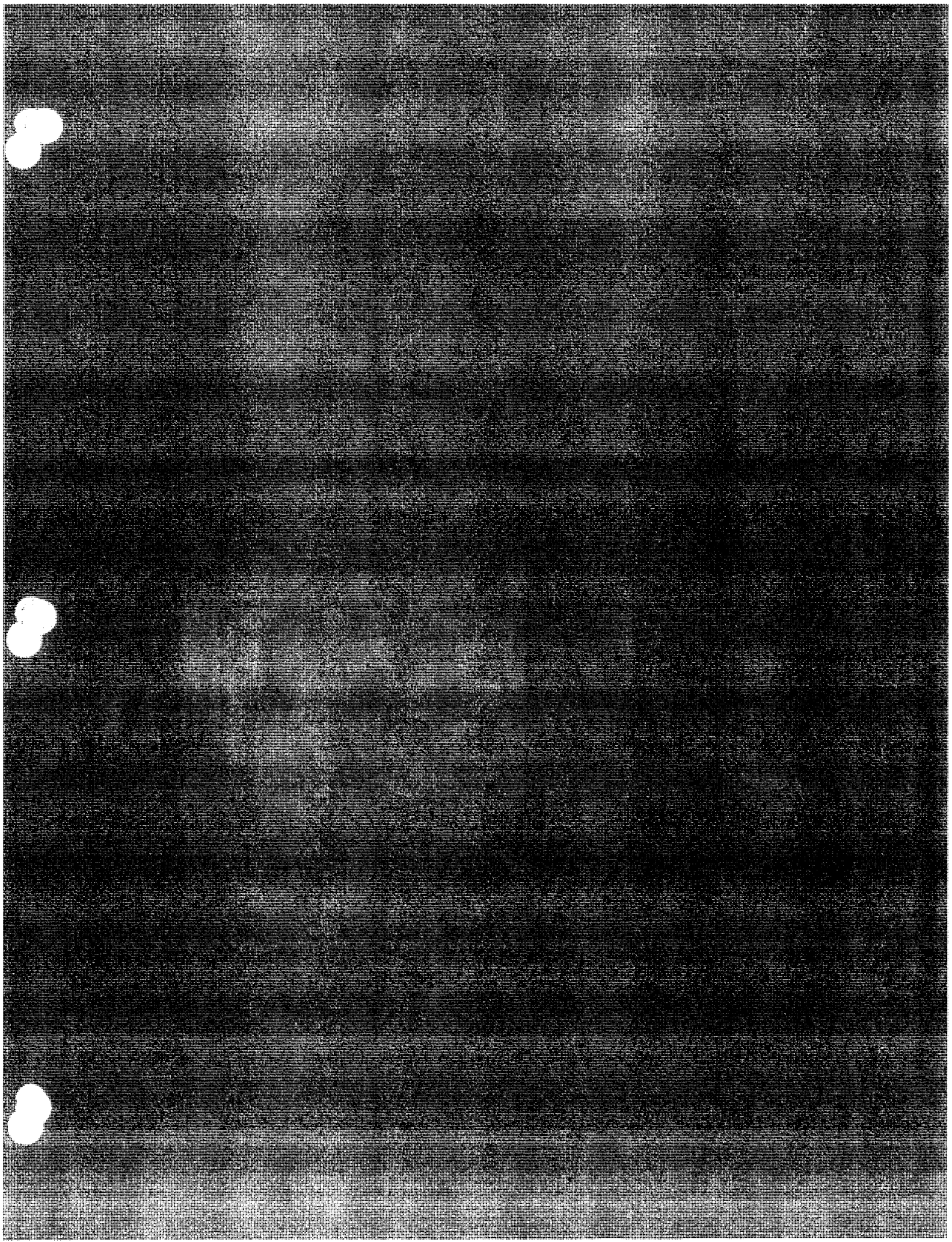
Ayes: 7 - Mr. Benjamin, Mrs. Hudgins, Mr. Albert, Ms. Hewlett, Mr. Zimmerman, Mr. Graham and Mr. Downey

Adjournment

The meeting was adjourned at 2:42 p.m.

Loyda Sequeira-Castillo, Board Secretary

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015559



From the Washington Business Journal
:http://www.bizjournals.com/washington/stories/2010/04/12/story8.html

Banneker's Metro deal stalled by board action

Premium content from Washington Business Journal by Sarah Krouse

Date: Monday, April 12, 2010, 12:00am EDT

Related:

Technology, Commercial Real Estate

Nearly two years after Metro tapped Banneker Ventures LLC to develop a mixed-use project, Jazz @ Florida Avenue, the transit authority appears to be on the verge of telling the developer to scat.

The Washington Metropolitan Area Transit Authority board voted unanimously March 25 to table the controversial project in an executive session.

Metro officials declined to say exactly what that means, so it is unclear whether the relationship between Metro and the Banneker team, which includes Bank of America Community Development Corp., has ended.

If that is the case, Banneker's attorney, A. Scott Bolden, a partner at Reed Smith LLP, said he will look into possible legal action.

"We haven't received any formal notification that it will be rebid and under the agreement, Metro is free to do that, but if they do decide to rebid we'll be looking quickly at every legal option," he said.

Banneker Ventures was selected in 2008 to develop 124 apartments and 20,000 square feet of retail on a 28,892-square-foot Metro-owned parcel in the 700 and 800 blocks of Florida Avenue NW. The agreement would give the developer a 60-year ground lease.

Metro documents said Banneker had submitted "a better financial offer than its closest competitor," reportedly bidding more than the property would appraise for at that time.

Market conditions have slowed the project, and the Metro board has already approved two extensions. The city has offered financial help, including a cut of $33.7 million in stimulus funds for housing projects.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015561

D.C. Councilman Jim Graham, D-Ward 1, a Metro board member, says the partnership is likely over.

"If it was tabled, it was tabled," he said. "There has been no other board action, so I assume it will not move forward."

Bolden said Graham has been an opponent of the project since the team was selected.

"The project has been languishing and has gone over several machinations — and those haven't been Banneker's or WMATA's fault," he said.

The board's vote "smacks of political interference when Metro and the city and Banneker should be pushing in the right direction and the same direction," Bolden added.

Graham "has sought to put his finger in the eye of this project simply because of political reasons," he said.

The councilman has had issues with Warren Williams Jr., a Banneker principal, in part because of Williams' involvement in a controversy over the contract to run the D.C. Lottery.

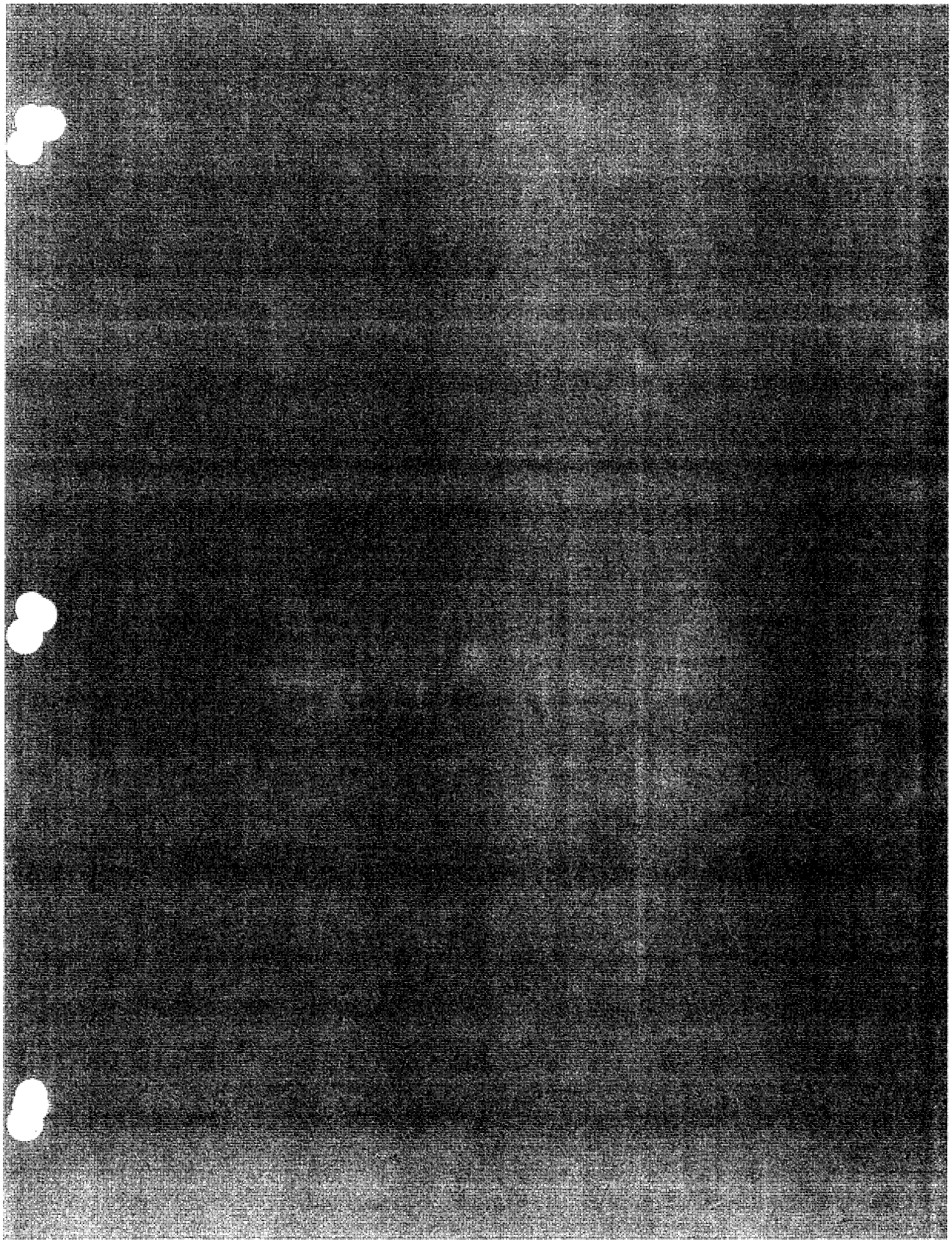
Graham said he does not have it in for the developer.

"The vote was seven to zero," he said. "It wasn't one to zero, and the people on the Metro board are extremely independent, end of story. I think the facts speak for themselves."

Political and media observers have said the Banneker awards may have more to do with Mayor Adrian Fenty's relationship with founder Omar Karim, who was in the same fraternity as the mayor at Howard University, than they do with the company's qualifications.

Banneker is part of development teams at several sites around the city including the Sursum Corda housing project in Northwest One, the Strand Theatre in Northeast and the city's New Communities program.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015562



April 26, 2010

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005

RE: Shaw-Howard/Florida Avenue Development Site

Dear Mr. Karim,

On March 25, 2010, the proposed extension of time for the Shaw-Howard/Florida Avenue Joint Development project was considered by Metro's Board of Directors. The chair of the Joint Development and Real Estate Committee moved to extend your team's exclusive negotiation period to July 30, 2010. The Board, however, voted unanimously to table the matter.

Under the Shaw-Howard/Florida Avenue Joint Development Term Sheet, your exclusive negotiation period for this project expired on March 31, 2010. At this time, Metro has no plans to revisit this matter either at the staff or Board level.

We thank you and your team for all of your efforts in promoting development in the District of Columbia.

Sincerely,

Steven Goldin
Director
Office of Station Area Planning & Asset Management

Washington
Metropolitan Area
Transit Authority

600 Fifth Street, NW
Washington, DC 20001
202/962-1234

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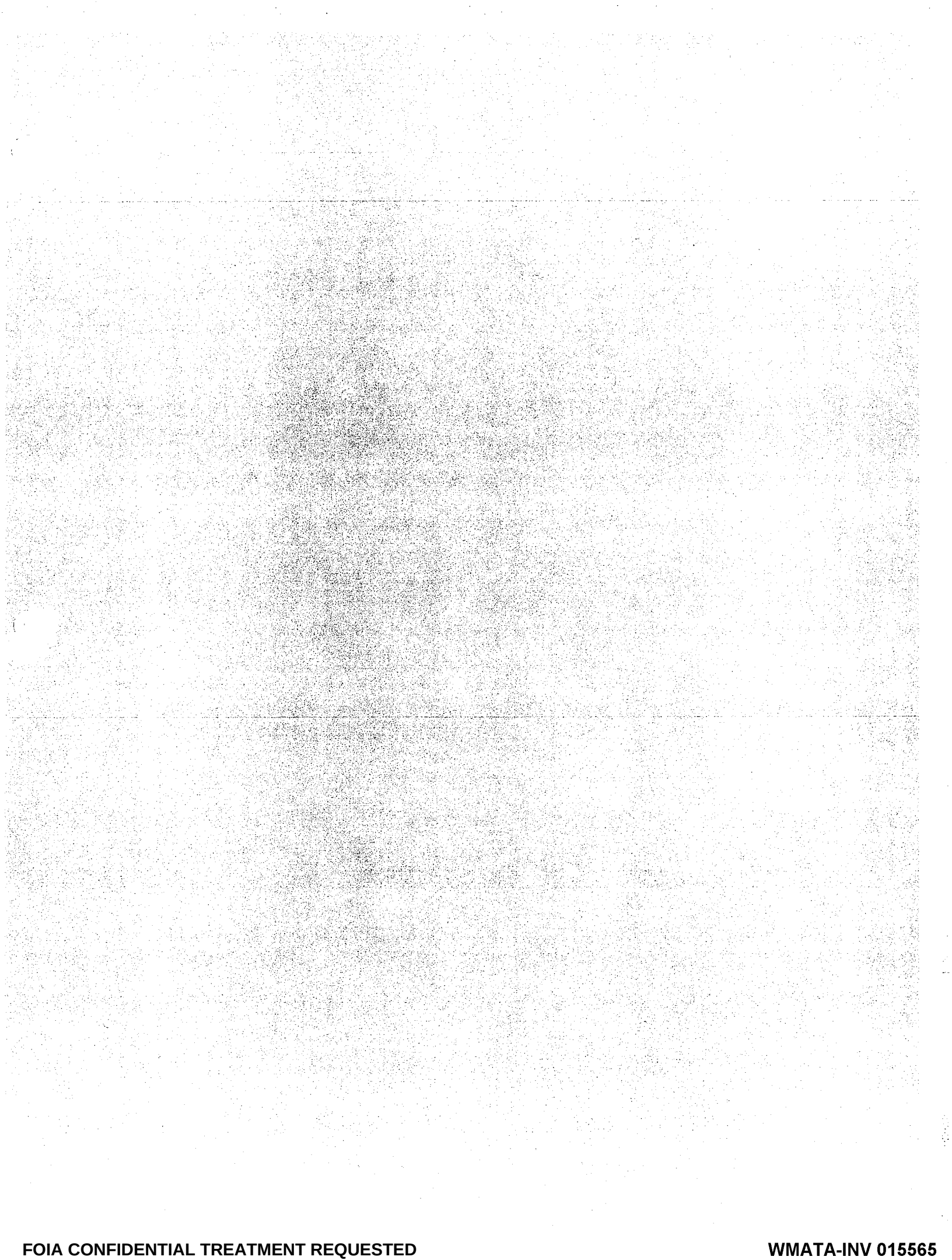
A District of Columbia,
Maryland and Virginia
Transit Partnership



Reed Smith LLP
1301 K Street, N.W.
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+1 202 414 9200
Fax +1 202 414 9299
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A. Scott Bolden
Direct Phone: +1 202 414 9266
Email: abolden@reedsmith.com

April 27, 2010

CONFIDENTIAL

VIA OVERNIGHT MAIL AND E-MAIL

Richard Sarles
Interim General Manager
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

-and-

Peter Benjamin
Chair, Board of Directors
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

Re: Status of Banneker Ventures Term Sheet and Award of Jazz at Florida Avenue Project

Dear Messrs. Sarles and Benjamin:

We represent Banneker Ventures, LLC ("Banneker") and write to address the status of the Washington Metropolitan Area Transit Authority ("WMATA") Board of Directors ("Board") approval of the Banneker Term Sheet for the joint development project known as the "Jazz at Florida Avenue Project" (the "Project"). We received a letter today from Steven Goldin, Director Office of Station Area Planning & Asset Management, WMATA confirming that the WMATA Joint Development and Real Estate Committee had moved to extend Banneker's exclusive negotiation period to July 30, 2010, but noting that The WMATA Board had voted unanimously, without explanation or rationale, "to table" *indefinitely* any further consideration of Banneker's timely-submitted, amended Term Sheet. WMATA's attempt to provide itself an opportunity to begin negotiations with other developers, besides Banneker, during the exclusive negotiation period, without the Board ever considering or rejecting the amended Term Sheet as required by the Joint Development Solicitation, is outrageous and unlawful.

Below, we provide: (I) a background summary of the Project; (II) Banneker's responses to alleged WMATA Board concerns; (III) Banneker's allegations of inappropriate conduct by WMATA

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Board Member, Joint Development & Real Estate Committee ("Committee") Chair Jim Graham; and (IV) Banneker's request for immediate WMATA Board approval and award of the Project.

I. BACKGROUND

On May 31, 2007, Banneker submitted its Response to the Opportunity to Compete Against an Unsolicited Proposal for the redevelopment of WMATA-owned parcels located at Shaw-Howard/Florida Avenue to Gary Malasky, Contracting Officer, Office of Property Development and Management, WMATA. In preparing the proposal, Banneker assembled a team, which included Torti Gallas & Partners, Inc., an architectural company with previous experience working on WMATA joint development projects, and District Development Group, LLC, who would serve as co-developer for the Project.

On August 24, 2007, WMATA issued a Joint Development Solicitation ("JDS") for the joint development of real estate at the Shaw-Howard/Florida Avenue Joint Development Site (the "Site"). See Attachment 1, Joint Development Solicitation, Shaw-Howard/Florida Avenue Joint Development Site: Proposal Submission Requirements, August 24, 2007. According to the JDS, proposals were due on October 5, 2007.

On September 18, 2007, Myla Moss, Advisory Neighborhood Commission ("ANC") Commissioner, ANC 1B01, held a Town Hall meeting to allow the WMATA short-listed development teams to present their vision for redeveloping the Shaw-Howard/Florida Avenue site. According to Ms. Moss' letter to Nat Bottigheimer, Contracting Officer, Office of Property Development and Management, WMATA dated October 4, 2007, only the Banneker proposal responded to all the express needs and desires of the community. See Attachment 2, Letter from Myla Moss, Commissioner, ANC 1B01 to Nat Bottigheimer, WMATA, dated October 4, 2007. Accordingly, Ms. Moss' letter supported Banneker to receive the WMATA contract to perform the Project.

On October 5, 2007, Banneker responded to the JDS and submitted a proposal to WMATA after assembling a team of development and investment partners, which included: (1) Banneker (Developer); (2) District Development Group, LLC (Co-Developer); (3) Donatelli Development Inc. (Co-Developer); (4) Torti Gallas & Partners, Inc. (Project Architect); (5) MacFarlane Partners (Equity Partner); and (6) Tompkins Builders (General Contractor).

On December 17, 2007, Banneker presented the Project to WMATA to demonstrate their capability and commitment to developing the WMATA-owned parcels at the Shaw-Howard/Florida Avenue site. See Attachment 3, Banneker Presentation to WMATA, The Jazz at Florida Avenue, December 17, 2007.

On February 29, 2008, Rosalyn Doggett called Omar Karim and informed him that WMATA had designated Banneker as the Selected Developer of the Site. Over the next several weeks, WMATA and the Banneker-led team negotiated a Term Sheet resulting in a final version of the Term Sheet on March 18, 2008. During these negotiations, Ms. Doggett informed Mr. Karim that WMATA's Board

should approve the Joint Development Agreement ("JDA") and resulting lease agreement with the Banneker-led team by October 2008.

In early April 2008, WMATA staff requested that the WMATA Board approve the Term Sheet previously agreed to by the parties and the selection of Banneker to perform the Project. Later that month, on April 17, 2008, Rosalyn Doggett contacted Omar Karim to inform him that WMATA Board Member Jim Graham raised issues regarding the participation of then Banneker principal Warren Williams, Jr. in the Project. Ms. Doggett recommended that Banneker respond to the issues raised by Jim Graham in a written submission to WMATA.

More specifically, Ms. Doggett suggested that Banneker's written submission state that Mr. Williams would not participate in the WMATA deal, if Banneker's selection was approved by the WMATA Board. By letter dated April 23, 2008, Banneker wrote WMATA to address the concerns raised by Mr. Graham. See Attachment 4, Letter from Omar Karim, Banneker to Rosalyn Doggett, WMATA dated April 23, 2008.

On April 24, 2008, during the monthly meeting conducted by the Committee, Mr. Graham requested that Banneker's designation as the Selected Developer of the Site be discussed in Executive Session of the Committee. Following the closed door meeting, the Committee reconvened in public and Mr. Graham moved to defer the WMATA Board approval of Banneker to serve as the Florida Avenue Developer and approval of the Term Sheet for a period of not less than 60 days. See Attachment 5, WMATA, Minutes of Planning, Development and Real Estate Committee, April 24, 2008.

By letter dated May 9, 2008, Banneker wrote WMATA to respond to further questions raised by Jim Graham regarding alleged obligations due the District of Columbia by Mr. Williams. See Attachment 6, Letter from Omar Karim, Banneker to Joel Washington, WMATA dated May 9, 2008. The letter clarified that Mr. Williams did not have any outstanding financial obligations due to the District in either his personal or corporate capacities.

In June 2008, WMATA staff again requested that the WMATA Board approve the Term Sheet previously agreed to by the parties and the selection of Banneker to perform the Project. On June 26, 2008, during a meeting of the Committee, Mr. Graham once again requested that the Committee discuss approval of Banneker's selection in Executive Session. See Attachment 7, WMATA, Board Agenda Review as of June 3, 2008. Following the Executive Session, the matter was eventually brought before the Committee in a public meeting during which the Committee approved both Banneker's selection as the Selected Developer and the Term Sheet over Mr. Graham's objections.

Following the June 26, 2008 Committee meeting, the WMATA Board reconvened later that day to review and vote on matters that had been approved by the various Board committees. During the full meeting of the Board, Mr. Graham approached and met briefly with Mr. Karim while he was in the audience. Mr. Graham informed Mr. Karim that he would vote for Banneker's selection to perform the Project, but that Mr. Karim needed to meet with him to discuss the Project.

On or about July 2, 2008, Mr. Graham and Mr. Karim met at Mr. Graham's Council of the District of Columbia office and then again at a restaurant to discuss the Project. During these meetings, Mr. Graham informed Mr. Karim that he wanted the Project to set aside 20% of its residential units as affordable housing. Mr. Graham also strongly suggested that Banneker add LaKritz Adler, a small, local real estate firm, to its development team for the Project or purchase their interest in an adjacent property that LaKritz Adler was controlling at the time. LaKritz Adler and its principals contributed significantly to Mr. Graham's District of Columbia Council re-election campaign. Ultimately, Banneker chose not to add LaKritz Adler to its development team.

On or about July 25, 2008, WMATA and Banneker participated in the Project kick-off meeting. At this meeting, Banneker provided WMATA with an executed copy of the Term Sheet and paid the $100,000 Option Fee as required by the JDS.

From July 2008 through March 2009, the parties engaged in continuous negotiations to enter into a finalized JDA.

In January 2009, Mr. Graham became Chairman of the WMATA Board. During his entire tenure as a WMATA Board Member and Chairman, Mr. Graham has injected himself into the day-to-day management of WMATA operations and has exceeded the scope of his duties as a WMATA Board Member. For example, in July 2009, Mr. Graham took it upon himself to contact the independent appraiser, who had been hired by WMATA staff to appraise the value of the Site, before the appraiser had submitted its appraisal report.

On March 6, 2009, Banneker provided WMATA with a letter from Banc of America Community Development Corporation ("Banc of America"). See Attachment 8, E-mail correspondence from Omar Karim, Banneker to Emeka Moneme, WMATA sent on March 6, 2009 at 3:00PM. Banc of America agreed to become a Co-Developer of and provide direct equity investment into the Project.

On April 23, 2009, WMATA's Board approved a one hundred twenty (120) day extension of the negotiation period between WMATA and Banneker regarding the Project. See Attachment 9, Letter from Emeka Moneme, WMATA to Leila Edwards, District of Columbia Department of Housing and Community Development, dated June 1, 2009.

By e-mail sent on May 29, 2009, WMATA informed Banneker that a possible JDA was imminent. However, WMATA indicated that it could not finalize the JDA until an outside appraisal of the deal was conducted by an independent contractor. See Attachment 10, E-mail correspondence from Rosalyn Doggett, WMATA to Omar Karim, Banneker sent on May 29, 2009 at 4:53PM.

From August 2009 through October 2009, WMATA proposed to change the Project from a lease agreement to a purchase agreement, whereby Banneker would own the property.

On or about September 10, 2009, WMATA staff requested another extension of the negotiation period with Banneker and the WMATA Board approved the extension.

On October 22, 2009, Mr. Graham met with Mr. Karim and Banneker's Chief Financial Officer ("CFO") to discuss the Project. Mr. Graham told both Mr. Karim and Banneker's CFO that the "firm should not have bid on the WMATA project" and that he "won't allow the sale of the WMATA-owned parcels located at Shaw-Howard/Florida Avenue." Mr. Karim told Mr. Graham that Banc of America preferred a sale, and had spent the past few months underwriting the Project as a sale. Mr. Graham told Mr. Karim that Banneker could get a new joint venture partner to facilitate the lease of the WMATA-owned parcels.

Moreover, Mr. Graham also told Mr. Karim that he would ensure that the Project would not get delayed if Mr. Karim agreed to change the Project from a sale of property to a lease. Mr. Karim agreed with Mr. Graham's request to change the Project back to a lease agreement. Later that day, Mr. Karim had several telephone conversations with John Catoe, Jr., the then-WMATA General Manager and Mr. Graham to discuss the terms of the lease.

By e-mail correspondence sent on October 22, 2009 from Steven Goldin, WMATA's Director of Station Area Planning & Asset Management, WMATA informed Banneker that "per direction from our Board, we are proceeding with preparing a Term Sheet for the lease of our property. The matter is to be taken up by the full Board in a special meeting in two weeks." See Attachment 11, E-mail correspondence from Steven Goldin, WMATA to Omar Karim, Banneker sent on October 22, 2009 at 3:08PM.

On or about November 16, 2009, WMATA staff submitted the parties' revised Term Sheet to the WMATA Board for approval. See Attachment 12, E-mail correspondence from Rosalyn Doggett, WMATA to Omar Karim, Banneker sent on November 16, 2009 at 8:54AM.

By e-mail correspondence sent on November 19, 2009, WMATA informed Banneker that the WMATA Board discussed the Term Sheet, but the WMATA Board took no action. See Attachment 13, E-mail correspondence from Steven Goldin, WMATA to Omar Karim, Banneker sent on November 19, 2009 at 5:22PM. This correspondence further advised Banneker that the WMATA Board directed WMATA staff to address specific issues raised by the Board regarding the initial capitalized lease payment and the lack of a payment "reset" for the first 60 years under the lease.

Following the November 19, 2009 meeting of the WMATA Board, Banneker was able to convince its equity partner to reduce its return on their investment and therefore increase the capitalized lease that the Banneker team could pay WMATA. WMATA and Banneker negotiated a revised Term Sheet which WMATA's staff then recommended to the WMATA Board for approval.

On January 14, 2010, although the WMATA staff recommended the Committee approve the revised Term Sheet, the Committee informed WMATA staff that it wanted Banneker to pay additional funds to perform at the Site. In this regard, the Committee moved to approve a time extension to allow WMATA staff and Banneker to negotiate an amended Term Sheet for the Site, which was to be brought to the WMATA Board by March 31, 2010. See Attachment 14, WMATA, Committee, Minutes of Planning, Development and Real Estate Committee, January 14, 2010.

Following the January 14, 2010 meeting of the WMATA Board, Mr. Graham becomes Chair of the Committee.

From January 14, 2010 through March 25, 2010, WMATA and Banneker engaged in negotiations to reach final agreement with regard to the amended Term Sheet for the Project. Prior to March 25, 2010, the parties reached final agreement on the amended Term Sheet and submitted it to the WMATA Board for approval. The revised Term Sheet significantly increases the capitalized lease payment that Banneker would pay WMATA from the amount submitted to the WMATA Board at the January 14, 2010 meeting.

On March 25, 2010, the WMATA Board discussed the executed amended Term Sheet in Executive Session, but, at the behest of Jim Graham, the Board removed from their agenda consideration of the amended Term Sheet and the WMATA Board did not take any action to approve it.

Since the March 25, 2010 WMATA Board Executive Session meeting and subsequent tabling of the approval of the executed amended Term Sheet at the public WMATA Board meeting, WMATA has not taken any action with regard to its further consideration and approval of the executed amended Term Sheet. Moreover, the Committee is not scheduled to meet to discuss the Banneker Project in the month of April.

On April 26, Steven Goldin, Director Office of Station Area Planning & Asset Management, WMATA sent a letter to Banneker confirming that the WMATA Joint Development and Real Estate Committee had moved to extend Banneker's exclusive negotiation period to July 30, 2010. Mr. Goldin's letter noted that The WMATA Board had voted unanimously, without explanation or rationale, "to table" indefinitely any further consideration of Banneker's timely-submitted, amended Term Sheet without the Board ever considering or rejecting the amended Term Sheet as required by the Joint Development Solicitation.

II. BANNEKER'S RESPONSES TO ALLEGED WMATA BOARD CONCERNS

During the course of the negotiations between WMATA and Banneker, mentioned above, WMATA raised concerns regarding Banneker's ability to: (a) perform the Project; (b) have a joint venture partner to work with Banneker on the Project; and (c) maintain financing to perform the Project. Each of these concerns is addressed below.

A. Banneker Has the Experience to Perform the Project

Banneker is a full service real estate firm that specializes in providing construction, construction management, real estate development and real estate advisory services to the public and private sectors. The firm focuses its resources and experience on transforming neighborhoods throughout the Mid-Atlantic region of the United States. The Banneker management team has more than 40 years of construction, construction management, development and finance experience in the public and private real estate sectors. In this regard, Banneker is known for its ability to work on and complete complex construction projects on time and within budget.

As part of its proposal, Banneker provided WMATA with three (3) examples of prior construction and land development projects for which Banneker played a significant lead role. Moreover, Banneker currently plays a significant role as the lead or co-lead on the following projects: (1) Walker Jones Education Campus; (2) Deanwood Community Center; and (3) Joiner Shop Lofts. All of these projects are comparable to the WMATA Project.

(1) Walker Jones Education Campus

Banneker provided project management and construction management services toward the design and construction of the Walker Jones Education Campus in the District of Columbia. This $50 million project involved the design and construction of a: (i) 100,000 square foot public school; (ii) 20,000 square foot recreation center; and (iii) 5,000 square foot library. Construction of this project was completed on time and within budget in December 2009. This project was the fastest public school ever built in the District of Columbia.

(2) Deanwood Community Center

Banneker is providing project management and construction management services toward completion of the Deanwood Community Center project in the District of Columbia. This project is a 63,000 square foot community center and library facility with a project budget of $32 million. The facility includes an indoor swimming pool, locker rooms, gymnasium, game room, library, childcare facilities, senior services area, kitchen, and multi-purpose facilities. The facility is 85% complete and is expected to reach Final Completion in August 2010. Upon completion, the Deanwood Community Center will be the largest public recreation center ever built in the District of Columbia.

(3) Joiner Shop Lofts

Banneker is providing development management services toward completion of the $60 million Joiner Shop Lofts project. The Joiner Shop Lofts is an adaptive-use, residential and retail development that includes the conversion of a 157,000 square foot warehouse into a 170-unit apartment and retail project. This project is the first residential building that will be completed at The Yards, a large-scale, mixed-use redevelopment of a 42-acre former annex to the Washington Navy Yard.

The above successful projects evidence Banneker's unquestionable ability to serve as project and construction manager on major projects such as the "Jazz at Florida Avenue Project". The services provided by Banneker on the above projects are similar in size and scope to those necessary to perform the WMATA Project. Accordingly, Banneker certainly has the experience to successfully perform the Project.

B. Banneker Has Development Partners to Perform the Project

Jim Graham has been reported as claiming that Banneker does not have a development partner(s) to perform the Project. This simply is not true. Banneker has development partners to perform the Project.

As stated above, Banc of America was very interested and preferred the WMATA deal when the Project involved the sale of the WMATA-owned parcels. However, due to Mr. Graham's requests, the structure of the WMATA deal was changed to a lease. Given these facts, Jim Graham advised Banneker that it could select another development partner to replace Banc of America, if necessary. Accordingly, the executed amended Term Sheet contains language that allows Banneker to replace Banc of America with a development partner with similar experience as that of Banc of America, if necessary.

In addition, Banneker has assembled a team of other development partners, which includes: Torti Gallas & Partners, Inc. (Project Architect); Clark Builders Group (General Contractor); Love Funding Corporation (Project Financing); and Holland & Knight LLP (Land Use Counsel). During negotiations, Banneker provided WMATA with information from each of the above and can provide that information again upon request.

Accordingly, there is no question that Banneker has capable and competent development partners to perform the WMATA Project.

C. Banneker Has Financing to Perform the Project

The WMATA Board, particularly Jim Graham, has raised concerns as to whether Banneker has financing to perform the Project. In fact, Banneker has financing to perform the WMATA Project. Love Funding Corporation ("Love Funding"), a national full-service, commercial mortgage-banking firm that serves as a direct lender and financial intermediary to offer loan placement services for borrowers, as well as origination, consulting and servicing of loans for investors nationwide, has agreed to provide the majority of the financing needed for the Project. In addition, Banneker has received a commitment from the District of Columbia to provide grant funding. Finally, Banneker and its equity partner will provide any remaining financing needed for the Project. Indeed, there is no question that Banneker has financing to perform the WMATA Project.

III. BANNEKER'S ALLEGATIONS OF INAPPROPRIATE CONDUCT BY WMATA BOARD MEMBER JIM GRAHAM

As you are aware, Jim Graham serves on the WMATA Board and is currently the Chair of the Committee. The duties of the WMATA Board members are prescribed in the "Procedures for WMATA Board of Directors – 2010" ("WMATA Board Rules"), which were presented and approved on January 28, 2010. See Attachment 15, Procedures for WMATA Board of Directors – 2010, January 28, 2010. The Standards of Conduct for Members of the WMATA Board of Directors ("Standards of Conduct") are included as Attachment 2 to the WMATA Board Rules.

Banneker believes that Mr. Graham likely has engaged in inappropriate conduct and has violated WMATA's Standards of Conduct as prescribed in the WMATA Board Rules. Specifically, Mr. Graham, in violation of WMATA Board rules, has: (a) in July of 2008, misused his official position as a member of the WMATA Board and his position as a District of Columbia Councilmember to improperly influence WMATA's selection of Banneker by offering to support a separate piece of legislation pending before the District of Columbia Council that would benefit a former Banneker principal, in

exchange for Banneker resigning as the Selected Developer for the WMATA Project; (b) on July 2, 2008, Mr. Graham inappropriately offered Banneker a quid pro quo for his support of Banneker for the Project on the condition that Banneker agree to use a specific developer identified by Mr. Graham; and (c) Mr. Graham has not acted impartially and has instead repeatedly demonstrated bias against Banneker.

If necessary, Banneker and others will provide evidence of Mr. Graham's unethical conduct. At a minimum, Mr. Graham should be investigated by the WMATA Office of the Inspector General and/or not be allowed any further involvement in approval or oversight of the WMATA Project. According to the WMATA Board Rules, any Board member who willfully violates the WMATA Board Rules shall forfeit the Board member's position with WMATA. See id., Article VI.

IV. BANNEKER'S REQUEST FOR IMMEDIATE WMATA BOARD APPROVAL AND AWARD OF THE PROJECT

Banneker requests an opportunity to meet with the WMATA officials and/or Board to provide information or make a presentation to address any concerns the Board may have in order to facilitate the immediate approval of the executed amended Term Sheet. Toward that end, Banneker seeks immediate WMATA Board approval of the executed amended Term Sheet followed by an expedited negotiation in order to reach agreement and WMATA Board approval of the JDA and resulting lease agreement. As stated above, the negotiations for the Project have been ongoing for over two (2) years. Banneker has paid both the requisite Proposal Security ($100,000) and the Option Fee ($100,000).

In addition, Banneker has incurred significant additional costs as a result of the protracted WMATA contract negotiations. As a small business, Banneker should not be forced to continue to incur these costs absent a commitment from WMATA that a final deal to perform the Project is forthcoming.

The WMATA Board should act immediately to approve the Project and avoid further delays. The Project is being delayed as a result of the WMATA Board's failure to approve the executed amended Term Sheet.

V. CONCLUSION

WMATA and Banneker have been engaged in good faith negotiations regarding the award of the Project to Banneker since March 2008. Throughout these negotiations, Banneker has remained available to perform the Project and has remained , ready, willing and able to provide information, if necessary, to address any WMATA concerns in an effort to eliminate further delay of the contract award decision-making process. WMATA's announcement today that it plans to indefinitely "table" consideration of the amended Term Sheet WMATA Staff has executed with Banneker, without the Board ever meeting in public session to review and approve or reject it, itself demonstrates bad faith. Moreover, such action (or in this case inaction) cannot be in the best interests of WMATA.

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Banneker requests a meeting as soon as possible with the appropriate WMATA officials, including members from the WMATA Joint Development & Real Estate Committee, in order to expedite WMATA's action on the the Project and formal consideration of Banneker's amended Term Sheet.

If the parties are unable to successfully move forward with action on Banneker's amended Term Sheet, given the foregoing, Banneker is prepared to seek any and all available remedies at law or in equity to address Banneker's damages and concerns regarding the selection process in this instance.

Sincerely, I am

A. Scott Bolden

Attachments

cc: Carol O'Keeffe, General Counsel, WMATA

Omar Karim

From: Bolden, A. Scott <ABolden@ReedSmith.com>
Sent: Monday, May 17, 2010 12:17 PM
To: Omar Karim
Subject: FW: Banneker - 5/10/10 ltr from J. Graham
Attachments: Untitled (2).pdf

fyi.

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Washington, D.C. Office

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From: Bridgewater, Natalie F
Sent: Monday, May 17, 2010 11:57 AM
To: Bolden, A. Scott
Cc: Coleman, Keith D.
Subject: Banneker - 5/10/10 ltr from J. Graham

today's mail. I'm adding to the Banneker workspace.

<<Untitled (2).pdf>>

* * *

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JIM GRAHAM
COUNCILMEMBER, WARD ONE
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WASHINGTON, D.C. 20004

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Chairperson
Committee on
Public Works and Transportation

Member
Board of Directors, Washington
Metropolitan Area Transit Authority

May 10, 2010

A. Scott Bolden, Attorney
Reed Smith LLP
1301 K Street, NW
Suite 1100 – East Tower
Washington, DC 20005

CONFIDENTIAL

Dear Mr. Bolden:

I reject as wholly groundless the accusations made in your letter, on behalf of Banneker Ventures, LLC, dated April 27, 2010. I am now asking the DC Attorney General for his review and action on this matter.

Sincerely,

CC: Peter Nickles
Peter Benjamin
Carol O'Keeffe
Richard Sarles

Attachments to Mr. Nickles only

JG/ml

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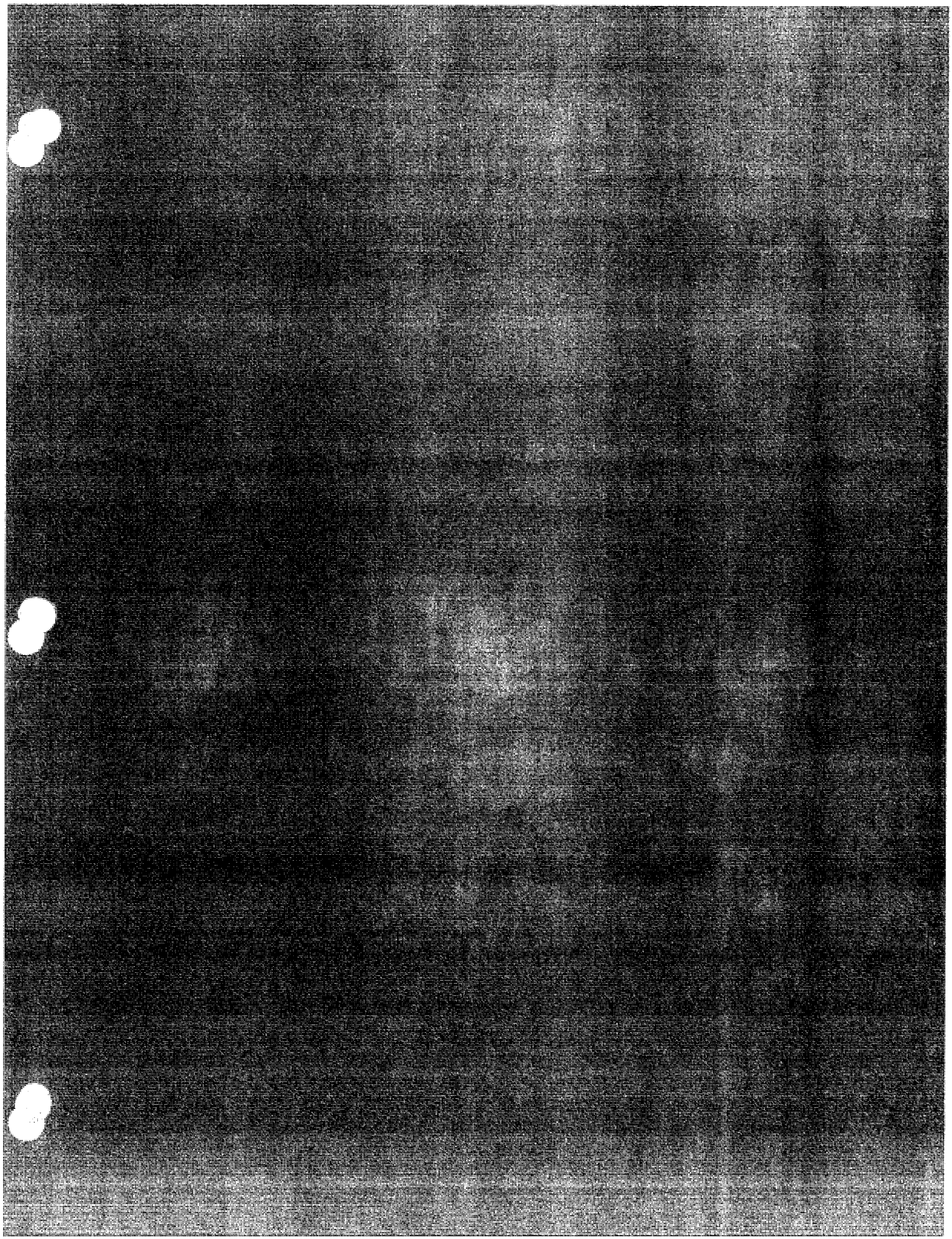


May 28, 2010

A. Scott Bolden, Esquire
Reed Smith LLP
1301 K Street, N.W.
Suite 1100 – East Tower
Washington, DC 20005-3373

Re: Status of Banneker Ventures Term Sheet and Award of Jazz at Florida Avenue Project

Dear Mr. Bolden:

Your letter dated April 27, 2010 to Mr. Sarles and Mr. Benjamin has been referred to me for response. The procedural posture of the Jazz at Florida Avenue Project is as follows: The Board of Directors ("Board") of the Washington Metropolitan Area Transit Authority ("WMATA") unanimously voted, on March 25, 2010, to table any action on the proposed amendment of the term sheet ("Term Sheet", attached hereto as Attachment A) executed by WMATA and Banneker Ventures, LLC ("Banneker") following Board member Graham's motion to extend the time within which to finalize a joint development agreement. The Board follows Robert's Rules of Order. Accordingly, the matter can now be taken from the table only by majority vote of the Board in accordance with the voting provisions of the WMATA Compact (Section 8). Pursuant to the terms of the Term Sheet, the exclusive negotiation period between WMATA and Banneker expired on March 31, 2010.

You have presented a number of points in your letter; although I will not respond point by point, the following discussion is intended to meet the substantive issues of concern. Let me begin by saying that WMATA staff worked diligently with Banneker representatives in attempting to achieve agreement on the revised business terms proposed by your client, which differed significantly from those originally proposed. We recognized that those revisions were driven by the changed economic circumstances. Nevertheless, the changes occurred in the context of a public solicitation for proposals for the Florida Avenue site and the differing terms presented

Washington Metropolitan Area Transit Authority

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:
'es D1, D3, D6, P6,
70, 71, 80, X2

A District of Columbia, Maryland and Virginia Transit Partnership

challenges that simply could not be overcome, despite our best efforts and the efforts of your client. We appreciate your client's interest in the site and regret that the faltering real estate market made it difficult for your client to adhere to the original terms which prompted the Board's initial selection of Banneker as the developer for the site. Having said that, it is important for you to understand that the Board has plenary authority to approve the terms of a joint development agreement and that approval simply was not achieved. I know of no plans to remove the matter from the table.

By submitting a proposal in response to the Florida Avenue Joint Development Solicitation ("JDS" or "Solicitation", attached hereto as Attachment B), Banneker agreed to and accepted all of the terms of the JDS (*see* JDS, § 1.5). Thus, Banneker agreed that the Term Sheet was not a binding agreement between WMATA and Banneker, but only established a fixed period of time in which Banneker had the exclusive right to negotiate a binding development agreement (*see* JDS §§ 1.6 and 1.7; and Term Sheet § 12). Banneker also agreed that the Term Sheet would terminate upon the expiration of such exclusive negotiation period (*see* JDS § 3.3(C)). It has so terminated. The Board has the sole authority to approve extensions of the Term Sheet and/or the terms of the binding development agreement (*see* JDS § 3.3(D), Term Sheet § 2, and WMATA's Joint Development Policies and Guidelines § 5.1).

Pursuant to the Term Sheet, Banneker and WMATA established an exclusive negotiation period of five months. The Term Sheet was initially executed by Banneker in July 2008, which meant that the parties had until December 2008 to submit a development agreement to the Board for approval. Almost immediately after being granted its exclusive negotiation period, Banneker significantly reduced its offer to WMATA. For example, Banneker's winning proposal offered an annual ground lease rent payment of $597,000 per year; soon after being selected, Banneker lowered its offer to less than $200,000 per year. The Board extended the negotiation period several times to provide the parties additional time to improve the business terms. In January 2010, the Board voted to extend the exclusive negotiation period through March 31, 2010. When the Board did not approve the extension of the exclusive negotiation period on March 25, 2010, the Term Sheet expired.

In Section IV of your letter, you state that Banneker has incurred significant additional costs as a result of the protracted contract negotiations. Please note that Banneker agreed at the onset that any costs incurred by Banneker

during this exclusive negotiation period are the sole liability of Banneker (*see* JDS § 1.9 and Term Sheet § 12).

Your letter overlooks critical details surrounding WMATA's dealings with Banneker. First, your letter provides a detailed description of WMATA's inquiry into the role of Warren Williams, Jr. and implies that the inquiry was, in some fashion, wrong. As Banneker acknowledged in its letter dated April 23, 2008, WMATA reserved the sole right to disqualify a selected developer if any member of the development team were found to have an unsatisfactory record of integrity and business ethics (*see* JDS § 5.2(F)). WMATA's inquiries were consistent with this right. As a publicly funded entity, WMATA has a duty to avoid entering into business relationships with persons that do not share WMATA's commitment to integrity. It is unquestioned that WMATA acted properly when it requested further information on certain members of Banneker's development team.

Your letter addresses affordable housing issues on this project, but fails to acknowledge all of the relevant facts. The JDS required proposals to be consistent with local land use policies (*see* JDS § 2.1). At the time of the Solicitation, WMATA's Florida Avenue property was subject to the "small area plan" adopted by the District of Columbia Council in June 2005, known as the "Duke Plan." As Banneker acknowledged in several meetings with WMATA, the Duke Plan, in conjunction with the positions of local community groups and the District of Columbia zoning and permitting offices, effectively required a 20% to 30% affordable housing set aside for any residential project on WMATA's Florida Avenue property. Banneker's acknowledgement of this fact is further evidenced by Banneker's original proposals, which included an affordable housing component (*see* the letter from District of Columbia Housing Finance Agency to Banneker, attached hereto as Attachment C). The Duke Plan's affordable housing policy was extant long before any purported meeting between Mr. Karim and Mr. Graham on July 2, 2008.

When reviewing all of the proposals that responded to the JDS, WMATA placed a high priority on development experience. Development experience is a priority for all WMATA joint development sites, and this project required the sophisticated expertise to be able to build a structure directly over WMATA's train tunnel. Such attention to development experience is evidenced in the JDS, which provided: (i) that the designation of a selected developer was in the nature of a personal services contract because of the importance of skills, experience, knowledge, and financing on this project;

and (ii) a change in the composition of the selected developer's development team required WMATA's written approval (*see* JDS § 5.1).

Throughout the duration of negotiations, WMATA had concerns about the stability of Banneker's development team. Because WMATA felt that Banneker was relatively inexperienced with this type of project, it decided that Banneker needed a strong development partner. It was the presence of Banneker's much more experienced partners, first Donatelli Development and then Metropolis Development Company, which satisfied WMATA when it initially approved Banneker's proposal. But, Banneker's development team experienced constant instability. Development partners Donatelli Development, District Development Group, Metropolis Development Company, and Banc of America Community Development Corporation all dropped out of the project without warning or explanation. Consequently, WMATA understandably expressed concern with Banneker's development team.

Your letter states that, "[f]rom August 2009 through October 2009, WMATA proposed to change the Project from a lease agreement to a purchase agreement." This statement ignores crucial facts surrounding this event. WMATA made it clear from the very beginning that WMATA preferred a lease transaction over a sale (*see* JDS § 1.1). Banneker's winning proposal was for a lease transaction. But, three months after WMATA and Banneker executed the Term Sheet, Banneker significantly changed its proposal. Banneker informed WMATA that it intended to purchase parcels adjacent to WMATA's property in order to construct a larger single building traversing both WMATA's property and the adjacent property. WMATA immediately informed Banneker that WMATA did not want to be the ground lease landlord of half of a building. Banneker assured WMATA that it would find a way to make this situation work for both parties. Over the next 10 months, WMATA repeatedly asked Banneker to resolve this problem and voiced its skepticism about this concept. Banneker never offered any solutions, but still insisted on combining WMATA's property with the adjacent property. Finally, in August 2009, Banneker proposed a co-tenancy agreement, which would govern the ownership of the building on the combined properties in the event that Banneker defaulted on its lease with WMATA. WMATA informed Banneker that the co-tenancy agreement was an untenable arrangement for WMATA. Seeing no other solution to Banneker's insistence on adding the adjacent parcels, in late August 2009, WMATA began to explore the option of selling its land to Banneker and to evaluate whether the co-tenancy arrangement could be appropriately modified. But, in October 2009, WMATA

decided to remove the sale option because of: (i) WMATA's long standing institutional preference for a lease; and (ii) concerns that the switch from lease to sale, after awarding the project would expose WMATA to bid protests. Your assertion that Mr. Graham advocated for the Florida Avenue project to be a lease transaction is consistent with the long standing policy of the Board to enter into leases rather than sales.

The incorporation of adjacent property into the project was required to be disclosed at the time of bidding under the JDS (*see* JDS §3.2(X)). By waiting until after it was designated as the selected developer to reveal its intention to assemble WMATA's property with adjacent parcels, Banneker caused significant problems for the negotiation.

Your letter also states that the Board removed consideration of the amended Term Sheet at the behest of Board member Jim Graham. It should be noted here that Mr. Graham, as chairman of WMATA's Planning, Development and Real Estate committee, actually recommended that the Board grant an extension of the Term Sheet. Board member Neil Albert then stepped in and moved to table the issue. The Board then voted unanimously to approve the motion to table.

In Section III, you have attempted to create the impression that improprieties occurred during your conversations with a WMATA Board member. Board members frequently discuss the progress of joint development negotiations with the parties involved. The nature of these discussions is dynamic and may include ways to strengthen the development team, but these discussions do not bind the WMATA Board of Directors. The allegations in your letter, standing alone, do not appear to constitute a violation of the Board's Standards of Conduct. However, if further consideration is deemed appropriate, it will be handled in accordance with the Board's Procedures. As you are aware, Mr. Graham has referred your letter to the Attorney General for the District of Columbia, regarding the claims you have made concerning District of Columbia matters.

At all times, WMATA staff and the Board have acted in accordance with the JDS and the Term Sheet. Neither the Term Sheet nor any other document grants Banneker an entitlement to any interest in WMATA's Florida Avenue property. By entering into the Term Sheet, the parties agreed to a schedule for negotiating a binding development agreement, but there was never a guarantee that these negotiations would produce an agreement that would gain Board approval. That schedule was enlarged by a series of extensions,

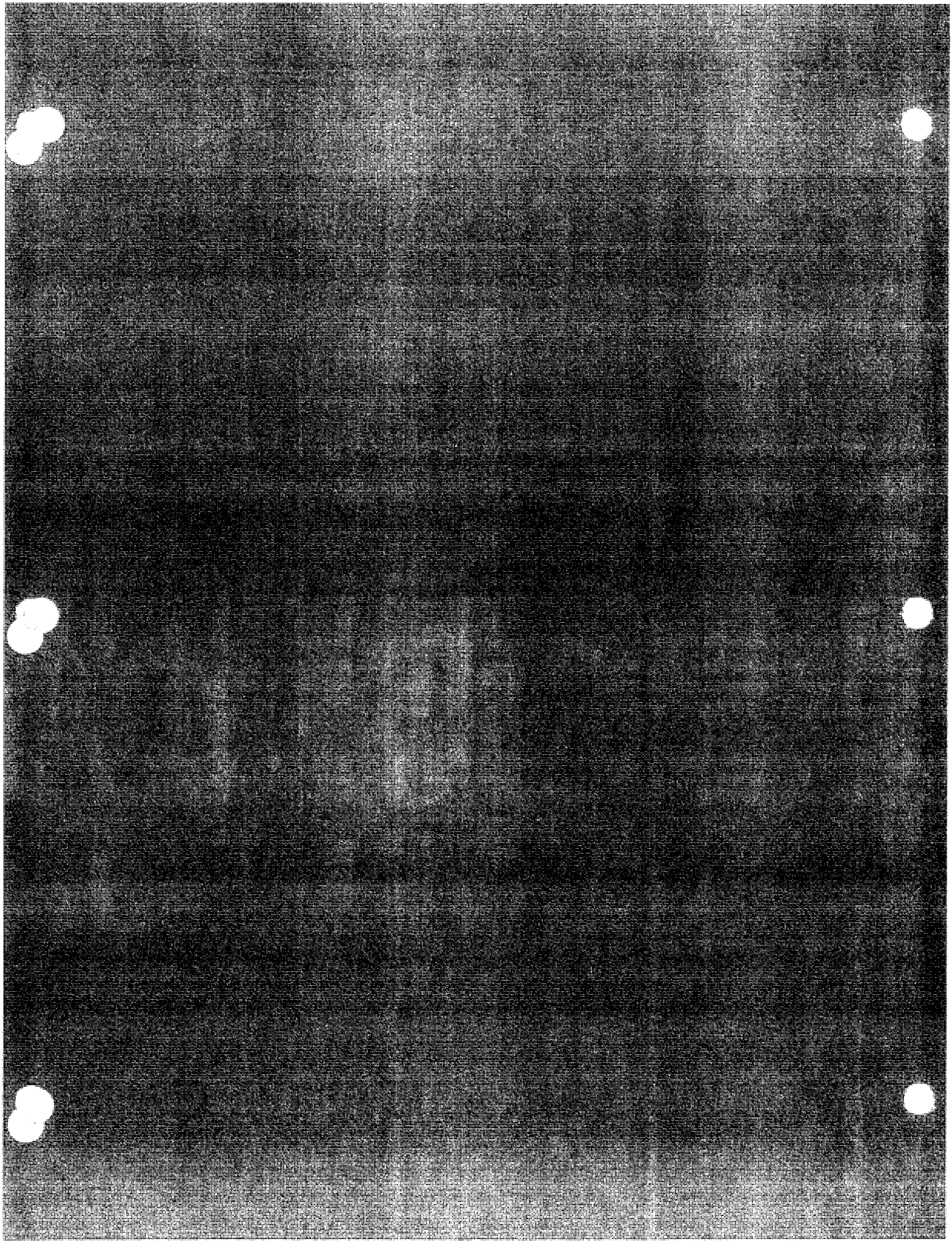
from December 2008 to March 2010. The Board took firm action on March 25, 2010. The Board is not required, under the JDS, Term Sheet, or WMATA's internal procedures, to provide Banneker with further explanation or rationale for its action, but I believe this letter clearly outlines the problems that are inherent in Banneker's revised business proposal. I trust that this is responsive to your concerns.

Sincerely,

Carol B. O'Keeffe
General Counsel

Attachments

cc: Chairman and Members of the Board, WMATA
Richard Sarles, General Manager



July 27, 2010

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005

Re: Shaw-Howard/Florida Avenue Development Site

Dear Mr. Karim,

On April 28, 2010 I informed you that your exclusive negotiation period for the above-referenced project expired on March 31, 2010. Accordingly, Metro is returning your Proposal Security of $100,000, with interest through June 30th, in the attached check for $100,216.76.

Please, do not hesitate to contact me should you have any questions.

Sincerely,

Steven E. Goldin
Director of Station Area Planning & Asset Management

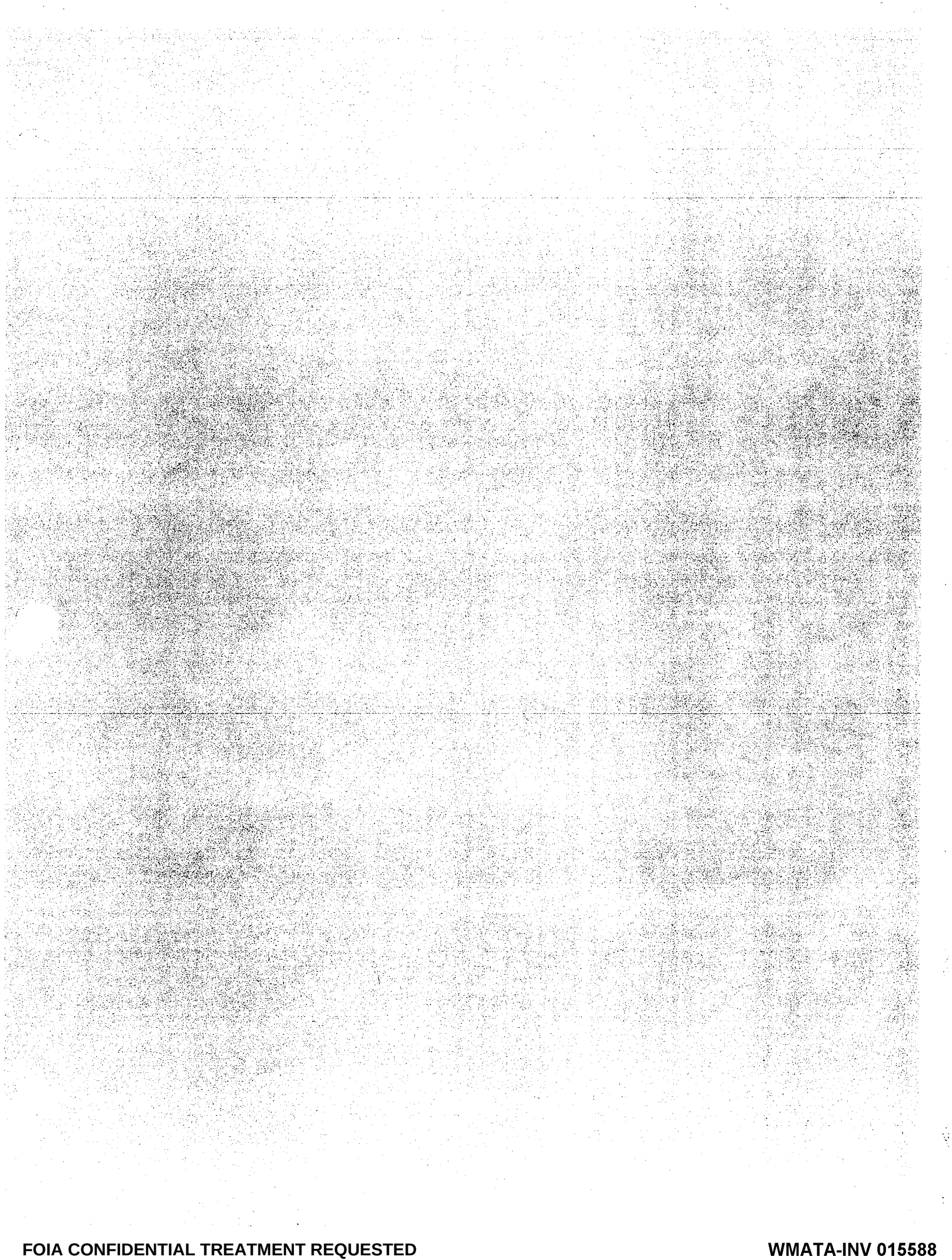
cc: Joshua Montague, COUN

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:
:s D1, D3, D6, P6,
70, 71, 80, X2

A District of Columbia, Maryland and Virginia Transit Partnership



Minutes
Joint Development and Real Estate Committee
March 24, 2011

The meeting was called to order at 10:45 a.m. Present were:

Committee members:

Mr. Tommy Wells
Mrs. Catherine Hudgins
Mr. Tom Downs
Mr. Mortimer Downey
Ms. Mary Hynes
Mr. Marcel Acosta
Mr. Peter Benjamin
Mr. Jeff McKay
Mr. William Euille
Ms. Kathryn Porter

Approval of Agenda

Mr. Benjamin moved, seconded by Mr. Downs, to approve the agenda as submitted. The Committee voted unanimously in favor of the motion.

Approval of Minutes

Mr. Benjamin moved, seconded by Mr. Downs, to approve the December 16, 2010 minutes as submitted. Mr. Wells and Ms. Hynes abstained. The motion passed by majority vote.

Action Item

A. Sale of Excess Property at West Falls Church Service and Inspection Yard

Mrs. Hudgins moved, seconded by Mr. McKay, for staff to convey excess property to Dominion Virginia Power for a Dulles Extension substation at West Falls Church Service and Inspection Yard: selling approximately 1.68 acres of land and granting two easements. The Committee voted unanimously in favor of the motion.

The meeting adjourned at 10:50 a.m.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015589

Board of Directors Meeting Agenda for July 21, 2011 at 1:00 PM

I. Call to Order	
II. Public Comment Period	
Action Items	
III. Approval of Agenda	Mrs. Hudgins
IV-A. Approval of Minutes of June 23, 2011 Board Meeting	Mrs. Hudgins
Information Items	
V. Report by Riders' Advisory Council	Mr. Alpert
VI. Report by the Accessibility Advisory Committee	Mr. Sheehan
VII. Report by Chair	Mrs. Hudgins
Action Items	
A. Approval of Accessibility Advisory Committee Appointments	
B. Swearing-in of Board Members	
VIII. Report by GM/CEO	Mr. Sarles
A. GM/CEO Monthly Report	
B. Employee Spotlight:	
Melissa Wooten, Metrorail Station Manager	
Timothy Grant, Bus Operator	
Garrett Rhodes, Bus Operator	
IX. Report by Finance and Administration Committee	Mrs. Hudgins
Action Items	
A. Reimbursable BRAC Bus Service to Pentagon Transit Center	
B. BRAC Transit Service to Fort Belvoir	
X. Report by Customer Service, Operations and Safety Commitee	Mr.Downs
Action Items	
A. Station Naming Policy	
XI. Report by Joint Development and Real Estate Committee	Mrs. Hudgins
Action Items	
A. Approval for Sale of Property at Congress Heights Station	

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015591

B. Approval to Amend Bethesda Station Lease

C. Approval for Sale of Property at Florida Avenue NW (pending Executive Session Discussion)

XII. Report by Governance Committee Mrs. Hynes

Action Items

A. Approval of Board of Directors' Bylaws and Revised Board Procedures

B. Approval of Board of Directors' Code of Ethics

XIII. Consent Items

Action Items

1. Exercise of Early Buyout Option for Tax Lease Ms. Kissal

XIV. Reports by

District of Columbia Mr. Downs

WSTC Mr. Nichols

NVTC Mrs. Hudgins

Federal Government Mr. Downey

XV. Adjournment

Some presentations are available in Adobe Acrobat (PDF format). Viewing these presentations requires the free Adobe Reader software.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015592

Report by Joint Development and Real Estate Committee (C) 7-21-2011

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

◉ Action ○ Information	MEAD Number: 101199	Resolution: ○ Yes ◉ No

TITLE:

Sale of Metro Property at Florida Ave N.W.

PURPOSE:

Request Board approval to sell excess Metro property at Florida Avenue NW to JBG Associates, LLC.

DESCRIPTION:

The excess Metro property consists of three vacant parcels comprising 15,956 square feet, 8,621 square feet and 3,799 square feet respectively. The property was acquired for construction of a portion of the Metrorail Green line tunnel in the District of Columbia. Based on an approved contract appraisal, the three parcels have an estimated fair market value of $9,400,000.

The property was originally offered for public sale in August 2007. In response to that offering, the proposal of Banneker Ventures, LLC was selected for negotiation of terms and an agreement. The ultimate value of Banneker`s offer totaled $5.6 million. The Board, however, took no action on the request for approval of the Banneker offer, and the sale was not consummated. The property was again offered for sale in September 2010 through a public bidding process. The three bids received, including the high bid in the amount of $11,500,000, were rejected as no bid received met both the minimum value threshold and all the terms and conditions of the solicitation.

A Request for Proposals (RFP) for the sale of the property was issued in April 2011 with a due date for proposals of May 2, 2011. The RFP required proposals to include a purchase price of at least $9,400,000 (Metro`s appraised fair market value) and a description of how the proposed use of the property would meet the goals and objectives of the local community, including the Duke Small Area Plan.

Two proposals were received in response to the RFP:

JBG Associates, LLC:	$10,250,000
Comstock Companies:	$ 9,400,000

The JBG Associates, LLC proposal exceeds both the minimum purchase price and the Comstock Companies proposal. The JBG proposal includes extensive detail as to how the proposed use of the property would meet local community goals and objectives as well as the Duke Small Area Plan.

The sale of this property to JBG, Associates, LLC supports Metro`s strategic goal of using every resource wisely by using Metro property to generate revenue for the capital program.

FUNDING IMPACT:

Proceeds from the sale of this property in the amount of $10,250,000 will be deposited into the capital budget in accordance with Federal Transit Administration (FTA) regulations that require proceeds from the sale of property acquired with Federal funds be directed to FTA-eligible capital projects.

Project Manager:	Mark Meister
Department:	Planning and Joint Development (PLJD)
Office:	Station Area Planning and Asset Management (SAAM)

RECOMMENDATION:

Approval to sell excess property at Florida Avenue NW to JBG Associates, LLC.

Joint Development and Real Estate Committee

Item III-A

July 21, 2011

Approval for Sale of Property at Congress Heights Station

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

◉Action ○Information	MEAD Number: 101225	Resolution: ○Yes ◉No

TITLE:

Sale of Congress Heights Station Property

PURPOSE:

Obtain Board approval to sell three parcels of land that comprise the Congress Heights Metrorail Station south entrance to Sanford City Partners I, LLC.

DESCRIPTION:

The subject property, which includes the south entrance to the Congress Heights Metrorail station, is located in Washington, D.C., mid-block between 13th and Congress Streets, SE on the south side of Alabama Avenue. The site consists of three parcels containing approximately 41,068 square feet of land. The property includes Metro's escalator, entrance walkway, and vent shafts.

Because of its small size, lack of vehicular ingress/egress, and Metro operational constraints, the property has limited marketability and independent utility as a stand-alone development project. Selling the property will maximize revenue to Metro by allowing the adjacent landowner, Sanford City Partners I,LLC, to span buildings across property boundaries, thereby maximizing the development density of both Metro's property and Sanford City Partners I, LLC's, adjacent land.

The property was advertised under a joint development solicitation in 2005, but did not generate any interest. Metro recently received an unsolicited proposal to purchase or lease the property from Sanford City Partners I, LLC, an adjacent landowner. In response to the Sanford City Partners I, LLC, proposal, the property was screened internally. No objections to selling the property were raised subject to retention and protection of Metro's operational facilities and access rights.

On May 26, 2011, the Board approved staff to negotiate the sale of the property exclusively with Sanford City PartnersI, LLC. The sale price for the property as part of an assemblage is estimated to be $3,000,000, which was determined by

an approved contract appraisal. The estimated current value of the property without assemblage is estimated at less than $1,000,000.

The property was also screened through the District of Columbia government, which raised no objections to the disposition of the property. The District of Columbia Office of Planning is encouraging high density development around the station to complement the St. Elizabeths Hospital East Campus/Department of Homeland Security redevelopment project. The sale is contingent upon approval of the Federal Transit Administration (FTA).

The proposed sale supports Metro`s strategic goal of using every resource wisely by using Metro property to generate revenue for the capital budget. Allowing the adjacent landowner/developer to assemble the properties will (1) facilitate high density, transit oriented development around the station consistent with local community goals, (2) increase local tax revenues, and (3) increase Metrobus and Metrorail ridership revenues by adding activities and passenger amenities adjacent to the station.

FUNDING IMPACT:

Proceeds of $3,000,000 from the sale will be deposited into the capital budget in accordance with FTA regulations that require proceeds from the sale of property acquired with Federal funds be directed to FTA-eligible capital projects.

Project Manager: Mark Meister
Department: Planning and Joint Development (PLJD)
Office: Station Area Planning and Asset Management (SAAM)

RECOMMENDATION:

Approval to sell three parcels of land that comprise the Congress Heights Metrorail station south entrance to Sanford City Partners I, LLC.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority

Sale of Metro Property at Congress Heights Station

Joint Development and Real Estate Committee

July 21, 2011

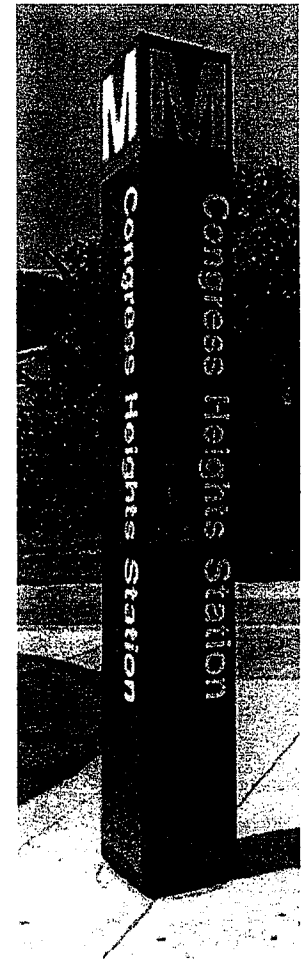
WMATA-INV 015600

FOIA CONFIDENTIAL TREATMENT REQUESTED

Purpose

Obtain Board approval to sell three parcels of land that comprise the Congress Heights Metrorail station south entrance to Sanford City Partners

Congress Heights Station
South Entrance Canopy



WMATA-INV 015601

FOIA CONFIDENTIAL TREATMENT REQUESTED

Background

- Because of its small size, no vehicular ingress/egress, and Metro's operational constraints, the property has limited marketability as a stand-alone development
- Adjacent property owner, Sanford City Partners, submitted an unsolicited offer to purchase Metro property surrounding the Congress Heights Metrorail station south entrance
- The property comprises 41,068 sq. ft. and includes the station escalator, walkway, and vent shafts. Metro's facilities and access rights will be retained and protected under the sale agreement.
- Sanford City Partners intends to assemble its adjacent property with the Metro property and surround the station entrance with a mixed use, transit oriented development

WMATA-INV 015602

FOIA CONFIDENTIAL TREATMENT REQUESTED

Benefits

- Revenue of approximately $3,000,000, which will be deposited in the capital budget. Value is based on assemblage of Metro property with adjacent developer owned property. Estimated current value of the Metro property without assemblage is less than $1,000,000.
- Increase in Metrobus and Metrorail ridership and revenues from transit oriented development
- Increase in tax revenue for District of Columbia
- Fulfillment of community planning objectives

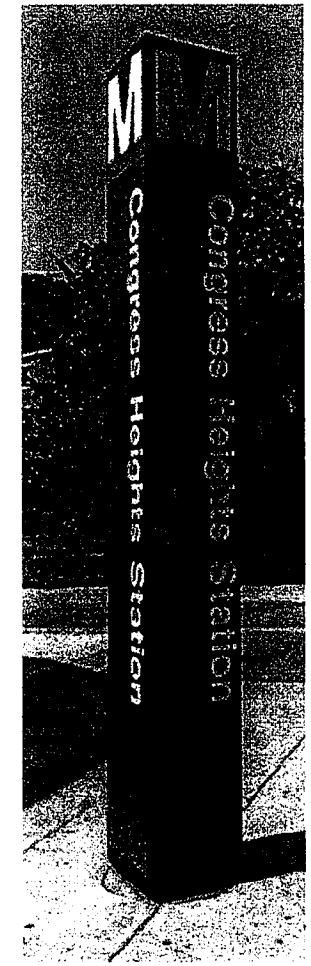
WMATA-INV 015603

FOIA CONFIDENTIAL TREATMENT REQUESTED

Recommendation

Board approval to sell three parcels of land that comprise the Congress Heights Metrorail station south entrance to Sanford City Partners

Congress Heights Station
South Entrance Canopy

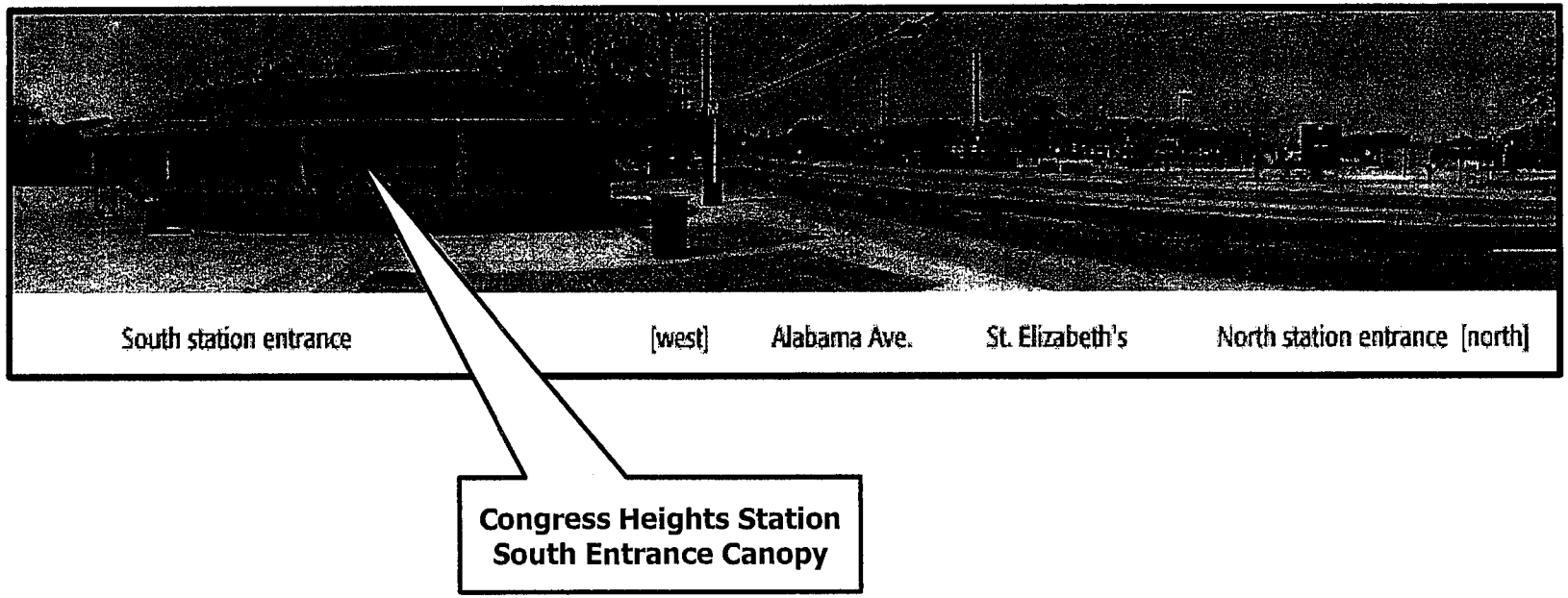


WMATA-INV 015604

FOIA CONFIDENTIAL TREATMENT REQUESTED

Appendix

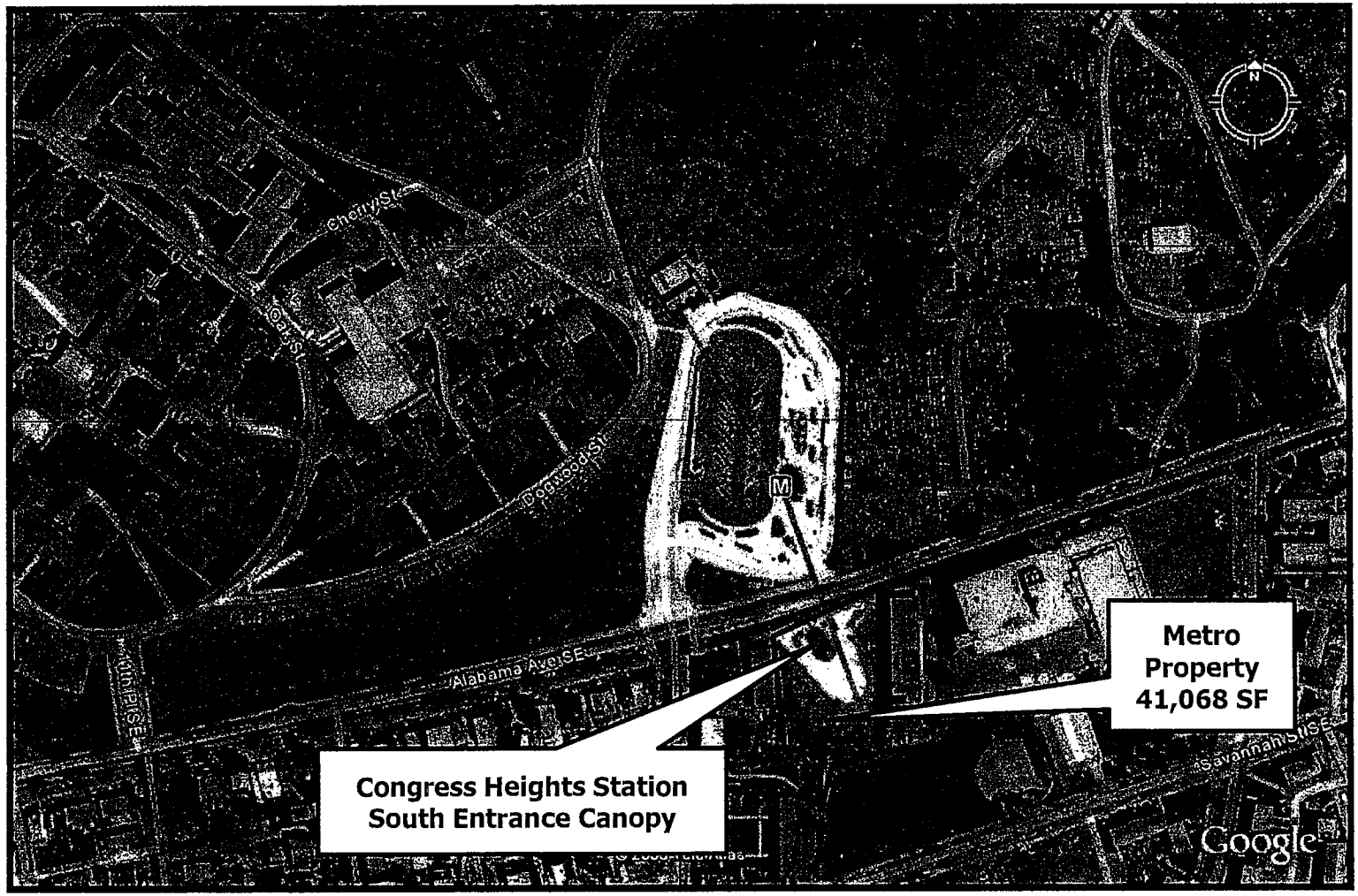
Map & Site Plan



WMATA-INV 015605

FOIA CONFIDENTIAL TREATMENT REQUESTED

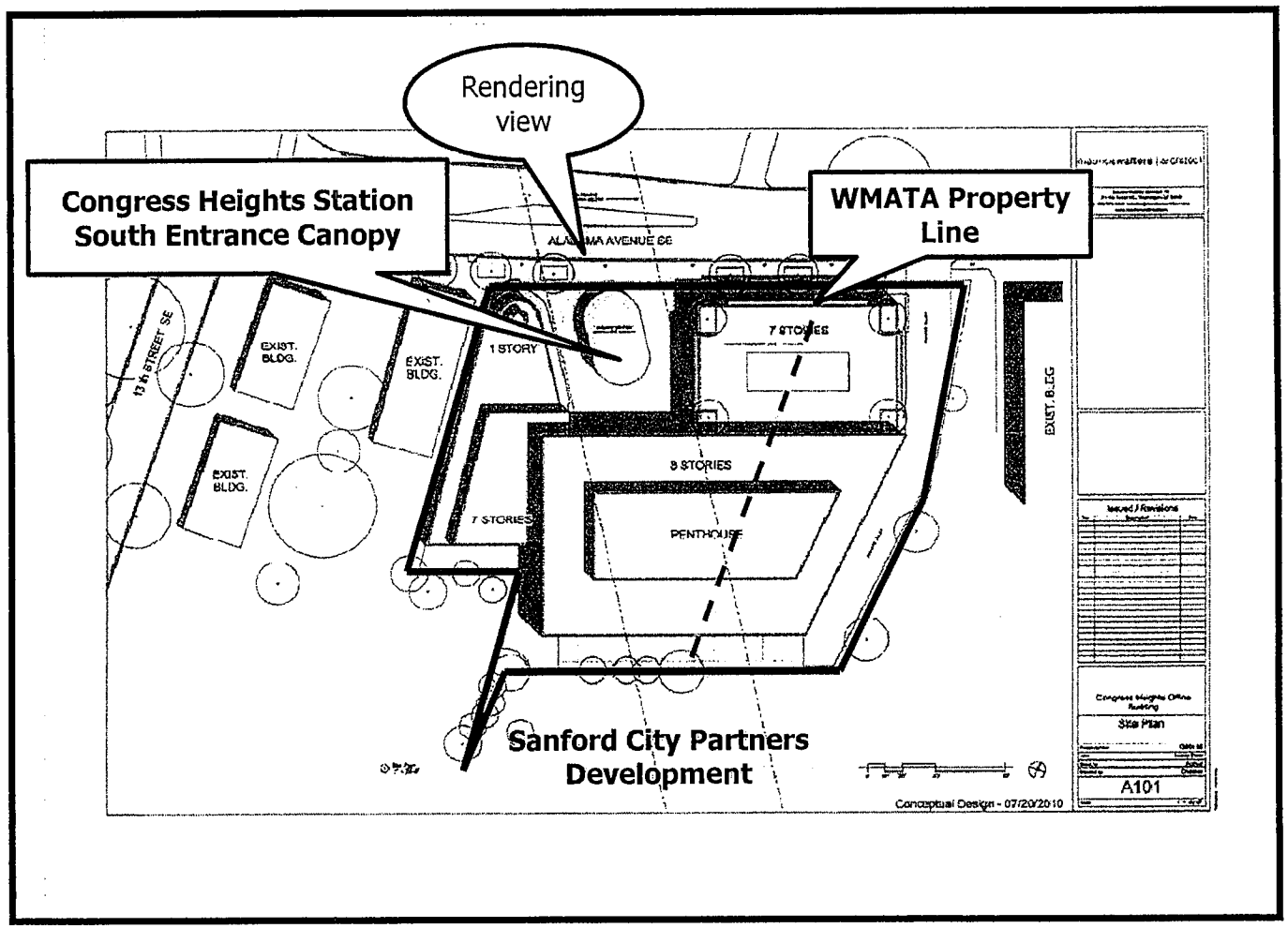
Site Map: Pre-Development



WMATA-INV 015606

FOIA CONFIDENTIAL TREATMENT REQUESTED

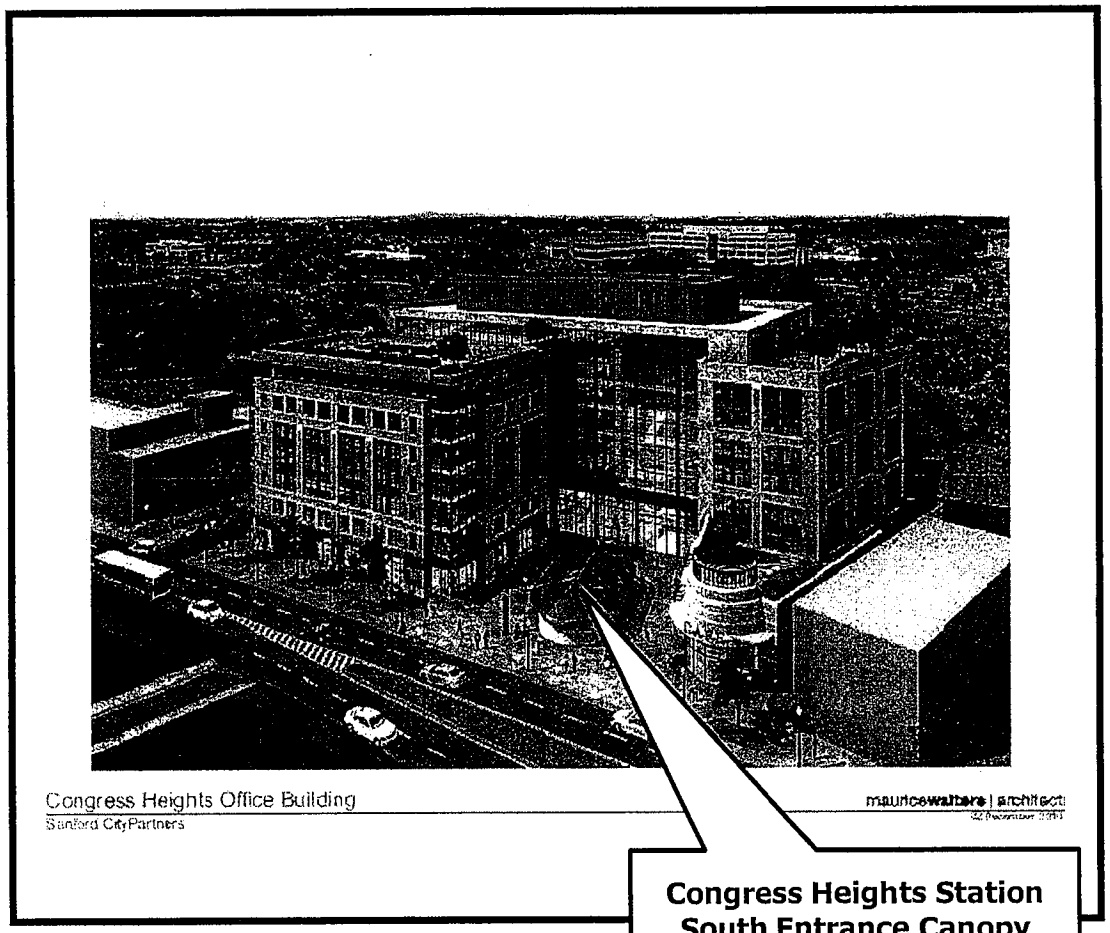
Site Plan – Post Development



WMATA-INV 015607

FOIA CONFIDENTIAL TREATMENT REQUESTED

Proposed Development
View Looking Southeast



WMATA-INV 015608

The Washington Post

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Further investigation needed of D.C. lottery

By Editorial Board, Published: January 24

HERE ARE SOME of the conclusions of D.C. Inspector General Charles J. Willoughby, who examined the city's tortured history of lottery procurement and its furtive approval of online gambling: The District's chief financial officer didn't follow proper procedures, and that may have deprived the city of the best deal. One group was wrongfully disqualified as a local small business, a decision that might have changed the outcome of the bidding. Two members of the D.C. Council conducted themselves in, at best, a less-than-ideal manner.

"The OIG found insufficient evidence," states the inspector general's 19-page report, dated Jan. 20, "to conclude that councilmembers acted improperly and violated standards of conduct." Nonetheless, the document cites a litany of issues that call into question the fairness of the process.

It chides Chief Financial Officer Natwar M. Gandhi for amending the lottery contract, awarded in 2009, to include online gaming after bidding had closed; Mr. Gandhi's office said its actions were in keeping with all laws and regulations. It questions the credentials of a politically connected firm that the winning bidder, Greek gaming giant Intralot, belatedly took on as a local partner to win council approval. Without identifying him by name, it notes that council member Michael A. Brown (I-At Large) sponsored legislation legalizing online gaming without disclosing that the law firm that employed him had a gaming practice. "The better course of action" might have been to alert the council to this fact or to seek an interpretive opinion about his activities, the inspector general noted, while stressing that his office found no evidence that the council member lobbied for or received anything from any gaming entity. Mr. Brown has said there was no conflict because no client had business with the city that would have been affected. The council approved Mr. Brown's measure with no public hearing or debate.

The report focuses also on allegations, previously reported by the Washington Times, regarding council member Jim Graham (D-Ward 1) without identifying him by name. Mr. Graham, who at the time was also a D.C. representative on the Metro board, had been a vocal opponent of a D.C. businessman, Warren Williams Jr., who was then Intralot's local partner. According to Mr. Willoughby's report, his office received information that Mr. Graham offered to drop his opposition to the lottery bid if a separate development company that Mr. Williams was involved in would withdraw from a contract awarded by Metro to develop property on Florida Avenue NW, because he could not give the local partner everything.

Mr. Graham told us he was not allowed to talk to inspector general investigators because of pending litigation by a former Gandhi subordinate, who claims he was fired for resisting political pressure in the lottery contract award. (Mr. Gandhi's office denies those allegations.) To us, Mr. Graham flatly denied that he intervened as is alleged in the report. "It's a lie," he said.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015610

How then to explain a series of 2008 e-mails in which Mr. Williams and others say they met with Mr. Graham and discussed this offer? Of particular note is a June 2, 2008, e-mail from Scott Bolden, Mr. Williams's attorney, quashing any suggestion that the alleged proposal even be considered. "I have made my thoughts on this nonsense very clear to warren," wrote Mr. Bolden, who was not in the meeting with Mr. Graham. "[T]his is complete bs and we are getting very close to corruption, bid rigging and other inappropriate conduct. . . . To even consider it is placing each of us at risk. Period." Mr. Graham told us he could not account for Mr. Bolden's correspondence other than to speculate that some kind of "misunderstanding" had occurred. In a later conversation, he told us that the Williams team was very angry at Mr. Graham's opposition, which he said was based solely on its past problems in operating a hip-hop club on U Street NW. Mr. Williams did not return our phone call.

Here is what the inspector general wrote: "While the councilmember's actions . . . may give the appearance that he lost complete independence or impartiality, and may have affected adversely the confidence of the public in the integrity of the government, the OIG did not find sufficient evidence to support or conclude that the councilmember had acted improperly." Hardly a ringing endorsement.

The council's finance committee is set to hold a hearing Thursday on the report, but the issues raised are beyond its authority. They go to the heart of the public's confidence in how city business is conducted. We would urge D.C. Attorney General Irvin B. Nathan and the already busy U.S. attorney to carefully review these events.

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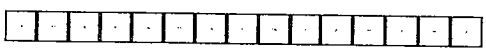

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015611

The Washington Post

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E-mails renew questions about Jim Graham's role in lottery contract

By Editorial Board, Published: January 26

ON MAY 29, 2008, D.C. Council member Jim Graham (D-Ward 1) met with representatives of a District business who were pressing their bid for the city's lottery contract. Allegations have emerged, most recently in a report by D.C. Inspector General Charles J. Willoughby, that the council member offered to drop his opposition to the group's bid if one of its members would agree to withdraw from a separate real estate deal with Metro, on whose board Mr. Graham sat. As this page reported Wednesday, Mr. Graham flatly denied that he ever made such an offer.

Since then, we have obtained a series of e-mails that raise further questions. The e-mails were written in the days leading up to and following Mr. Graham's meeting with representatives of W2I, a joint venture between a local group involving businessman Warren Williams Jr. and Greek gaming giant Intralot that was seeking the $38 million lottery contract. The e-mails show that the lottery seekers were concerned about what they viewed as an inappropriate, if not illegal, demand from Mr. Graham. The e-mails also show them addressing questions, allegedly raised by Mr. Graham in the May 29 meeting, about whether Mr. Williams's family had made campaign contributions to Mr. Graham's 2006 primary challenger and if they or a friend of Mr. Williams had been involved with a racially charged poster targeting Mr. Graham.

On May 30, 2008, the day after the meeting, Jim Link, a lobbyist working with Mr. Williams, wrote to thank Mr. Graham: "I wanted to let you know that I greatly enjoyed and appreciated meeting you yesterday and for the opportunity you gave the Williams? [sic] to engage with you in reconciliation. I found the meeting to be productive and I look forward to discussing next steps."

On June 2, Mr. Graham wrote back: "Thanks. Do you think they will do anything?" Mr. Link responded, "Yes. Wheels are in motion. Everyone took your concerns seriously. I would like to discuss . . . at a time convenient for you."

That same day saw a flurry of correspondence among the Williams group about what to do. At 5:46 p.m., Mr. Williams wrote that he could not pull out of the Metro project because of legal obligations to his partners. But he suggested showing a willingness to discuss it with Mr. Graham "to prove to him that I'm 'onboard' and 'non-threatening' I would give him the [Metro] project."At 6:43 p.m., Mr. Link responded that they should be upfront about not being able to abandon the Metro project but wondered, "Is there a possibility that this project could be expanded to include someone of his liking?" At 7:05 p.m., Mr. Williams reported preliminary talks with another developer "he wants to see win the site."

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015613

This apparently alarmed the group's attorney, A. Scott Bolden, who fired off an e-mail at 8:26 p.m. "This is complete bs and we are getting very close to corruption, bid rigging and other inappropriate conduct," Mr. Bolden wrote.

Subsequent days saw the circulation of drafts of a response to Mr. Graham; now included in the e-mail traffic are Intralot officials. "Seriously I do not like the last line it empowers Graham too much it suggest that whatever we discussed we realized the subject matter may be dirty and thus we became a part of it in that we considered it!" wrote Intralot vice president Byron Boothe on June 11.

That same day, Mr. Link wrote to Mr. Graham: "As for Metro, there are a number of factors that make it impossible for us to even consider accommodating your request." He assured Mr. Graham that neither Mr. Williams nor his friend Sinclair Skinner was involved with the poster and that neither Mr. Williams nor any relative "ever made a contribution to the campaign of Chad Williams, who challenged your seat."

Two hours later Mr. Graham wrote back: "Sinclair was observed putting the posters up. I would rather not continue this on email.. . . The rejection of your application at Metro (which has not been approved) is necessitated not by any of this but by other factors relating to the application."

Asked to respond to these disclosures, Mr. Graham e-mailed us Thursday: "My reaction is the same. I have no recollection of anything like this occurring. I do recall a wide ranging conversation dealing most particularly with the problems associated with Warren Williams and Club U [a go-go club on U Street NW owned by Mr. Williams's family] and the various abuses of the government lease as well as club-related violence issues." He also pointed out that the inspector general, to whom he says he was precluded from speaking because of pending litigation, said he found no evidence of illegality in Mr. Graham's involvement.

W2I did not get the lottery contract. Intralot eventually did win the bidding, taking on a different local partner.

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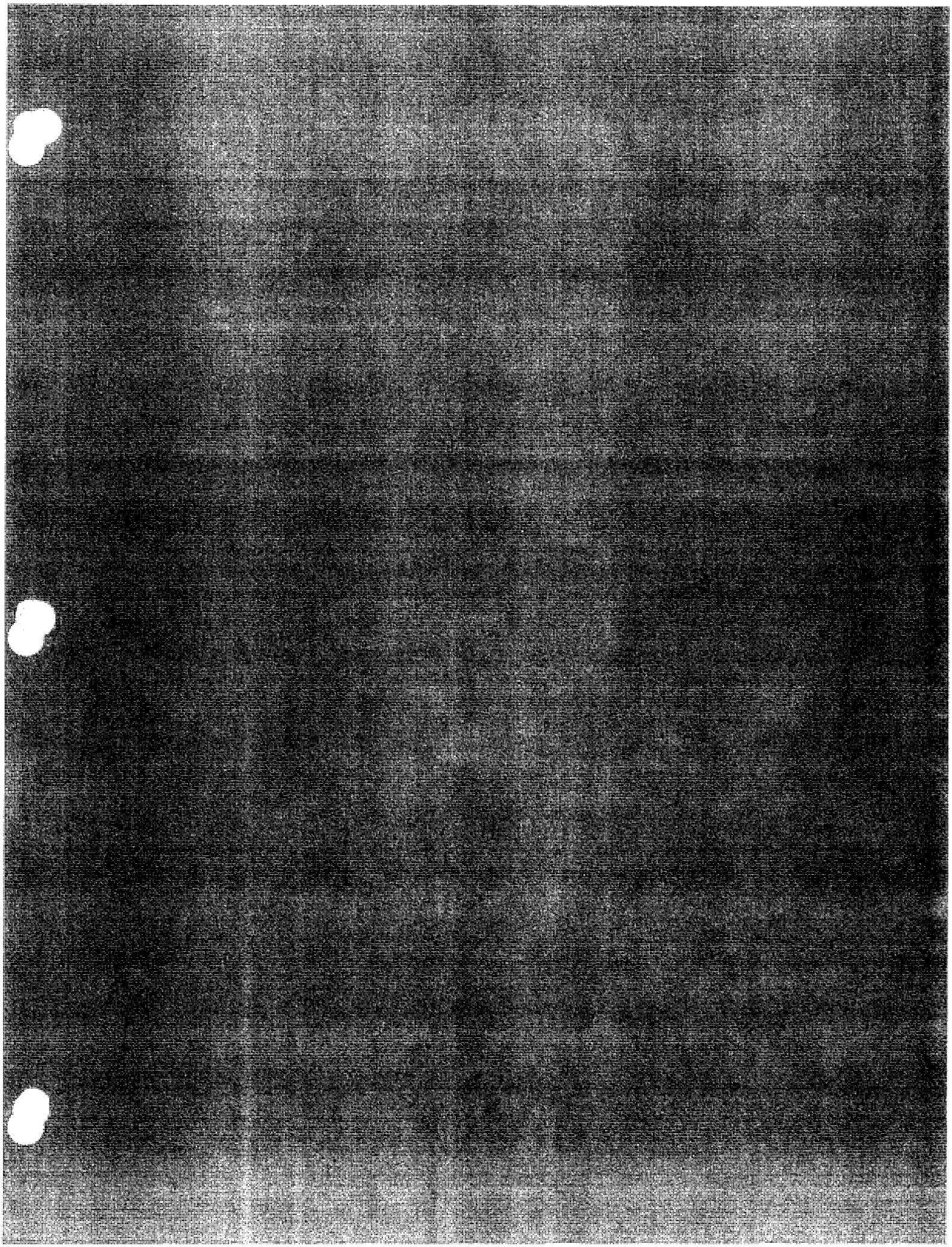
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015614



Agenda
Planning, Program Development and Real Estate Committee
January 26, 2012
10 a.m.

I. Approval of Agenda

II. Approval of Minutes of December 15, 2011

III. Action Item

A. Disposition of 11507 Georgia Ave. Excess Property (N. Bottigheimer)

Committee Members
Marcel Acosta, Chair
Muriel Bowser, Vice Chair
Catherine Hudgins
Tom Downs
Mortimer Downey
Alvin Nichols
James Dyke
Michael Barnes
Mary Hynes
Artis Hampshire Cowan
William Euille
Tom Bulger
Anthony Giancola
Kathryn Porter

Washington Metropolitan Area Transit Authority

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

◉ Action ○ Information	MEAD Number: 101669	Resolution: ○ Yes ◉ No

TITLE:

Disposition of 11507 Georgia Ave. Excess Property

PURPOSE:

To obtain Board approval to dispose of excess property at 11507 Georgia Avenue, Wheaton, MD.

DESCRIPTION:

The proposed action meets Metro's goal of using every resource wisely in that disposition of vacant, excess property provides revenue for the Authority.

The property, comprising approximately 167,151 square feet (3.84 acres) of vacant land, was acquired in April 1985 for construction of a portion of the Metrorail Red Line extension to Glenmont. The property was screened in September 2011 and determined to be excess to Metro operational requirements with the exception of easements to be retained along the Georgia Avenue frontage required for a fan shaft, drainage pumping station and emergency exit servicing the Metrorail tunnel under Georgia Avenue.

The disposition of the property through a sale or lease will be, at a minimum, at fair market value as determined by a third-party appraiser engaged by Metro. Metro will first notify Montgomery County to determine if the County wishes to acquire the property at fair market value. If the County declines, Metro will then offer the property for disposition to the highest qualified bidder and consummate the sale or lease provided that the revenue meets or exceeds fair market value.

The disposition documents will include easements, retaining the facilities on the Georgia Avenue frontage for Metro.

FUNDING IMPACT:

This is a revenue generating action with proceeds to be used in accordance with Federal Transit Administration regulations. Sale proceeds must be placed an a capital account whereas lease proceeds amy be placed in the operating budget.

Project Manager: Rosalyn Doggett

Department/Office: Planning & Joint Development/Station Area Planning & Asset Management

RECOMMENDATION:

Approval of disposition of excess property at 11507 Georgia Avenue, Wheaton, MD.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority

Disposition of 11507 Georgia Avenue

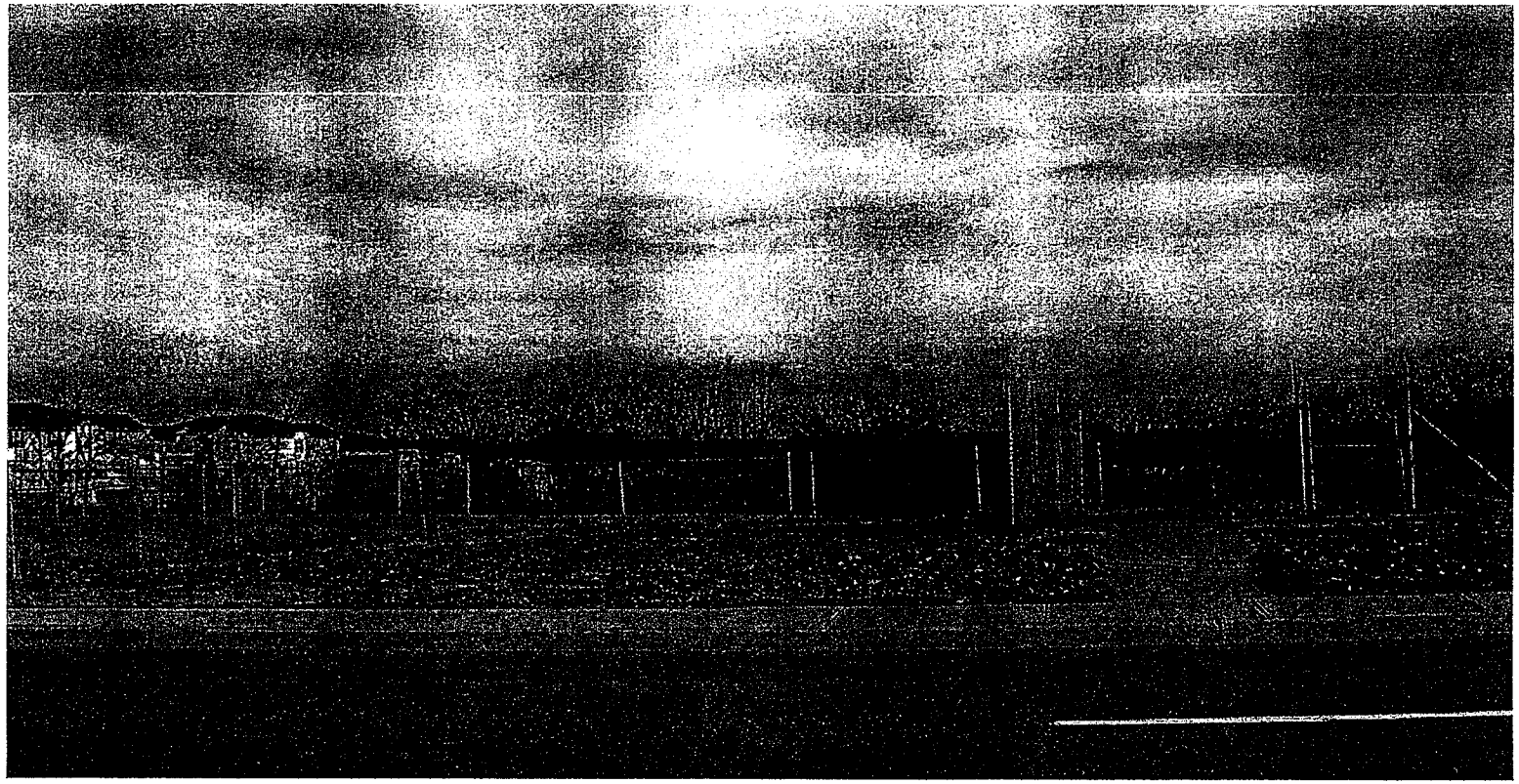
Planning, Program Development and Real Estate Committee
January 26, 2012

WMATA-INV 015619

FOIA CONFIDENTIAL TREATMENT REQUESTED

Purpose

Request Board authorization to dispose of excess property at 11507 Georgia Avenue, Wheaton MD

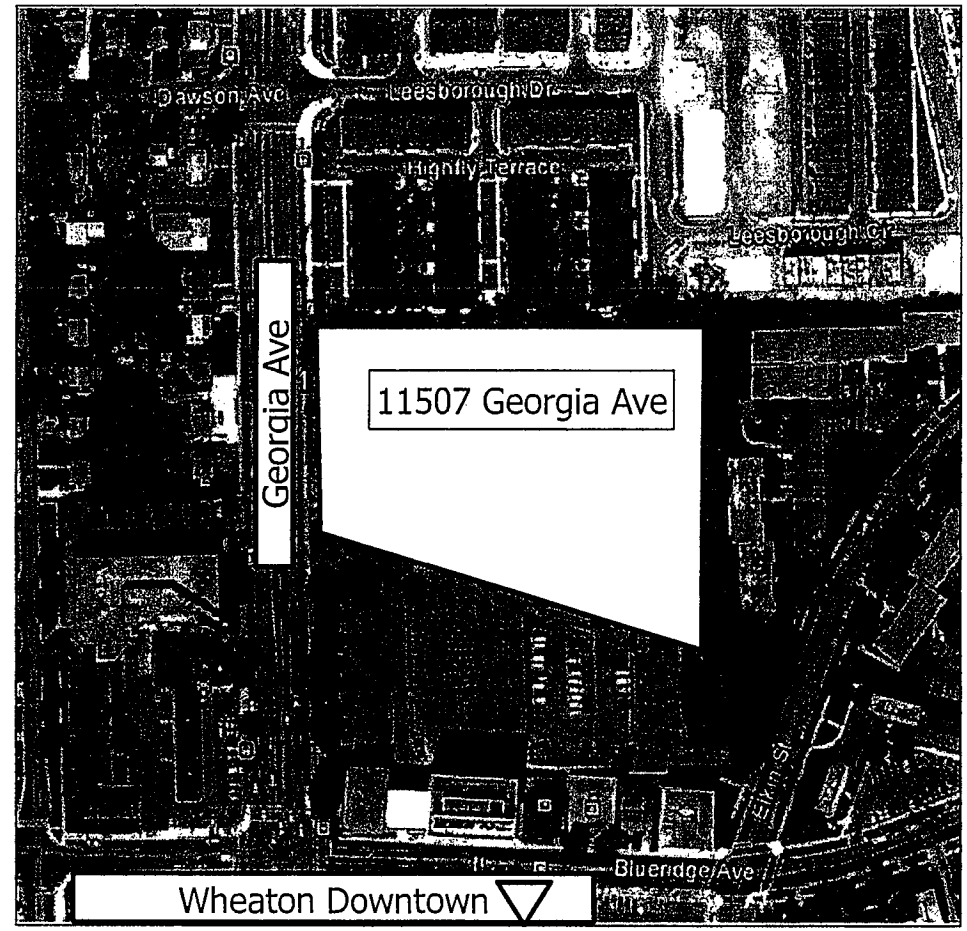


WMATA-INV 015620

FOIA CONFIDENTIAL TREATMENT REQUESTED

Background

- 3.8 acre site acquired in 1985 for Red Line to Glenmont
- Site is vacant except for a Metro fan shaft, emergency exit and drainage pumping station on Georgia Avenue frontage
- Property screened within Metro in September 2011, determined to be excess except for Metro facilities



WMATA-INV 015621

FOIA CONFIDENTIAL TREATMENT REQUESTED

Next Steps

- Reserve easements for Metro facilities
- Determine Montgomery County interest in property
- Offer to highest bidder
- Sell or lease to meet or exceed fair market value appraisal

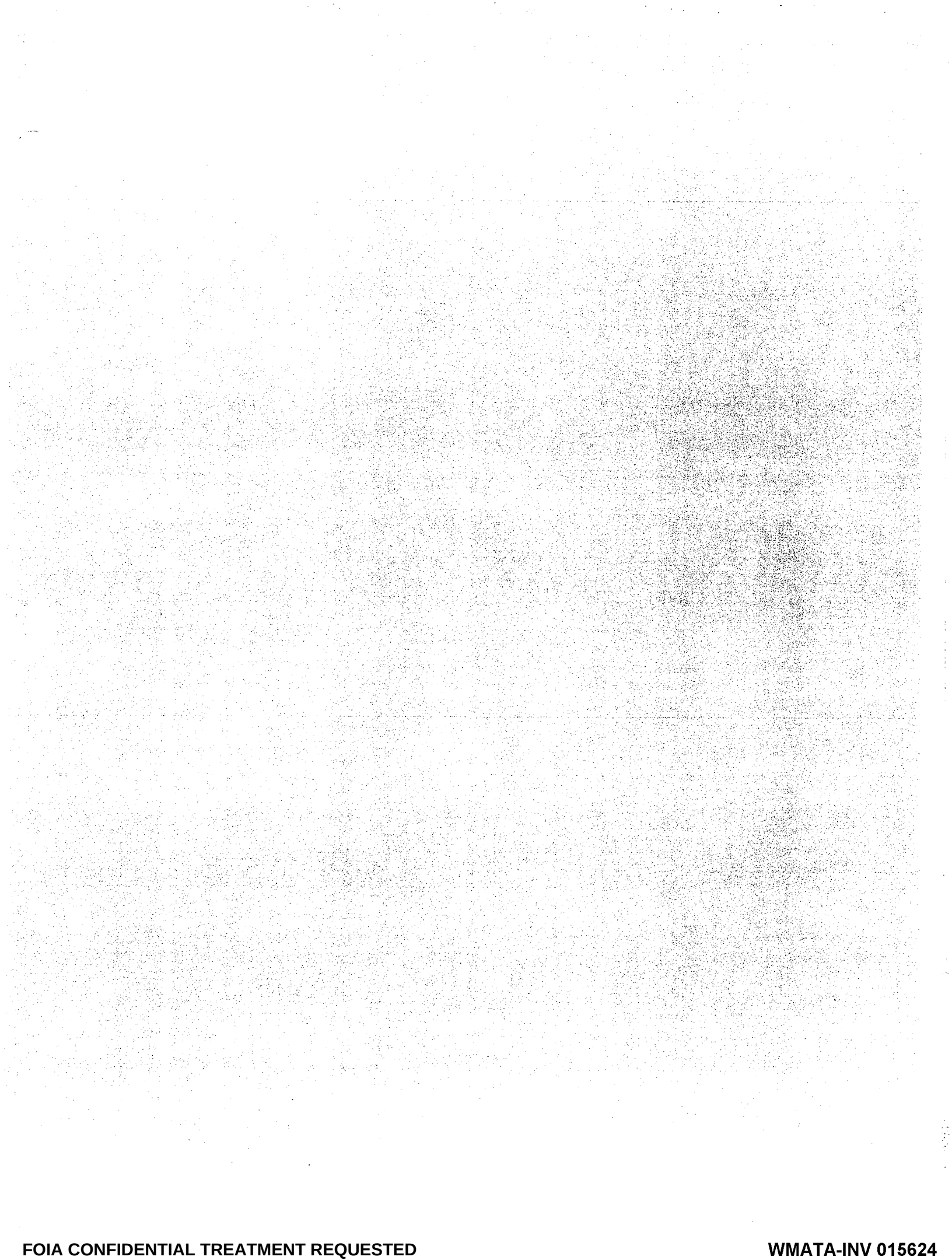
WMATA-INV 015622

FOIA CONFIDENTIAL TREATMENT REQUESTED

Recommendation

Board approve disposition of excess property at 11507 Georgia Avenue, Wheaton MD

WMATA-INV 015623



The Washington Post

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Did Jim Graham try to undermine a Metro project?

By Editorial Board, Published: February 3

OFFICIALS AT Banneker Ventures were thrilled when they learned in February 2008 that their company had won a competition to develop Metro-owned property on Florida Avenue NW. The general construction and contract management firm had beaten rival companies in an open procurement process for the retail and residential project. But when the proposal came before Metro on April 24, Jim Graham (D), the District's representative on the transit agency's board and a D.C. Council member whose Ward 1 would be home to the development, successfully moved to postpone action. Mr. Graham's action warrants scrutiny.

Not long after that, he allegedly tried to pressure Banneker out of the Metro deal by linking it to his support for a separate bid by one of Banneker's principals for the District's lucrative lottery contract. What was Mr. Graham up to? On whose behalf was he advocating? And why was it that in both cases — the operation of D.C.'s lottery and the development of Metro land — the winning bidders ended up not doing the public's business?

Mr. Graham's alleged threat to deny the city's lottery contract to a related firm unless Banneker opted out of the Metro deal is described by D.C. Inspector General Charles J. Willoughby as part of his larger inquiry into the D.C. lottery deal. Mr. Willoughby said he did not find sufficient evidence to conclude the council member acted improperly but said his action "may give the appearance that he lost complete independence or impartiality, and may have affected adversely the confidence of the public in the integrity of government."

Mr. Graham wrote in an e-mail Friday that pending litigation limits what he is able to say, but he did note that any actions he took on the Metro board concerning Banneker were due to what he viewed as "fundamental, ongoing problems" with its proposal. He has denied that he linked the two contracts during a meeting with the lottery seekers on May 29. However, as we previously reported, contemporaneous e-mails among those seeking Mr. Graham's support for the lottery contract refer to the council member's desire to change the Metro deal. The bidders even discussed whether they could accommodate what they saw as Mr. Graham's demand until their lawyer warned them off: "This is complete bs and we are getting very close to corruption, bid rigging and other inappropriate conduct," A. Scott Bolden wrote.

The two contracts were, in theory, unrelated. The city was awarding the lottery contract, Metro the development business. But Warren Williams Jr., then a principal in Banneker, also was bidding, as a partner with a big Greek firm, for the lottery business. And Mr. Williams, after his May meeting with

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015625

the council member, thought he knew why Mr. Graham wanted Banneker out. A rival development firm, LaKritz Adler, had been one of three finalists for the Metro job, and that firm, Mr. Williams wrote in an e-mail to an associate, is "the developer he [Mr. Graham] wants to see win the site."

LaKritz had done projects in Ward 1, and its principals and associated entities have contributed to Mr. Graham's campaigns, giving $1,000 in 2006 and $5,000 in 2010, according to city campaign finance records. Mr. Williams had contributed to earlier campaigns; in a June 2 e-mail to the lobbyist pleading his lottery bid, he wrote: "One other thing that should be mentioned to council member Graham is that we have tried to support him several times during his runs for city council and that he has accepted thousands of dollars that were bundled. . . . So when he ask was I funding his enemies, the answer is no they funded you Mr. Graham." Omar Karim, Banneker's president, said he doesn't recall ever contributing to Mr. Graham's campaigns.

According to a complaint lodged with Metro in 2010 by Banneker's attorney, Mr. Graham sought to get Banneker either to add LaKritz Adler to its development team or to purchase LaKritz's interest in an adjacent property. Mr. Karim said that Mr. Graham told him in April 2008 to meet with LaKritz partners in response to his query about why the development proposal had been tabled. Mr. Graham, in a phone interview last week, acknowledged he had urged Banneker to get LaKritz's help because, he said, he was worried about Banneker's ability to handle the Metro project. E-mails confirm that Banneker and LaKritz officials discussed a possible land sale.

Joshua A. Adler, managing partner of LaKritz, told us that he was not aware of Mr. Graham's advocating for his firm and that a sale was discussed because it would have enhanced the Metro development. Of the campaign contributions, Mr. Adler said, "We think [Mr. Graham] is a good council member."

On June 26, 2008, about a month after his meeting on the lottery contract, Mr. Graham attended a session of the Metro board where the Florida Avenue project was to be discussed again. In a preliminary closed-door meeting, according to Metro officials who were present, he argued against giving Banneker the development rights, but it was clear that he was in the minority. When the board moved into open session, he voted in favor but, as the Washington Business Journal reported, voiced objections, including "whether this deal is financially viable."

The project, however, was stillborn. Mr. Graham became chairman of the Metro board seven months later, in February 2009, and, according to Banneker's 2010 complaint to Metro, "injected himself" into negotiations over a final plan, including by contacting an independent appraiser hired by Metro staff before its report was submitted. The two parties never came to agreement on a final development plan. Banneker officials say they were sabotaged by Mr. Graham's continued obstructions, a view shared by some Metro sources we consulted. A spokesman for Metro, citing a possible lawsuit by Banneker, wouldn't comment or make officials available to us for comment.

Mr. Graham disputed Friday that his actions caused the project to fail: "Many efforts by various people, including myself, went in to trying to salvage this deal." From the beginning, he wrote, he had doubts about the "merits and qualifications" of Banneker, and later events — instability in the Banneker development team, ever-changing plans that amounted to what he called "bait and switch," repeated delays — proved him right. He suggested that one reason Banneker held on as long as it did was due to the political influence of Mr. Karim's friendship with then-Mayor Adrian M. Fenty (D).

After Metro refused in March 2010 to approve an extension of Banneker's exclusive negotiation period, LaKritz submitted a proposal to purchase the property, prompting the transit agency in September to put out a request for new bidders. Banneker did not compete. In July 2011 — by which time Mr. Graham

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015626

had left the board — Metro agreed to sell the land to JBG Associates for $10.2 million; the firm is working with the city on approvals for a retail and residential project.

Metro's code of conduct prohibits its officials from engaging in "any actions that might result in favored treatment or appearances thereof toward any individual, private organization, consultant, contractor or potential consultant or contractor." For reasons we will explain in another editorial, these events were not investigated by Metro at the time. We would say it's not too late.

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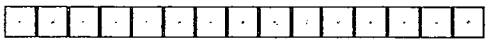

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Did Jim Graham try to undermine a Metro project?

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Sat Feb 4, 2012 1:36 pm

whj@...
whjmela
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Send Email

Today's Post editorial on the actions of CM Graham should be seen as a peak into how the Council Member's pay-to-play political machine works, not as an isolated incident around a single Metro parcel. Whether it's building a park, a multi-million dollar city sponsored development project, closing schools or getting an ABC License the pay-to-play game is the same. Also related to this same lottery contact was the clever use of the legislative/budget process to enable internet gaming, to follow the quid pro quo of the Graham machine requires following closely a similar use of the budget process and emergency legisation to reward public resources to crony developers such as Lakritz Adler. During this same period, LaKritz Adler was redeiving via the use of emergency legislation $2.0M in TIF financing to build a CVS on Georgia Ave. A project under normal circumstances which would have never qualified for a city sponsored TIF. Was this TIF a consolation prize in the struggle of a Graham backed team and a Fenty Admin backed team over this Metro prize? For the sake of a political education let's hope the Post keeps peeling back the onion.

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Did Jim Graham try to undermine a Metro project?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015629

OFFICIALS AT Banneker Ventures were thrilled when they learned in February 2008 that their company had won a competition to develop Metro-owned property on Florida Avenue NW. The general construction and contract management firm had beaten rival companies in an open procurement process for the retail and residential project. But when the proposal came before Metro on April 24, Jim Graham (D), the Districtâ€™s representative on the transit agencyâ€™s board and a D.C. Council member whose Ward 1 would be home to the development, successfully moved to postpone action. Mr. Grahamâ€™s action warrants scrutiny.

Not long after that, he allegedly tried to pressure Banneker out of the Metro deal by linking it to his support for a separate bid by one of Bannekerâ€™s principals for the Districtâ€™s lucrative lottery contract. What was Mr. Graham up to? On whose behalf was he advocating? And why was it that in both cases â€" the operation of D.C.â€™s lottery and the development of Metro land â€" the winning bidders ended up not doing the publicâ€™s business?

http://www.washingtonpost.com/opinions/did-jim-graham-try-to-undermine-a-metro-project/2012/02/02/gIQAGIe0nQ_story.html

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Did Jim Graham try to undermine a Metro project? Today's Post editorial on the actions of CM Graham should be seen as a peak into how the Council Member's pay-to-play political machine works, not as an... — whj@... whjmela — Feb 4, 2012 1:36 pm

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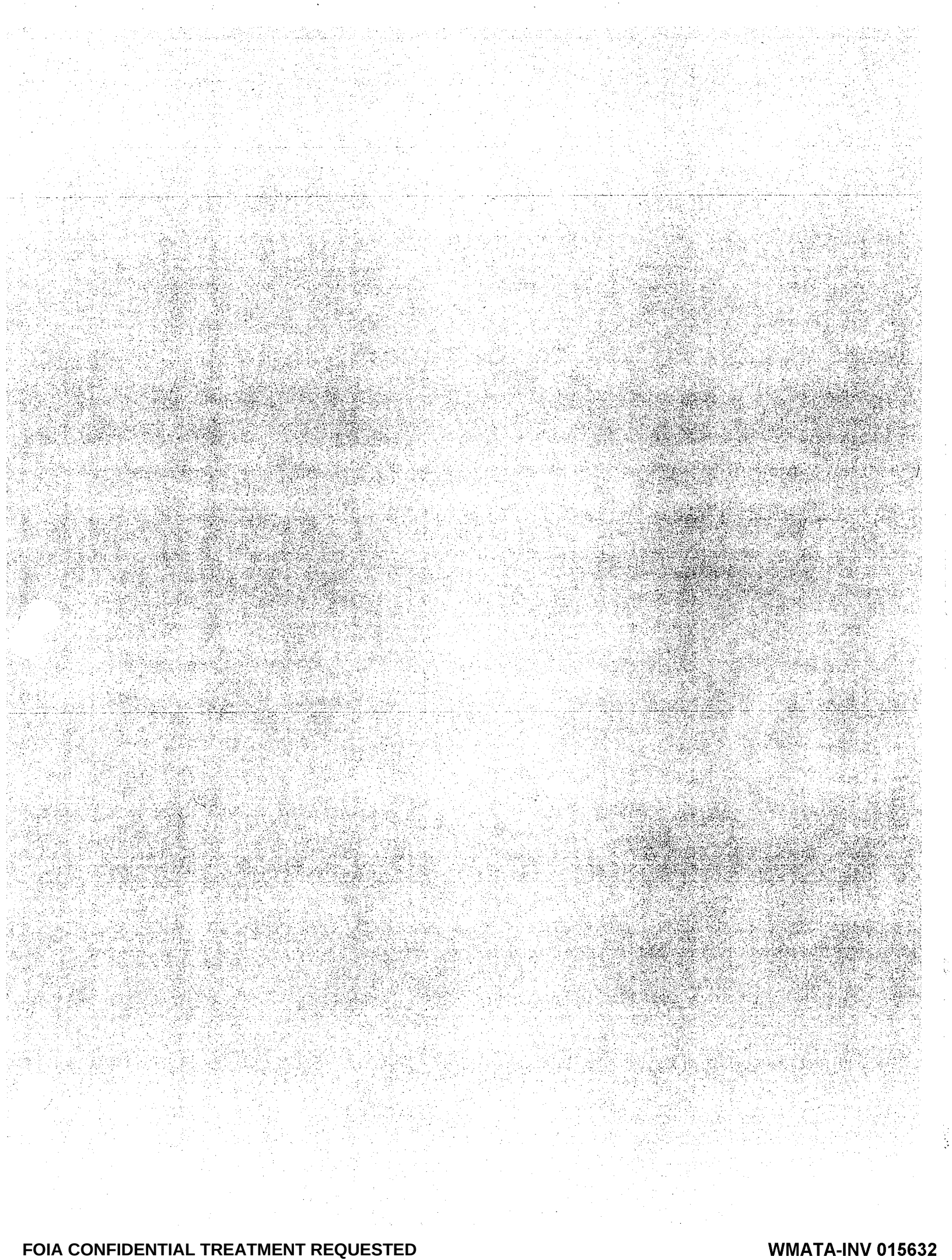

The Washington Post

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Metro will look into Jim Graham's actions, at last

By Editorial Board, Published: February 7

THE CHAIR OF the Metro board of directors announced Tuesday the launch of an independent review into the handling of an unsuccessful development venture on Florida Avenue NW, about which we have written several recent editorials. It is a welcome move but late. We point that out not to be churlish but because the failure to investigate sooner raises questions about District and Metro processes.

Concerns about the contract, and D.C. Council member Jim Graham's role in it, surfaced long ago. The District's chief financial officer (in 2008), top Metro officials and D.C.'s attorney general (both in 2010) all received complaints. Yet none of these offices seemed to think it was its responsibility to get to the bottom of the matter.

Only recently, with the release last month of D.C. Inspector General Charles J. Willoughby's report on the District's lottery dealings, has attention refocused on the case. Mr. Willoughby cited evidence suggesting that Mr. Graham, then D.C.'s representative to Metro, offered to support the bid of a group vying for the city's lottery contract if one of its members would pull out of an unrelated venture to develop Metro-owned property. Mr. Willoughby found insufficient evidence of improper conduct, but he said the council member's actions raised questions about his impartiality and independence that could undermine public confidence in government integrity. Mr. Graham, who was not referred to by name in the IG's report, has denied linking the two contracts or favoring a competing bidder. Contemporaneous e-mails call those denials into question.

How then to explain — and here we are being charitable — the nonchalant response of District and transit agency officials to concerns about Mr. Graham's behavior? Robert Andary, then director of the Office of Integrity and Oversight under Chief Financial Officer Natwar M. Gandhi, got wind of complaints about Mr. Graham within weeks of the council member's May 29, 2008, meeting with the lottery bidders. Mr. Andary learned of the allegations while investigating another lottery-related issue. He would not discuss the matter with us, but city sources confirm he filed a preliminary memo. (In an e-mail to us, Mr. Graham wrote Tuesday that he was not interviewed by Mr. Andary and did not know the outcome.) At the city's behest, the memo has been placed under court seal as part of a federal lawsuit brought by a former contract officer who says he was fired for resisting political pressure on the lottery contract. So the public is left to wonder: What did Mr. Andary conclude? Was no further action taken? And if there's nothing to hide, why won't the city release his memo?

Two years later, attorney A. Scott Bolden asked the Metro inspector general to look into allegations that Mr. Graham improperly tried to influence selection of the developer of the Florida Avenue parcel.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015633

General Counsel Carol B. O'Keefe responded to Mr. Bolden, but her comments were focused only on Mr. Graham's interactions with those who sought to develop the site, not on his alleged attempt to play the lottery contract against the Metro deal. "Board members frequently discuss the progress of joint development negotiations with the parties involved. . . . The allegations in your letter, standing alone, do not appear to constitute a violation of the Board's Standards of Conduct," she wrote on May 28, 2010.

It doesn't appear any effort was made to investigate what transpired at the May 2008 meeting. One complication may have been the Metro rule that precludes the agency's inspector general from investigating allegations of misconduct by a board member without the authorization of the board chair, vice chair or chair of the audits and investigations committee. It also was clear — as was recently reiterated to us by Peter Benjamin, then Metro chair — that Metro saw these as "District of Columbia matters."

Mr. Graham seemed to agree, writing to Mr. Bolden, "I reject as wholly groundless the accusations made in your letter. . . . I am now asking the D.C. Attorney General for his review and action on this matter." But there is no evidence that the attorney general undertook such a review. "To my knowledge, I never received a response," Mr. Graham e-mailed us last week. A spokesman for the current attorney general said the office had no knowledge of a review. Peter J. Nickles, who was then attorney general, said he had only a vague memory of the matter but "wasn't that something [Metro] took care of?"

Allowing these questions to fall through the cracks, unanswered, does a disservice to the public. We hope Metro has come to that realization, though it's a bit worrying that, in the same statement announcing an independent review, Metro board chair Catherine M. Hudgins also expressed confidence that the matter was handled properly.

"I support another review of this, and I will cooperate in that review," Mr. Graham e-mailed us Tuesday.

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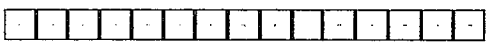

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015634

AGENDA

Executive Session of the Board of Directors
February 16, 2012

1. Personnel Matters
2. Legal Matters

Washington Metropolitan Area Transit Authority

600 Fifth Street, NW
Washington, DC 20001
202/962-1234

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A District of Columbia, Maryland and Virginia Transit Partnership

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015636

The Washington Post

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Jim Graham and Banneker

By Editorial Board, Published: May 19

THE BOARD of directors of the Washington Metropolitan Area Transit Authority has retained a prominent law firm to conduct an independent investigation into a development proposal involving Ward 1 D.C. Council member and former Metro board member Jim Graham (D).

It's a welcome, albeit overdue, sign that the authority is taking seriously the allegations that have been raised about Mr. Graham's conduct and is committed to finding the answers.

Cadwalader, Wickersham & Taft, an international law firm with extensive experience in internal investigations, was selected by the board's audit and investigations committee to examine decisions involving the efforts of Banneker Ventures from 2008 to 2010 to develop Metro-owned land on Florida Avenue NW. The allegations about Mr. Graham center on whether he improperly tried to get the firm, which had won an open competition, to withdraw from the Metro deal by offering to support the separate bid of a Banneker principal for the D.C. government's lucrative lottery contract. Banneker officials allege their development ultimately failed because of continued obstructions by Mr. Graham. Mr. Graham has denied any wrongdoing; he says that Banneker failed because of inherent weaknesses in its plans and operations.

In a Jan. 20 report that examined numerous aspects of the city's controversial handling of its lottery business, the D.C. inspector general found insufficient evidence to warrant further inquiry. But the IG said that Mr. Graham's actions raised questions about his impartiality and independence that could undermine public confidence in government integrity. E-mails that this page obtained detail the concern by members of the group seeking the D.C. lottery contract that Mr. Graham was making inappropriate, if not illegal, demands. City officials were aware of the allegations and in possession of the troubling e-mails in 2008; Metro officials were alerted in 2010, but neither entity bothered to investigate. Passing the buck between the two jurisdictions left unanswered whether one of its leading officials tried to use his influence to punish perceived political enemies and steer business to a favored firm.

Mr. Graham has said that his interest in suggesting to Banneker that it try to include another firm in the project was based solely on the belief it would result in a better development. "On all matters, there has been no allegation of any crime, nor any personal financial benefit to me," Mr. Graham e-mailed to us on Friday.

Metro promised that its review, expected to take several months, will be thorough. It will be led by firm partner Bradley J. Bondi, experienced in conducting investigations for boards, public companies and other organizations. Metro's announcement Friday came the same week in which a federal judge ruled that Mr. Graham, along with Mayor Vincent C. Gray (D), must give depositions in the wrongful-

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015638

termination case of former contract officer Eric Payne, who claims that political shenanigans affected the council's handling of the lottery contract. Mr. Graham said of the order that he be deposed: "I welcome the opportunity to clear the air."

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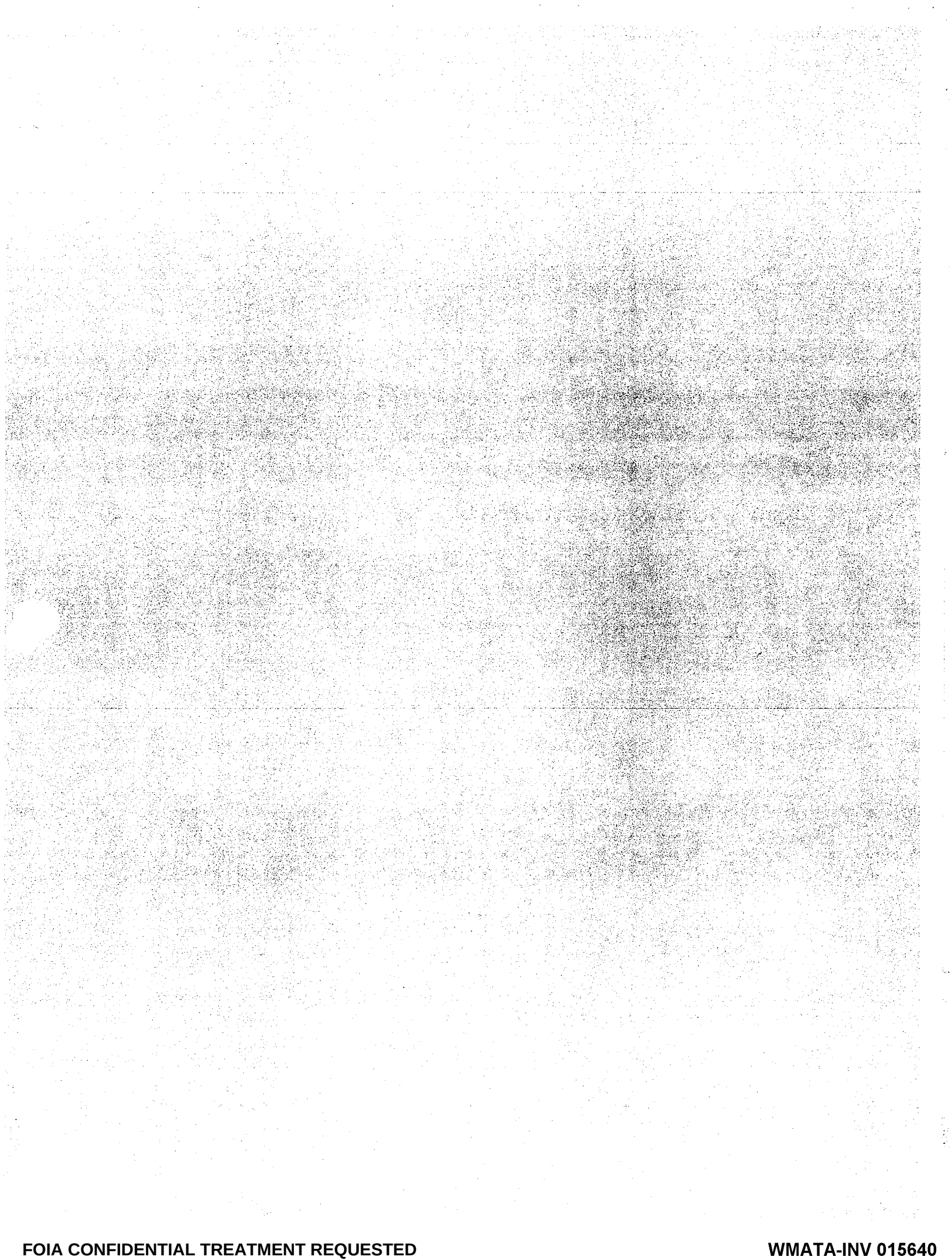

The Washington Post

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Jim Graham and the lottery contract mess

By Colbert I. King, Published: June 29

Did D.C. Council member Jim Graham (D-Ward 1) tell officials of the firm W2I, which had been awarded a multiyear D.C. lottery contract, that he would drop his opposition to the contract award if one of the company's principals withdrew from a separate land deal involving the Washington Metropolitan Area Transit Authority (WMATA), on whose board Graham also sat?

Recently obtained e-mails suggest that four of the people present at the 2008 meeting in Graham's office — W2I executives Warren C. Williams and Alaka Williams, W2I lobbyist James Link, and public relations officer Crystal Wright — believe Graham made such an improper offer.

Graham maintains that he has done nothing wrong: "zero allegation of any crime" and "no suggestion of any financial gain by me," he wrote in a Feb. 24 op-ed on this page. There was "[n]o evidence of wrongdoing by Graham, the D.C. inspector general concluded last month in a lengthy review of my involvement with the lottery contract process."

Actually, the inspector general said no such thing. Only one paragraph of Charles Willoughby's 19-page report was devoted to Graham. Willoughby concluded that he "did not find sufficient evidence to support or conclude that the councilmember had acted improperly."

E-mail excerpts paint a different picture.

Alerted that a reporter had learned about the May 29, 2008, meeting with Graham, A. Scott Bolden, lawyer for Warren Williams, e-mailed the four participants on June 7 with draft language for an e-mail that he proposed Wright send to Graham. It reads in part: "Jim, wanted to let you know and give you the heads up that Bill Meyers [sic] of the dc examiner contacted me on Friday afternoon and recounted [our] entire conversation from our meeting with me, Jim [Link], you and your staff and the Williams. And while I know this meeting was off the record, he knew quite a bit and was calling for a confirmation. Despite our legal and general concerns regarding your request that the Williams' withdraw from the wmata development contract — contracts they won both fair and square and other contract information, in exchange for your support of the lottery contract, please know that no one from our team contacted the media as it would not be in our interest or your interests to publicize your unusual request."

The next afternoon, Wright replied to Bolden:

"Neither Jim [Link] or I are . . . comfortable with emailing Graham. I spoke with the lawyer, who counsels me on business matters and she strongly advises us against putting anything in writing, acknowledging this meeting and its contents, as it would have far reaching implications, even though we

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015641

did nothing wrong."

Bolden responded to Wright that night: "We want to alert Graham to avoid being blamed for the leak . . . You also want to block Graham from blaming us for the proposed deal — the email is our protection against that possibility . . . the participants in the meeting are all witnesses to Graham's crap. We have not done anything wrong."

Earlier, on June 2, Warren Williams had e-mailed Wright with copies to Alaka Williams, Link and Bolden: "We should discuss with the [councilmember], the fact that, even though I don't like [to have to] prove to him that I'm 'onboard' and 'non-threatening' I would give him the wmata project. The legal realities are that I can't do that. Banneker Ventures own[s] 35% of the rights to develop the sites. Two other companies have much more to lose. If we tried to drop out they would sue us. We've got six figures of expenses as well as a six-figure deposit being held by wmata."

Later that night, Link e-mailed Warren Williams with copies to the others: "I think we should be upfront with Graham about why this piece of his request cannot be accommodated. Its pretty clear that you are unable for very strict legal reasons to unilaterally make that decision. Is there a possibility that this project could be expanded to include someone of his liking?"

Williams replied: "I think being honest with Graham is the right move as well. We have begun some preliminary talks with LaKritz, the developer he wants to see win the site. If Graham wants to cut the deal with LaKritz for a 'better project' we could do that. But I just can't give the project to anyone . . . ."

Later in the message, referring to Graham's alleged complaint that they had supported campaigns of his opponents, Williams wrote that Graham "has accepted thousands of dollars that were bundled and hand delivered to him from [Club U] and various entities that were in my control. Thousands. So when he ask was I funding his enemies, the answer is no they funded you Mr. Graham."

The seriousness of the situation was not lost on Bolden. Weeks later, on July 23, 2008, Bolden e-mailed Wright: "Crystal, as a follow up to our discussion this morning, this will confirm that you are reluctant to and will not turn over your notes to me from the meeting with Jim Graham and the W2 tech team on or about May 29th, 2008 in his DC Council office. Nor will you allow me to review them for responsiveness. . . . Notwithstanding, please preserve them in anticipation of the [inspector general's] possible formal request or future IG subpoena for the same."

Williams and Bolden confirmed the contents of the e-mails. Wright declined to comment when I spoke to her this week. Link did not return my calls. Graham will not speak with me by phone. He was contacted Friday for comment on the e-mails, but no response was received.

Thank goodness the U.S. attorney is on this case.

kingc@washpost.com

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015642

JENNER&BLOCK

July 25, 2012

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VIA HAND DELIVERY

Samantha A. Dreilinger, Esq.
Cadwalader, Wickersham & Taft LLP
700 Sixth Street, N.W.
Washington, DC 20001

Re: WMATA OIG Subpoena to LaKritz Adler Dated July 29, 2012

Dear Samantha:

I am writing in response to the subpoena that the Washington Metropolitan Area Transit Authority Office of the Inspector General ("WMATA OIG") issued to my client, LaKritz Adler, dated June 29, 2012. After carefully reviewing the subpoena and the compact governing WMATA's operations, we continue to have significant doubts as to WMATA OIG's authority to compel document production and testimony under these circumstances.

Nonetheless, in the spirit of cooperation, we are willing to provide certain documents voluntarily. Enclosed, and Bates labeled LA001 through LA168, are direct communications between any representative of LaKritz Adler and Banneker Ventures LLC, Omar Karim, Warren Williams, and/or Jim Graham, regarding a property owned by WMATA on Florida Avenue, N.W., in Washington, D.C. ("Florida Avenue Property"), and/or any adjacent lot, that were created, sent, or received between January 1, 2007, and the present, excluding any documents protected by the attorney-client privilege, work product protection, or any other applicable privilege. Please note that each page of our production is stamped "CONFIDENTIAL." These documents are private business records of LaKritz Adler, and we request that you and your client refrain from disclosing them except to the extent required by law.

We believe that these documents go to the heart of your inquiry, which we understand to be focused on the conduct of members of the WMATA Board in relation to Banneker Ventures LLC and certain of its principals in connection with Banneker's bid to develop the Florida Avenue Property. We therefore trust that they will suffice for your purposes.

By producing these documents, we do not waive our right to oppose a motion to compel compliance with the subpoena as originally written, either to the extent that it seeks additional documents or requires Joshua Adler, or any representative of LaKritz Adler, to appear for a deposition.

Should you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Jessie K. Liu

Enclosure

From: Josh Adler [josh@lakritzadler.com]
Sent: Tuesday, June 17, 2008 3:42 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Ground Lease
Attachments: 1920 8th St NW Plat.pdf; 1920 8th NPV.xls; 1920 8th street standalone rendering 12-17-07.jpg; image001.gif

PERSONAL AND CONFIDENTIAL

Hello Omar:

Following up on our telephone conversation today, we'd like to see if there is a mutually agreeable arrangement we can reach with respect to the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels. 1920 8th Street, AKA 1916-1930 8th Street, NW, is an 11,320 SF lot in the C2B/Arts zone. A plat is attached.

We have designed a free-standing 47,600 SF by-right commercial building with 26 surface parking spaces for the site, which we intend to begin marketing for pre-lease or sale in the event that we are unable to develop this site with the adjacent WMATA parcels or reach an acceptable arrangement with the selected developer for the WMATA parcels. I'm attaching a rendering of that plan as well.

To recap, the Ground Lease contains the following essential terms:

- Medal, Inc., as Landlord and 1920 8th Street, LLC, as Tenant.
- 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 at the end of the last renewal term (that is, on August 3, 2017) shall be $3,419,256.20.
- A one time fee of $175,000 payable to Landlord for resubordination of Landlord's fee interest in land to Tenant's permanent financing lender (if such lender is different from Tenant's construction lender), to be paid upon the sooner of: 1) resubordination of Landlord fee interest to new lender following substantial completion of project, or 2) upon exercise of purchase option.
- 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.
- For an additional $30,000 one-time "combination fee", Landlord is required to allow Tenant to cross-collateralize Landlord's fee interest with other adjacent parcels, and combine the Ground Lease parcel with other adjacent parcels through the subdivision process. In other words, a developer can use the Landlord's land equity to finance a project that includes, but is not limited, to the 1920 8th Street property itself.
- Ground Lease is freely assignable and transferrable by Tenant without any consent or restriction by Landlord.

As we discussed, there are two big value benefits in the Ground Lease as we have structured it: 1) the ground lease payments pay down the purchase option over ten years, resulting in a very favorable carry cost and total land cost under the ground lease compared to a fee simple purchase at market value today, especially after discounting for the time-value of money over that period; and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect, and amplifying the impact of the back-loading of the land purchase cost in net present value calculations.

CONFIDENTIAL LA0001

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015645

The attached Excel spreadsheet shows the value of the ground lease and purchase option today, once the future payments are discounted over the balance of the ten year term. As you can see from the highlighted column, a ground lease purchaser that pays a $3.5 million assignment fee for the ground lease in August 2008, pays the ground lease directly until the end of its final term, and then exercises the final option price of about $3.6 million in August 2017, is paying the equivalent of $100/FAR-foot for the fee interest in the land today, and this is how we have derived our assignment price. I should note that a bank-ordered appraisal obtained for 1920 8th several years ago put the land value at $6.5 million, or $127/FAR-foot, so we are discounting considerably from that value, to your benefit, by using the lower $100/FAR-foot value.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the delayed closing, the payments we have already made toward the Ground Lease and the ongoing cost of the Ground Lease to us until you close.

Our thought on this would be to sell you a $3.5 million option on the ground lease for approximately our cost to-date and expected cost through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Most of your advance payment would be credited to the assignment price at settlement.

As of August 3, 2009, our two years of ground lease payments and property taxes (approximately) will have come to about $500,000 – that is the amount we will have paid to Medal, Inc., and to the D.C. Government for property tax, and does not include any of our legal, due diligence, or any other costs associated with the site. We would also charge a $100,000 nonrefundable fee for a partial recovery of these costs. All but the $100,000 fee would be credited toward your $3.5 million assignment cost at settlement, and all would be nonrefundable in the event that you failed to close, in which case control of the Ground Lease would revert to us.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $600,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) The Assignment Option Fee would reimburse 1920 8th Street LLC for the 2007-2008 ground lease and property tax payments already paid, would prepay the 2008-2009 ground lease and property tax payments (through August 4, 2009), and would provide $100,000 additional reimbursement of expenses to 1920 8th Street LLC.
4) Upon Seller's nonrefundable receipt of the Assignment Option Fee, Seller would notify WMATA of its intention to withdraw from competition for the adjacent WMATA parcels.
5) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $3 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $3.5 million, less credit for $500,000 of the Assignment Option Fee.)
6) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $600,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. Of course, it also has the substantial benefit to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), and of removing us as competitors for the WMATA parcels.

We would appreciate your feedback on the proposed arrangement by the end of this week. We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

LAKRITZ ADLER
4326 8th St., N.W.

CONFIDENTIAL

LA0002

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015646

Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

Tracking:

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015647

Recipient	Read
okarim@bannekerventures.com	Read: 6/17/2008 3:48 PM

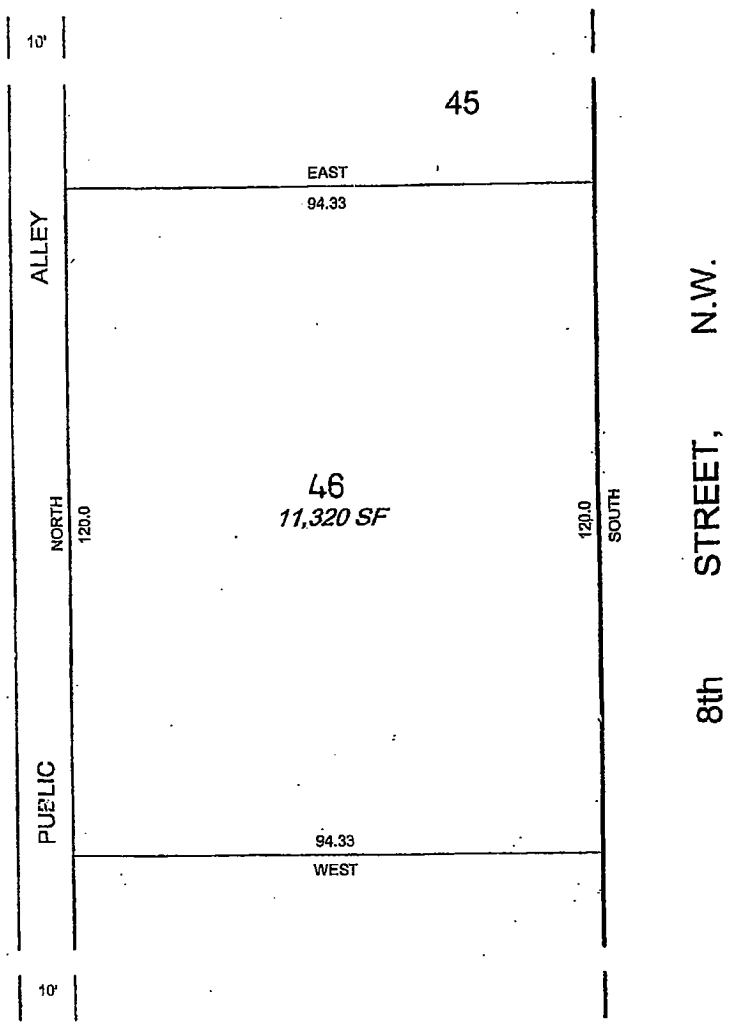
CONFIDENTIAL

LA0004

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015648

SUBDIVISION
SQUARE 393



CONFIDENTIAL

LA0005

FOIA CONFIDENTIAL TREATMENT REQUESTED

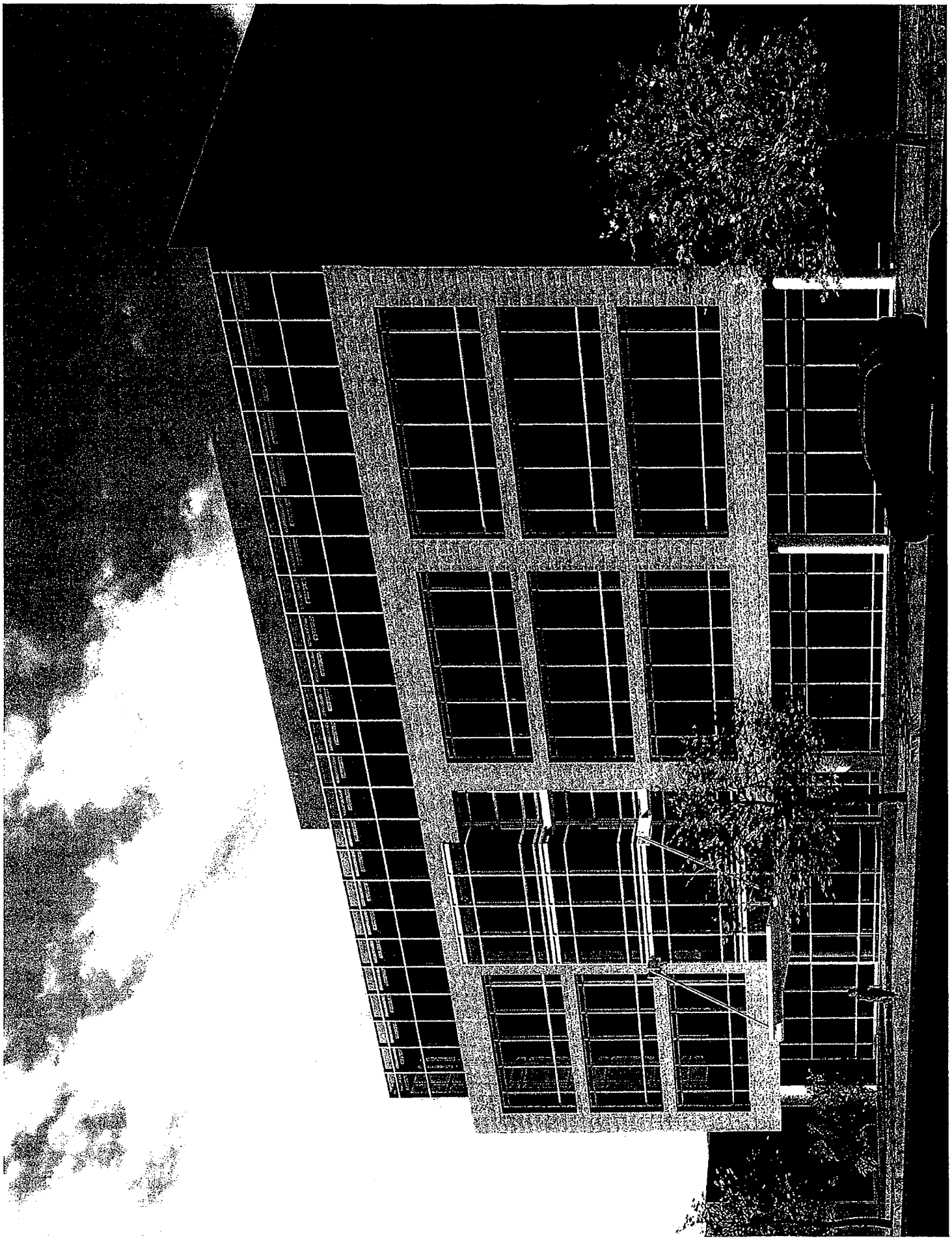
CONFIDENTIAL

FOIA CONFIDENTIAL TREATMENT REQUESTED

			Year	1	2	3	4	5	6	7	8	9	10
Effective Discount Rate:	15.78%	Year Ending in August of...		2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Debt Rate	6.5%	Ground Lease Payments (as of Year End)		*Pre-Paid*	$ 150,000.00	$ 150,000.00	$ 150,000.00	$ 150,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00
Equity Rate	20%	Accumulated Toward Option		$ 100,000.00	$ 200,000.00	$ 300,000.00	$ 450,000.00	$ 600,000.00	$ 800,000.00	$ 1,000,000.00	$ 1,200,000.00	$ 1,400,000.00	$ 1,600,000.00
		Option Price at Year End - 1 day		$ 4,875,000.00	$ 4,847,000.00	$ 4,820,080.00	$ 4,744,256.20	$ 4,594,256.20	$ 4,394,256.20	$ 4,194,256.20	$ 3,994,256.20	$ 3,794,256.20	$ 3,594,256.20
		NPV in Aug 08 if Option Exercised this Year		$ 4,875,000.00	$3,745,647.38	$3,347,478.40	$2,978,708.61	$2,630,278.20	$2,342,426.29	$2,105,113.26	$1,909,910.73	$1,749,748.89	$1,618,702.72
		(Assume rent paid at year start, option at year end)											
		Ground Lease Assignment Fee (Paid Aug 2008)		$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00
		Effective Purchase Price		$ 8,375,000.00	$ 7,245,647.38	$ 6,847,478.40	$ 6,478,708.61	$ 6,130,278.20	$ 5,842,426.29	$ 5,605,113.26	$ 5,409,910.73	$ 5,249,748.89	$ 5,118,702.72
		Potential Floor Area at 4.5 FAR (SF)		50940	50940	50940	50940	50940	50940	50940	50940	50940	50940
		Effective Price per FAR-foot		**$ 164.41**	**$ 142.24**	**$ 134.42**	**$ 127.18**	**$ 120.34**	**$ 114.69**	**$ 110.03**	**$ 106.20**	**$ 103.06**	**$ 100.48**
	2008 Value/FAR-ft												
	$ 100.00	Property Market Value at Year End, starting at X/FAR-ft		$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00
		Net Land Equity at Assignment (Replaces Cash Equity)		$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00
		Percentage Land Value as Cash		68.71%	68.71%	68.71%	68.71%	68.71%	68.71%	68.71%	68.71%	68.71%	68.71%
		Percentage Land Value as Debt (i.e., "free" equity)		31.29%	31.29%	31.29%	31.29%	31.29%	31.29%	31.29%	31.29%	31.29%	31.29%
		Debt Rate x Debt Share of Land Equity		2.03%	2.03%	2.03%	2.03%	2.03%	2.03%	2.03%	2.03%	2.03%	2.03%
		Equity Rate x Cash Share of Land Equity		13.74%	13.74%	13.74%	13.74%	13.74%	13.74%	13.74%	13.74%	13.74%	13.74%
		Effective Discount Rate (average cost of capital)		15.78%	15.78%	15.78%	15.78%	15.78%	15.78%	15.78%	15.78%	15.78%	15.78%

LA0006

WMATA-INV 015650



CONFIDENTIAL LA0007

From: Josh Adler [josh@lakritzadler.com]
Sent: Tuesday, June 17, 2008 3:42 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Ground Lease
Attachments: image001.gif; 1920 8th St NW Plat.pdf; 1920 8th NPV.xls; 1920 8th street standalone rendering 12-17-07.jpg

PERSONAL AND CONFIDENTIAL

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CONFIDENTIAL LA0008

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015652

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Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

LAKRITZ | ADLER

4326 8th St., N.W.

CONFIDENTIAL LA0009

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015653

Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

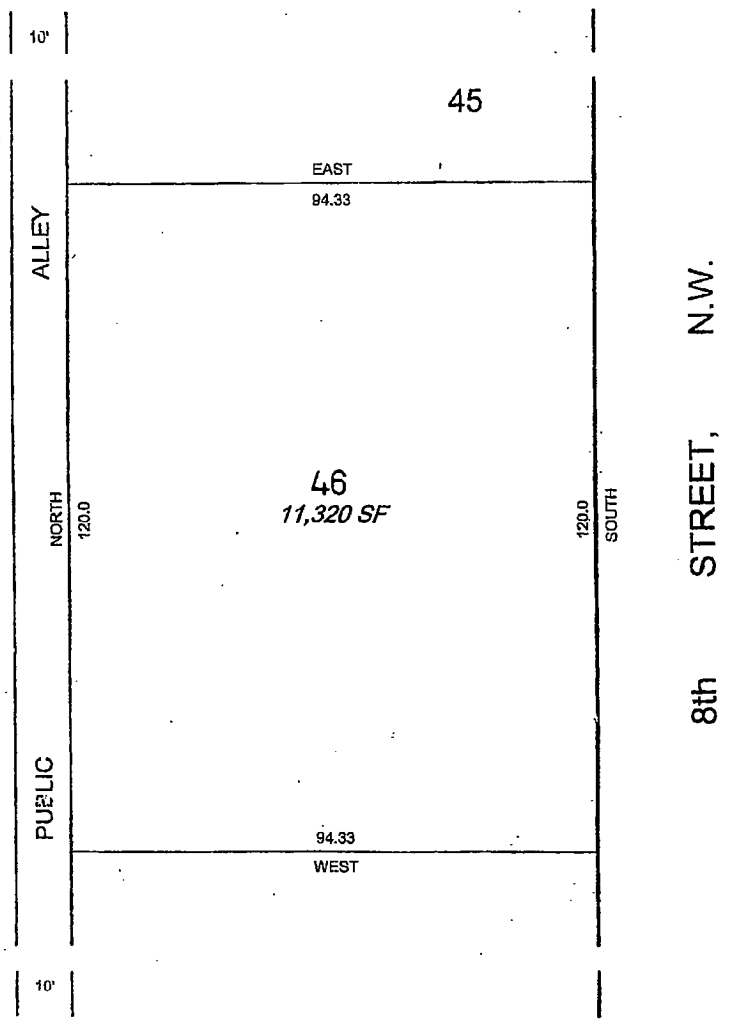
CONFIDENTIAL

LA0010

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015654

SUBDIVISION
SQUARE 393



CONFIDENTIAL

LA0011

FOIA CONFIDENTIAL TREATMENT REQUESTED

CONFIDENTIAL LA0012

FOIA CONFIDENTIAL TREATMENT REQUESTED

CONFIDENTIAL

			Year	1	2	3	4	5	6	7	8	9	10
Effective Discount Rate:		**15.78%**	Year Ending in August of...	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Debt Rate		6.5%	Ground Lease Payments (as of Year End)	*Pre-Paid*	$ 150,000.00	$ 150,000.00	$ 150,000.00	$ 150,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00
Equity Rate		20%	Accumulated Toward Option	$ 100,000.00	$ 200,000.00	$ 300,000.00	$ 450,000.00	$ 600,000.00	$ 800,000.00	$ 1,000,000.00	$ 1,200,000.00	$ 1,400,000.00	$ 1,600,000.00
			Option Price at Year End - 1 day	$ 4,875,000.00	$ 4,847,000.00	$ 4,820,080.00	$ 4,744,256.20	$ 4,594,256.20	$ 4,394,256.20	$ 4,194,256.20	$ 3,994,256.20	$ 3,794,256.20	$ 3,594,256.20
			NPV in Aug 08 If Option Exercised this Year	$ 4,875,000.00	$3,745,647.38	$3,347,478.40	$2,978,708.61	$2,630,278.20	$2,342,426.29	$2,105,113.26	$1,909,910.73	$1,749,748.89	$1,618,702.72
			(Assume rent paid at year start, option at year end)										
			Ground Lease Assignment Fee (Paid Aug 2008)	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00
			Effective Purchase Price	$ 8,375,000.00	$ 7,245,647.38	$ 6,847,478.40	$ 6,478,708.61	$ 6,130,278.20	$ 5,842,426.29	$ 5,605,113.26	$ 5,409,910.73	$ 5,249,748.89	$ 5,118,702.72
			Potential Floor Area at 4.5 FAR (SF)	50940	50940	50940	50940	50940	50940	50940	50940	50940	50940
			Effective Price per FAR-foot	**$ 164.41**	**$ 142.24**	**$ 134.42**	**$ 127.18**	**$ 120.34**	**$ 114.69**	**$ 110.03**	**$ 106.20**	**$ 103.06**	**$ 100.48**
	2008 Value/FAR-ft												
	$	100.00	Property Market Value at Year End, starting at X/FAR-ft	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00	$ 5,094,000.00
			Net Land Equity at Assignment (Replaces Cash Equity)	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00	$ 1,594,000.00
			Percentage Land Value as Cash	68.71%	68.71%	68.71%	68.71%	68.71%	68.71%	68.71%	68.71%	68.71%	68.71%
			Percentage Land Value as Debt (i.e., "free" equity)	31.29%	31.29%	31.29%	31.29%	31.29%	31.29%	31.29%	31.29%	31.29%	31.29%
			Debt Rate x Debt Share of Land Equity	2.03%	2.03%	2.03%	2.03%	2.03%	2.03%	2.03%	2.03%	2.03%	2.03%
			Equity Rate x Cash Share of Land Equity	13.74%	13.74%	13.74%	13.74%	13.74%	13.74%	13.74%	13.74%	13.74%	13.74%
			Effective Discount Rate (average cost of capital)	15.78%	15.78%	15.78%	15.78%	15.78%	15.78%	15.78%	15.78%	15.78%	15.78%

LA0013

WMATA-INV 015657

From: Josh Adler [josh@lakritzadler.com]
Sent: Tuesday, June 24, 2008 5:16 PM
To: okarim@bannekerventures.com
Subject: Proposal
Attachments: image001.gif

Omar,

We were expecting some feedback on our proposal last Friday. Have your people reviewed it yet?

Thanks,

Josh

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL LA0014

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015658

From: Josh Adler [josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED
Attachments: 1920 8th NPV at 80 per ft.xls; image001.gif

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance

CONFIDENTIAL LA0015

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015659

payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

LAKRITZ ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

Tracking:

CONFIDENTIAL

LA0016

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015660

Recipient	Read
okarim@bannekerventures.com	Read: 7/15/2008 3:40 PM

CONFIDENTIAL

LA0017

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015661

CONFIDENTIAL

			Year	1	2	3	4	5	6	7	8	9	10
Effective Discount Rate:		**15.35%**	Year Ending in August of...	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Debt Rate		6.5%	Ground Lease Payments (as of Year End)	*Pre-Paid*	$ 150,000.00	$ 150,000.00	$ 150,000.00	$ 150,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00
Equity Rate		20%	Accumulated Toward Option	$ 100,000.00	$ 200,000.00	$ 300,000.00	$ 450,000.00	$ 600,000.00	$ 800,000.00	$ 1,000,000.00	$ 1,200,000.00	$ 1,400,000.00	$ 1,600,000.00
			Option Price at Year End - 1 day	$ 4,875,000.00	$ 4,847,000.00	$ 4,820,080.00	$ 4,744,256.20	$ 4,594,256.20	$ 4,394,256.20	$ 4,194,256.20	$ 3,994,256.20	$ 3,794,256.20	$ 3,594,256.20
			NPV in Aug 08 if Option Exercised this Year	$ 4,875,000.00	$3,773,119.69	$3,383,634.97	$3,020,675.23	$2,676,374.64	$2,389,045.79	$2,152,109.11	$1,956,490.18	$1,795,388.81	$1,663,082.91
			(Assume rent paid at year start, option at year end)										
			Ground Lease Assignment Fee (Paid Aug 2008)	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37
			Effective Purchase Price	$ 7,545,300.37	$ 6,443,420.06	$ 6,053,935.34	$ 5,690,975.61	$ 5,345,675.01	$ 5,059,346.16	$ 4,822,409.48	$ 4,626,790.55	$ 4,465,689.18	$ 4,333,383.28
			Potential Floor Area at 4.5 FAR (SF)	50940	50940	50940	50940	50940	50940	50940	50940	50940	50940
			Effective Price per FAR-foot	**$ 148.12**	**$ 126.49**	**$ 118.84**	**$ 111.72**	**$ 104.94**	**$ 99.32**	**$ 94.67**	**$ 90.83**	**$ 87.67**	**$ 85.07**
	2008 Value/FAR-ft												
	$	**80.00**	Property Market Value at Year End, starting at X/FAR-ft	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00
			Net Land Equity at Assignment (Replaces Cash Equity)	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63
			Percentage Land Value as Cash	65.53%	65.53%	65.53%	65.53%	65.53%	65.53%	65.53%	65.53%	65.53%	65.53%
			Percentage Land Value as Debt (i.e., "free" equity)	34.47%	34.47%	34.47%	34.47%	34.47%	34.47%	34.47%	34.47%	34.47%	34.47%
			Debt Rate x Debt Share of Land Equity	2.24%	2.24%	2.24%	2.24%	2.24%	2.24%	2.24%	2.24%	2.24%	2.24%
			Equity Rate x Cash Share of Land Equity	13.11%	13.11%	13.11%	13.11%	13.11%	13.11%	13.11%	13.11%	13.11%	13.11%
			Effective Discount Rate (average cost of capital)	15.35%	15.35%	15.35%	15.35%	15.35%	15.35%	15.35%	15.35%	15.35%	15.35%

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015662

From: Josh Adler [josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED
Attachments: image001.gif; 1920 8th NPV at 80 per ft.xls

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance

CONFIDENTIAL LA0019

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015663

payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

LAKRITZ ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL LA0020

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015664

CONFIDENTIAL

FOIA CONFIDENTIAL TREATMENT REQUESTED

			Year	1	2	3	4	5	6	7	8	9	10
Effective Discount Rate:		15.35%	Year Ending in August of...	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Debt Rate		6.5%	Ground Lease Payments (as of Year End)	*Pre-Paid*	$ 150,000.00	$ 150,000.00	$ 150,000.00	$ 150,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00
Equity Rate		20%	Accumulated Toward Option	$ 100,000.00	$ 200,000.00	$ 300,000.00	$ 450,000.00	$ 600,000.00	$ 800,000.00	$ 1,000,000.00	$ 1,200,000.00	$ 1,400,000.00	$ 1,600,000.00
			Option Price at Year End - 1 day	$ 4,875,000.00	$ 4,847,000.00	$ 4,820,080.00	$ 4,744,256.20	$ 4,594,256.20	$ 4,394,256.20	$ 4,194,256.20	$ 3,994,256.20	$ 3,794,256.20	$ 3,594,256.20
			NPV in Aug 08 if Option Exercised this Year	$ 4,875,000.00	$3,773,119.69	$3,383,634.97	$3,020,675.23	$2,675,374.64	$2,389,045.79	$2,152,109.11	$1,956,490.18	$1,795,388.81	$1,663,082.91
			(Assume rent paid at year start, option at year end)										
			Ground Lease Assignment Fee (Paid Aug 2008)	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37	$ 2,670,300.37
			Effective Purchase Price	$ 7,545,300.37	$ 6,443,420.06	$ 6,053,935.34	$ 5,690,975.81	$ 5,345,675.01	$ 5,059,346.16	$ 4,822,409.48	$ 4,626,790.55	$ 4,465,689.18	$ 4,333,383.28
			Potential Floor Area at 4.5 FAR (SF)	50940	50940	50940	50940	50940	50940	50940	50940	50940	50940
			Effective Price per FAR-foot	**$ 148.12**	**$ 126.49**	**$ 118.84**	**$ 111.72**	**$ 104.94**	**$ 99.32**	**$ 94.67**	**$ 90.83**	**$ 87.67**	**$ 85.07**
	2008 Value/FAR-ft												
	$	80.00	Property Market Value at Year End, starting at X/FAR-ft	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00	$ 4,075,200.00
			Net Land Equity at Assignment (Replaces Cash Equity)	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63	$ 1,404,899.63
			Percentage Land Value as Cash	65.53%	65.53%	65.53%	65.53%	65.53%	65.53%	65.53%	65.53%	65.53%	65.53%
			Percentage Land Value as Debt (i.e., "free" equity)	34.47%	34.47%	34.47%	34.47%	34.47%	34.47%	34.47%	34.47%	34.47%	34.47%
			Debt Rate x Debt Share of Land Equity	2.24%	2.24%	2.24%	2.24%	2.24%	2.24%	2.24%	2.24%	2.24%	2.24%
			Equity Rate x Cash Share of Land Equity	13.11%	13.11%	13.11%	13.11%	13.11%	13.11%	13.11%	13.11%	13.11%	13.11%
			Effective Discount Rate (average cost of capital)	15.35%	15.35%	15.35%	15.35%	15.35%	15.35%	15.35%	15.35%	15.35%	15.35%

LA0021

WMATA-INV 015665

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Thursday, July 17, 2008 11:06 AM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Pls call me @ 301-523-1810 (cell) to discuss.

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 15 Jul 2008 15:38:34 -0400
To: <okarim@bannekerventures.com>
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED
PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015666

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

LAKRITZ ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL LA0023

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015667

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Attachments: image001.gif

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

CONFIDENTIAL

LA0024

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015668

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

LAKRITZ ADLER

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Washington, D.C. 20011
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F 202.882.0809

CONFIDENTIAL

LA0025

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015669

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Attachments: image001.gif

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

CONFIDENTIAL LA0026

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015670

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

LAKRITZ ADLER

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Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL

LA0027

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015671

From: Josh Adler [josh@lakritzadler.com]
Sent: Tuesday, August 05, 2008 1:52 PM
To: 'Omar A. Karim'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Attachments: image001.gif

Hello Omar,

Here is where we are on your proposal:

We can accept your price of $1.5 million for the ground lease.

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

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Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
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3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease

CONFIDENTIAL

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015673

would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)

5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL

LA0030

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015674

From: Josh Adler [josh@lakritzadler.com]
Sent: Tuesday, August 05, 2008 1:52 PM
To: Omar A. Karim
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Attachments: image001.gif

Hello Omar,

Here is where we are on your proposal:

We can accept your price of $1.5 million for the ground lease.

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015675

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

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In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease

CONFIDENTIAL

LA0032

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015676

would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)

5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL

LA0033

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015677

From: Josh Adler [josh@lakritzadler.com]
Sent: Wednesday, August 06, 2008 5:00 PM
To: 'Jim Graham'
Subject: Meyer School editorial
Attachments: image001.gif

Hi Jim,

We saw the Washington Post editorial about the Meyer School, DPW and Meridian PCS. As you might know, we have been talking to Meridian PCS for several years about the potential to build a new school for them at our property at 1920 8th Street, with a plan similar to the very successful new E.L. Haynes PCS building on Georgia. Meridian put the new school plan on hold while they waited for the results of the Meyer School disposition. When they lost Meyer, they became interested in building a new school on 8th Street again. For what it's worth, they have recently yet again lost interest in building and owning a new school building on 8th Street, because they now apparently believe they will get the Grimke School building.

(Meridian is of similar size to E.L. Haynes, and is much, much better funded than E.L. Haynes ever was, and their choice right now is between renewing a very expensive lease with Douglas Jemal in an inferior building and inferior location, or building and owning their own custom school building in their preferred location at a much lower cost than continuing to rent. I don't know why that is such a hard decision for them, but that's another story.)

I bring all this up because, in light of the Washington Post editorial, we were wondering what the DPW plan is for the Meyer School building. Is it possible that we could serve the DPW needs with a custom building at 1920 8th Street, and then Meridian could still get the Meyer School building? 1920 8th is a much better location for a public agency, as it is zoned C2B arts overlay and is right off the corner of Georgia and Florida in a busy commercial area, two blocks from two different Metro entrances. The Meyer School, at 2501 11th Street, is zoned for single-family residential use in the middle of a single family residentially-zoned neighborhood on a residential street. Maybe a three-way swap would make everyone happy, and address the concerns of the Post editorial?

Best regards,

Josh Adler

LAKRITZ ADLER
4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL LA0034

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015678

From: Jim Graham [Jim@grahamwone.com]
Sent: Thursday, August 07, 2008 10:01 AM
To: Josh Adler
Subject: RE: Meyer School editorial
Attachments: image001.gif

A new building for DPW would assuredly be far more expensive. Plus Meyer is ready. Grimke may be a possibility for Meridian, but it is a ways off since neither Fire or Corrections has a new home that is ready. Please do not quote me on any of this. Bests

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me. For most effective communication, please use my direct email address: jim@grahamwone.com

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

Chairman, Committee on Public Works and the Environment (including alcohol regulation). Main Committee Number: 202-724-8195. 1350 Pa. Ave., NW, #116, Washington, DC 20004.

Voting member, Board of Directors, WMATA/Metro.

Website: www.grahamwone.com

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Wednesday, August 06, 2008 5:00 PM
To: Jim Graham
Subject: Meyer School editorial

Hi Jim,

We saw the Washington Post editorial about the Meyer School, DPW and Meridian PCS. As you might know, we have been talking to Meridian PCS for several years about the potential to build a new school for them at our property at 1920 8th Street, with a plan similar to the very successful new E.L. Haynes PCS building on Georgia. Meridian put the new school plan on hold while they waited for the results of the Meyer School disposition. When they lost Meyer, they became interested in building a new school on 8th Street again. For what it's worth, they have recently yet again lost interest in building and owning a new school building on 8th Street, because they now apparently believe they will get the Grimke School building.

(Meridian is of similar size to E.L. Haynes, and is much, much better funded than E.L. Haynes ever was, and their choice right now is between renewing a very expensive lease with Douglas Jemal in an inferior building and inferior location, or building and owning their own custom school building in their preferred location at a much lower cost than continuing to rent. I don't know why that is such a hard decision for them, but that's another story.)

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Best regards,

Josh Adler

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL

LA0036

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015680

From: Jim Graham [Jim@grahamwone.com]
To: Josh Adler
Sent: Thursday, August 07, 2008 11:25 AM
Subject: Not read: Not read: Meyer School editorial

Your message was deleted without being read on Thursday, August 07, 2008 8:24:49 AM (GMT-08:00) Pacific Time (US & Canada).

CONFIDENTIAL

LA0037

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015681

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Hello Omar,

Here is where we are on your proposal:

We can accept your price of $1.5 million for the ground lease.

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

CONFIDENTIAL LA0039

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015683

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL

LA0040

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015684

From: Josh Adler [josh@lakritzadler.com]
Sent: Monday, August 11, 2008 12:17 PM
To: okarim@bannekerventures.com
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Hello Omar,

Here is where we are on your proposal:

We can accept your price of $1.5 million for the ground lease.

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015685

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015686

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

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We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

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Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

[x]

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL LA0043

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015687

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Monday, August 11, 2008 12:36 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

That's fine. If you can get something over before you leave, that would be great; if not, we understand. Enjoy your vacation.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Monday, August 11, 2008 12:17 PM
To: okarim@bannekerventures.com
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Hello Omar,

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We can accept your price of $1.5 million for the ground lease.

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

CONFIDENTIAL LA0044

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015688

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015689

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

CONFIDENTIAL

LA0046

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015690

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL LA0047

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015691

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Saturday, August 16, 2008 5:08 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Instead of waiting till you got back, we thought we would get started on the agreement to purchase your option on 1920 8th Street, NW. Should have a draft w/n the week. Lets touch basis upon your return.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Monday, August 11, 2008 12:17 PM
To: okarim@bannekerventures.com
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Hello Omar,

Here is where we are on your proposal:

We can accept your price of $1.5 million for the ground lease.

CONFIDENTIAL LA0048

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015692

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
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4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

[x]

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL

LA0051

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015695

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Saturday, August 23, 2008 1:19 AM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Tried to put something together in your absence but b/c we don't have privy to the agreement that you all signed with Dr. Medhane, we were not able to get a doc done. Can you all draft something for our review?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Mon, 11 Aug 2008 12:16:51 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

CONFIDENTIAL

LA0052

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015696

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Hello Omar,

Here is where we are on your proposal:

We can accept your price of $1.5 million for the ground lease.

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

CONFIDENTIAL

LA0053

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015697

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

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Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

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5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

CONFIDENTIAL

LA0054

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015698

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL

LA0055

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015699

From: Josh Adler [josh@lakritzadler.com]
Sent: Thursday, August 28, 2008 4:16 PM
To: okarim@bannekerventures.com
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

I'm back and will work on this. I hope to have an LOI drafted for you by end of next week.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Saturday, August 23, 2008 1:19 AM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Tried to put something together in your absence but b/c we don't have privy to the agreement that you all signed with Dr. Medhane, we were not able to get a doc done. Can you all draft something for our review?

Thanks.

Omar

Omar A. Karim
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700 12th Street, NW, Suite 700
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(202) 667-4110 office
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From: "Josh Adler" <josh@lakritzadler.com>
Date: Mon, 11 Aug 2008 12:16:51 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

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To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC

700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
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To: 'Omar A. Karim'<okarim@bannekerventures.com>
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Omar

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To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

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4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.

CONFIDENTIAL LA0058

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015702

4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL

LA0059

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015703

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Thursday, August 28, 2008 4:19 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Great.

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Thu, 28 Aug 2008 16:16:11 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
I'm back and will work on this. I hope to have an LOI drafted for you by end of next week.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Saturday, August 23, 2008 1:19 AM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Tried to put something together in your absence but b/c we don't have privy to the agreement that you all signed with Dr. Medhane, we were not able to get a doc done. Can you all draft something for our review?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Mon, 11 Aug 2008 12:16:51 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Hello Omar,

Here is where we are on your proposal:

We can accept your price of $1.5 million for the ground lease.

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

CONFIDENTIAL

LA0062

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015706

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL

LA0063

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015707

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Wednesday, September 03, 2008 6:48 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Any word on when we should expect the doc?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Thu, 28 Aug 2008 16:16:11 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
I'm back and will work on this. I hope to have an LOI drafted for you by end of next week.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Saturday, August 23, 2008 1:19 AM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Tried to put something together in your absence but b/c we don't have privy to the agreement that you all signed with Dr. Medhane, we were not able to get a doc done. Can you all draft something for our review?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

CONFIDENTIAL LA0064

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015708

From: "Josh Adler" <josh@lakritzadler.com>
Date: Mon, 11 Aug 2008 12:16:51 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Hello Omar,

Here is where we are on your proposal:

We can accept your price of $1.5 million for the ground lease.

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

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In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

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Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

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We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

[x]

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL

LA0067

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015711

From: Josh Adler [josh@lakritzadler.com]
Sent: Thursday, September 04, 2008 2:25 PM
To: okarim@bannekerventures.com
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

We're doing a quick legal review of the LOI draft – I should have it for you tomorrow.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, September 03, 2008 6:48 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Any word on when we should expect the doc?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Thu, 28 Aug 2008 16:16:11 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
I'm back and will work on this. I hope to have an LOI drafted for you by end of next week.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Saturday, August 23, 2008 1:19 AM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Tried to put something together in your absence but b/c we don't have privy to the agreement that you all signed with Dr. Medhane, we were not able to get a doc done. Can you all draft something for our review?

Thanks.

Omar

CONFIDENTIAL

LA0068

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015712

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Mon, 11 Aug 2008 12:16:51 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
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We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

CONFIDENTIAL

LA0069

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015713

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

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1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015714

collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808

CONFIDENTIAL LA0071

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015715

CONFIDENTIAL

LA0072

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015716

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Thursday, September 04, 2008 2:35 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Great.

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Thu, 4 Sep 2008 14:24:35 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
We're doing a quick legal review of the LOI draft – I should have it for you tomorrow.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, September 03, 2008 6:48 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Any word on when we should expect the doc?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Thu, 28 Aug 2008 16:16:11 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
I'm back and will work on this. I hope to have an LOI drafted for you by end of next week.

CONFIDENTIAL LA0073

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015717

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Saturday, August 23, 2008 1:19 AM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Tried to put something together in your absence but b/c we don't have privy to the agreement that you all signed with Dr. Medhane, we were not able to get a doc done. Can you all draft something for our review?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Mon, 11 Aug 2008 12:16:51 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400

To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Hello Omar,

Here is where we are on your proposal:

We can accept your price of $1.5 million for the ground lease.

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

CONFIDENTIAL

LA0075

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015719

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

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CONFIDENTIAL

LA0076

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015720

substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL LA0077

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015721

From: Josh Adler [josh@lakritzadler.com]
Sent: Friday, September 05, 2008 12:46 PM
To: okarim@bannekerventures.com
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Attachments: 1920 8th Amended and Restated Ground Lease.pdf; Banneker 1920 8th Street LOI 9-5-08.pdf

Hello Omar,

Attached is the proposed Letter of Intent, and a scan of the ratified Ground Lease and purchase option on 1920 8th Street. Please review the LOI, and if it is acceptable to you, sign and return a copy. We will then draw up a contract on this basis.

We look forward to reaching an agreement with you.

Josh Adler

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, September 04, 2008 2:35 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Great.

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Thu, 4 Sep 2008 14:24:35 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
We're doing a quick legal review of the LOI draft – I should have it for you tomorrow.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, September 03, 2008 6:48 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Any word on when we should expect the doc?

Thanks.

Omar

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015722

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Thu, 28 Aug 2008 16:16:11 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
I'm back and will work on this. I hope to have an LOI drafted for you by end of next week.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Saturday, August 23, 2008 1:19 AM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Tried to put something together in your absence but b/c we don't have privy to the agreement that you all signed with Dr. Medhane, we were not able to get a doc done. Can you all draft something for our review?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Mon, 11 Aug 2008 12:16:51 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
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From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Hello Omar,

Here is where we are on your proposal:

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We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM

CONFIDENTIAL LA0080

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015724

To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")

CONFIDENTIAL LA0081

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015725

2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
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We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

Tracking:

Recipient	Read
okarim@bannekerventures.com	Read: 9/5/2008 4:06 PM

CONFIDENTIAL LA0083

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015727

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.

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(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.

YH.

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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

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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

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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.

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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:_____
Title:_____

By:_____
Name:_____
Title:_____

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EXHIBIT A

Depiction of the Premises

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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.

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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.

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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:_____

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WMATA-INV 015757

EXHIBIT "A"

LEGAL DESCRIPTION

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WMATA-INV 015758

EXHIBIT "B"

TENANTS

SEE ATTACHED RENT ROLL

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WMATA-INV 015759

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

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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

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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 015762

EXHIBIT D

Subordination Agreement

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015763

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,

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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

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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

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LA0129

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015773

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]

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LA0130

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015774

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: _____

CONFIDENTIAL LA0131

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015775

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

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LA0132

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015776

EXHIBIT B

PERMITTED EXCEPTIONS

4796382_v6

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LA0133

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015777

LAKRITZ | ADLER
real estate development

September 5, 2008

NON-BINDING LETTER OF INTENT

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

Dear Omar:

This non-binding Letter of Intent is an outline of the general terms and conditions to be more particularly described and detailed in a formal Purchase and Sale Agreement by and between **Banneker Ventures, LLC** hereinafter referred to as **"Purchaser"** and the owners of the membership interests in **1920 8th Street, LLC,** hereinafter collectively referred to as **"Seller"** whereby Purchaser shall agree to buy and Seller shall agree to sell 100% of the membership interests in 1920 8th Street, LLC, hereinafter referred to as the **"Property"**.

1. Seller:

The Seller of the Property shall be the owners of 100% of the membership interests in 1920 8th Street, LLC, a Delaware Limited Liability Company.

2. Purchaser:

The Purchaser of the Property is Banneker Ventures, LLC, a _____ Limited Liability Company.

3. Property Description:

The property is a Delaware Limited Liability Company known as 1920 8th Street, LLC (the "Tenant"), which holds a ground lease and purchase option ("Ground Lease") to an approximately 11,320 square foot vacant lot known as Square 393, Lot 46, also known as 1916-1930 8th Street, NW, Washington, DC, zoned C-2-B Arts Overlay.

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4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

The Ground Lease contains the following essential terms:

- Medal, Inc., as Landlord and 1920 8th Street, LLC, as Tenant.
- 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% at the beginning of 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 at the end of the last renewal term (that is, on August 3, 2017) shall be $3,419,256.20.
- A one time fee of $175,000 payable to Landlord for resubordination of Landlord's fee interest in land to Tenant's permanent financing lender (if such lender is different from Tenant's construction lender), to be paid upon the sooner of: 1) resubordination of Landlord fee interest to new lender following substantial completion of project, or 2) upon exercise of purchase option.
- Landlord is obliged under the ground lease to subordinate its unencumbered fee interest in the Property to Tenant's Lender, meaning that Tenant has full use of the land value of the Property as collateral to secure its construction financing and any other financing through the end of the final renewal term.
- Ground Lease is freely assignable by Tenant without consent of Landlord.

A copy of the complete Ground Lease follows this LOI.

4. Purchase Price:

One Million Five Hundred Thousand Dollars ($1,500,000), payable all cash at the Settlement.

5. Deposit:

Upon execution of a Purchase and Sale Agreement, Purchaser shall deposit Fifty Thousand Dollars ($50,000) to be held in escrow by Regional Title Corp., Washington, DC, or another mutually acceptable title company ("Escrow Agent"), in an interest bearing account ("Deposit"). Any and all deposit monies shall be credited against the Purchase Price at closing. Upon removal of the General Due Diligence Period by Purchaser, Deposit shall be deemed nonrefundable and earned by Seller and shall be released by Escrow Agent to Seller.

6. General Due Diligence Period:

Purchaser shall have a period of Thirty (30) days following the date of execution of the Purchase and Sale Agreement ("General Due Diligence Period") to perform its due diligence investigation of the Property and the Ground Lease. If, prior to the expiration of the Due Diligence Period, Purchaser determines in its sole discretion not to purchase the Property, then Purchaser shall have the right to terminate the Purchase Agreement, whereupon the Deposit shall be promptly returned to Purchaser, and Purchaser shall provide to Seller copies and assignment of all due diligence related reports obtained by Purchaser. No later than five (5) business days after the execution of the Purchase Agreement, Seller will provide to Purchaser (or make available for inspection by Buyer) copies of all materials in Seller's possession with respect to the Property and the Ground Lease (including, without limitation, any and all documents; environmental studies and reports; title commitments, reports and/or policies; surveys; plans and specifications; architectural and engineering documents and data; and reports, permits, licenses, and zoning documents) (collectively, the "Due Diligence Materials").

7. Settlement:

Settlement shall occur not later than December 31, 2009, time of the essence, or a sooner date with the mutual consent of the Purchaser and Seller. Any cost to Seller of delay of Settlement by fault of the Purchaser shall be reimbursed concurrently by Purchaser to Seller, including any ground rent and other carry costs paid or incurred by Tenant during the period between the original Settlement date and the actual date of Settlement, in addition to any other rights and remedies available to Seller as a result of such default.

8. Ground Lease Carry Cost:

Purchaser shall be responsible for all Ground Rent and property taxes payable by Tenant under the Ground Lease from the date that the General Due Diligence Period is removed by Purchaser until Settlement occurs, commencing retroactively to the first day of the month in which the General Due Diligence Period is removed by Purchaser ("Contract Period"). During Contract Period, Purchaser shall make any and all payments due by Tenant under Ground Lease to Escrow Agent when such payments are due under the Ground Lease, time of the essence, and Escrow Agent shall immediately disburse such payments to Landlord, with prompt written notice to Seller of such disbursements. If Purchaser fails to make any payment required by Ground Lease during the Contract Period by the close of business on the date such payment is due, Seller shall have the right to cure any anticipated default on Ground Lease by making payment to Escrow Agent or directly to Landlord (in addition to any other rights and remedies available to Seller as a result of such default), and Purchaser shall be deemed in default and shall have no further right or claim with respect to the property in law or equity.

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9. Purchaser Default:

In addition to customary Purchaser default conditions for a commercial real estate purchase contract in Washington, D.C., the Purchase Agreement shall include the following conditions under which Purchaser shall be called immediately in default, with no further right or claim by Purchaser on the Property:

a. Purchaser fails to make timely payment of Ground Lease carry costs, per its obligation under Paragraph 8.

b. Purchaser is notified by Washington Metropolitan Area Transit Authority (WMATA) that Purchaser (or an affiliate or subsidiary of Purchaser or substantially controlled by Omar Karim and or Warren Williams) is no longer the "designated developer" with respect to WMATA Parcel Square 393 Lot 45 adjacent to the Property. Purchaser shall have an affirmative obligation to notify Seller of any such notice from WMATA, oral or written.

10. Additional Representations of Seller:

The Property is sold, and the Purchaser shall accept the Ground Lease As-Is, Where-Is. Seller represents and warrants that as of the date of the Purchaser's removal of the General Due Diligence Period, Tenant shall be in good standing with respect to Ground Lease, and Ground Lease shall be in full force and effect.

11. Additional Obligations of Purchaser:

Purchaser shall promptly inform Seller of any material change, favorable or unfavorable, with respect to Purchaser's negotiations with WMATA for acquisition and development of the WMATA parcel adjacent to the Property, including material developments pertaining to current or potential joint venture partners and equity and debt financing sources for the proposed project on the WMATA parcel.

12. Broker Commission:

Neither Buyer nor Seller is represented by a broker.

13. Assignment:

The Purchase Agreement shall not be assigned without consent of Seller in its sole discretion, except to an entity substantially controlled by Banneker Ventures, LLC, or Omar Karim and/or Warren Williams individually.

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(202) 882-0808 • Fax (202) 882-0809

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14. Confidentiality:

Unless and until Settlement shall occur, Purchaser agrees to keep the existence of and terms and conditions of this Letter of Intent, the Purchase Agreement and all Due Diligence Materials, confidential to themselves and their affiliates, and will not disclose the same except to its attorneys, accountants, lenders and prospective lenders, agents, consultants and advisors involved in the transaction and architects, engineers and other professionals or independent contractors who or which may be engaged to assist in or perform due diligence activities with respect to the Property (who shall abide by the confidentiality restrictions). If the Purchase Agreement is not entered into or is terminated, Purchaser agrees to return a copy of all Due Diligence Materials to Seller and shall provide the Seller with any Due Diligence Materials created by Purchaser or its agents, at no cost to the Seller. This Paragraph shall survive any termination or expiration of this Letter of Intent and the Purchase Agreement.

This offer will be held open until close of business on September 19, 2008. If the terms of this Letter of Intent are satisfactory to Purchaser, we request that you execute a copy of this Letter of Intent in the appropriate space provided below and return a signed copy to us by such date. Following execution of this Letter of Intent, Seller will immediately commence drafting of the Purchase Agreement for delivery to Purchaser within ten business days.

Sincerely,

Joshua Adler
Co-Managing Member

AGREED AND ACCEPTED:

Banneker Ventures, LLC	**1920 8th Street Venture, LLC**
By:_____	**By:**_____
Its:_____	**Its:**_____
Date:_____	**Date:**_____

10575.02.000000.0898

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Friday, September 05, 2008 4:12 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thanks for the documents. We will review them. Can you send the LOI in a Word format so that we can make edits (if any).

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Friday, September 05, 2008 12:46 PM
To: okarim@bannekerventures.com
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Hello Omar,

Attached is the proposed Letter of Intent, and a scan of the ratified Ground Lease and purchase option on 1920 8th Street. Please review the LOI, and if it is acceptable to you, sign and return a copy. We will then draw up a contract on this basis.

We look forward to reaching an agreement with you.

Josh Adler

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, September 04, 2008 2:35 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Great.

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Thu, 4 Sep 2008 14:24:35 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
We're doing a quick legal review of the LOI draft – I should have it for you tomorrow.

CONFIDENTIAL LA0139

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015783

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, September 03, 2008 6:48 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Any word on when we should expect the doc?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Thu, 28 Aug 2008 16:16:11 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
I'm back and will work on this. I hope to have an LOI drafted for you by end of next week.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Saturday, August 23, 2008 1:19 AM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Tried to put something together in your absence but b/c we don't have privy to the agreement that you all signed with Dr. Medhane, we were not able to get a doc done. Can you all draft something for our review?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Mon, 11 Aug 2008 12:16:51 -0400

To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Hello Omar,

Here is where we are on your proposal:

We can accept your price of $1.5 million for the ground lease.

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler
202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now

CONFIDENTIAL LA0142

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015786

and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL LA0143

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015787

From: Josh Adler [josh@lakritzadler.com]
Sent: Monday, September 08, 2008 2:56 PM
To: Omar A. Karim
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Attachments: Banneker 1920 8th LOI 9-5-08 FINAL.doc

Here it is.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Friday, September 05, 2008 4:12 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thanks for the documents. We will review them. Can you send the LOI in a Word format so that we can make edits (if any).

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Friday, September 05, 2008 12:46 PM
To: okarim@bannekerventures.com
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

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We look forward to reaching an agreement with you.

Josh Adler

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Sent: Thursday, September 04, 2008 2:35 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Great.

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Thu, 4 Sep 2008 14:24:35 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
We're doing a quick legal review of the LOI draft – I should have it for you tomorrow.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, September 03, 2008 6:48 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Any word on when we should expect the doc?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Thu, 28 Aug 2008 16:16:11 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
I'm back and will work on this. I hope to have an LOI drafted for you by end of next week.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Saturday, August 23, 2008 1:19 AM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Tried to put something together in your absence but b/c we don't have privy to the agreement that you all signed with Dr. Medhane, we were not able to get a doc done. Can you all draft something for our review?

Thanks.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700

Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Mon, 11 Aug 2008 12:16:51 -0400
To: <okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Can do, but I'm going on vacation for two weeks on Wednesday, so I'm not sure it will get done before I go.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 07, 2008 3:11 PM
To: Josh Adler
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Thank you for your email. Can you draft something up for us to review?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Tue, 5 Aug 2008 13:52:19 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED
Hello Omar,

Here is where we are on your proposal:

We can accept your price of $1.5 million for the ground lease.

We would require that you pay all of the ground lease carry costs ($150,000 per year plus property taxes) during the time that you want to reserve your right to exercise your option, with payments made monthly on the first of each month, time of the essence. Keep in mind that most of the ground lease payments are crediting toward your future exercise of the land option.

Deposit of $50,000 at contract execution is acceptable.

Settlement would occur by end of 2009.

We reserve the right to withdraw this offer at any time, without further notice.

Best regards,

Josh Adler

202-882-0808

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, July 21, 2008 2:37 PM
To: 'Josh Adler'
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")
2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)
3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.
4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)
5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler
Co-Managing Member
1920 8th Street LLC

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

CONFIDENTIAL LA0148

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015792

LAKRITZ | ADLER
real estate development

September 5, 2008

NON-BINDING LETTER OF INTENT

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

Dear Omar:

This non-binding Letter of Intent is an outline of the general terms and conditions to be more particularly described and detailed in a formal Purchase and Sale Agreement by and between **Banneker Ventures, LLC** hereinafter referred to as **"Purchaser"** and the owners of the membership interests in **1920 8th Street, LLC,** hereinafter collectively referred to as **"Seller"** whereby Purchaser shall agree to buy and Seller shall agree to sell 100% of the membership interests in 1920 8th Street, LLC, hereinafter referred to as the **"Property"**.

1. Seller:

The Seller of the Property shall be the owners of 100% of the membership interests in 1920 8th Street, LLC, a Delaware Limited Liability Company.

2. Purchaser:

The Purchaser of the Property is Banneker Ventures, LLC, a _____ Limited Liability Company.

3. Property Description:

The property is a Delaware Limited Liability Company known as 1920 8th Street, LLC (the "Tenant"), which holds a ground lease and purchase option ("Ground Lease") to an approximately 11,320 square foot vacant lot known as Square 393, Lot 46, also known as 1916-1930 8th Street, NW, Washington, DC, zoned C-2-B Arts Overlay.

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015793

The Ground Lease contains the following essential terms:

- Medal, Inc., as Landlord and 1920 8th Street, LLC, as Tenant.
- 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% at the beginning of 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 at the end of the last renewal term (that is, on August 3, 2017) shall be $3,419,256.20.
- A one time fee of $175,000 payable to Landlord for resubordination of Landlord's fee interest in land to Tenant's permanent financing lender (if such lender is different from Tenant's construction lender), to be paid upon the sooner of: 1) resubordination of Landlord fee interest to new lender following substantial completion of project, or 2) upon exercise of purchase option.
- Landlord is obliged under the ground lease to subordinate its unencumbered fee interest in the Property to Tenant's Lender, meaning that Tenant has full use of the land value of the Property as collateral to secure its construction financing and any other financing through the end of the final renewal term.
- Ground Lease is freely assignable by Tenant without consent of Landlord.

A copy of the complete Ground Lease follows this LOI.

4. Purchase Price:

One Million Five Hundred Thousand Dollars ($1,500,000), payable all cash at the Settlement.

5. Deposit:

Upon execution of a Purchase and Sale Agreement, Purchaser shall deposit Fifty Thousand Dollars ($50,000) to be held in escrow by Regional Title Corp., Washington, DC, or another mutually acceptable title company ("Escrow Agent"), in an interest bearing account ("Deposit"). Any and all deposit monies shall be credited against the Purchase Price at closing. Upon removal of the General Due Diligence Period by Purchaser, Deposit shall be deemed nonrefundable and earned by Seller and shall be released by Escrow Agent to Seller.

6. General Due Diligence Period:

Purchaser shall have a period of Thirty (30) days following the date of execution of the Purchase and Sale Agreement ("General Due Diligence Period") to perform its due diligence investigation of the Property and the Ground Lease. If, prior to the expiration of the Due Diligence Period, Purchaser determines in its sole discretion not to purchase the Property, then Purchaser shall have the right to terminate the Purchase Agreement, whereupon the Deposit shall be promptly returned to Purchaser, and Purchaser shall provide to Seller copies and assignment of all due diligence related reports obtained by Purchaser. No later than five (5) business days after the execution of the Purchase Agreement, Seller will provide to Purchaser (or make available for inspection by Buyer) copies of all materials in Seller's possession with respect to the Property and the Ground Lease (including, without limitation, any and all documents; environmental studies and reports; title commitments, reports and/or policies; surveys; plans and specifications; architectural and engineering documents and data; and reports, permits, licenses, and zoning documents) (collectively, the "Due Diligence Materials").

7. Settlement:

Settlement shall occur not later than December 31, 2009, time of the essence, or a sooner date with the mutual consent of the Purchaser and Seller. Any cost to Seller of delay of Settlement by fault of the Purchaser shall be reimbursed concurrently by Purchaser to Seller, including any ground rent and other carry costs paid or incurred by Tenant during the period between the original Settlement date and the actual date of Settlement, in addition to any other rights and remedies available to Seller as a result of such default.

8. Ground Lease Carry Cost:

Purchaser shall be responsible for all Ground Rent and property taxes payable by Tenant under the Ground Lease from the date that the General Due Diligence Period is removed by Purchaser until Settlement occurs, commencing retroactively to the first day of the month in which the General Due Diligence Period is removed by Purchaser ("Contract Period"). During Contract Period, Purchaser shall make any and all payments due by Tenant under Ground Lease to Escrow Agent when such payments are due under the Ground Lease, time of the essence, and Escrow Agent shall immediately disburse such payments to Landlord, with prompt written notice to Seller of such disbursements. If Purchaser fails to make any payment required by Ground Lease during the Contract Period by the close of business on the date such payment is due, Seller shall have the right to cure any anticipated default on Ground Lease by making payment to Escrow Agent or directly to Landlord (in addition to any other rights and remedies available to Seller as a result of such default), and Purchaser shall be deemed in default and shall have no further right or claim with respect to the property in law or equity.

9. Purchaser Default:

In addition to customary Purchaser default conditions for a commercial real estate purchase contract in Washington, D.C., the Purchase Agreement shall include the following conditions under which Purchaser shall be called immediately in default, with no further right or claim by Purchaser on the Property:

a. Purchaser fails to make timely payment of Ground Lease carry costs, per its obligation under Paragraph 8.

b. Purchaser is notified by Washington Metropolitan Area Transit Authority (WMATA) that Purchaser (or an affiliate or subsidiary of Purchaser or substantially controlled by Omar Karim and or Warren Williams) is no longer the "designated developer" with respect to WMATA Parcel Square 393 Lot 45 adjacent to the Property. Purchaser shall have an affirmative obligation to notify Seller of any such notice from WMATA, oral or written.

10. Additional Representations of Seller:

The Property is sold, and the Purchaser shall accept the Ground Lease As-Is, Where-Is. Seller represents and warrants that as of the date of the Purchaser's removal of the General Due Diligence Period, Tenant shall be in good standing with respect to Ground Lease, and Ground Lease shall be in full force and effect.

11. Additional Obligations of Purchaser:

Purchaser shall promptly inform Seller of any material change, favorable or unfavorable, with respect to Purchaser's negotiations with WMATA for acquisition and development of the WMATA parcel adjacent to the Property, including material developments pertaining to current or potential joint venture partners and equity and debt financing sources for the proposed project on the WMATA parcel.

12. Broker Commission:

Neither Buyer nor Seller is represented by a broker.

13. Assignment:

The Purchase Agreement shall not be assigned without consent of Seller in its sole discretion, except to an entity substantially controlled by Banneker Ventures, LLC, or Omar Karim and/or Warren Williams individually.

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4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

14. Confidentiality:

Unless and until Settlement shall occur, Purchaser agrees to keep the existence of and terms and conditions of this Letter of Intent, the Purchase Agreement and all Due Diligence Materials, confidential to themselves and their affiliates, and will not disclose the same except to its attorneys, accountants, lenders and prospective lenders, agents, consultants and advisors involved in the transaction and architects, engineers and other professionals or independent contractors who or which may be engaged to assist in or perform due diligence activities with respect to the Property (who shall abide by the confidentiality restrictions). If the Purchase Agreement is not entered into or is terminated, Purchaser agrees to return a copy of all Due Diligence Materials to Seller and shall provide the Seller with any Due Diligence Materials created by Purchaser or its agents, at no cost to the Seller. This Paragraph shall survive any termination or expiration of this Letter of Intent and the Purchase Agreement.

This offer will be held open until close of business on September 19, 2008. If the terms of this Letter of Intent are satisfactory to Purchaser, we request that you execute a copy of this Letter of Intent in the appropriate space provided below and return a signed copy to us by such date. Following execution of this Letter of Intent, Seller will immediately commence drafting of the Purchase Agreement for delivery to Purchaser within ten business days.

Sincerely,

Joshua Adler
Co-Managing Member

AGREED AND ACCEPTED:

Banneker Ventures, LLC	**1920 8th Street Venture, LLC**
By:_____	**By:**_____
Its:_____	**Its:**_____
Date:_____	**Date:**_____

10575.02.000000.0898

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4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

From: Josh Adler [josh@lakritzadler.com]
Sent: Wednesday, September 17, 2008 2:30 PM
To: Omar A. Karim
Subject: Progress?
Attachments: image001.gif

How is LOI review going?

LAKRITZ | ADLER

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T 202.882.0808
F 202.882.0809

CONFIDENTIAL LA0154

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015798

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Wednesday, September 17, 2008 2:54 PM
To: Josh Adler
Subject: Re: Progress?

Coming along. Should send comments by end of wk.

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

From: "Josh Adler" <josh@lakritzadler.com>
Date: Wed, 17 Sep 2008 14:29:53 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>
Subject: Progress?
How is LOI review going?

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Washington, D.C. 20011
T 202.882.0808
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CONFIDENTIAL LA0155

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015799

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Friday, September 26, 2008 4:51 PM
To: 'Josh Adler'
Subject: Letter of Intent w/ BV comments- 1920 8th Street, LLC
Attachments: 1920 8th Street LOI with BV comments.doc

Josh,

Attached is a clean and marked version of the Letter of Intent for the purchase of the membership interests in 1920 8th Street, LLC. Because of the credit markets, we will not be able to use the property as equity and instead would have to purchase it at the start of construction, and as such the economics of the deal have greatly changed. As a result, the maximum we would be able to pay for the lease option is $1M. Lets catch up next week.

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

CONFIDENTIAL LA0156

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015800

LAKRITZ | ADLER
real estate development

September ~~5~~, 2008

NON-BINDING LETTER OF INTENT

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

Dear Omar:

This non-binding Letter of Intent is an outline of the general terms and conditions to be more particularly described and detailed in a formal Purchase and Sale Agreement by and between **Banneker Ventures, LLC** hereinafter referred to as **"Purchaser"** and the owners of the membership interests in **1920 8th Street, LLC**, hereinafter collectively referred to as **"Seller"** whereby Purchaser shall agree to buy and Seller shall agree to sell 100% of the membership interests in 1920 8th Street, LLC, hereinafter referred to as the **"~~Property~~Company"**.

1. Seller:

The Seller of the ~~Property shall be~~**Company is** the ~~owners~~**owner** of 100% of the membership interests in 1920 8th Street, LLC, a Delaware ~~Limited Liability Company~~**limited liability company**.

2. Purchaser:

The Purchaser of the ~~Property~~**Company** is Banneker Ventures, LLC, a ~~Limited Liability Company~~**limited liability company formed under the laws of the District of Columbia**.

3. Property Description:

The ~~property~~**Company** is a Delaware ~~Limited Liability Company~~**limited liability company** known as 1920 8th Street, LLC (the "Tenant"), which holds a ground lease and purchase option ("Ground Lease") to an approximately 11,320 square foot vacant lot

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known as Square 393, Lot 46, also known as 1916-1930 8th Street, NW, Washington, DC, zoned C-2-B Arts Overlay **(the "Property")**.

The Ground Lease contains the following essential terms:

- Medal, Inc., as Landlord and 1920 8th Street, LLC, as Tenant.
- 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% at the beginning of 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 at the end of the last renewal term (that is, on August 3, 2017) shall be $3,419,256.20.
- A one time fee of $175,000 payable to Landlord for resubordination of Landlord's fee interest in land to Tenant's permanent financing lender (if such lender is different from Tenant's construction lender), to be paid upon the sooner of: 1) resubordination of Landlord fee interest to new lender following substantial completion of project, or 2) upon exercise of purchase option.
- Landlord is obliged under the ground lease to subordinate its unencumbered fee interest in the Property to Tenant's Lender, meaning that Tenant has full use of the land value of the Property as collateral to secure its construction financing and any other financing through the end of the final renewal term.
- Ground Lease is freely assignable by Tenant without consent of Landlord.

A copy of the complete Ground Lease follows this LOI.

4. Purchase Price:

One Million ~~Five Hundred Thousand Dollars ($1,500,000~~**Dollars ($1,000,000), less the Deposit and Ground Lease Carry Costs (as defined below)**, payable all **in** cash ~~at~~**on** the Settlement **Date (as defined in Section 7)**.

5. Deposit:

Upon **the full** execution of a Purchase and Sale Agreement, Purchaser shall deposit Fifty Thousand Dollars ($50,000) ~~to be held in escrow by Regional Title Corp., Washington, DC, or another mutually acceptable title company ("Escrow Agent"),~~ in an interest bearing **escrow** account ("Deposit**"). The Deposit shall be held by an escrow agent**

satisfactory to the Purchaser ("Escrow Agent"). Any and all ~~deposit~~**Deposit** monies shall be credited against the Purchase Price ~~at closing~~**on the Settlement Date**. ~~Upon removal of the General Due Diligence Period by Purchaser,~~**On the Trigger Date (as defined herein below), the** Deposit shall be deemed nonrefundable and earned by Seller and shall be released by Escrow Agent to Seller.

6. General Due Diligence Period:

Purchaser shall have a period of ~~Thirty (30~~**one hundred and twenty (120)** days following the date of execution of the Purchase and Sale Agreement ("General Due Diligence Period") to perform its due diligence investigation of the **Company,** Property and ~~the~~ Ground Lease**, and secure approval of an executed Joint Development Agreement and Ground Lease between Purchaser and the Washington Metropolitan Area Transit Authority's ("WMATA") Board of Directors**. If, prior to the expiration of the **General** Due Diligence Period, Purchaser **elects, in its sole discretion, to proceed with the purchase of the Company, Purchaser shall provide written notice to Seller on the date of such election (the "Trigger Date", the period between the Trigger Date and the Settlement Date shall be referred to as the "Contract Period"). If, prior to the expiration of the General Due Diligence Period, Purchaser** determines in its sole discretion not to purchase the ~~Property~~**Company**, then Purchaser shall have the right to terminate the Purchase Agreement, whereupon the Deposit shall be promptly returned to Purchaser, ~~and~~ Purchaser shall provide to Seller copies and assignment of all due diligence related reports obtained by Purchaser**, and Purchaser shall have no further obligations to Seller**. No later than five (5) business days after the execution of the Purchase Agreement, Seller will provide to Purchaser ~~(or make available for inspection by Buyer)~~ copies of all materials in Seller's possession with respect to the Property**, Company** and the Ground Lease (including, without limitation, any and all documents **relating to the Property and the Company including financial statements**; environmental studies and reports; title commitments, reports and/or policies; surveys; plans and specifications; architectural and engineering documents and data; and reports, permits, licenses, and zoning documents) (collectively, the "Due Diligence Materials").

7. Settlement:

~~Settlement shall occur not later than December 31, 2009, time of the essence, or a sooner date with the mutual consent of the Purchaser and Seller. Any cost to Seller of delay of Settlement by fault of the Purchaser shall be reimbursed concurrently by Purchaser to Seller, including any ground rent and other carry costs paid or incurred by Tenant during the period between the original Settlement date and the actual date of Settlement, in addition to any other rights and remedies available to Seller as a result of such default.~~
Provided the Conditions Precedent (as defined herein below) are satisfied, the closing of the purchase and sale of the Company (the "Settlement") shall occur on or before May 31, 2010 (the "Settlement Date").

8. Ground Lease Carry ~~Cost~~Costs:

Purchaser shall be responsible for ~~all Ground~~**paying the Fixed** Rent and property taxes payable by Tenant under the Ground Lease ~~from the date that the General Due Diligence Period is removed by Purchaser until Settlement occurs, commencing retroactively to the first day of the month in which the General Due Diligence Period is removed by Purchaser ("Contract Period")~~**(the "Ground Lease Carry Costs") during the Contract Period**. During **the** Contract Period, Purchaser shall make ~~any and all~~ payments **of Fixed Rent** due by Tenant under **the** Ground Lease ~~to Escrow Agent~~**which arose during the Contract Period to Landlord** when such payments are due under the Ground Lease~~,~~ ~~time of the essence, and Escrow Agent shall immediately disburse such payments to Landlord, with prompt~~ **and, shall make payments of property taxes due during the Contract Period, within a reasonable time following receipt of the property tax bill from Seller, directly to the tax authority to which such payments must be made. Purchaser shall provide** written notice to Seller of ~~such disbursements~~**Purchaser's payment of Fixed Rent and property taxes each month. The parties agree that, with respect to the payments contemplated under this Section 8 and Seller's notification to Purchaser of property tax payments that shall become due, that time is of the essence. Except for payment of Fixed Rent and property taxes, Seller shall retain responsibility for all other payments due to Landlord and shall perform all other covenants, terms and conditions of the Ground Lease**. If Purchaser fails to ~~make any payment required by Ground Lease~~**pay the Ground Lease Carry Costs to Landlord or the tax authority, as applicable,** during the Contract Period by the close of business on the date such payment is due, Seller shall have the right to cure any anticipated default on **the** Ground Lease by making payment ~~to Escrow Agent or directly to Landlord (in addition to any other rights and remedies available to Seller as a result of such default), and Purchaser shall be deemed in default and shall have no further right or claim with respect to the property in law or equity.~~**directly to Landlord or the tax authority.**

9. Conditions Precedent to Settlement

The Purchase Agreement shall contain conditions precedent to Settlement ("Conditions Precedent"), including, but not limited to, the following:

i) Seller shall deliver to Purchaser written certification from Seller with respect to items (a) through (f) provided in Section 22 of the Ground Lease.

ii) Seller shall cause Landlord to deliver an estoppel to Purchaser with respect to items (a) through (f) provided in Section 22 of the Ground Lease and shall include a provision stating that Landlord is obligated to credit to Purchaser, as Tenant, Fixed Rent in the amount of $_____, in accordance with Section 34 of the Ground Lease if Purchaser elects to purchase the Property.

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

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iii) Seller shall cause Landlord to deliver to Purchaser a bringdown certificate stating that all representations and warranties of Landlord provided in the Ground Lease are true as of the Settlement Date.

iv) Seller shall provide Purchaser with Seller's bring-to-date title policy (dated as of the Settlement Date) and shall cause Landlord to deliver to Purchaser a standard form of Owner's Title Affidavit sufficient to delete any exceptions from Seller's title commitment and title policy so that such title policy includes only those encumbrances existing as of the Settlement Date and approved by Purchaser, and any documents reasonably required by Purchaser's title insurance company to remove the standard title exceptions for parties in possession and mechanics' or materialman's liens.

v) Seller shall cause Landlord to deliver to Purchaser any documents reasonably required by Seller's title company evidencing Landlord's authority to enter into the Ground Lease, including, without limitation, certifications and other documentation relating to Landlord's organizational structure.

~~**9. Purchaser Default:**~~

vi) Seller's representations and warranties contained in the Purchase Agreement shall be true as of the date of execution of the Purchase Agreement and Settlement Date.

~~In addition to customary Purchaser default conditions for a commercial real estate purchase contract in Washington, D.C., the Purchase Agreement shall include the following conditions under which Purchaser shall be called immediately in default, with no further right or claim by Purchaser on the Property:~~

~~a. Purchaser fails to make timely payment of Ground Lease carry costs, per its obligation under Paragraph 8.~~

10. Exclusivity

~~b. Purchaser is notified by Washington Metropolitan Area Transit Authority (WMATA) that Purchaser (or an affiliate or subsidiary of Purchaser or substantially controlled by Omar Karim and or Warren Williams) is no longer the "designated developer" with respect to WMATA Parcel Square 393 Lot 45 adjacent to the Property. Purchaser shall have an affirmative obligation to notify Seller of any such notice from WMATA, oral or written.~~

In consideration of Purchaser's efforts and expense in analyzing this transaction, Seller agrees that as long as Purchaser is proceeding in good faith to negotiate the Joint Development Agreement and Ground Lease with WMATA and the Purchase Agreement with Seller, during the period following the date hereof until the execution of the Purchase Agreement, Seller for itself and on behalf of Seller's respective representatives, agents and employees, will not directly or

indirectly make, accept, negotiate, entertain or otherwise pursue any offers to sell any interest in the Company or to engage in any financing or other capital transaction regarding the Company's interest under the Ground Lease during such period.

~~10.~~**11. Additional Representations of Seller:**

The ~~Property is sold, and the Purchaser shall accept the Ground Lease As-Is, Where Is. Seller represents and warrants that as of the date of the Purchaser's removal of the General Due Diligence Period, Tenant shall be in good standing with respect to Ground Lease, and Ground Lease shall be~~**Purchase Agreement shall contain representations and warranties by Seller satisfactory to Purchaser which shall be effective as of the date of execution of the Purchase Agreement and the Settlement Date, including customary company-level representations and warranties for a transaction of this type, and also including, but not limited to, the following:**

i) Landlord owns the Property under a marketable, fee simple title.

ii) Neither Landlord nor Seller is in default under the Ground Lease nor has any event occurred that would constitute a default thereunder with the passage of time.

iii) The Ground Lease is in full force and effect.

iv) Seller has not assigned, transferred or pledged any interest in the Company or the Ground Lease and Seller has not subleased any portion of the Property.

v) Landlord has not assigned, transferred or pledged its fee interest in the Property or its reversionary estate to any party.

vi) There has not occurred a material adverse change that affects in any way the Company or the Property.

~~11.~~**12. Additional Obligations of Purchaser:**

Purchaser shall promptly inform Seller of any material change, favorable or unfavorable, with respect to Purchaser's negotiations with WMATA for acquisition and development of the WMATA parcel adjacent to the Property~~, including material developments pertaining to current or potential joint venture partners and equity and debt financing sources for the proposed project on the WMATA parcel~~.

~~12.~~**13. Broker Commission:**

Neither Buyer nor Seller is represented by a broker.

~~13. Assignment:~~

~~The Purchase Agreement shall not be assigned without consent of Seller in its sole discretion, except to an entity substantially controlled by Banneker Ventures, LLC, or Omar Karim and/or Warren Williams individually.~~

14. Due Diligence and Reasonable Closing Costs:

Upon execution of this Letter of Intent, Seller shall pay to Purchaser an up-front deposit totaling $20,000, which shall be refundable to the extent it is not applied to Purchaser's out of pocket costs and expenses (including, without limitation, attorneys' fees) paid or incurred by Purchaser in connection with Purchaser's due diligence analyses, investigations and evaluations and in negotiating the terms of and documenting this Letter of Intent and the Purchase Agreement. This provision is and shall be binding on the parties. Seller and Purchaser shall each pay 50% of the costs of revenue stamps, recording taxes and filing fees in connection with the Settlement. Except for the up-front deposit paid by Seller in connection with Purchaser's due diligence, Seller and Purchaser shall each pay for their own attorneys' fees.

15. Confidentiality:

Unless and until Settlement shall occur, Purchaser agrees to keep the existence of and terms and conditions of this Letter of Intent, the Purchase Agreement and all Due Diligence Materials, confidential to themselves and their affiliates, and will not disclose the same except to its attorneys, accountants, lenders and prospective lenders, agents, consultants and advisors involved in the transaction**, local government officials, including, but not limited to WMATA,** and architects, engineers and other professionals or independent contractors who or which may be engaged to assist in or perform due diligence activities with respect to the **Company and** Property (who shall abide by the confidentiality restrictions). If the Purchase Agreement is not entered into or is terminated, Purchaser agrees to return a copy of all Due Diligence Materials to Seller and shall provide the Seller with any Due Diligence Materials created by Purchaser or its agents, at no cost to the Seller. This Paragraph shall survive any termination or expiration of this Letter of Intent and the Purchase Agreement.

This offer will be held open until close of business on September ~~19,~~ __, 2008. If the terms of this Letter of Intent are satisfactory to Purchaser, we request that you execute a copy of this Letter of Intent in the appropriate space provided below and return a signed copy to us by such date. Following execution of this Letter of Intent, Seller will immediately commence drafting of the Purchase Agreement for delivery to Purchaser within ten business days.

Sincerely,

Joshua Adler
Co-Managing Member

AGREED AND ACCEPTED:

Banneker Ventures, LLC	**1920 8th Street Venture, LLC**
By:_____	**By:**_____
Its:_____	**Its:**_____
Date:_____	**Date:**_____

10575.02.000000.0898

LaKritz | Adler Development, LLC
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(202) 882-0808 • Fax (202) 882-0809

Document comparison done by Workshare Professional on Thursday, September 25, 2008 12:44:34 PM

Input:	
Document 1	file://C:/Documents and Settings/dl19022/My Documents/Banneker LOI initial draft.doc
Document 2	interwovenSite://EASTDMS/EAST/42173345/4
Rendering set	DLAPiper

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	73
Deletions	44
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	121

From: Josh Adler [josh@lakritzadler.com]
Sent: Friday, October 10, 2008 4:39 PM
To: Omar A. Karim
Subject: RE: Letter of Intent w/ BV comments- 1920 8th Street, LLC

Hi Omar,

A few deal points:
1) Are you saying, in your email below, that rather than buy the lease, you are going to exercise the option at closing and buy the land immediately? If so, we could simplify the contract considerably – I'm a little unclear on whether that is your intention, but if you are intending that, I would encourage it.

2) We are not going to pay you to do your due diligence – that's a non-starter. However, we've already paid for most of the due diligence you would do, and we're happy to share what we've got with you, as per the proposed LOI.

3) We'll do your $1 million option price if:
a. Deposit is $100k
b. Study period is the sooner of 90 days or Jan 31, 2009 (at this point we're already into early next year on that, so if your intention was to have until the end of the year to reach a final deal with Metro, you've already got it)
c. We can kick out of study with 5-day notice to you until you remove contingency and start paying the lease carry (you can always remove it early).

Before we spend a lot of time on the legal stuff in the LOI, let's settle on the main terms.

How's progress with Metro?

Thanks,

Josh

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Friday, September 26, 2008 4:51 PM
To: 'Josh Adler'
Subject: Letter of Intent w/ BV comments- 1920 8th Street, LLC

Josh,

Attached is a clean and marked version of the Letter of Intent for the purchase of the membership interests in 1920 8th Street, LLC. Because of the credit markets, we will not be able to use the property as equity and instead would have to purchase it at the start of construction, and as such the economics of the deal have greatly changed. As a result, the maximum we would be able to pay for the lease option is $1M. Lets catch up next week.

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

CONFIDENTIAL LA0166

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015810

Tracking:

CONFIDENTIAL

LA0167

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015811

Recipient	Read
Omar A. Karim	Read: 11/13/2008 6:10 PM

CONFIDENTIAL

LA0168

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015812

CHADBOURNE
& PARKE LLP
Abbe D. Lowell
direct tel 202-974-5605

1200 New Hampshire Avenue NW, Washington, DC 20036
tel (202) 974-5600 fax (202) 974-5602

September 7, 2012

VIA HAND DELIVERY

Bradley J. Bondi, Esq.
Cadwalader, Wickersham & Taft LLP
700 Sixth Street, N.W.
Washington, DC 20001

Re: WMATA OIG Subpoena to LaKritz Adler Dated June 29, 2012

Dear Brad:

As we indicated we would do, enclosed are documents Bates-numbered LA0169 to LA1142 that are responsive to Categories 1 and 2 as set forth in my email to you dated September 3, 2012. This is in addition to the production that was made earlier on July 25, 2012. Specifically, our production today comprises:

(1) Communications or evidence of communications between LaKritz Adler (or its representatives) and representatives of Banneker Ventures, LLC, Omar Karim, Warren Williams, or Jim Graham for the period January 1, 2007, to the present, discussing, relating, or referring to the Florida Avenue Property or the lot adjacent to the Florida Avenue Property (1920 Eighth Street, N.W.), which was controlled by LaKritz Adler ("the adjacent lot"); and

(2) Documents, including communications between LaKritz Adler (or its representatives) and anyone, discussing, relating, or referring to the development of the WMATA Florida Avenue Property and/or the adjacent lot, for the period February 1, 2008, through March 31, 2010.

We have not produced documents responsive to these two categories that are protected by the attorney client privilege and/or the attorney work product doctrine. Furthermore, as I indicated in my email to you dated September 4, 2012, we are continuing to review additional documents, and will produce any responsive items as they are collected and reviewed. We anticipate producing a batch of documents to you next week, and are in the process of confirming whether there are any further electronic documents.

Very truly yours,

Abbe D. Lowell

FOIA CONFIDENTIAL TREATMENT REQUESTED

Cc: Jessie K. Liu, Esquire (w/out enclosures)

From: Robb LaKritz <robb@lakritzadler.com>
Sent: Tuesday, January 2, 2001 11:39 PM
To: josh@lakritzadler.com
Subject: Re: CONFIDENTIAL: 1920 8th Street Offer REVISED

Rock on...

On 7/21/08 8:48 PM, "josh@lakritzadler.com" <josh@lakritzadler.com> wrote:

Fyi. He must be getting anxious, since I told him I'd be away early this week and would get back to him late in the week.Meridian is trying to schedule internal conference call on our proposal for wednesday.

From: "Omar A. Karim" <okarim@bannekerventures.com>
Date: Mon, 21 Jul 2008 14:37:11 -0400
To: 'Josh Adler'<josh@lakritzadler.com>
Subject: RE: CONFIDENTIAL: 1920 8th Street Offer REVISED

Josh,

Please advise where you all are with respect to our offer. As discussed, we could try to make the deal work by paying your firm a maximum of 1.5M for your option under the terms that we discussed.

Omar

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, July 15, 2008 3:39 PM
To: okarim@bannekerventures.com
Subject: CONFIDENTIAL: 1920 8th Street Offer REVISED

PERSONAL AND CONFIDENTIAL

Dear Omar:

Following up on our meeting last week, we have revised our proposal for the transfer of our ground lease and purchase option on 1920 8th Street to your organization for inclusion in your proposed project on the adjacent WMATA parcels.

As we discussed in the meeting, there would be a number of benefits to Banneker for including the 1920 8th Street parcel in your development project on the smaller adjacent WMATA parcels. These include:

1) Reduced site work and foundation engineering cost by avoiding placing the building load on the Metro tunnel beneath the WMATA parcel.

2) Much greater construction efficiency (lower average cost by reducing general conditions and other fixed costs per foot) and lower core factor (a higher ratio of net rentable to gross square footage) by building and operating a single 90,000 square foot rather than only a 38,000 square foot building on the site.

3) Higher final valuation factor as well as easier financing for the project by producing an institutional-grade building (approximately 100 units) rather than a non-institutional grade building (only about 40-units).

4) A savings of about nine months off your pre-construction approval time, because with the combined parcels it is possible to build a 90,000 square foot by-right project on the site, with no zoning relief, whereas you will definitely need to go through the nine-month BZA variance process to build anything close to a maximum density building on WMATA Parcel 2 by itself. A true by-right plan is also much easier to finance with lenders and investors compared to a plan that hinges on a successful entitlement process.

In addition, there are the benefits of our subordinated ground lease and purchase option structure. These include: 1) the below market carry cost of the ground lease payments over ten years, which credit toward the purchase option, resulting in a very favorable effective land cost under the ground lease compared to a fee simple purchase at market value today (especially after discounting for the time-value of money over that period); and 2) the Landlord's obligation to subordinate his fee interest in the land to the developer's construction and permanent financing, which means that the developer is effectively replacing third party investor cash equity -- the most expensive kind of money -- with low-cost senior debt collateralized by the Landord's fee interest, greatly enhancing the share of profits that the developer keeps and greatly enhancing investor cash returns through a super-leveraging effect. This further amplifies the impact of the back-loading of the land purchase cost in net present value calculations.

In our meeting you stated that you would be willing to pay $80 per FAR-foot today for the 1920 8th Street parcel, which is a price of $4,075,200. As you can see from the attached Excel spreadsheet, if we assign a present value of $80 per FAR-foot to the land (although we have a bank-ordered appraisal valuing the land at over $120/FAR-foot), it is the equivalent paying a $2,670,300 for the ground lease in August 2008, paying the ground lease directly until the end of its final term, and then exercising the final option price of about $3.6 million in August 2017. In other words, owing to the discounting effect of paying most of the purchase price in nine years, rather than today, plus the benefit of getting to use the entire land value as equity for your

project, even though you have not paid for the entire land value, paying $2.67 million now and $3.6 million in nine years is equivalent to paying the full $4,075,200 today. This does not even consider the valuation impacts to your project listed above.

Since you do not anticipate closing on the assignment until next year, we need to make some accommodation for the ongoing cost of the Ground Lease until you close, if we are going to tie up the land under your option.

Our thought on this would be to sell you a **$2.32 million** option on the ground lease (after applying advance payments) through August 3, 2009, by which time settlement on the ground lease assignment would have to occur. Your advance payments to the Ground Lease would credit to the assignment price at settlement. This is a considerable reduction from our calculation of the actual market value of the Ground Lease, which is $3.5 million, based on a present value of $100 per FAR-foot.

To summarize our proposal:

1) We ("Seller") would enter into an assignment contract with respect to the Ground Lease with you ("Purchaser")

2) Purchaser would make a nonrefundable one-time payment of $200,000 ("Assignment Option Fee") directly to 1920 8th Street LLC upon execution of the assignment contract (following a reasonable due diligence period for Purchaser's legal review of the Ground Lease and any investigation of the site)

3) Purchaser also would pay the next year of Ground Lease payments and property tax payments (approximately $200,000) into an escrow account, which would disburse the payments to the Landlord each month, as required by the Ground Lease.

4) Not later than August 3, 2009, Purchaser would settle on purchase of Ground Lease, by making an additional payment of $2.32 million to Seller, at which time all of Seller's rights and obligations with respect to Ground Lease would transfer to Purchaser. (Purchase Price is $2.67 million, less credit for $350,000 of the Assignment Option Fee and advance lease payments.)

5) If Purchaser failed to settle the purchase of Ground Lease by August 3, 2009, control of Ground Lease would revert to Seller, assignment contract would be null and void, and Seller would retain the $200,000 nonrefundable Assignment Option Fee.

We think this is a simple and fair structure to transfer control of the Ground Lease at below its fair market value, and it gives you plenty of time to conclude your settlement with WMATA with minimal risk and exposure. As you can see, we have greatly reduced the advance payment amount required to control the ground lease. Of course, it also has the substantial benefits to you of making it far less costly to build on WMATA Parcel 2 (you will probably recover most of the assignment cost on that basis alone), increasing the value and efficiency of your project, saving nine months off your approval time and bringing a substantial amount of land equity into the project financing.

We reserve the right to withdraw or modify this offer at any time in our sole discretion, and without further notice. Please hold confidential this e-mail, any attachments, and all related discussions.

Sincerely,

Joshua Adler

Co-Managing Member

1920 8th Street LLC

LAKRITZ | ADLER

4326 8th St., N.W.

Washington, D.C. 20011

T 202.882.0808

F 202.882.0809

From: Josh Adler <josh@lakritzadler.com>
Sent: Monday, February 4, 2008 4:28 PM
To: 'robb@lakritzadler.com'
Subject: BRING GROUND LEASE

Bring four copes of the 1920 8th ground lease tomorrow morning, two for us, two for them, so we can go through it in more detail if they want to.

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

From: Robb M. LaKritz <robb@lakritzadler.com>
Sent: Monday, February 4, 2008 4:30 PM
To: 'Josh Adler' <josh@lakritzadler.com>
Subject: RE: BRING GROUND LEASE

This is your meeting. The ground lease is on the server. I have my own job to do.

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Monday, February 04, 2008 4:28 PM
To: robb@lakritzadler.com
Subject: BRING GROUND LEASE

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LAKRITZ ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

From: Robb M. LaKritz <robb@lakritzadler.com>
Sent: Monday, February 4, 2008 4:30 PM
To: 'Josh Adler' <josh@lakritzadler.com>
Subject: RE: BRING GROUND LEASE

Under /LA Property Files/1920 8th St.

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Sent: Monday, February 04, 2008 4:28 PM
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LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

From:	Josh Adler <josh@lakritzadler.com>
Sent:	Friday, February 8, 2008 5:06 PM
To:	'Rosan, Peter' <Peter.Rosan@Grubb-Ellis.com>
Subject:	RE: In Search of DC Charter School Site
Attach:	1920 8th Floor Plans Sketch 12-11-07.pdf; 1920 8th close up w metros.jpg; 1920 8th Street Google Image.jpg; 1920 8th street standalone rendering SE view 12-18-07.jpg; 1920 8th street standalone rendering 12-17-07.jpg; 1920 8th St NW Plat.pdf

Hi Peter,

Attached are two Google maps showing our charter school / commercial development site at 1920 8th Street, NW, in the U Street / Shaw neighborhood, within two blocks of both the U Street and Shaw/Howard Metro stations. We are deep (five months) into negotiations with another charter school, which wants to buy the site from us and build a new 45,000 SF facility for their 500 students, but we have not yet entered a contract with them, so it is still available if someone else can move quickly.

I'm also attaching renderings and floor plans of the 47,600 square foot by-right commercial building we have been planning for the site, if the charter school deal does not go through. These plans could be adapted for a charter school, or they could do new plans with a similar building envelope, with a less expensive, more tradition masonry and punch-window design. Of course, they could lease part of their building to office or retail tenants, as we would.

A few key points about the site:

- Site is 11,320 SF of vacant ground
- Zoning is C2B Arts Overlay, which allows charter school by right, and allows up to about 50,000 SF of new school by-right, with the generation or transfer of arts overlay bonus density, which is readily available from several sources.
- Height limit is 65-feet, there is no lot coverage limit, but with rear yard setbacks, the effective lot occupancy limit is 90%.

We control the site through a complicated but very favorable subordinated ground lease and purchase option structure. If the school is interested in this site, I can provide the details on the ground lease, which is assignable. Our current negotiation on the site is for us to assign the ground lease for an assignment fee to the charter school, and then they will build their own building and exercise the purchase option in the ground lease at the end of ten years. As you know, charter schools are generally in a better position to own their property than lease, because of their low cost of funds (tax exempt bond financing) and their tax exemption from property taxes in D.C. But we're open to discussing other arrangements.

An organization moving quickly could probably build their building and take occupancy by mid to late 2010.

Thanks,

Josh Adler
202-882-0808

From: Rosan, Peter [mailto:Peter.Rosan@Grubb-Ellis.com]
Sent: Friday, February 08, 2008 1:17 PM
To: josh@lakritzadler.com
Subject: Re: In Search of DC Charter School Site

Please send it.
Peter Rosan
Grubb & Ellis

----- Original Message -----
From: josh@lakritzadler.com <josh@lakritzadler.com>
To: Rosan, Peter

Sent: Fri Feb 08 12:15:24 2008
Subject: Re: In Search of DC Charter School Site

We have a perfect site for this, but it is vacant land, not an existing building, so soonest delivery would be mid-2010.
-----Original Message-----
From: "Rosan, Peter" <Peter.Rosan@Grubb-Ellis.com>

Date: Fri, 8 Feb 2008 13:00:17
To:"Josh Adler" <josh@lakritzadler.com>
Subject: FW: In Search of DC Charter School Site

Josh:

Would the requirement below fit in one of your buildings that we discussed in DC? This school is represented by some of our brokers downtown.

Thank you,

Peter

Peter M. Rosan
Assistant Vice President | Grubb & Ellis Company
6550 Rock Spring Drive | Suite 150 | Bethesda, Maryland 20817
T 301.214.6152 | C 443.480.1843 | F 301.564.6161
<mailto:peter.rosan@grubb-ellis.com> peter.rosan@grubb-ellis.com
<http://www.grubb-ellis.com/>

From: Ley, Rachel
Sent: Friday, February 08, 2008 10:19 AM
Subject: In Search of DC Charter School Site

Client in Search of Site for DC Charter School

-->-->• All DC wards considered
- Site/building to accommodate up to 450 students
- Building Size: Approximately 30,000 - 40,000 SF
- Access to Metro bus or rail
- 2008/2009 Timing
- Desire to purchase or lease with purchase option
- Co-location with non-profit would be considered

-->Please forward all options and information to: -->
Aaron Pomerantz | 202.312.5746 | aaron.pomerantz@grubb-ellis.com
-->Sandy Weiss | 202.312.5747 | sandy.weiss@grubb-ellis.com -->

Grubb & Ellis Company
900 19th Street, NW | Suite 600 | Washington, DC 20006
202.312.5400 (ph) | 202.312.5450 (fx) | <http://www.grubb-ellis.com/> www.grubb-ellis.com -->

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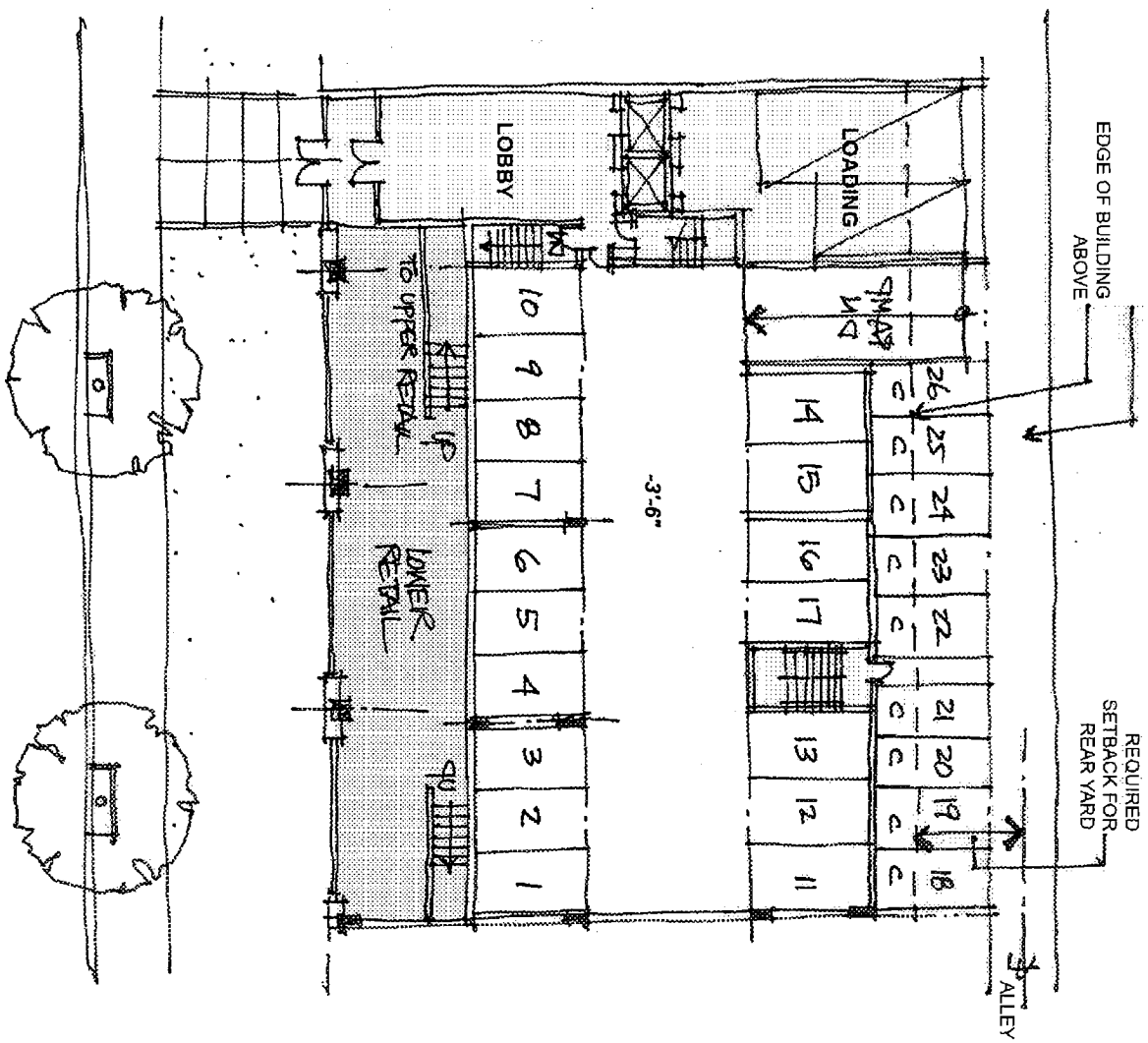


010 wisconsin avenue, nw T 202.466.6116
suite 405 F 202.466.6235
washington, dc 20007 E GEN@COREdc.com

1920 8TH STREET **SK1**

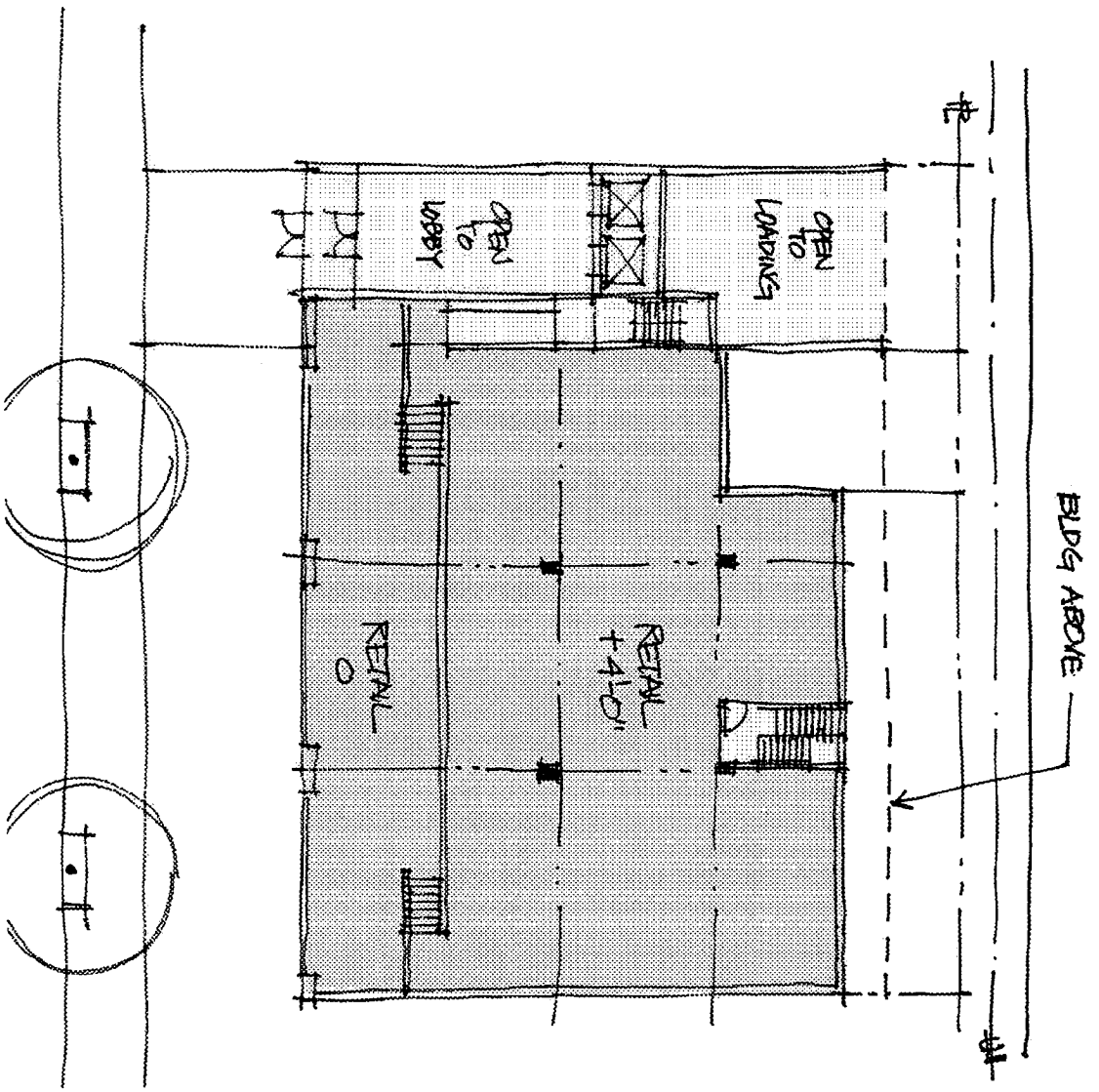
Ground Floor Plan DT 12/11/07 PN 07037.00

CONFIDENTIAL

LA 179

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015831



CORE
010 wisconsin avenue, nw T 202.466.6116
uite 405 F 202.466.6235

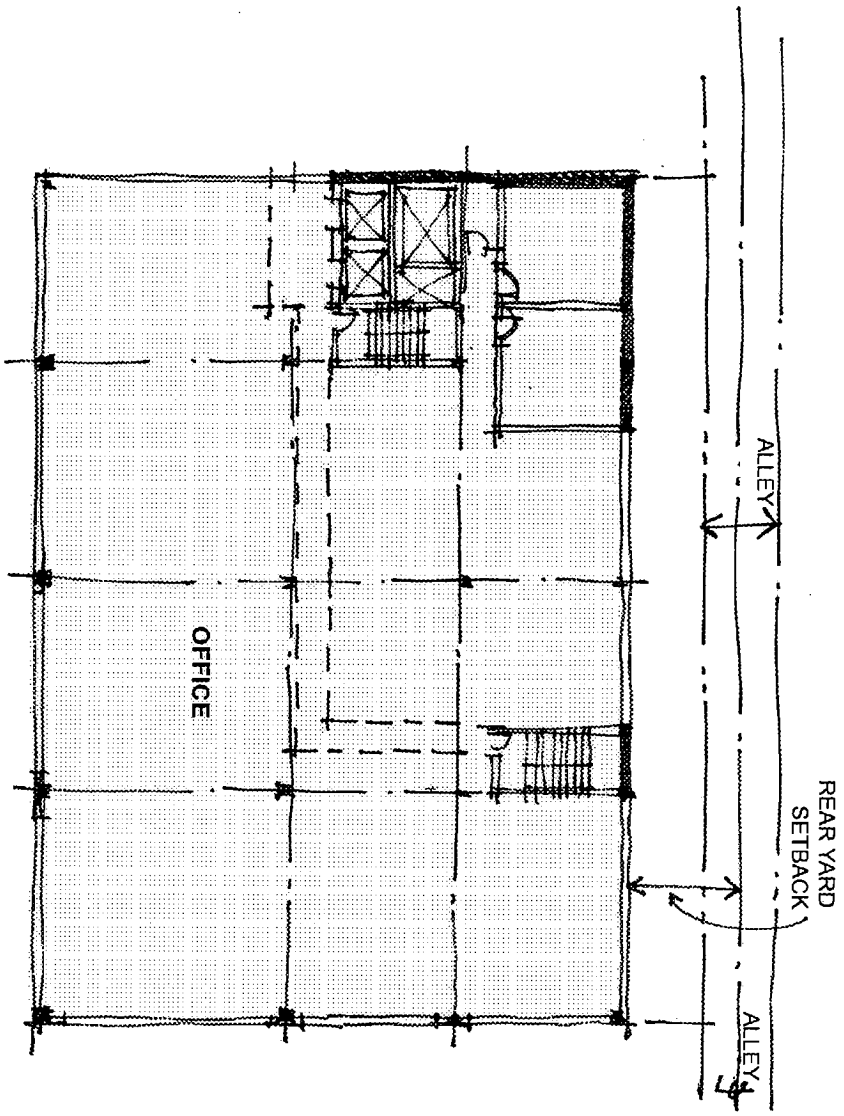
1920 8TH STREET **SK2**

Upper Ground Floor Plan DT 12/11/07 PN 07037.00

CONFIDENTIAL

LA 180

FOIA CONFIDENTIAL TREATMENT REQUESTED



010 wisconsin avenue, nw T 202.466.6116
ulite 405 F 202.466.6235

1920 8TH STREET **SK3**

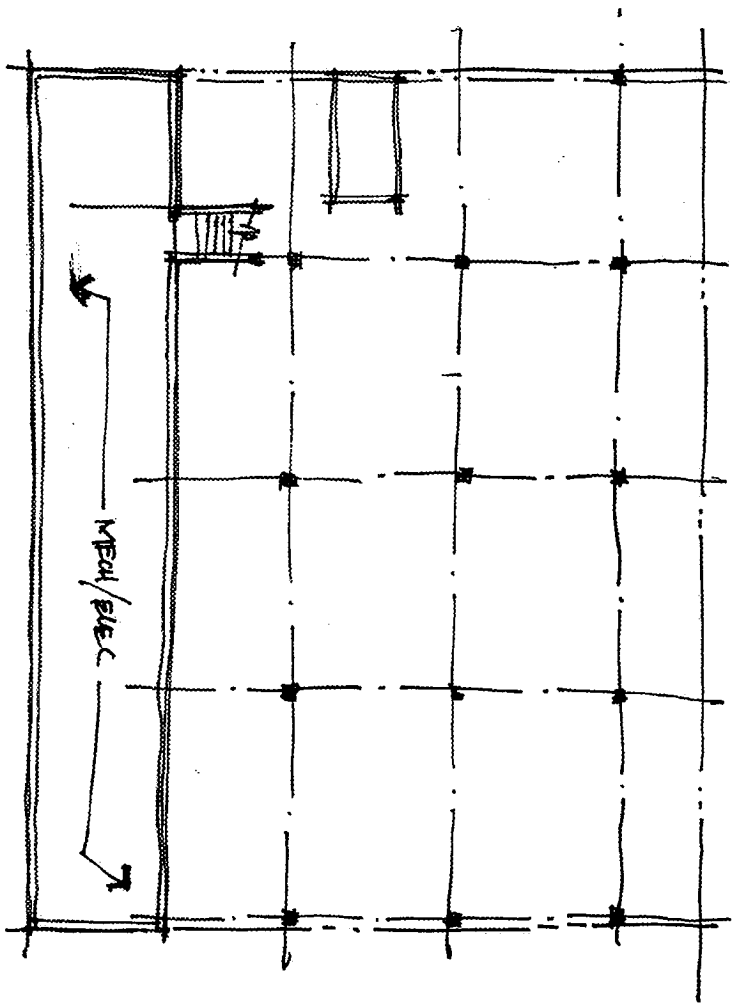
Typical Floor Plan DT 12/11/07 PN 07037.00

CONFIDENTIAL

LA 181

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015833



CORE
010 wisconsin avenue, nw T 202.466.6116
uite 405 F 202.466.6235
ashington, dc 20007 E GEN@COREdc.com

1920 8TH STREET **SK4**

Lower Mechanical Level Plan DT 12/11/07 PN 07037.00

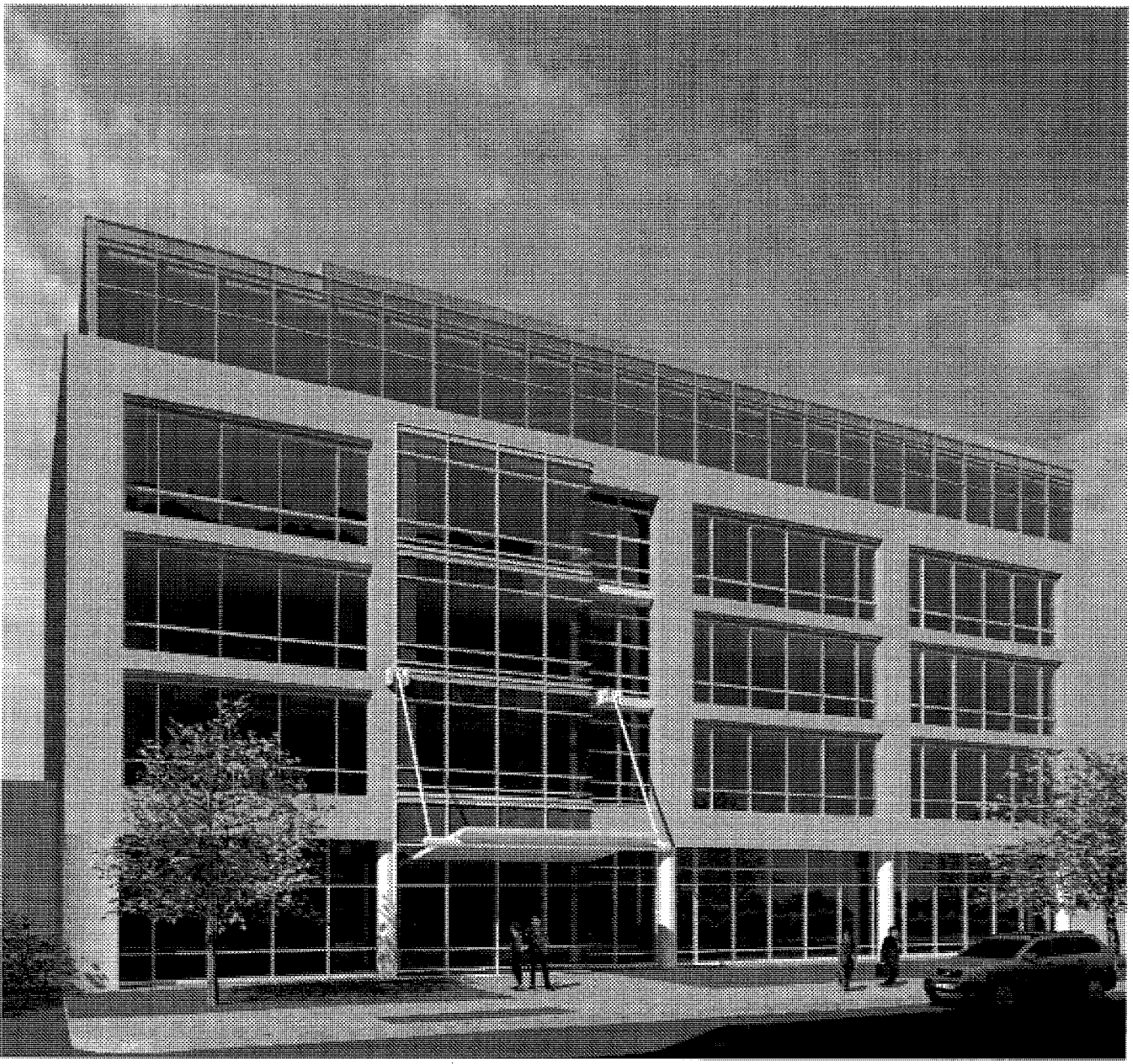
CONFIDENTIAL

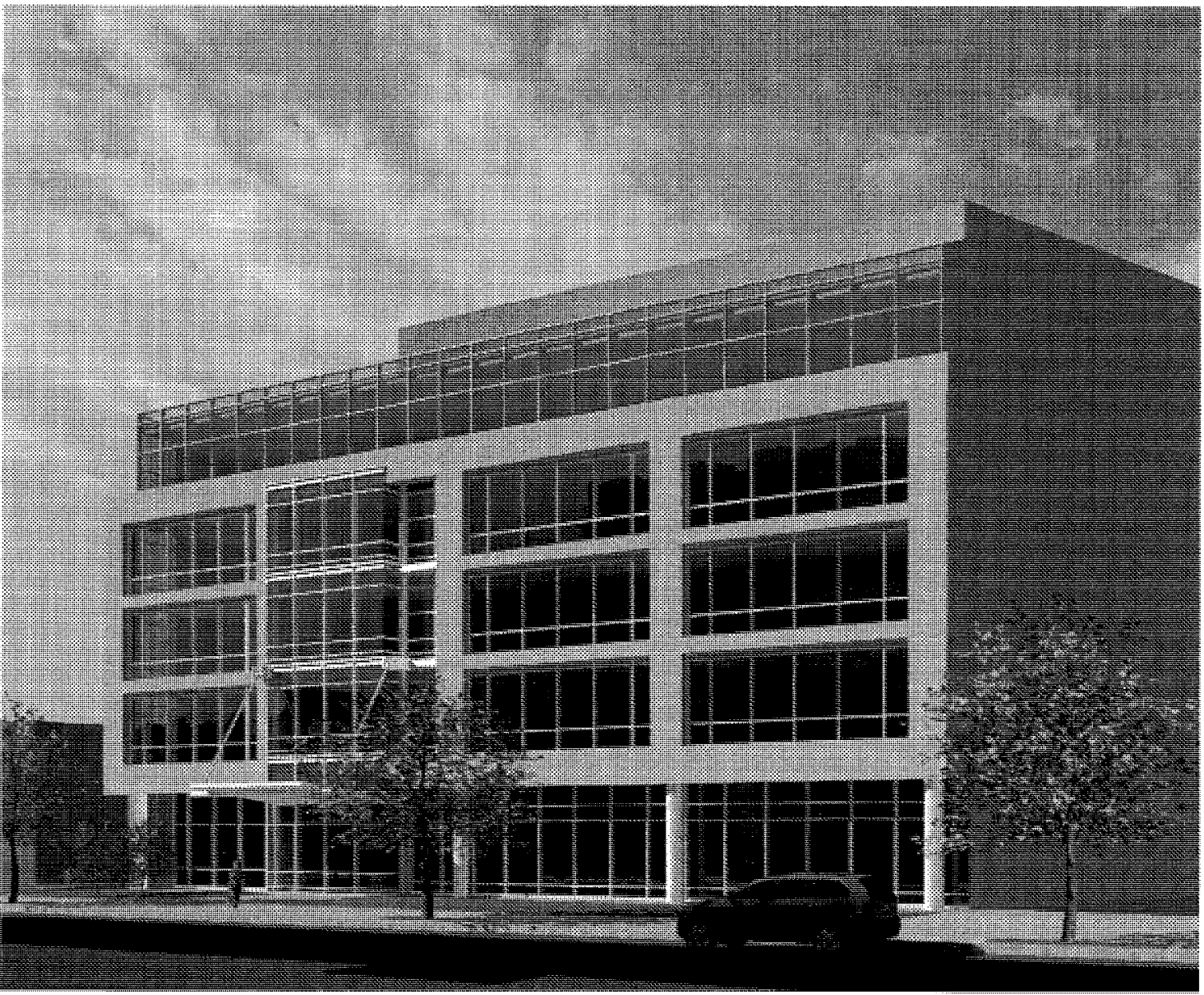
LA 182

FOIA CONFIDENTIAL TREATMENT REQUESTED

Google

Google





SUBDIVISION
SQUARE 393
8th STREET, N.W.
10'
PUBLIC
ALLEY
WEST
94.33
EAST
94.33
NORTH
120.0
SOUTH
120.0
46
11,320 SF
45
10'

From: Josh Adler <josh@lakritzadler.com>
Sent: Monday, February 11, 2008 11:16 AM
To: 'Anne Corbett' <Anne@culturaldc.org>
Subject: RE: Source Theater Arts Credit Transfer Proposal

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Sent: Monday, February 11, 2008 10:09 AM
To: Josh Adler
Subject: FW: Source Theater Arts Credit Transfer Proposal

josh,
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anne

-----Original Message-----
From: Christopher Pilla [mailto:Pilla@voa.com]
Sent: Friday, February 08, 2008 5:31 PM
To: Anne Corbett; Travis Bowerman; Brian Allen
Cc: Ilana Branda
Subject: RE: Source Theater Arts Credit Transfer Proposal

Anne--

The survey for the theatre is 100' x 36' for the building (3600sf). The lot is 36'x120.17' (4326.12sf).

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Based on this information, you are using 7734 SF, or FAR of 1.78 of the lot.

Let me know if you see any holes in my process.
Have a great weekend,
cp

Chris Pilla
VOA Associates Incorporated
202-822-8227

From: Josh Adler <josh@lakritzadler.com>
Sent: Monday, March 3, 2008 1:44 PM
To: 'robb@lakritzadler.com'
Subject: Metro Decision

Rosalyn called, said they are choosing Banneker, then Madi is second place. We are third. She said Banneker substituted someone else for Donatelli. She said the reason for decision was price offered, that we did not even get to their appraisal threshold.

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

From: Robb LaKritz <robb@lakritzadler.com>
Sent: Wednesday, March 5, 2008 1:00 PM
To: 'Brad Voight - LA' <brad@lakritzadler.com>
Subject: RE: Contact Info for Medhane (1920 8th St NW)

(301) 983-8491 or amedhane@comcast.net

From: Brad Voight - LA [mailto:brad@lakritzadler.com]
Sent: Tuesday, March 04, 2008 12:28 PM
To: 'Robb LaKritz'
Subject: Contact Info for Medhane (1920 8th St NW)

I need to contact Medhane after all to request the real estate tax bill that's due March 31st. I can pull it off the DC website but I need the original bill to pay it at Wachovia and receive a receipt for payment. What's the best way to contact him?

Bradley M. Voight, CPA
Vice President - Finance & Accounting

LAKRITZ | ADLER

LaKritz Adler Development LLC
4326 8th Street, NW
Washington, DC 20011
E-Mail: Brad@LaKritzAdler.com
Phone: 202-882-0808
Fax: 202-882-0809
Cell: 301-742-5789

From: Josh Adler <josh@lakritzadler.com>
Sent: Thursday, March 6, 2008 11:40 AM
To: 'robb@lakritzadler.com'
Subject: Howard

Diane Branch told me Banneker's partner is Metropolis (a long time ago she told me Metropolis was one of the developers, but we were not able to confirm that). They've already been in touch with her.

Howard is focused on development projects other than the CVS site right now. They do intend to do a hotel there eventual, but they want to look at some other brands that are "more representative" of Howard, and the look they want for that corner. They will keep us in mind for their other projects, but she doesn't want to say what they are yet.

LAKRITZ|ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

From: Anne Corbett <Anne@culturaldc.org>
Sent: Monday, March 10, 2008 3:04 PM
To: Josh Adler <josh@lakritzadler.com>
Subject: RE: Source Theater Arts Credit Transfer Proposal

josh,
we would like to counter your original offer -- cudc is willing to sell the transferable density at $9 /sf.
thanks for your patience,
anne

Anne L. Corbett
Executive Director | Cultural Development Corporation
Flashpoint | 916 G St, NW | WDC 20001
Source | 1835 14th St, NW | WDC 20009
202.315.1308 | 202.315.1303 fax | anne@culturaldc.org
culturaldc.org | flashpointdc.org | sourcedc.org

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Cc: Ilana Branda
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Have a great weekend,
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Chris Pilla
VOA Associates Incorporated
202-822-8227

From: Josh Adler <josh@lakritzadler.com>
Sent: Monday, March 10, 2008 3:08 PM
To: 'Anne Corbett' <Anne@culturaldc.org>
Subject: RE: Source Theater Arts Credit Transfer Proposal

Thanks for the clear response. We will discuss it here.

-----Original Message-----
From: Anne Corbett [mailto:Anne@culturaldc.org]
Sent: Monday, March 10, 2008 3:04 PM
To: Josh Adler
Subject: RE: Source Theater Arts Credit Transfer Proposal

josh,
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thanks for your patience,
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Executive Director | Cultural Development Corporation
Flashpoint | 916 G St, NW | WDC 20001
Source | 1835 14th St, NW | WDC 20009
202.315.1308 | 202.315.1303 fax | anne@culturaldc.org
culturaldc.org | flashpointdc.org | sourcedc.org

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202-822-8227

From: Josh Adler <josh@lakritzadler.com>
Sent: Monday, March 10, 2008 3:08 PM
To: 'robb@lakritzadler.com'
Subject: FW: Source Theater Arts Credit Transfer Proposal

Finally, a clear response from someone. This would be $300,000. I'm still waiting on a clear number from Studio, and expecting it shortly.

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From: Anne Corbett [mailto:Anne@culturaldc.org]
Sent: Monday, March 10, 2008 3:04 PM
To: Josh Adler
Subject: RE: Source Theater Arts Credit Transfer Proposal

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Have a great weekend,
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202-822-8227

From: Josh Adler <josh@lakritzadler.com>
Sent: Wednesday, March 12, 2008 3:32 PM
To: 'robb@lakritzadler.com'
Subject: Moddie

I'm glad I called him. Metropolis is not in the deal. Banneker teamed up with two other no names: "District Development" (Tim Hirt???) and a local developer from Durham, NC, "Blue Devil Ventures".

MacFarlane may or may not be involved.

LAKRITZ ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

From: Josh Adler <josh@lakritzadler.com>
Sent: Thursday, March 13, 2008 2:48 PM
To: 'Anne Corbett' <Anne@culturaldc.org>
Subject: RE: Source Theater Arts Credit Transfer Proposal

Anne --

Give me a call when you get a break from jury duty to discuss. Did you and the board have a chance to review our original offer letter, and did you find all the other terms (excluding the offer price) to be acceptable?

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Sent: Friday, March 14, 2008 3:20 PM
To: 'Anne Corbett' <Anne@culturaldc.org>
Subject: RE: Source Theater Arts Credit Transfer Proposal
Attach: LaKritz Adler Source Theater Arts Credit Transfer REVISED 3-14-08.pdf

---

Anne,

Please find our revised offer attached. We are willing to raise our offer to $7.50/foot (up to $253,500), and we'll take the closing costs, if we can get this going next week. If this is acceptable, please sign the attached letter and return it to me.

Feel free to call with questions. 202-882-0808.

Thanks,

Josh Adler

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Sent: Thursday, March 13, 2008 2:48 PM
To: Anne Corbett
Subject: RE: Source Theater Arts Credit Transfer Proposal

Anne --

Give me a call when you get a break from jury duty to discuss. Did you and
the board have a chance to review our original offer letter, and did you find all the other terms (excluding the offer price) to be acceptable?

Thanks,

Josh Adler
202-882-0808

-----Original Message-----
From: Anne Corbett [mailto:Anne@culturaldc.org]
Sent: Monday, March 10, 2008 3:04 PM
To: Josh Adler
Subject: RE: Source Theater Arts Credit Transfer Proposal

josh,
we would like to counter your original offer -- cudc is willing to sell the transferable density at $9 /sf.
thanks for your patience,
anne

Anne L. Corbett
Executive Director | Cultural Development Corporation
Flashpoint | 916 G St, NW | WDC 20001
Source | 1835 14th St, NW | WDC 20009
202.315.1308 | 202.315.1303 fax | anne@culturaldc.org
culturaldc.org | flashpointdc.org | sourcedc.org

Screen our new film Reinventing Source online

In the Gallery at Flashpoint
Nellie Appleby, Vita Litvak & Amanda Sauer: Anima Mundi
February 14 - March 29

-----Original Message-----
From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Monday, February 11, 2008 11:16 AM
To: Anne Corbett
Subject: RE: Source Theater Arts Credit Transfer Proposal

I think the transferrable density is the 4x multiple of the final built theater area, probably excluding basement space. You have 2.5 FAR commercial area allowed (2.5 x 4,326 = 10,815 sf) before you start touching
any of the arts bonus density that the theater use creates. But, I don't
think non-bonus floor area (floor area allowed by the base zoning, but not
created by a bonus use) is transferrable. I might be wrong about that -- if
I'm wrong, that's good for both of us. Anyway, 7,734 x 4 = 30,936, which
would probably meet the requirements for our 1920 8th St lot.

-----Original Message-----
From: Anne Corbett [mailto:Anne@culturaldc.org]
Sent: Monday, February 11, 2008 10:09 AM
To: Josh Adler
Subject: FW: Source Theater Arts Credit Transfer Proposal

josh,
here are the square footages as determined by my architect. there seems to be some question as to whether we can sell you 4 times our theatre use OR the result of our total allowable FAR minus what we've built. I am still trading phone calls with my attorney on terms and will get back to you as soon as I am able. sorry for the delay.
anne

-----Original Message-----
From: Christopher Pilla [mailto:Pilla@voa.com]
Sent: Friday, February 08, 2008 5:31 PM
To: Anne Corbett; Travis Bowerman; Brian Allen

Cc: Ilana Branda
Subject: RE: Source Theater Arts Credit Transfer Proposal

Anne--

The survey for the theatre is 100' x 36' for the building (3600sf). The lot is 36'x120.17' (4326.12sf).

FAR would be based on the lot size. The GSF for the building in its "soon to be" condition would as follows:

1. Basement does not count towards FAR
2. Ground floor is 3600 SF based on the DC survey.
3. Mezzanine is 534 SF (sound booth and storage)
4. Second floor is 3600 SF (again, based on the survey)

Based on this information, you are using 7734 SF, or FAR of 1.78 of the lot.

Let me know if you see any holes in my process.
Have a great weekend,
cp

Chris Pilla
VOA Associates Incorporated
202-822-8227

LAKRITZ | ADLER
real estate development

March 21, 2008

Anne Corbett, Executive Director
Cultural Development Corporation
916 G Street, NW
Washington, DC 20001
Via e-mail Anne@CulturalDC.Org

Re: Arts Overlay Combined Lot Development Transfer to 1916-1930 8th Street, NW
Letter Agreement – REVISED MARCH 21, 2008

Dear Anne:

This Letter Agreement is our revised offer for the transfer of the Source Theater's Uptown Arts Overlay Bonus Density from 1835 14th Street, NW, to a project we are planning within the Uptown Arts Overlay at the address 1916-1930 8th Street, NW, also known as 1920 8th Street, or Square 393, Lot 46. As you can see, we have increased our original offer price by 150%, to $7.50 per foot, for a total payment of up to $253,500, and we have agreed that the Cultural Development Corporation will not have to split closing costs.

Transfer of Bonus Density from 1835 14th Street, NW to 1916-1930 8th Street, NW Washington, D.C.

Source Property / Bonus Density	All of the Uptown Arts Overlay District Bonus Density (as defined in Chapter 19 of Title 11 of the District of Columbia Municipal Regulations, the "D.C. Zoning Code") generated by the property known as the Source Theater, located at 1835 14th Street, NW, Washington, D.C., also known as Lots 33 and 34 in Square 238
Recipient Property	1916-1930 8th Street, NW, Washington, D.C., also known as Lot 46 in Square 393, or any other property designated by Purchaser in its sole discretion.
Purchaser	LaKritz Adler Development, LLC, or its

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

CONFIDENTIAL LA 207

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015876

	assignee
Seller	The Cultural Development Corporation of the District of Columbia
Purchase Price	Seven Dollars Fifty Cents ($7.50) per foot of bonus density transferred (the expected Purchase Price will be $253,500 if the final transferred bonus density is confirmed as 33,800 square feet.)
Deposit	Five Thousand Dollars ($5,000) upon Execution of this Letter Agreement. Deposit to be held in an interest-bearing account at Regional Title Corp., Washington, D.C.
Purchase Contract	The parties shall enter into a Purchase Contract and a Combined Lot Development Agreement to be provided by Purchaser within 60 days of Execution of this Letter Agreement.
Study Period	Purchaser shall have 180 days from the later of: i) Purchase Contract Execution Date and ii) Purchaser's receipt of Due Diligence Materials to make all studies of the Property. Purchaser may cancel the Purchase Contract during the Study Period for any reason whatsoever, in Purchaser's sole discretion, in which case all deposits and interest thereon shall be refunded immediately to Purchaser without penalty.
Contingencies	Settlement shall be contingent on: i) certification by the D.C. Office of Attorney General, the Zoning Administrator, the Historic Preservation and Review Board, the Office of the Recorder of Deeds, the Department of Consumer and Regulatory Affairs and any other relevant regulatory authority that this transfer of Bonus Density is of correct form and legally sufficient to complete the Purchaser's intended transaction and build Purchaser's intended project; ii) Purchaser's absolute confirmation, in a form acceptable to Purchaser in its sole discretion, that the actual Bonus Density to be transferred is

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

CONFIDENTIAL LA 208

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015877

	equal to or greater than 30,936 square feet; and iii) all Seller Representation are true and correct in fact at settlement. Purchaser may waive any contingency in its sole discretion.
Seller Representations	Seller represents that that the above grade floor area of the finished Source Theater building is or will be not less than 7,734 square feet at Settlement, that all of this area will be in use as "Legitimate Theater" as defined by the D.C. Zoning Code at the time of Settlement, and that the 1835 14th Street building was constructed prior to 1958. Seller shall make additional representations as may be customary for real estate sales in the District of Columbia in the Purchase Contract, which shall be unconditional.
Closing Period	Purchaser and Seller shall settle the purchase no more than 60 days after DCRA issuance of final building permits for Purchaser's intended project, or on a sooner date at the sole discretion of Purchaser.
Closing Costs	Seller shall pay transfer taxes and Purchaser shall pay recordation taxes.
Broker	Neither party is represented by a broker.
Legal Fees	Each party shall be responsible for its own legal fees.
Assignment	This Letter Agreement and subsequent Purchase Contract and Combined Lot Development Agreement shall be freely assignable by Purchaser in its sole and absolute discretion.
Due Diligence Materials	Within ten business days of Letter Agreement Execution Date, Seller shall provide to Purchaser copies of all surveys, architectural and construction plans and property records, certified as true and correct by Seller, sufficient for Purchaser to establish the existence (or future creation)

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

CONFIDENTIAL LA 209

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015878

	and amount of the Bonus Density.
Expiration of Offer	This Offer will expire at 5 p.m., March 21, 2008 at the sole option of Purchaser if it is not accepted by such date.
Confidentiality	Seller and its advisors shall at all times (whether or not a final purchase agreement is entered into) maintain the confidentiality of each and all of the terms of these purchase negotiations and the purchase agreement (if any), except as required by law.

THE EXECUTION OF THIS LETTER AGREEMENT IS A BINDING AGREEMENT BETWEEN THE PARTIES.

If these terms are acceptable to the Cultural Development Corporation, please sign below and return a copy of this letter to me. At that time, we will have a Purchase Contract and Combined Lot Development Agreement drawn up by our lawyer on the terms described above for your review.

Sincerely,

Joshua Adler
Co-Managing Member

ACCEPTED AND AGREED BY SELLER:

THE CULTURAL DEVELOPMENT CORPORATION

_____

Anne Corbett, Executive Director DATE

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

CONFIDENTIAL LA 210

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015879

From: Anne Corbett <Anne@culturaldc.org>
Sent: Friday, March 14, 2008 5:13 PM
To: Josh Adler <josh@lakritzadler.com>
Cc: Leila Putzel <leila@culturaldc.org>
Subject: RE: Source Theater Arts Credit Transfer Proposal

---

received and appreciated. leila Putzel, our deputy director, or I will get back to you next week.

Anne L. Corbett
Executive Director | Cultural Development Corporation
Flashpoint | 916 G St, NW | WDC 20001
Source | 1835 14th St, NW | WDC 20009
202.315.1308 | 202.315.1303 fax | anne@culturaldc.org
culturaldc.org | flashpointdc.org | sourcedc.org

Screen our new film Reinventing Source online

In the Gallery at Flashpoint
Nellie Appleby, Vita Litvak & Amanda Sauer: Anima Mundi
February 14 - March 29

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From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Friday, March 14, 2008 3:20 PM
To: Anne Corbett
Subject: RE: Source Theater Arts Credit Transfer Proposal

Anne,

Please find our revised offer attached. We are willing to raise our offer
to $7.50/foot (up to $253,500), and we'll take the closing costs, if we can
get this going next week. If this is acceptable, please sign the attached
letter and return it to me.

Feel free to call with questions. 202-882-0808.

Thanks,

Josh Adler

-----Original Message-----
From: Anne Corbett [mailto:Anne@culturaldc.org]
Sent: Friday, March 14, 2008 11:20 AM
To: Josh Adler
Subject: RE: Source Theater Arts Credit Transfer Proposal

the only term I would have issue with is splitting closing costs equally. as a nonprofit, we won't be subject to transfer taxes. you will need to take responsibility for all costs you generate by virtue of who you are as a for-profit company as well as other closing costs. I won't be looking to split those with you.

Anne L. Corbett
Executive Director | Cultural Development Corporation

Flashpoint | 916 G St, NW | WDC 20001
Source | 1835 14th St, NW | WDC 20009
202.315.1308 | 202.315.1303 fax | anne@culturaldc.org
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created by a bonus use) is transferrable. I might be wrong about that
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I'm wrong, that's good for both of us. Anyway, 7,734 x 4 = 30,936,
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Sent: Monday, February 11, 2008 10:09 AM
To: Josh Adler
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I am still trading phone calls with my attorney on terms and will get
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Sent: Friday, February 08, 2008 5:31 PM
To: Anne Corbett; Travis Bowerman; Brian Allen
Cc: Ilana Branda
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Based on this information, you are using 7734 SF, or FAR of 1.78 of the
lot.

Let me know if you see any holes in my process.
Have a great weekend,
cp

Chris Pilla
VOA Associates Incorporated
202-822-8227

From: Zuhairah Scott <zscott@mfpdc.com>
Sent: Saturday, March 15, 2008 3:41 PM
To: josh@lakritzadler.com
Subject: FW: Omar A. Karim
Attach: Omar A Karim.vcf

Josh,

I wanted to follow up on our phone conversation earlier this week. I spoke to our team here internally and I think it is best if you approach Omar directly about the possibility of purchasing your land as we have yet to finalize our deal. Please contact me should you have any questions or want to discuss further. I have attached Omar's contact info. for your reference.

Thanks.

Zuhairah Y. Scott
Assistant Vice President
MacFarlane Properties DC, LLC
1155 Connecticut Avenue, NW
3rd Floor
Washington, DC 20036
202-572-0690-main
202-572-0697-direct
202-572-0699-fax
zscott@macfarlanepartners.com
zscott@mfpdc.com

Omar A. Karim

Name:	Omar A. Karim
Full Name:	Omar A. Karim
Organization:	Banneker Ventures, LLC
Title:	Principal
Telephone Number (Work Voice):	(301) 565-4980
Telephone Number (Cell Voice):	(301) 523-1810
Telephone Number (Work Fax):	(301) 565-4982
Address (Work):	;Suite 300;814 Thayer Avenue Suite 300;Silver Spring;Maryland;20910;United States of America
Delivery Label (Work):	Suite 300 814 Thayer Avenue Suite 300 Silver Spring, Maryland 20910 United States of America
Electronic Mail Address (Preferred Internet):	okarim@bannekerventures.com

vCard Version: 2.1 | Revision: 20080315T193737Z

From: Zuhairah Scott <zscott@mfpdc.com>
Sent: Saturday, March 15, 2008 10:30 PM
To: josh@lakritzadler.com
Subject: Re: Omar A. Karim

I have not but my colleague Brad Dockser may have.

----- Original Message -----
From: josh@lakritzadler.com <josh@lakritzadler.com>
To: Zuhairah Scott
Sent: Sat Mar 15 15:16:14 2008
Subject: Re: Omar A. Karim

OK. Have you discussed it with him at all?
-----Original Message-----
From: "Zuhairah Scott" <zscott@mfpdc.com>

Date: Sat, 15 Mar 2008 12:40:41
To:<josh@lakritzadler.com>
Subject: FW: Omar A. Karim

Josh,

I wanted to follow up on our phone conversation earlier this week. I spoke to our team here internally and I think it is best if you approach Omar directly about the possibility of purchasing your land as we have yet to finalize our deal. Please contact me should you have any questions or want to discuss further. I have attached Omar's contact info. for your reference.

Thanks.

Zuhairah Y. Scott
Assistant Vice President
MacFarlane Properties DC, LLC
1155 Connecticut Avenue, NW
3rd Floor
Washington, DC 20036
202-572-0690-main
202-572-0697-direct
202-572-0699-fax
zscott@macfarlanepartners.com
zscott@mfpdc.com <mailto:zscott@mfpdc.com>

From: Josh Adler <josh@lakritzadler.com>
Sent: Tuesday, March 18, 2008 2:32 PM
To: 'manstine@fraserforbes.com'
Subject: Information about 1920 8th Street NW
Attach: 1920 8th Street Google Image.jpg; 1920 8th NPV.xls; 1920 8th street standalone rendering SE view 12-18-07.jpg; 1920 8th street standalone rendering 12-17-07.jpg; 1920 8th St NW Plat.pdf; 1920 8th Floor Plans Sketch 12-11-07.pdf; 1920 8th close up w metros.jpg

---

Mark,

Attached files will give you a good sense of the 1920 8th Street site.

Let me know if I can provide anything else.

Thanks,

Josh Adler

LAKRITZ ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

Google

FOIA CONFIDENTIAL TREATMENT REQUESTED

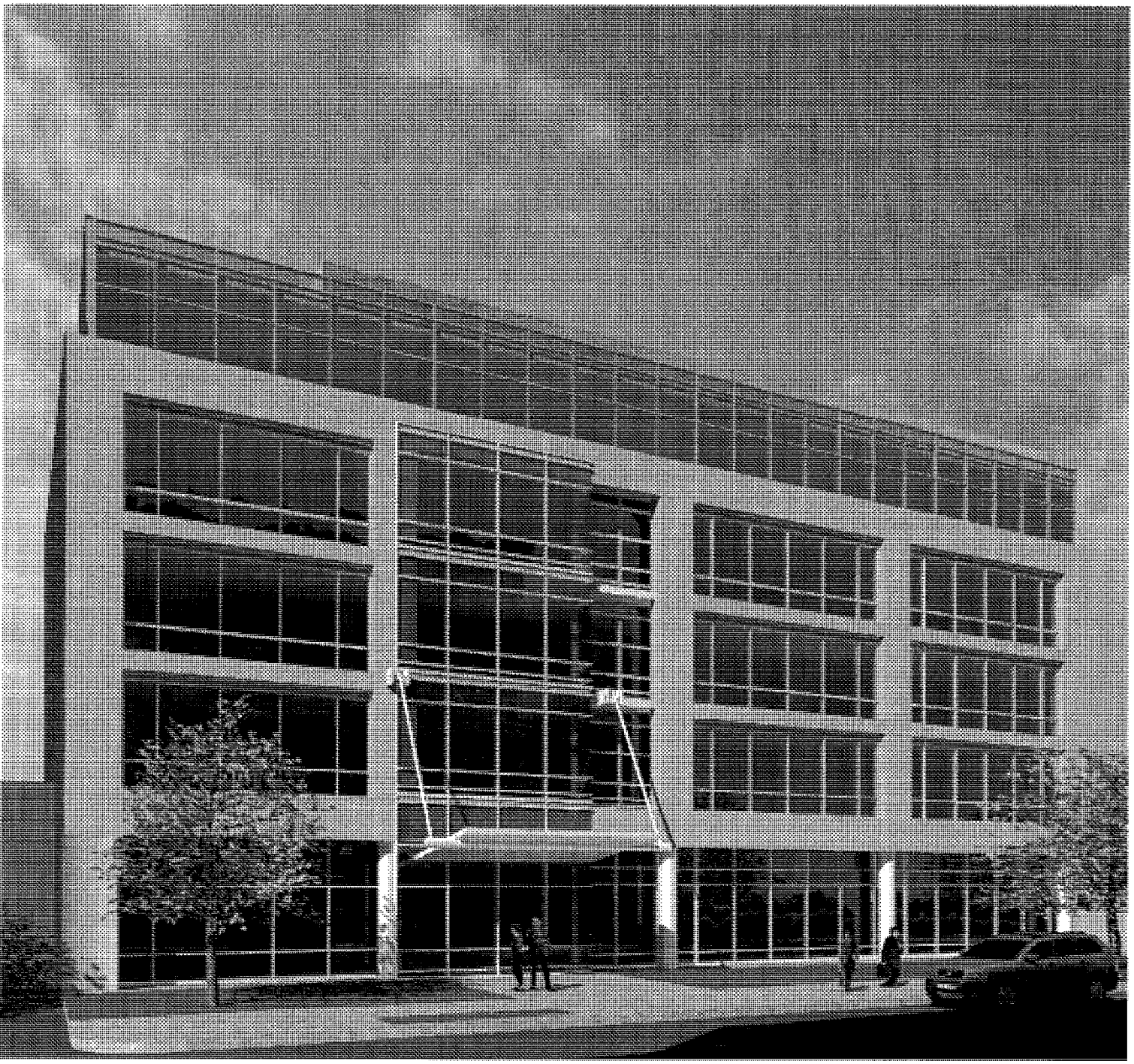
	A	B	C	D	E	F	G
1			Year	1	2	3	4
2	**Effective Discount Rate:**	**14.87%**	Year Ending in August of...	2008	2009	2010	2011
3	Debt Rate	8%	Ground Lease Payments (as of Year End)	*Pre-Paid*	$ 150,000.00	$ 150,000.00	$ 150,000.00
4	Equity Rate	20%	Accumulated Toward Option	$ 100,000.00	$ 200,000.00	$ 300,000.00	$ 450,000.00
5			Option Price at Year End - 1 day	$ 4,875,000.00	$ 4,847,000.00	$ 4,820,080.00	$ 4,744,256.20
6			NPV in Aug 08 if Option Exercised this Year	$ 4,875,000.00	$3,803,857.05	$3,424,242.61	$3,067,984.19
7			(Assume rent paid at year start, option at year end)				
8			Ground Lease Assignment Fee (Paid Aug 2008)	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00
9			Effective Purchase Price	$ 8,375,000.00	$ 7,303,857.05	$ 6,924,242.61	$ 6,567,984.19
10			Potental Floor Area at 4.5 FAR (SF)	50940	50940	50940	50940
11			Effective Price per FAR-foot	$ 164.41	$ 143.38	$ 135.93	$ 128.94
12		2008 Value/FAR-ft					
13		$ 120.00	Property Market Value at Year End, starting at X/FAR-ft	$ 6,112,800.00	$ 6,112,800.00	$ 6,112,800.00	$ 6,112,800.00
14			Net Land Equity at Assignment (Replaces Cash Equity)	$ 2,612,800.00	$ 2,612,800.00	$ 2,612,800.00	$ 2,612,800.00
15			Percentage Land Value as Cash	57.26%	57.26%	57.26%	57.26%
16			Percentage Land Value as Debt (i.e., "free" equity)	42.74%	42.74%	42.74%	42.74%
17			Debt Rate x Debt Share of Land Equity	3.42%	3.42%	3.42%	3.42%
18			Equity Rate x Cash Share of Land Equity	11.45%	11.45%	11.45%	11.45%
19			Effective Discount Rate (average cost of capital)	14.87%	14.87%	14.87%	14.87%

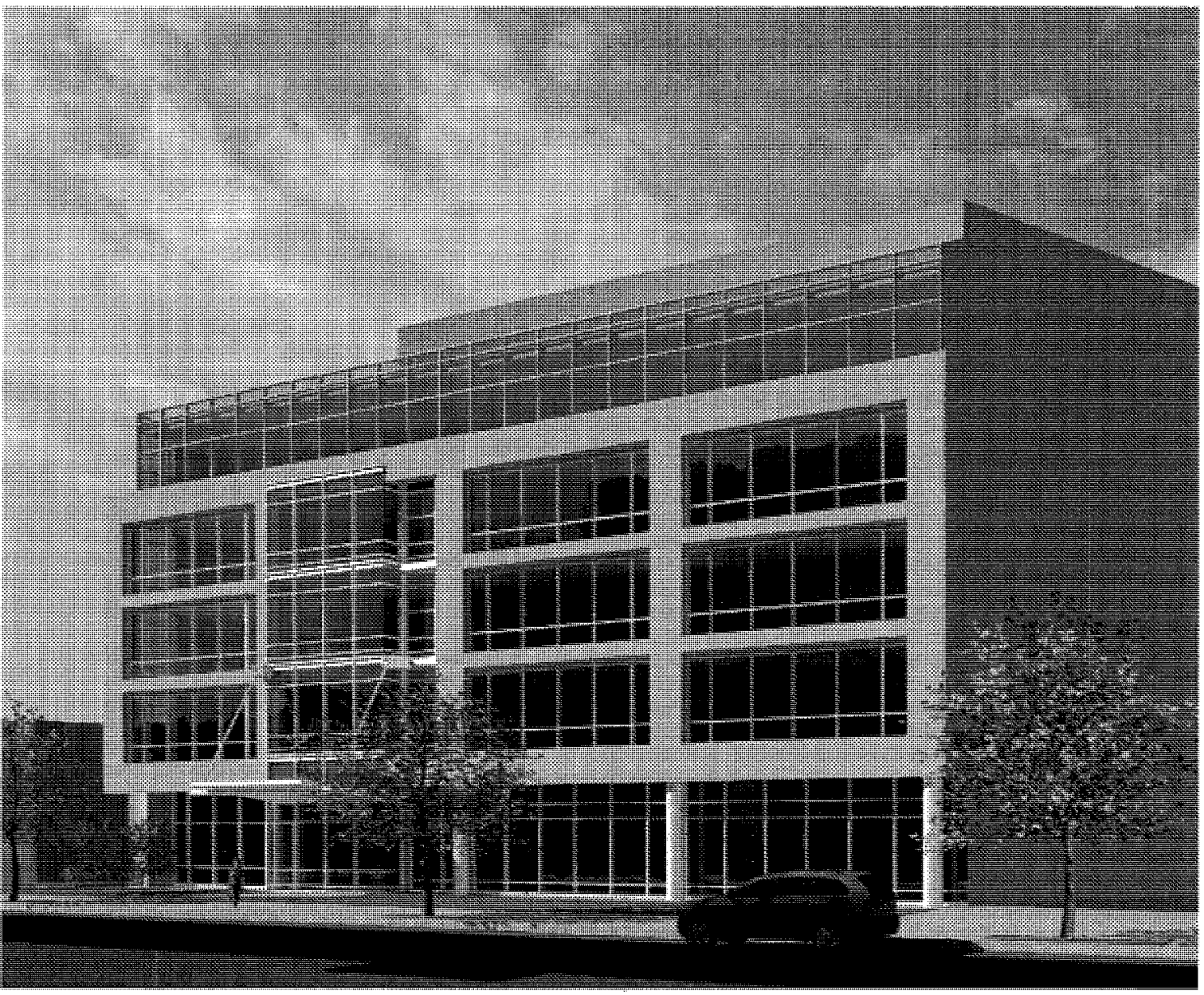
WMATA-INV 015895

FOIA CONFIDENTIAL TREATMENT REQUESTED

	H	I	J	K	L	M
1	5	6	7	8	9	10
2	2012	2013	2014	2015	2016	2017
3	$ 150,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00	$ 200,000.00
4	$ 600,000.00	$ 800,000.00	$ 1,000,000.00	$ 1,200,000.00	$ 1,400,000.00	$ 1,600,000.00
5	$ 4,594,256.20	$ 4,394,256.20	$ 4,194,256.20	$ 3,994,256.20	$ 3,794,256.20	$ 3,594,256.20
6	$2,726,396.98	$2,441,975.74	$2,205,644.12	$2,009,717.67	$1,847,695.65	$1,714,083.29
7						
8	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	$ 3,500,000.00	**$ 3,500,000.00**
9	$ 6,226,396.98	$ 5,941,975.74	$ 5,705,644.12	$ 5,509,717.67	$ 5,347,695.65	$ 5,214,083.29
10	50940	50940	50940	50940	50940	50940
11	$ 122.23	$ 116.65	$ 112.01	$ 108.16	$ 104.98	**$ 102.36**
12						
13	$ 6,112,800.00	$ 6,112,800.00	$ 6,112,800.00	$ 6,112,800.00	$ 6,112,800.00	$ 6,112,800.00
14	$ 2,612,800.00	$ 2,612,800.00	$ 2,612,800.00	$ 2,612,800.00	$ 2,612,800.00	$ 2,612,800.00
15	57.26%	57.26%	57.26%	57.26%	57.26%	57.26%
16	42.74%	42.74%	42.74%	42.74%	42.74%	42.74%
17	3.42%	3.42%	3.42%	3.42%	3.42%	3.42%
18	11.45%	11.45%	11.45%	11.45%	11.45%	11.45%
19	**14.87%**	14.87%	14.87%	14.87%	14.87%	**14.87%**

WMATA-INV 015896





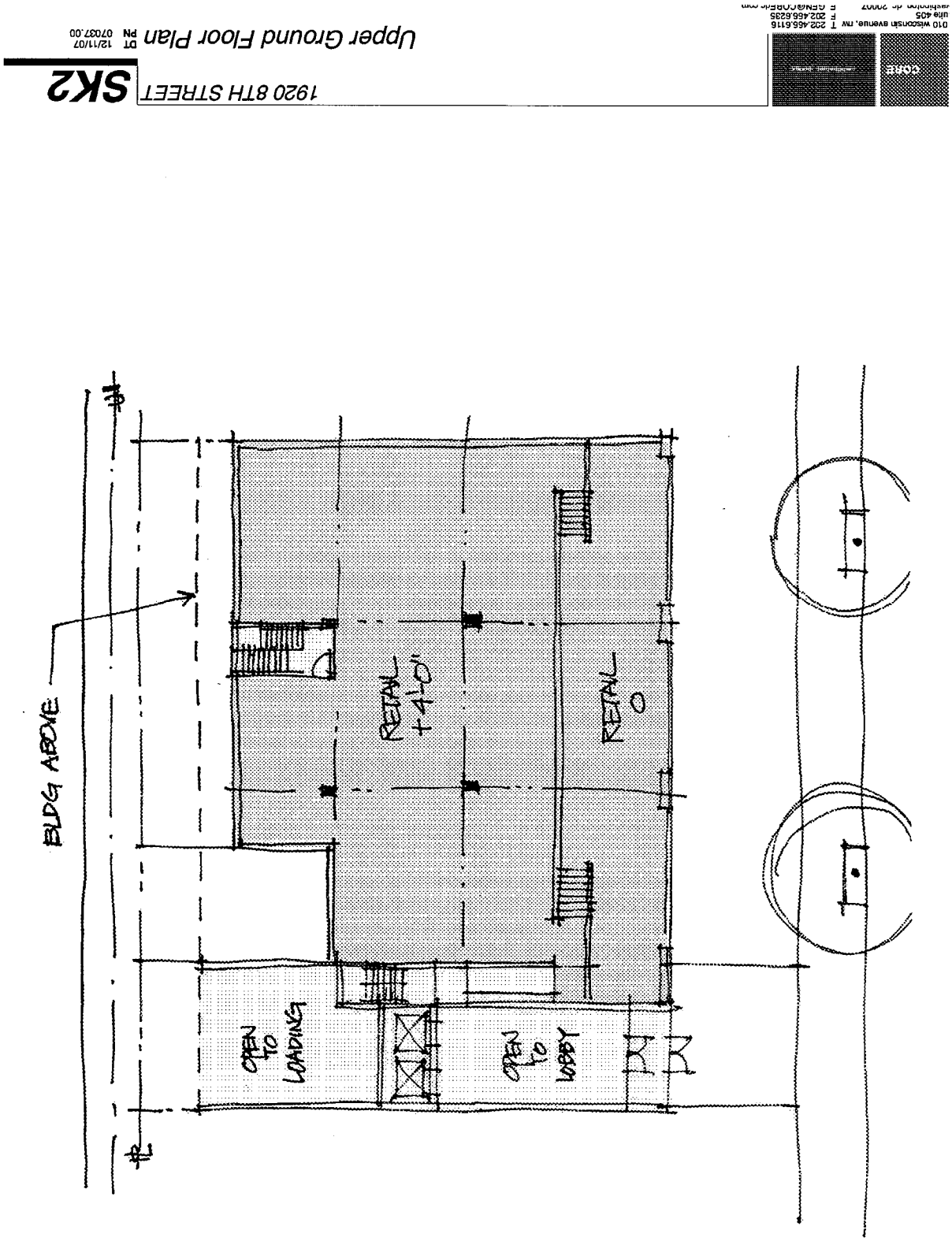
SUBDIVISION
SQUARE 393
8th STREET, N.W.
10'
PUBLIC
ALLEY
10'
WEST
94.33
EAST
94.33
NORTH
120.0
SOUTH
120.0
46
11,320 SF
45

010 wisconsin avenue, nw T 202.466.5116
suite 405 F 202.466.6235
washington, dc 20007 E GENA@COREarc.com

CORE

1920 8TH STREET **SK1**

Ground Floor Plan DT 12/11/07 PN 07037.00

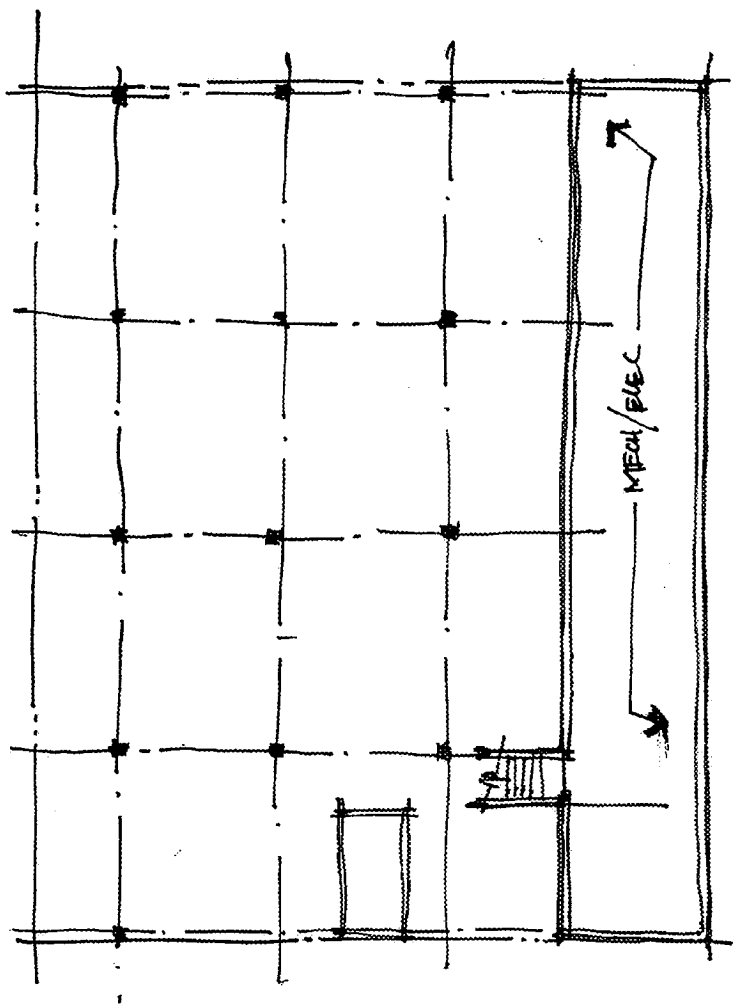

1920 8TH STREET
SK2
Upper Ground Floor Plan
DT 12/11/07
PN 07037.00
010 wisconsin avenue, nw T 202.466.6116
ute 405 F 202.466.6235
ashington dc 20007 E GEN@CORE.com
CORE
BLDG ABOVE
RETAIL +4'-0"
RETAIL 0
OPEN TO LOADING
OPEN TO LOBBY

1010 Wisconsin Avenue, nw T 202.466.6116
suite 405 F 202.466.6235
washington, dc 20007 E GEN@CORE-dc.com

CORE

1920 8TH STREET **SK3**

Typical Floor Plan 01 PN 07037.00
12/11/07



CORE
010 wisconsin avenue, nw T 202.466.6116
ute 405 F 202.466.6235
ashington dc 20007 E GEN@CORE4c.com

1920 8TH STREET **SK4**

Lower Mechanical Level Plan DT 12/11/07 PN 07037.00

Metro
1030 7th St NW, Washington, DC 20001
Metro
Google

From: Mark Anstine <manstine@fraserforbes.com>
Sent: Tuesday, March 18, 2008 4:03 PM
To: Josh Adler <josh@lakritzadler.com>
Subject: RE: Information about 1920 8th Street NW

---

thank you. We will get back to you.

FRASER FORBES LAND SALES
Fraser Forbes Co., LLC
6862 Elm Street Suite 220
McLean, VA 22101

Mark Anstine
Executive Vice President
E-Mail: manstine@fraserforbes.com
Office: 703.790.9400
Fax: 703.790.9401
Mobile: 703.928.4082

We make your life easier!

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, March 18, 2008 2:32 PM
To: Mark Anstine
Subject: Information about 1920 8th Street NW

Mark,

Attached files will give you a good sense of the 1920 8th Street site.

Let me know if I can provide anything else.

Thanks,

Josh Adler

LAKRITZ | ADLER
4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

From: Anne Corbett <Anne@culturaldc.org>
Sent: Tuesday, March 18, 2008 6:12 PM
To: Josh Adler <josh@lakritzadler.com>
Subject: RE: Source Theater Arts Credit Transfer Proposal

josh,
just got off a conference call and a more legally minded board member has weighed in and we do have some issues with the other terms. not major issues and I think the fastest way to get to closer would be to meet in person. we would like to meet with you at your convenience although I am stuck in jury duty of late and going forward with no clear end.
how's tomorrow at 5 pm or friday late after noon or monday morning look for you? ideally we'd meet here at our offices at 9th and g nw.

and real quick, do you own your site out-right at this point or is any other component still pending?

thanks,
anne

Anne L. Corbett
Executive Director | Cultural Development Corporation
Flashpoint | 916 G St, NW | WDC 20001
Source | 1835 14th St, NW | WDC 20009
202.315.1308 | 202.315.1303 fax | anne@culturaldc.org
culturaldc.org | flashpointdc.org | sourcedc.org

Screen our new film Reinventing Source online

In the Gallery at Flashpoint
Nellie Appleby, Vita Litvak & Amanda Sauer: Anima Mundi
February 14 - March 29

-----Original Message-----
From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Friday, March 14, 2008 3:20 PM
To: Anne Corbett
Subject: RE: Source Theater Arts Credit Transfer Proposal

Anne,

Please find our revised offer attached. We are willing to raise our offer
to $7.50/foot (up to $253,500), and we'll take the closing costs, if we can
get this going next week. If this is acceptable, please sign the attached
letter and return it to me.

Feel free to call with questions. 202-882-0808.

Thanks,

Josh Adler

-----Original Message-----
From: Anne Corbett [mailto:Anne@culturaldc.org]
Sent: Friday, March 14, 2008 11:20 AM
To: Josh Adler

Subject: RE: Source Theater Arts Credit Transfer Proposal

the only term I would have issue with is splitting closing costs equally. as a nonprofit, we won't be subject to transfer taxes. you will need to take responsibility for all costs you generate by virtue of who you are as a for-profit company as well as other closing costs. I won't be looking to split those with you.

Anne L. Corbett
Executive Director | Cultural Development Corporation
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-----Original Message-----
From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Thursday, March 13, 2008 2:48 PM
To: Anne Corbett
Subject: RE: Source Theater Arts Credit Transfer Proposal

Anne --

Give me a call when you get a break from jury duty to discuss. Did you and
the board have a chance to review our original offer letter, and did you find all the other terms (excluding the offer price) to be acceptable?

Thanks,

Josh Adler
202-882-0808

-----Original Message-----
From: Anne Corbett [mailto:Anne@culturaldc.org]
Sent: Monday, March 10, 2008 3:04 PM
To: Josh Adler
Subject: RE: Source Theater Arts Credit Transfer Proposal

josh,
we would like to counter your original offer -- cudc is willing to sell the transferable density at $9 /sf.
thanks for your patience,
anne

Anne L. Corbett
Executive Director | Cultural Development Corporation
Flashpoint | 916 G St, NW | WDC 20001
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February 14 - March 29

-----Original Message-----
From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Monday, February 11, 2008 11:16 AM
To: Anne Corbett
Subject: RE: Source Theater Arts Credit Transfer Proposal

I think the transferrable density is the 4x multiple of the final built theater area, probably excluding basement space. You have 2.5 FAR commercial area allowed (2.5 x 4,326 = 10,815 sf) before you start touching
any of the arts bonus density that the theater use creates. But, I don't
think non-bonus floor area (floor area allowed by the base zoning, but not
created by a bonus use) is transferrable. I might be wrong about that -- if
I'm wrong, that's good for both of us. Anyway, 7,734 x 4 = 30,936, which
would probably meet the requirements for our 1920 8th St lot.

-----Original Message-----
From: Anne Corbett [mailto:Anne@culturaldc.org]
Sent: Monday, February 11, 2008 10:09 AM
To: Josh Adler
Subject: FW: Source Theater Arts Credit Transfer Proposal

josh,
here are the square footages as determined by my architect. there seems to be some question as to whether we can sell you 4 times our theatre use OR the result of our total allowable FAR minus what we've built. I am still trading phone calls with my attorney on terms and will get back to you as soon as I am able. sorry for the delay.
anne

-----Original Message-----
From: Christopher Pilla [mailto:Pilla@voa.com]
Sent: Friday, February 08, 2008 5:31 PM
To: Anne Corbett; Travis Bowerman; Brian Allen
Cc: Ilana Branda
Subject: RE: Source Theater Arts Credit Transfer Proposal

Anne--

The survey for the theatre is 100' x 36' for the building (3600sf). The lot is 36'x120.17' (4326.12sf).

FAR would be based on the lot size. The GSF for the building in its "soon to be" condition would as follows:

1. Basement does not count towards FAR
2. Ground floor is 3600 SF based on the DC survey.
3. Mezzanine is 534 SF (sound booth and storage)
4. Second floor is 3600 SF (again, based on the survey)

Based on this information, you are using 7734 SF, or FAR of 1.78 of the lot.

Let me know if you see any holes in my process.
Have a great weekend,
cp

Chris Pilla

VOA Associates Incorporated
202-822-8227

From: Josh Adler <josh@lakritzadler.com>
Sent: Tuesday, March 18, 2008 6:24 PM
To: 'Anne Corbett' <Anne@culturaldc.org>
Subject: RE: Source Theater Arts Credit Transfer Proposal

Tomorrow at 5 pm should be fine. Friday afternoon is available too.

We control our site under a ground lease with a purchase option.

-----Original Message-----
From: Anne Corbett [mailto:Anne@culturaldc.org]
Sent: Tuesday, March 18, 2008 6:12 PM
To: Josh Adler
Subject: RE: Source Theater Arts Credit Transfer Proposal

josh,
just got off a conference call and a more legally minded board member has weighed in and we do have some issues with the other terms. not major issues and I think the fastest way to get to closer would be to meet in person. we would like to meet with you at your convenience although I am stuck in jury duty of late and going forward with no clear end.
how's tomorrow at 5 pm or friday late after noon or monday morning look for you? ideally we'd meet here at our offices at 9th and g nw.

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Anne L. Corbett
Executive Director | Cultural Development Corporation
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to $7.50/foot (up to $253,500), and we'll take the closing costs, if we can
get this going next week. If this is acceptable, please sign the attached
letter and return it to me.

Feel free to call with questions. 202-882-0808.

Thanks,

Josh Adler

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To: Josh Adler
Subject: RE: Source Theater Arts Credit Transfer Proposal

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Anne L. Corbett
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Thanks,

Josh Adler
202-882-0808

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To: Josh Adler
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thanks for your patience,
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Anne L. Corbett

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would probably meet the requirements for our 1920 8th St lot.

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Sent: Monday, February 11, 2008 10:09 AM
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josh,
here are the square footages as determined by my architect. there seems to be some question as to whether we can sell you 4 times our theatre use OR the result of our total allowable FAR minus what we've built. I am still trading phone calls with my attorney on terms and will get back to you as soon as I am able. sorry for the delay.
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To: Anne Corbett; Travis Bowerman; Brian Allen
Cc: Ilana Branda
Subject: RE: Source Theater Arts Credit Transfer Proposal

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The survey for the theatre is 100' x 36' for the building (3600sf). The lot is 36'x120.17' (4326.12sf).

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Based on this information, you are using 7734 SF, or FAR of 1.78 of the lot.

Let me know if you see any holes in my process.
Have a great weekend,
cp

Chris Pilla
VOA Associates Incorporated
202-822-8227

From: Josh Adler <josh@lakritzadler.com>
Sent: Monday, March 24, 2008 1:18 PM
To: 'Anne Corbett' <Anne@culturaldc.org>
Subject: Revised Offer
Attach: CDC Source CLD proposal 03-24-08.doc; CDC Source CLD proposal 03-24-08 REDLINE.doc

---

Hi Anne,

I enjoyed meeting you and Amy in person on Friday afternoon. Pursuant to your request, I am providing a revised CLD purchase offer and a redline comparison to the last offer. The key changes are that we are offering a substantial annual extension payment to CDC if we do not settle the purchase within 18 months (sufficient time to get through the key entitlement issues pertaining to the bonus density creation and transfer and site plans, as we discussed), and we have reduced the seller representation language and eliminated the "binding agreement" paragraph. Let me know if I missed anything else from our discussion.

If this is acceptable for you, please print and sign a copy and return it to me by fax or email, and we will start preparing the full purchase contract. We request your response by the end of this week.

Thanks,

Josh Adler

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Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

LAKRITZ | ADLER
real estate development

March 24, 2008

Anne Corbett, Executive Director
Cultural Development Corporation
916 G Street, NW
Washington, DC 20001
Via e-mail Anne@CulturalDC.Org

Re: Arts Overlay Combined Lot Development Transfer to 1916-1930 8th Street, NW
Letter Agreement – REVISED MARCH 24, 2008

Dear Anne:

This Letter Agreement is our revised offer for the transfer of the Source Theater's Uptown Arts Overlay Bonus Density from 1835 14th Street, NW, to a project we are planning within the Uptown Arts Overlay at the address 1916-1930 8th Street, NW, also known as 1920 8th Street, or Square 393, Lot 46. As you can see, we have increased our original offer price by 150%, to $7.50 per foot, for a total payment of up to $253,500, and we have agreed that the Cultural Development Corporation will not have to split closing costs.

In addition, we have provided for annual extension payments of $25,000 to CDC in the event that settlement does not occur within 18 months.

Transfer of Bonus Density from 1835 14th Street, NW to 1916-1930 8th Street, NW Washington, D.C.

Source Property / Bonus Density	All of the Uptown Arts Overlay District Bonus Density (as defined in Chapter 19 of Title 11 of the District of Columbia Municipal Regulations, the "D.C. Zoning Code") generated by the property known as the Source Theater, located at 1835 14th Street, NW, Washington, D.C., also known as Lots 33 and 34 in Square 238
Recipient Property	1916-1930 8th Street, NW, Washington, D.C., also known as Lot 46 in Square 393,

LaKritz | Adler Development, LLC
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CONFIDENTIAL LA 239

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015925

	or any other property designated by Purchaser in its sole discretion.
Purchaser	LaKritz Adler Development, LLC, or its assignee
Seller	The Cultural Development Corporation of the District of Columbia
Purchase Price	Seven Dollars Fifty Cents ($7.50) per foot of bonus density transferred (the expected Purchase Price will be $253,500 if the final transferred bonus density is confirmed as 33,800 square feet.)
Deposit	Five Thousand Dollars ($5,000) upon Execution of this Letter Agreement. Deposit to be held in an interest-bearing account at Regional Title Corp., Washington, D.C.
Purchase Contract	The parties shall enter into a Purchase Contract and a Combined Lot Development Agreement to be provided by Purchaser within 60 days of Execution of this Letter Agreement.
Study Period	Purchaser shall have 180 days from the later of: i) Purchase Contract Execution Date and ii) Purchaser's receipt of Due Diligence Materials to make all studies of the Property. Purchaser may cancel the Purchase Contract during the Study Period for any reason whatsoever, in Purchaser's sole discretion, in which case all deposits and interest thereon shall be refunded immediately to Purchaser without penalty.
Contingencies	Settlement shall be contingent on: i) certification by the D.C. Office of Attorney General, the Zoning Administrator, the Historic Preservation and Review Board, the Office of the Recorder of Deeds, the Department of Consumer and Regulatory Affairs and any other relevant regulatory authority that this transfer of Bonus Density is of correct form and legally sufficient to complete the Purchaser's intended transaction and build Purchaser's intended project; ii) Purchaser's absolute

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CONFIDENTIAL

LA 240

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015926

	confirmation, in a form acceptable to Purchaser in its sole discretion, that the actual Bonus Density to be transferred is equal to or greater than 30,936 square feet; and iii) all Seller Representation are true and correct in fact at settlement. Purchaser may waive any contingency in its sole discretion.
Seller Representations	Seller represents that that the above grade floor area of the finished Source Theater building is or will be not less than 7,734 square feet at Settlement, that all of this area will be in use as "Legitimate Theater" as defined by the D.C. Zoning Code at the time of Settlement, and that the 1835 14th Street building was constructed prior to 1958. Seller shall make additional representations as may be customary or required for a Combined Lot Development Agreement or transfer of development rights in the District of Columbia in the Purchase Contract.
Closing Period	Purchaser and Seller shall settle the purchase no more than 60 days after DCRA issuance of final building permits for Purchaser's intended project, or on a sooner date at the sole discretion of Purchaser.
Extension Payments	If purchase has not settled within 18 months of execution of the Purchase Contract, provided that Purchaser wishes to continue its rights under the Purchase Contract, Purchaser shall direct Title Company to release the Deposit to Seller, and shall pay to Seller an additional Twenty Thousand Dollars ($20,000), for a total payment to Seller of Twenty Five Thousand Dollars ($25,000) as an Extension Payment. The Extension Payment shall be non-refundable (except in the event of Seller Default), and shall be credited in full to Purchase Price at Settlement. On each anniversary of the

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CONFIDENTIAL

LA 241

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015927

	first Extension Payment, if Settlement has not yet occurred and provided that Purchaser wishes to continue its rights under the Purchase Contract, Purchaser shall pay an additional Twenty Five Thousand Dollars ($25,000) to Seller ("Additional Extension Payments"). Additional Extension payments shall be on-refundable, except in the event of Seller default, and shall be credited in full to the Purchase Price at Settlement.
Closing Costs	Seller shall pay transfer taxes and Purchaser shall pay recordation taxes.
Broker	Neither party is represented by a broker.
Legal Fees	Each party shall be responsible for its own legal fees.
Assignment	This Letter Agreement and subsequent Purchase Contract and Combined Lot Development Agreement shall be freely assignable by Purchaser in its sole and absolute discretion.
Due Diligence Materials	Within ten business days of Letter Agreement Execution Date, Seller shall provide to Purchaser copies of all surveys, architectural and construction plans and property records, sufficient for Purchaser to establish the existence (or future creation) and amount of the Bonus Density.
Expiration of Offer	This Offer will expire at 5 p.m., March 28, 2008 at the sole option of Purchaser if it is not accepted by such date.
Confidentiality	Seller and its advisors shall at all times (whether or not a final purchase agreement is entered into) maintain the confidentiality of each and all of the terms of these purchase negotiations and the purchase agreement (if any), except as required by law.

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CONFIDENTIAL LA 242

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015928

If these terms are acceptable to the Cultural Development Corporation, please sign below and return a copy of this letter to me. At that time, we will have a Purchase Contract and Combined Lot Development Agreement drawn up by our lawyer on the terms described above for your review.

Sincerely,

Joshua Adler
Co-Managing Member

ACCEPTED AND AGREED BY SELLER:

THE CULTURAL DEVELOPMENT CORPORATION

_____

Anne Corbett, Executive Director DATE

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
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CONFIDENTIAL LA 243

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015929

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real estate development

March ~~21~~24, 2008

Anne Corbett, Executive Director
Cultural Development Corporation
916 G Street, NW
Washington, DC 20001
Via e-mail Anne@CulturalDC.Org

Re: Arts Overlay Combined Lot Development Transfer to 1916-1930 8th Street, NW
Letter Agreement – REVISED MARCH ~~21~~24, 2008

Dear Anne:

This Letter Agreement is our revised offer for the transfer of the Source Theater's Uptown Arts Overlay Bonus Density from 1835 14th Street, NW, to a project we are planning within the Uptown Arts Overlay at the address 1916-1930 8th Street, NW, also known as 1920 8th Street, or Square 393, Lot 46. As you can see, we have increased our original offer price by 150%, to $7.50 per foot, for a total payment of up to $253,500, and we have agreed that the Cultural Development Corporation will not have to split closing costs.

In addition, we have provided for annual extension payments of $25,000 to CDC in the event that settlement does not occur within 18 months.

Transfer of Bonus Density from 1835 14th Street, NW to 1916-1930 8th Street, NW Washington, D.C.

Source Property / Bonus Density	All of the Uptown Arts Overlay District Bonus Density (as defined in Chapter 19 of Title 11 of the District of Columbia Municipal Regulations, the "D.C. Zoning Code") generated by the property known as the Source Theater, located at 1835 14th Street, NW, Washington, D.C., also known as Lots 33 and 34 in Square 238
Recipient Property	1916-1930 8th Street, NW, Washington, D.C., also known as Lot 46 in Square 393,

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4326 8th Street, NW • Washington, DC 20011
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CONFIDENTIAL

LA 244

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015931

	or any other property designated by Purchaser in its sole discretion.
Purchaser	LaKritz Adler Development, LLC, or its assignee
Seller	The Cultural Development Corporation of the District of Columbia
Purchase Price	Seven Dollars Fifty Cents ($7.50) per foot of bonus density transferred (the expected Purchase Price will be $253,500 if the final transferred bonus density is confirmed as 33,800 square feet.)
Deposit	Five Thousand Dollars ($5,000) upon Execution of this Letter Agreement. Deposit to be held in an interest-bearing account at Regional Title Corp., Washington, D.C.
Purchase Contract	The parties shall enter into a Purchase Contract and a Combined Lot Development Agreement to be provided by Purchaser within 60 days of Execution of this Letter Agreement.
Study Period	Purchaser shall have 180 days from the later of: i) Purchase Contract Execution Date and ii) Purchaser's receipt of Due Diligence Materials to make all studies of the Property. Purchaser may cancel the Purchase Contract during the Study Period for any reason whatsoever, in Purchaser's sole discretion, in which case all deposits and interest thereon shall be refunded immediately to Purchaser without penalty.
Contingencies	Settlement shall be contingent on: i) certification by the D.C. Office of Attorney General, the Zoning Administrator, the Historic Preservation and Review Board, the Office of the Recorder of Deeds, the Department of Consumer and Regulatory Affairs and any other relevant regulatory authority that this transfer of Bonus Density is of correct form and legally sufficient to complete the Purchaser's intended transaction and build Purchaser's intended project; ii) Purchaser's absolute

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CONFIDENTIAL LA 245

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015932

	confirmation, in a form acceptable to Purchaser in its sole discretion, that the actual Bonus Density to be transferred is equal to or greater than 30,936 square feet; and iii) all Seller Representation are true and correct in fact at settlement. Purchaser may waive any contingency in its sole discretion.
Seller Representations	Seller represents that that the above grade floor area of the finished Source Theater building is or will be not less than 7,734 square feet at Settlement, that all of this area will be in use as "Legitimate Theater" as defined by the D.C. Zoning Code at the time of Settlement, and that the 1835 14th Street building was constructed prior to 1958. Seller shall make additional representations as may be customary or required for ~~real estate sales~~a Combined Lot Development Agreement or transfer of development rights in the District of Columbia in the Purchase Contract~~, which shall be unconditional~~.
Closing Period	Purchaser and Seller shall settle the purchase no more than 60 days after DCRA issuance of final building permits for Purchaser's intended project, or on a sooner date at the sole discretion of Purchaser.
Extension Payments	If purchase has not settled within 18 months of execution of the Purchase Contract, provided that Purchaser wishes to continue its rights under the Purchase Contract, Purchaser shall direct Title Company to release the Deposit to Seller, and shall pay to Seller an additional Twenty Thousand Dollars ($20,000), for a total payment to Seller of Twenty Five Thousand Dollars ($25,000) as an Extension Payment. The Extension Payment shall be non-refundable (except in the event of Seller Default), and shall be credited in full to Purchase Price at

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015933

	Settlement. On each anniversary of the first Extension Payment, if Settlement has not yet occurred and provided that Purchaser wishes to continue its rights under the Purchase Contract, Purchaser shall pay an additional Twenty Five Thousand Dollars ($25,000) to Seller ("Additional Extension Payments"). Additional Extension payments shall be on-refundable, except in the event of Seller default, and shall be credited in full to the Purchase Price at Settlement.
Closing Costs	Seller shall pay transfer taxes and Purchaser shall pay recordation taxes.
Broker	Neither party is represented by a broker.
Legal Fees	Each party shall be responsible for its own legal fees.
Assignment	This Letter Agreement and subsequent Purchase Contract and Combined Lot Development Agreement shall be freely assignable by Purchaser in its sole and absolute discretion.
Due Diligence Materials	Within ten business days of Letter Agreement Execution Date, Seller shall provide to Purchaser copies of all surveys, architectural and construction plans and property records, ~~certified as true and correct by Seller,~~ sufficient for Purchaser to establish the existence (or future creation) and amount of the Bonus Density.
Expiration of Offer	This Offer will expire at 5 p.m., March ~~21~~28, 2008 at the sole option of Purchaser if it is not accepted by such date.
Confidentiality	Seller and its advisors shall at all times (whether or not a final purchase agreement is entered into) maintain the confidentiality of each and all of the terms of these purchase negotiations and the purchase agreement (if any), except as required by law.

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(202) 882-0808 • Fax (202) 882-0809

CONFIDENTIAL

LA 247

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015934

~~THE EXECUTION OF THIS LETTER AGREEMENT IS A BINDING AGREEMENT BETWEEN THE PARTIES.~~

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
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CONFIDENTIAL

LA 248

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015935

If these terms are acceptable to the Cultural Development Corporation, please sign below and return a copy of this letter to me. At that time, we will have a Purchase Contract and Combined Lot Development Agreement drawn up by our lawyer on the terms described above for your review.

Sincerely,

Joshua Adler
Co-Managing Member

ACCEPTED AND AGREED BY SELLER:

THE CULTURAL DEVELOPMENT CORPORATION

_____

Anne Corbett, Executive Director DATE

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

CONFIDENTIAL LA 249

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015936

From: Josh Adler <josh@lakritzadler.com>
Sent: Friday, March 28, 2008 4:32 PM
To: 'Anne Corbett' <Anne@culturaldc.org>
Subject: RE: Revised Offer
Attach: CDC Source CLD proposal 03-28-08.doc

We are OK with a .5% monthly escalation after the 18th month. I have added this provision to the LOI and attached the revised LOI.

Ready to go?

Thanks,

Josh

From: Anne Corbett [mailto:Anne@culturaldc.org]
Sent: Thursday, March 27, 2008 4:51 PM
To: Josh Adler
Subject: RE: Revised Offer

josh,
we appreciate your willingness to commit to payment beginning at 18 months. however, we would also ask for a ½ percent increase per month starting at 18 months.
this goes to the ensuring that the net present value, given the time involved in realizing the bulk of the payment, is congruent with the amount you've offered.
thanks,
anne

Anne L. Corbett
Executive Director | **Cultural Development Corporation**
Flashpoint | 916 G St, NW | WDC 20001
Source | 1835 14th St, NW | WDC 20009
202.315.1308 | 202.315.1303 fax | anne@culturaldc.org
culturaldc.org | flashpointdc.org | sourcedc.org

Screen our new film **Reinventing Source** online

In the Gallery at Flashpoint
Nellie Appleby, Vita Litvak & Amanda Sauer: *Anima Mundi*
February 14 – March 29

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Monday, March 24, 2008 1:18 PM
To: Anne Corbett
Subject: Revised Offer

Hi Anne,

I enjoyed meeting you and Amy in person on Friday afternoon. Pursuant to your request, I am providing a revised CLD purchase offer and a redline comparison to the last offer. The key changes are that we are offering a substantial annual extension payment to CDC if we do not settle the purchase within 18 months (sufficient time to get through the key entitlement issues pertaining to the bonus density creation and transfer and site plans, as we discussed), and we have reduced the seller representation language and eliminated the "binding agreement" paragraph. Let me know if I missed anything else from our discussion.

If this is acceptable for you, please print and sign a copy and return it to me by fax or email, and we will start preparing the

full purchase contract. We request your response by the end of this week.

Thanks,

Josh Adler

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Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

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real estate development

March 28, 2008

Anne Corbett, Executive Director
Cultural Development Corporation
916 G Street, NW
Washington, DC 20001
Via e-mail Anne@CulturalDC.Org

Re: Arts Overlay Combined Lot Development Transfer to 1916-1930 8th Street, NW
Letter Agreement – REVISED MARCH 28, 2008

Dear Anne:

This Letter Agreement is our revised offer for the transfer of the Source Theater's Uptown Arts Overlay Bonus Density from 1835 14th Street, NW, to a project we are planning within the Uptown Arts Overlay at the address 1916-1930 8th Street, NW, also known as 1920 8th Street, or Square 393, Lot 46. As you can see, we have increased our original offer price by 150%, to $7.50 per foot, for a total payment of up to $253,500, and we have agreed that the Cultural Development Corporation will not have to split closing costs.

In addition, we have provided for annual extension payments of $25,000 to CDC in the event that settlement does not occur within 18 months and we have added a .5% monthly price escalation after the eighteenth month, per your request.

Transfer of Bonus Density from 1835 14th Street, NW to 1916-1930 8th Street, NW Washington, D.C.

Source Property / Bonus Density	All of the Uptown Arts Overlay District Bonus Density (as defined in Chapter 19 of Title 11 of the District of Columbia Municipal Regulations, the "D.C. Zoning Code") generated by the property known as the Source Theater, located at 1835 14th Street, NW, Washington, D.C., also known as Lots 33 and 34 in Square 238
Recipient Property	1916-1930 8th Street, NW, Washington,

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015941

	D.C., also known as Lot 46 in Square 393, or any other property designated by Purchaser in its sole discretion.
Purchaser	LaKritz Adler Development, LLC, or its assignee
Seller	The Cultural Development Corporation of the District of Columbia
Purchase Price	Seven Dollars Fifty Cents ($7.50) per foot of bonus density transferred (the expected Purchase Price will be $253,500 if the final transferred bonus density is confirmed as 33,800 square feet.)
Deposit	Five Thousand Dollars ($5,000) upon Execution of this Letter Agreement. Deposit to be held in an interest-bearing account at Regional Title Corp., Washington, D.C.
Purchase Contract	The parties shall enter into a Purchase Contract and a Combined Lot Development Agreement to be provided by Purchaser within 60 days of Execution of this Letter Agreement.
Study Period	Purchaser shall have 180 days from the later of: i) Purchase Contract Execution Date and ii) Purchaser's receipt of Due Diligence Materials to make all studies of the Property. Purchaser may cancel the Purchase Contract during the Study Period for any reason whatsoever, in Purchaser's sole discretion, in which case all deposits and interest thereon shall be refunded immediately to Purchaser without penalty.
Contingencies	Settlement shall be contingent on: i) certification by the D.C. Office of Attorney General, the Zoning Administrator, the Historic Preservation and Review Board, the Office of the Recorder of Deeds, the Department of Consumer and Regulatory Affairs and any other relevant regulatory authority that this transfer of Bonus Density is of correct form and legally sufficient to complete the Purchaser's intended transaction and build Purchaser's

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CONFIDENTIAL LA 253

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015942

	intended project; ii) Purchaser's absolute confirmation, in a form acceptable to Purchaser in its sole discretion, that the actual Bonus Density to be transferred is equal to or greater than 30,936 square feet; and iii) all Seller Representation are true and correct in fact at settlement. Purchaser may waive any contingency in its sole discretion.
Seller Representations	Seller represents that that the above grade floor area of the finished Source Theater building is or will be not less than 7,734 square feet at Settlement, that all of this area will be in use as "Legitimate Theater" as defined by the D.C. Zoning Code at the time of Settlement, and that the 1835 14th Street building was constructed prior to 1958. Seller shall make additional representations as may be customary or required for a Combined Lot Development Agreement or transfer of development rights in the District of Columbia in the Purchase Contract.
Closing Period	Purchaser and Seller shall settle the purchase no more than 60 days after DCRA issuance of final building permits for Purchaser's intended project, or on a sooner date at the sole discretion of Purchaser.
Extension Payments	If purchase has not settled within 18 months of execution of the Purchase Contract, provided that Purchaser wishes to continue its rights under the Purchase Contract, Purchaser shall direct Title Company to release the Deposit to Seller, and shall pay to Seller an additional Twenty Thousand Dollars ($20,000), for a total payment to Seller of Twenty Five Thousand Dollars ($25,000) as an Extension Payment. The Extension Payment shall be non-refundable (except in the event of Seller Default), and shall be credited in full to Purchase Price at

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	Settlement. On each anniversary of the first Extension Payment, if Settlement has not yet occurred and provided that Purchaser wishes to continue its rights under the Purchase Contract, Purchaser shall pay an additional Twenty Five Thousand Dollars ($25,000) to Seller ("Additional Extension Payments"). Additional Extension payments shall be on-refundable, except in the event of Seller default, and shall be credited in full to the Purchase Price at Settlement.
Purchase Price Escalation	If purchase has not settled within 18 months of execution of the Purchase Contract, provided that Purchaser wishes to continue its rights under the Purchase Contract, Purchase Price shall increase by one-half of one percent (.5%) of the base Purchase Price on the first day of each month following the 18th month after Purchase Contract execution, until such time as Settlement occurs or Purchaser chooses to terminate the Purchase Contract.
Closing Costs	Seller shall pay transfer taxes and Purchaser shall pay recordation taxes.
Broker	Neither party is represented by a broker.
Legal Fees	Each party shall be responsible for its own legal fees.
Assignment	This Letter Agreement and subsequent Purchase Contract and Combined Lot Development Agreement shall be freely assignable by Purchaser in its sole and absolute discretion.
Due Diligence Materials	Within ten business days of Letter Agreement Execution Date, Seller shall provide to Purchaser copies of all surveys, architectural and construction plans and property records, sufficient for Purchaser to establish the existence (or future creation) and amount of the Bonus Density.

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CONFIDENTIAL LA 255

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015944

Expiration of Offer	This Offer will expire at 5 p.m., April 2, 2008 at the sole option of Purchaser if it is not accepted by such date.
Confidentiality	Seller and its advisors shall at all times (whether or not a final purchase agreement is entered into) maintain the confidentiality of each and all of the terms of these purchase negotiations and the purchase agreement (if any), except as required by law.

If these terms are acceptable to the Cultural Development Corporation, please sign below and return a copy of this letter to me. At that time, we will have a Purchase Contract and Combined Lot Development Agreement drawn up by our lawyer on the terms described above for your review.

Sincerely,

Joshua Adler
Co-Managing Member

ACCEPTED AND AGREED BY SELLER:

THE CULTURAL DEVELOPMENT CORPORATION

_____

Anne Corbett, Executive Director DATE

LaKritz | Adler Development, LLC
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CONFIDENTIAL LA 256

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015945

From: Josh Adler <josh@lakritzadler.com>
Sent: Tuesday, April 1, 2008 4:45 PM
To: 'robb@lakritzadler.com'
Subject: Friedman

Reading the Dupont Current article about Friedman's hotel reminds me we should approach Citypaper and WPFW as potential buyers or tenants for 1920 8th (rather than the Petworth triangle, as Friedman was pushing before). Should we call Friedman about this, or just call the broker representing those organization, who is listed in the article?

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Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

From: Josh Adler <josh@lakritzadler.com>
Sent: Thursday, April 17, 2008 12:38 PM
To: 'Rosalyn Doggett' <rdoggett@wmata.com>
Bcc: 'robb@lakritzadler.com'
Subject: LaKritz Adler Follow-up Letter to WMATA re Shaw Howard Parcels
Attach: LaKritz Adler WMATA letter 4-17-08.pdf

Hello Rosalyn,

Please find attached a follow-up letter regarding our offer for the Florida Avenue WMATA parcels. Please convey this to Mr. Washington as well.

Thank you,

Joshua Adler

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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

CONFIDENTIAL LA 259

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 015951

From: Rosalyn Doggett <rdoggett@wmata.com>
Sent: Friday, April 18, 2008 9:25 AM
To: Josh Adler <josh@lakritzadler.com>
Subject: Follow up letter

---

this letter arrived in junk mail and I inadvertently deleted it
please send again
thanks

From: Josh Adler <josh@lakritzadler.com>
Sent: Friday, April 18, 2008 12:34 PM
To: 'Rosalyn Doggett' <rdoggett@wmata.com>
Subject: RE: Follow up letter
Attach: LaKritz Adler WMATA letter 4-17-08.pdf

Trying again...

-----Original Message-----
From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Friday, April 18, 2008 9:25 AM
To: Josh Adler
Subject: Follow up letter

this letter arrived in junk mail and I inadvertently deleted it
please send again
thanks

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

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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

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4326 8th Street, NW • Washington, DC 20011
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CONFIDENTIAL

LA 262

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 015957

From: Rosalyn Doggett <rdoggett@wmata.com>
Sent: Friday, April 18, 2008 1:40 PM
To: Josh Adler <josh@lakritzadler.com>
Subject: RE: Follow up letter

---

successfully received, thanks

>>> "Josh Adler" <josh@lakritzadler.com> 4/18/2008 12:33 PM >>>
Trying again...

-----Original Message-----
From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Friday, April 18, 2008 9:25 AM
To: Josh Adler
Subject: Follow up letter

this letter arrived in junk mail and I inadvertently deleted it
please send again
thanks

From: Josh Adler <josh@lakritzadler.com>
Sent: Tuesday, April 22, 2008 4:26 PM
To: 'dchristenson@mrea.net'
Subject: 1920 8th Street
Attach: Florida Ave Metro Sites w Metro Entrance.jpg; 1920 8th Floor Plans Sketch 12-11-07.pdf; 800 Florida Standalone Rendering 12-17-07.jpg

---

Donna,

Thanks for calling today.

Attached are our floor plan sketches and a rendering for our proposed by-right office building at 1920 8th Street. The current plans call for a 47,600 SF building, five stories, thus a footprint of about 9,520 SF. We show about 26 parking spaces in a "tuckunder" type garage that would save a lot of construction cost versus doing a true underground garage, but both are options.

I'm also attaching a Google map showing the immediate surrounding area. Our site is marked "8th Street Lot" and shaded.

Best regards,

Josh Adler
Principal

LAKRITZ | ADLER

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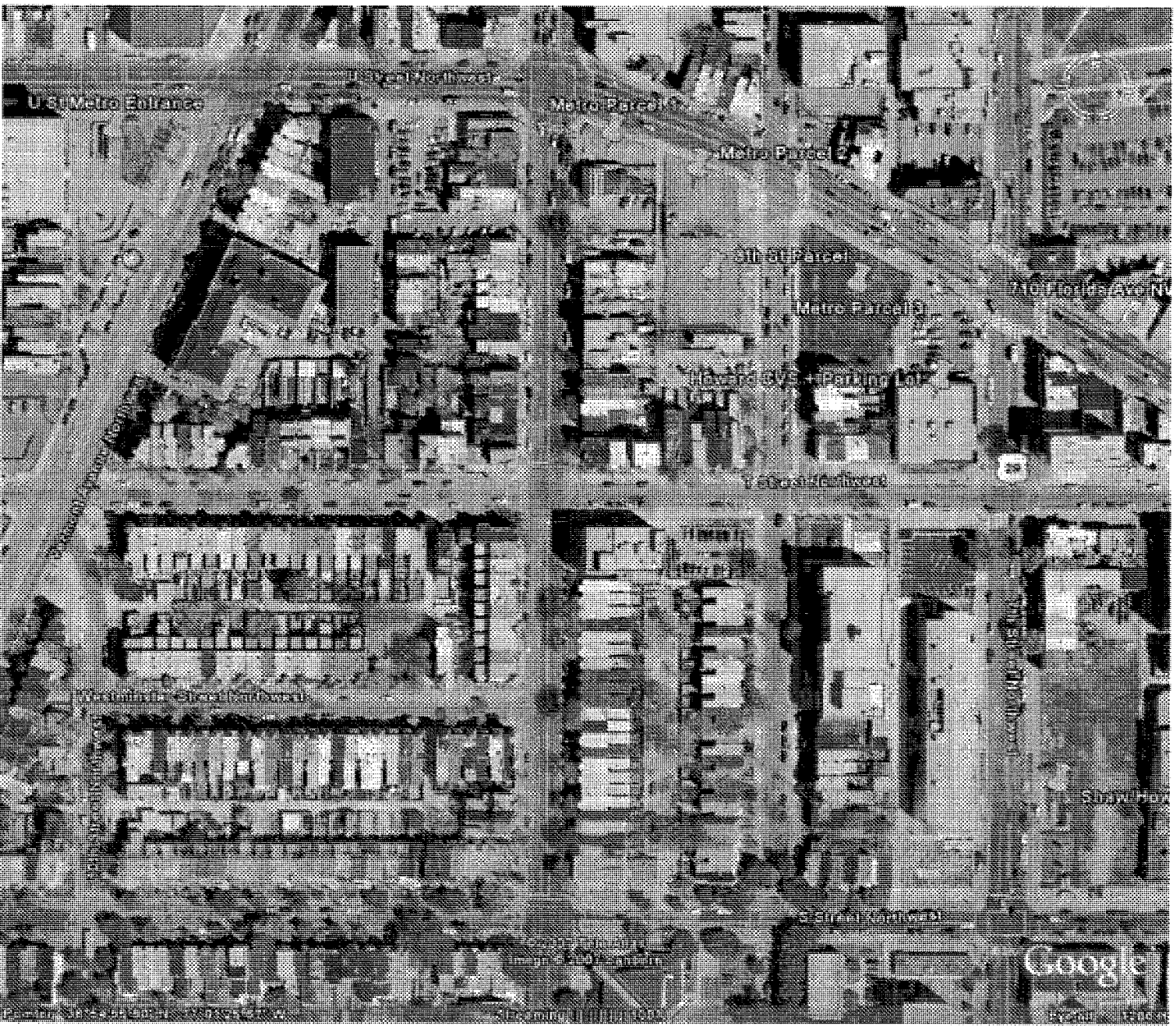
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809


Metro Parcel 5
Metro Parcel 6
Google

CORE
010 Wisconsin avenue, nw T 202.466.5116
suite 405 F 202.466.5235
washington dc 20007 E GENERAL@COREPC.COM

1920 8TH STREET **SK1**

Ground Floor Plan DT 12/11/07 PN 07037.00

CORE
010 wisconsin avenue, nw T 202.466.6116
suite 405 F 202.466.6235
washington, dc 20007 E GEN@CORE4c.com

1920 8TH STREET **SK2**

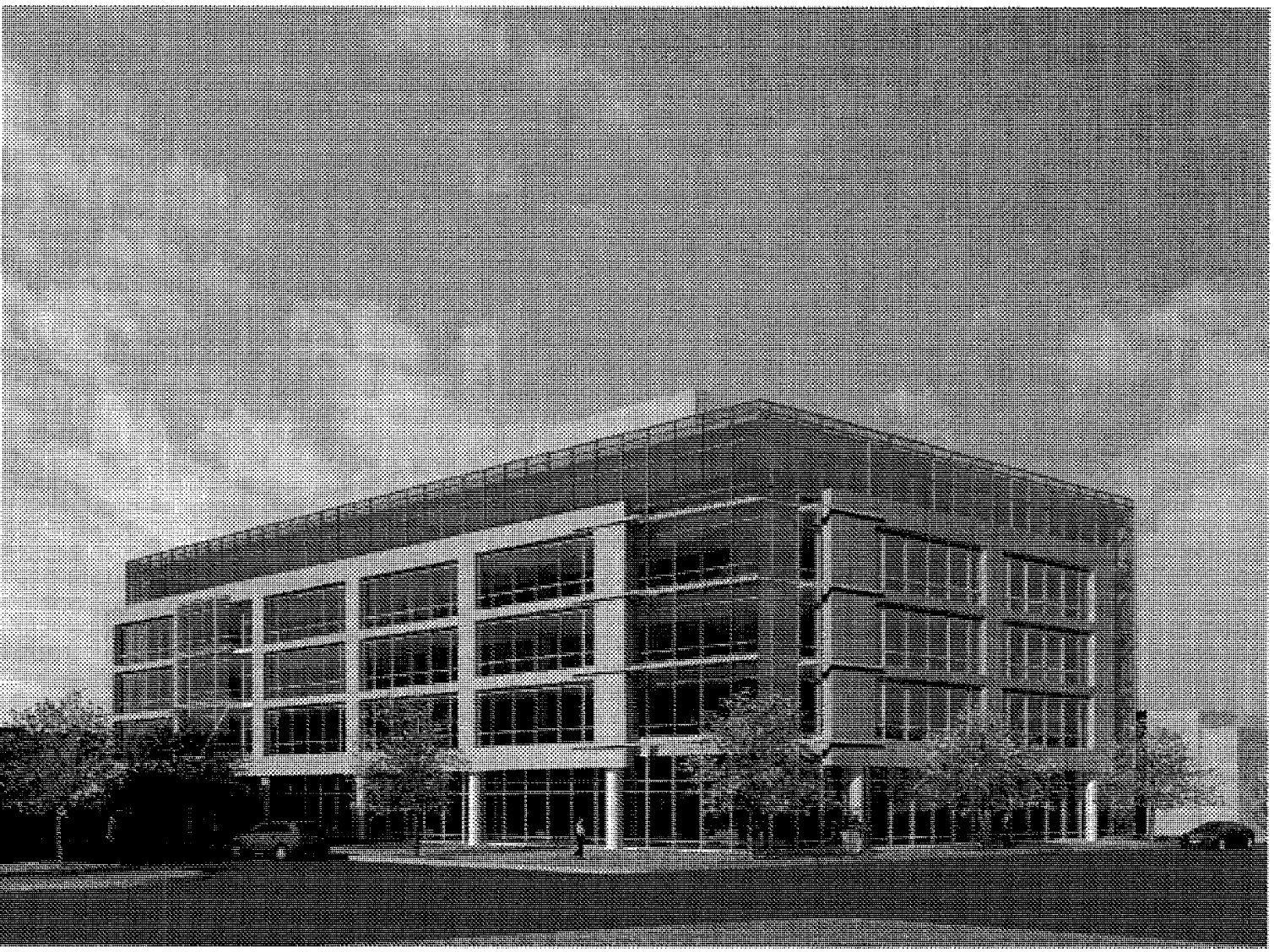
Upper Ground Floor Plan DT 12/11/07 PN 07037.00

CORE
010 Wisconsin avenue, nw T 202.466.5116
suite 405 F 202.466.5235
washington, dc 20007 E GEN@COREarch.com

COHE
010 Wisconsin avenue, nw T 202.466.6115
suite 405 F 202.466.6235
washington, dc 20007 E GSN@COHEarch.com

1920 8TH STREET **SK4**

Lower Mechanical Level Plan DT 12/11/07 PN 07037.00



From: Robb LaKritz <robb@lakritzadler.com>
Sent: Wednesday, April 23, 2008 2:21 PM
To: 'Ronald Bryant' <rbryant@buildersbank.com>; 'Dan Ruvalcaba' <druvalcaba@buildersbank.com>
Subject: FW: 1920 8th Street
Attach: AR-M277_20070828_033433.pdf

Found the term sheet...

Builders Bank
3 Bethesda Metro Center
Bethesda, MD 20814

August 27, 2007

Mr. Robb LaKritz
Mr. Josh Adler
LaKritz Adler Development
4326 8th Street, NW
Washington, DC 20011

Re: 1920 8th Street
Washington, DC

Further to your recent request, the following represent the terms that I am willing to present for approval by the Loan Committee of Builder's Bank. This is not a commitment. Issuance of a formal Letter of Intent is subject to final approval by the Loan Committee. Now, therefore, the terms are as follows:

Loan Amount:	$1,000,000.
Interest Rate:	Prime + 1%.
Fee(s):	1.0% commitment fee plus all legal and closing costs.
Term:	18 months.
Extensions:	None
Guarantee:	Full, joint and several, of all principals.
Reports:	Appraisal and Environmental.
Prepayment:	Permitted without penalty.
Advances:	Subject to loan agreement.
Repayment:	Construction Financing
Covenants:	Maximum LTV Ratio 25%.
	Maximum LTC Ratio 90%.

Sincerely,

Ronald A. Bryant
SVP/Regional Manager
Builders Bank
3 Bethesda Metro
Suite 430
Bethesda, Maryland 20814

Each depositor insured to $100,000 FDIC

tel: 301.656.0887
fax: 301.656.0889
www.buildersbank.com

EQUAL HOUSING LENDER

Builders Bank
3 Bethesda Metro Center
Bethesda, MD 20814

August 27, 2007

Mr. Robb LaKritz
Mr. Josh Adler
LaKritz Adler Development
4326 8th Street, NW
Washington, DC 20011

Re: 1920 8th Street
Washington, DC

Further to your recent request, the following represent the terms that I am willing to present for approval by the Loan Committee of Builder's Bank. This is not a commitment. Issuance of a formal Letter of Intent is subject to final approval by the Loan Committee. Now, therefore, the terms are as follows:

Loan Amount:	$12,500,000.
Interest Rate:	Prime + 1%.
Fee(s):	1.0% commitment fee plus all legal and closing costs.
Term:	18 months.
Extensions:	2, 3 month extensions.
Guarantee:	Full, joint and several, of all principals.
Reports:	Appraisal, Environmental and Plan and Cost Reports.
Prepayment:	Permitted without penalty.
Advances:	Subject to building loan agreement.
Repayment:	Refinance with a permanent mortgage lender.
Covenants:	Maximum LTV Ratio 65%.
	Maximum LTC Ratio 90%.

Sincerely,

Ronald A. Bryant
SVP/Regional Manager
Builders Bank
3 Bethesda Metro
Suite 430
Bethesda, Maryland 20814

Each depositor insured to $100,000
FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

tel: 301.656.0887
fax: 301.656.0889
www.buildersbank.com

EQUAL HOUSING LENDER

From: Robb LaKritz <robb@lakritzadler.com>
Sent: Wednesday, April 23, 2008 5:38 PM
To: 'Josh Adler' <josh@lakritzadler.com>
Subject: 1920 8th Street 5 Floor Office pro forma 8-16-07 (2) (2).xls
Attach: 1920 8th Street 5 Floor Office pro forma 8-16-07 (2) (2).xls

---

Can you want to look anew at this before I send it to Builder's Bank.

FOIA CONFIDENTIAL TREATMENT REQUESTED

	A	B
1		
2		
3		
4		
5	**SUMMARY DATA**	
6		
7		Total SF
8		Retail SF
9		Office SF
10		
11		Surface and Cellar Parking (3'6" deep)
12		
13		**Totals**
14		Site Area
15		Legal FAR / Actual FAR / FAR
16		
17	**DEVELOPMENT BUDGET**	
18		
19		
20		
21	**LAND**	
22		Land Purchase
23		Seller Take-Back (Subordinated)
24	**LAND, TOTAL**	
25		
26	**HARD COSTS**	
27		Base Building - Retail ($ PGSF/GSF)
28		Base Building - Office
29		Residential
30		Cellar Parking
31		Site Work
32		Demo/Site Work
33		**Subtotal**
34		Contingency - Hard Costs
35	**HARD COSTS, TOTAL**	
36		
37	**SOFT COSTS**	
38		Architect & Engineer, Pre-Con Consulting (% of Hard Cost)
39		Permits, Licenses & Utilities
40		Third Party Reports

WMATA-INV 015979

FOIA CONFIDENTIAL TREATMENT REQUESTED

	C	D	E	F	G
1				1920 8th Street, NW -- retail + offi	
2				WASHI	
3				DEVELOPMENT BUDGET &	
4					
5					
6	**CORE Design - no BZA**	**Eff %**	**GSF**	**NSF**	
7		93.9%	47,600	44,707	
8		100.0%	8,007	8,007	
9		92.7%	39,593	36,700	
10				0	
11		29.00	219	6,339	
12					
13		**93.9%**	**47,600**	**44,707**	
14			11320	11,320	
15		4.5	4.20	47,600	
16	Lot Occupancy	84.10%	9520		
17					
18	Commercial FAR	Credits Needed			
19	16980	30,620		First Year Land Cost @ Closing	
20	Less Restaurant Bonus	12010.5	Overlay Credits	$5	
21				**$ / Legal FAR**	
22				$6.68	
23				0.00	
24				**6.68**	
25					
26					
27			$150	8,007	
28			$150	39,593	
29				0	
30				$8,441	
31			$ 22.08		
32				$ -	
33				160.394958	
34				10.00%	
35					
36					
37					
38			no BZA	5.50%	
39				3.2%	
40					

WMATA-INV 015980

FOIA CONFIDENTIAL TREATMENT REQUESTED

	H	I	J	K	L	M
1	**ce, 5 floors, english basement parking**					
2	**NGTON, DC**					
3	**PRO FORMA SALE PROCEEDS**					
4						
5						
6	**Units**		**Avg Size**		**Zoning**	
7	1		44,707		**Parking Req.**	
8					Retail	
9						
10					Office	
11						
12						
13	**1**		**44,707**			
14	Parking		29		8,160	
15	Parking Ratio		1,542		281.3793103	per space
16						
17						
18						
19	225,000		**44,707**		**47,600**	
20	93,048					
21	**$ Amount**		**Per SSF**		**Per GSF**	
22	$ 318,047.50		$7.11		$6.68	
23			0.00		0.00	
24	**318,048**		**7.11**		**6.68**	
25						
26						
27	1,201,050		26.86		25.23	
28	5,938,950		132.84		124.77	
29	0		0.00		0.00	
30	244,800		5.48		5.14	
31	250,000		5.59		5.25	
32			0.00		0.00	
33	**7,634,800**		**170.77**		**160.39**	
34	763,480		17.08		16.04	
35	**8,398,280**		**187.85**		**176.43**	
36						
37						
38	419,914		9.39		8.82	
39	244,314		5.46		5.13	
40	50,000		1.12		1.05	

WMATA-INV 015981

FOIA CONFIDENTIAL TREATMENT REQUESTED

	N	O	P	Q	R	S	T	U
1								
2								
3								
4								
5								
6								
7	GSF/Units		exempt	remainder				
8	8,007	17%	505	7,502	10.00314286	10		
9								
10	39,593	83%	1663.571429	37,929	21.07190476	21		
11					required	31		
12					after arts restaurant reduction	21		
13					reduced by 25%	15.75		
14	Total Area							
15								
16								
17								
18								
19	**1**				**Pre-**		**% of**	
20					**Development**		**Total Cost**	
21	**Per Unit**		**% Cost**					
22	$318,048		2.2%		$318,048		100%	
23	0		0.0%		0		100%	
24	**318,048**		**2.2%**		**318,048**		**100%**	
25								
26								
27	1,201,050		8.2%		0		0%	
28	5,938,950		40.8%		0		0%	
29	0		0.0%		0		0%	
30	244,800		1.7%		0		0%	
31	250,000		1.7%		0		0%	
32	0		0.0%		0		0%	
33	**7,634,800**		**52.4%**		**0**		**0%**	
34	763,480		5.2%		0		0%	
35	**8,398,280**		**57.7%**		**0**		**0%**	
36								
37								
38	419,914		2.9%		335,931		80%	
39	244,314		1.7%		146,588		60%	
40	50,000		0.3%		50,000		100%	

WMATA-INV 015982

FOIA CONFIDENTIAL TREATMENT REQUESTED

	A	B
41		Real Estate Taxes During Construction
42		Builders Risk Insurance
43		Transfer & Recordation Taxes (Loan Only)
44		Legal, Condo Docs, Closing Cost
45		Title Insurance
46		Senior Lender Origination Fee
47		Debt Placement Fee
48		Equity Placement Fee
49		Marketing
50		Development Fee (% of Hard)
51		**Subtotal**
52		Contingency - Soft Costs
53	**SOFT COSTS, TOTAL**	
54		
55	**LAND, HARD & SOFT COSTS**	
56		
57		
58		
59		
60	**INTEREST, CONSTRUCTION + PRE-DEVELOP**	
61		
62		
63		Broker Commissions
64	**TOTAL PROJECT COST**	
65		
66	**PRO FORMA SALE PROCEEDS**	
67		
68	**TOTAL SALES PROCEEDS (from value calculations below)**	
69		
70	**PROFIT**	
71		
72	**RETAIL VALUE at completion**	
73		
74		
75	**OFFICE VALUE at completion**	
76		
77		
78	**CAPITALIZATION**	
79		
80		
81		Senior Lender

WMATA-INV 015983

FOIA CONFIDENTIAL TREATMENT REQUESTED

	C	D	E	F	G
41			3,000,000	1.850%	
42				0.50%	
43				1.45%	
44		no BZA		1.5%	
45				0.005	
46				1.00%	
47				0.00%	
48					
49				fixed	
50				7.00%	
51					
52				5.00%	
53					
54					
55					
56	Interest Calculations:	planning time (no bza)	18	$ 216,876.43	
57		building time	16	$ 709,397.16	
58		sale/lease-up	6	$ 216,994.77	
59		capitalized GL	40	$ 339,666.67	
60		8.00%		$ 1,482,935.02	
61	Post Construction Costs				
62	TI Budget	Retail and Office	Per NSF	$ 40.00	
63		10 yr retail, 5 yr office		6.00%	
64					
65					
66					
67					
68					
69					
70					
71					
72		NSF	NNN RENT	NOI	
73		8,007	**35**	$ 280,245.00	
74					
75		NSF	NNN RENT	NOI	
76		36,700	30	$ 1,101,000.00	
77					
78					
79					
80			**% Gross**	**% Equity**	
81			#REF!		

WMATA-INV 015984

FOIA CONFIDENTIAL TREATMENT REQUESTED

	H	I	J	K	L	M
41	185,000		4.14		3.89	
42	38,174		0.85		0.80	
43	203,000		4.54		4.26	
44	125,974		2.82		2.65	
45	43,582		0.97		0.92	
46	83,983		1.88		1.76	
47	0		0.00		0.00	
48	0		0.00		0.00	
49	50,000		1.12		1.05	
50	587,880		13.15		12.35	
51	**2,031,820**		**45.45**		**42.69**	
52	101,591		2.27		2.13	
53	**2,133,411**		**47.72**		**44.82**	
54						
55	**10,849,738**		**242.69**		**227.94**	
56						
57						
58						
59						
60	**1,482,935**		**33.17**		**31.15**	
61						
62	**1,728,280**					
63	498,447					
64	**$14,559,400**		**$325.66**		**$305.87**	
65						
66						
67						
68	**$22,320,692**		**$499.27**		**$468.92**	
69						
70	**$7,761,292**		**$173.60**		**$163.05**	
71						
72	CAP RATE		VALUE		Value-Sale Cost	
73	6.5%		$ 4,311,461.54		4,117,446	
74			538	per foot		
75	CAP RATE		VALUE		Value-Sale Cost	
76	6.5%		$ 16,938,461.54		16,176,231	
77			462	per foot		
78						
79						
80	**$ Amount**		**Per SSF**		**Per GSF**	
81	$11,647,520		$260.53		$244.70	

WMATA-INV 015985

FOIA CONFIDENTIAL TREATMENT REQUESTED

	N	O	P	Q	R	S	T	U
41	185,000		1.3%		97,941		53%	
42	38,174		0.3%		10,000		26%	
43	203,000		1.4%		37,500		18%	
44	125,974		0.9%		125,974		100%	
45	43,582		0.3%		7,500		17%	
46	83,983		0.6%		15,000		18%	
47	0		0.0%		0		0%	
48	0		0.0%		0		0%	
49	50,000		0.3%		25,000		50%	
50	587,880		4.0%		311,230		53%	
51	**2,031,820**		**14.0%**		**1,162,665**		**57%**	
52	101,591		0.7%		101,591		100%	
53	**2,133,411**		**14.7%**		**1,264,256**		**59%**	
54								
55	**10,849,738**		**74.5%**		**1,582,304**		**15%**	
56					**216,876**			
57								
58								
59					**156,000**			
60	**1,482,935**		**10.2%**					
61								
62								
63								
64	**$14,559,400**		**100.0%**		**$1,955,180**		**13.43%**	
65				**Minimum Land Value:**		**$3,007,969**	**At LTV of**	**65%**
66								
67								
68	**$22,320,692**		**includes retail and office value**					
69								
70	**$7,761,292**		**53.3%**	**Return on Cost**				
71			**34.8%**	**Gross Margin**				
72				(before option exercise)				
73								
74								
75								
76								
77								
78								
79								
80	**Per Unit**		**%**		**$ Amount**		**PreDev %**	
81	$11,647,520		80.0%		$1,427,281		73.0%	

WMATA-INV 015986

FOIA CONFIDENTIAL TREATMENT REQUESTED

	A	B
82		Mezzanine
83		Fully Subordienate Seller Take-Back
84		Sponsor Cash
85	**Capitalization, Totals**	
86		
87	**PROFIT ANALYSIS**	
88		
89	**Waterfall**	
90		Total Net Sales Proceeds
91		Less Senior Loan Principal
92		Less Mezzanine Principal
93		Less Seller Take-Back Principal
94	**Proceeds Available for Distribution**	
95		Less Mezzanine Interest (Rate)
96		Less Seller Takeback Interest (Rate)
97	**Proceeds To Sponsor**	
98		Less Sponsor Cash
99		Plus Developer Fee
100	**Net Proceeds to Sponsor (Multiple before Dev. Fee)**	
101		
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109	**PARKING VALUE at completion**	
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WMATA-INV 015987

FOIA CONFIDENTIAL TREATMENT REQUESTED

	C	D	E	F	G
82			#REF!	81.9%	
83				0.0%	
84				18.1%	
85				**100.0%**	
86					
87					
88					
89					
90					
91					
92					
93					
94					
95				20.00%	
96				15.00%	
97					
98					
99					
100				**30.42**	
101				% of Sales	
102	Seller Takeback + Int base case	$ 2,365,487.00		% of Cost	
103	1/2 profit	$7,764,222			
104	Proceed to sponsor	$8,352,102	includes fee		
105	% of Sales	#REF!			
106	% of cost	57%			
107					
108					
109		SPACES	NNN RENT	NOI	
110		29	2400	$ 69,600.00	
111					
112					
113	**RENTAL CASH FLOW - At Completion (4 years, without option exercise)**				
114	**Ground Lease**	**$ 150,000.00**			
115	**NSF - Retail**	**8,007**			
116	$/NSF/Year	$ 38.25	1.092727	Inflation Factor	
117	Gross Rent	$ 306,231.28			
118	Op Cost %	0%	nnn		
119	Retail NOI	$ 306,231.28			
120	**NSF - Office**	**36,700.00**			
121	$/NSF/Year	$ 32.78	nnn		
122	Gross Rent	$ 1,203,092.43			
123	Op Cost %	0%			

WMATA-INV 015988

FOIA CONFIDENTIAL TREATMENT REQUESTED

	H	I	J	K	L	M
82	2,383,981		53.32		50.084	
83	0		-		-	
84	527,899		11.808		11.090	
85	**$14,559,400**		**$325.66**		**$305.87**	
86						
87						
88						
89	**$ Amount**		**Per SSF**		**Per GSF**	
90	$22,320,692		$499.27		$468.92	
91	(3,451,763)		(77.21)		(72.516)	
92	(2,383,981)		(53.325)		(50.084)	
93	-		0.00		0.00	
94	**$16,484,948**		**368.73**		**346.32**	
95	(428,605)		(9.587)		(9.004)	
96	-		0.00		0.00	
97	**$16,056,343**		**359.15**		**337.32**	
98	(527,899)		(11.808)		(11.090)	
99	587,880		13.15		12.35	
100	**$16,116,324**		**360.49**		**338.58**	
101	72%					
102	111%					
103						
104						
105						
106						
107						
108						
109	CAP RATE		VALUE		Value - Sale Cost	
110	6.5%		$ 1,070,769.23		$ 1,022,584.62	
111			$ 36,923.08	per space		
112						
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WMATA-INV 015989

FOIA CONFIDENTIAL TREATMENT REQUESTED

	N	O	P	Q	R	S	T	U
82	2,383,981		16.4%		$0		0.0%	
83	0		0.0%		0		0.0%	
84	527,899		3.6%		527,899		27.0%	
85	**$14,559,400**		**100.0%**		**$1,955,180**		**100.0%**	
86								
87								
88								
89	**Per Unit**		**% of Proceeds**					
90	$22,320,692							
91	(3,451,763)							
92	(2,383,981)							
93	0							
94	**16,484,948**		**100.0%**					
95	(428,605)		-2.6%					
96	0		0.0%					
97	**16,056,343**		**97.4%**					
98	(527,899)							
99	587,880							
100	**16,116,324**							
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102								
103								
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WMATA-INV 015990

FOIA CONFIDENTIAL TREATMENT REQUESTED

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WMATA-INV 015991

FOIA CONFIDENTIAL TREATMENT REQUESTED

	C	D	E	F	G
124	Op Cost	$ -			
125	Office NOI	$ 1,203,092.43			
126	**NSF-Residential**	-			
127	$/NSF/Year	$ 36.00			
128	Gross Rent	$ -			
129	Op Cost %	30%			
130	Residential NOI	**$** -			
131	**Parking Spaces**	**29**			
132	Parking Rent/Space/Year	$ 2,622.54	$ 218.55	per month	
133	Parking Rent/Year	$ 76,053.80	Market Cap	Market Value	
134	**Total NOI**	**$ 1,435,377.50**	0.065	$ 22,082,730.84	
135	**Total Cost (bf land option)**	**$14,559,400**	Value/SF=	$ 463.92	
136	Cap on Cost	**9.86%**	100%		
137	LTC	100%	0%	$0.00	
138	Debt	$14,559,400.35	$0.00		
139	Rate	8.0%	8.0%		
140	Amort	360	**IO**		
141	Monthly Payment	$106,831.72	$97,062.67		
142					
143	Annual PMT (abs)	$1,281,980.66	$1,164,752.03		
144	NOI/Year	$ 1,435,377.50	$ 1,435,377.50		
145	DCR	1.119656127	1.232346001		
146	NADS	$ 153,396.84	$ 270,625.48		
147					
148					
149	**SALE VALUE & CASH FLOW AT SALE (10 years w/ Option Exercise)**				
150	**Ground Lease**	**$** -			
151	**NSF - Retail**	**8,007**			
152	$/NSF/Year	$ 45.67	1.304773184	Inflation Factor	
153	Gross Rent	$ 365,656.16			
154	Op Cost %	0%	nnn		
155	Retail NOI	$ 365,656.16			
156	**NSF - Office**	**36,700.00**			
157	$/NSF/Year	$ 39.14	nnn		
158	Gross Rent	$ 1,436,555.28			
159	Op Cost %	0%			
160	Op Cost	$ -			
161	Office NOI	$ 1,436,555.28			
162	**NSF-Residential**	-			
163	$/NSF/Year	$ 36.00			
164	Gross Rent	$ -			
165	Op Cost %	30%			

WMATA-INV 015992

FOIA CONFIDENTIAL TREATMENT REQUESTED

	H	I	J	K	L	M
124						
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129						
130						
131						
132						
133	Profit		ROC		GPM	
134	$ 7,523,330.49		52%		34.07%	
135						
136	Bank Max LTV		70%			
137	Max Loan		$ 15,457,911.58			
138	Actual Loan		$14,559,400.35			
139	Bank Max LTC		85%			
140	Max Loan		$14,559,400.35			
141	At Min Land Equity		**$2,569,305.94**		(this is the minimum appraised land value to fund 15% of cost with land equity)	
142						
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WMATA-INV 015993

FOIA CONFIDENTIAL TREATMENT REQUESTED

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WMATA-INV 015994

FOIA CONFIDENTIAL TREATMENT REQUESTED

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WMATA-INV 015995

FOIA CONFIDENTIAL TREATMENT REQUESTED

	C	D	E	F	G
166	Residential NOI	$ -			
167	**Parking Spaces**	**29**			
168	Parking Rent/Space/Year	$ 3,131.46	$ 260.95	per month	
169	Parking Rent/Year	$ 90,812.21	Market Cap	Market Value	
170	**Total NOI**	**$ 1,893,023.65**	0.065	$ 29,123,440.77	
171	**Total Cost + Option @ $3.5 million**	**$18,059,400**	Value/SF=	$ 611.84	
172	Cap on Cost	**10.48%**	100%		
173	LTC	100%	0%	**$0.00**	
174	Debt	$18,059,400.35	$0.00		
175	Rate	7.0%	7.0%		
176	Amort	360	**IO**		
177	Monthly Payment	$120,149.64	$105,346.50		
178	IO PMT	$105,346.50			
179	Annual PMT (abs)	$1,441,795.69	$1,264,158.02		
180	NOI/Year	$ 1,893,023.65	$ 1,893,023.65		
181	DCR	1.31296248	1.497458081		
182	NADS	$ 451,227.96	$ 628,865.63		
183					
184					
185	**SALE VALUE AT SALE (End of 6 years w/ Option Exercise)**				
186	**Ground Lease**	$ -			
187	**NSF - Retail**	**8,007**			
188	$/NSF/Year	$ 41.79	1.194052297	Inflation Factor	
189	Gross Rent	$ 334,627.19			
190	Op Cost %	0%	nnn		
191	Retail NOI	$ 334,627.19			
192	**NSF - Office**	**36,700.00**			
193	$/NSF/Year	$ 35.82	nnn		
194	Gross Rent	$ 1,314,651.58			
195	Op Cost %	0%			
196	Op Cost	$ -			
197	Office NOI	$ 1,314,651.58			
198	**NSF-Residential**	-			
199	$/NSF/Year	$ 36.00			
200	Gross Rent	$ -			
201	Op Cost %	30%			
202	Residential NOI	$ -			
203	**Parking Spaces**	**29**			
204	Parking Rent/Space/Year	$ 2,865.73	$ 238.81	per month	
205	Parking Rent/Year	$ 83,106.04	Market Cap	Market Value	
206	**Total NOI**	**$ 1,732,384.80**	0.065	$ 26,652,073.91	
207	**Total Cost + Option @ $4.2 million**	**$18,759,400**	Value/SF=	$ 559.92	

WMATA-INV 015996

FOIA CONFIDENTIAL TREATMENT REQUESTED

	H	I	J	K	L	M
166						
167						
168						
169	Profit		ROC		GPM	
170	$ 11,064,040.42		61%		37.99%	
171						
172						
173	62.01%		LTV			
174						
175	Bank Max LTV		80%			
176	Max Loan		$ 23,298,752.61			
177	Actual Loan		$18,059,400.35			
178	Bank Max LTC		85%			
179	Max Loan		$18,059,400.35			
180	At Min Land Equity		**$3,186,953.00**			
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204						
205	Profit		ROC		GPM	
206	$ 7,892,673.56		42%		29.61%	
207						

WMATA-INV 015997

FOIA CONFIDENTIAL TREATMENT REQUESTED

	N	O	P	Q	R	S	T	U
166								
167								
168								
169	Sale Cost		Net Sale					
170	$ 1,310,554.83		$ 9,753,485.58					
171	4.5%							
172								
173								
174								
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204								
205	Sale Cost		Net Sale					
206	$ 1,199,343.33		$ 6,693,330.23					
207	4.5%							

WMATA-INV 015998

FOIA CONFIDENTIAL TREATMENT REQUESTED

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WMATA-INV 015999

FOIA CONFIDENTIAL TREATMENT REQUESTED

	C	D	E	F	G
208	Cap on Cost	**9.23%**	100%		
209	LTC	100%	0%	**$0.00**	
210	Debt	$18,759,400.35	$0.00		
211	Rate	7.0%	7.0%		
212	Amort	360	**IO**		
213	Monthly Payment	$124,806.76	$109,429.84		
214	IO PMT	$109,429.84			
215	Annual PMT (abs)	$1,497,681.10	$1,313,158.02		
216	NOI/Year	$ 1,732,384.80	$ 1,732,384.80		
217	DCR	1.16	1.32		
218	NADS	$ 234,703.70	$ 419,226.78		
219					
220					
221	**CASH FLOW ON GROUND LEASE (End of 6 years without Option Exercise)**				
222	**Ground Lease**	**$ 200,000.00**			
223	**NSF - Retail**	**8,007**			
224	$/NSF/Year	$ 41.79	1.194052297	Inflation Factor	
225	Gross Rent	$ 334,627.19			
226	Op Cost %	0%	nnn		
227	Retail NOI	$ 334,627.19			
228	**NSF - Office**	**36,700.00**			
229	$/NSF/Year	$ 35.82	nnn		
230	Gross Rent	$ 1,314,651.58			
231	Op Cost %	0%			
232	Op Cost	$ -			
233	Office NOI	$ 1,314,651.58			
234	**NSF-Residential**	-			
235	$/NSF/Year	$ 36.00			
236	Gross Rent	$ -			
237	Op Cost %	30%			
238	Residential NOI	**$ -**			
239	**Parking Spaces**	**29**			
240	Parking Rent/Space/Year	$ 2,865.73	$ 238.81	per month	
241	Parking Rent/Year	$ 83,106.04	Market Cap	Market Value	
242	**Total NOI**	**$ 1,532,384.80**	0.065	$ 23,575,150.83	
243	**Total Cost before Option**	**$14,559,400**	Value/SF=	$ 495.28	
244	Cap on Cost	**10.53%**	100%		
245	LTC	100%	0%	**$0.00**	
246	Debt	$14,559,400.35	$0.00		
247	Rate	7.00%	7.00%		
248	Amort	360	**IO**		
249	Monthly Payment	$96,864.05	$84,929.84		

WMATA-INV 016000

FOIA CONFIDENTIAL TREATMENT REQUESTED

	H	I	J	K	L	M
208						
209	70.39%		LTV			
210						
211	Bank Max LTV		80%			
212	Max Loan		$ 21,321,659.13			
213	Actual Loan		$18,759,400.35			
214	Bank Max LTC		85%			
215	Max Loan		$18,759,400.35			
216	At Min Land Equity		**$3,310,482.41**			
217						
218						
219						
220						
221						
222						
223						
224						
225						
226						
227						
228						
229						
230						
231						
232						
233						
234						
235						
236						
237						
238						
239						
240						
241	Profit		ROC		GPM	
242	$ 9,015,750.48		62%		38.24%	
243						
244						
245	61.76%		LTV			
246						
247	Bank Max LTV		80%			
248	Max Loan		$ 18,860,120.67			
249	Actual Loan		$14,559,400.35			

WMATA-INV 016001

FOIA CONFIDENTIAL TREATMENT REQUESTED

	N	O	P	Q	R	S	T	U
208								
209								
210								
211								
212								
213								
214								
215								
216								
217								
218								
219								
220								
221								
222								
223								
224								
225								
226								
227								
228								
229								
230								
231								
232								
233								
234								
235								
236								
237								
238								
239								
240								
241	Sale Cost		Net Sale					
242	$ 1,060,881.79		$ 7,954,868.70					
243	4.5%							
244								
245								
246								
247								
248								
249								

WMATA-INV 016002

FOIA CONFIDENTIAL TREATMENT REQUESTED

	A	B
250		
251		
252		
253		
254		

WMATA-INV 016003

FOIA CONFIDENTIAL TREATMENT REQUESTED

	C	D	E	F	G
250	IO PMT	$84,929.84			
251	Annual PMT (abs)	$1,162,368.65	$1,019,158.02		
252	NOI/Year	$ 1,532,384.80	$ 1,532,384.80		
253	DCR	1.32	1.50		
254	NADS	$ 370,016.16	$ 513,226.78		

WMATA-INV 016004

FOIA CONFIDENTIAL TREATMENT REQUESTED

	H	I	J	K	L	M
250	Bank Max LTC		85%			
251	Max Loan		$14,559,400.35			
252	At Min Land Equity		**$2,569,305.94**			
253						
254						

WMATA-INV 016005

From: Josh Adler <josh@lakritzadler.com>
Sent: Wednesday, April 23, 2008 7:50 PM
To: 'robb@lakritzadler.com'
Subject: RE: 1920 8th Street 5 Floor Office pro forma 8-16-07 (2) (2).xls

We should use the Argus model – more accurate calculations.

From: Robb LaKritz [mailto:robb@lakritzadler.com]
Sent: Wednesday, April 23, 2008 5:38 PM
To: 'Josh Adler'
Subject: 1920 8th Street 5 Floor Office pro forma 8-16-07 (2) (2).xls

Can you want to look anew at this before I send it to Builder's Bank.

From: Branch, Diane E <dbranch@Howard.edu>
Sent: Wednesday, April 23, 2008 8:25 PM
To: josh@lakritzadler.com
Cc: Lindsay, Rosalyn T. <rlindsay@Howard.edu>
Subject: Re: Courtyard?

Josh,
Be assured- we qre not building a Courtyard Marriott at the CVS nor has an agreement been entered into.
Diane

-----Original Message-----
From: Josh Adler <josh@lakritzadler.com>
To: Branch, Diane E
Sent: Wed Apr 23 15:38:46 2008
Subject: Courtyard?

Diane,

Omar Karim told me Banneker has a deal with Howard (and CVS) to do a Marriott Courtyard on the CVS parcel – you told me specifically that Howard "does NOT want a Marriott Courtyard". What's up with that?

Thanks,

Josh

From: Josh Adler <josh@lakritzadler.com>
Sent: Wednesday, April 23, 2008 8:33 PM
To: 'Branch, Diane E' <dbranch@Howard.edu>
Subject: RE: Courtyard?

Dude was blowing smoke at me, I guess. He sure seemed confident about it!

From: Branch, Diane E [mailto:dbranch@Howard.edu]
Sent: Wednesday, April 23, 2008 8:25 PM
To: josh@lakritzadler.com
Cc: Lindsay, Rosalyn T.
Subject: Re: Courtyard?

Josh,
Be assured- we qre not building a Courtyard Marriott at the CVS nor has an agreement been entered into.
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-----Original Message-----
From: Josh Adler <josh@lakritzadler.com>
To: Branch, Diane E
Sent: Wed Apr 23 15:38:46 2008
Subject: Courtyard?

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Thanks,

Josh

From: Josh Adler <josh@lakritzadler.com>
Sent: Wednesday, April 23, 2008 8:37 PM
To: 'robb@lakritzadler.com'
Subject: FW: Courtyard?

Dude is full of shit.

From: Branch, Diane E [mailto:dbranch@Howard.edu]
Sent: Wednesday, April 23, 2008 8:25 PM
To: josh@lakritzadler.com
Cc: Lindsay, Rosalyn T.
Subject: Re: Courtyard?

Josh,
Be assured- we qre not building a Courtyard Marriott at the CVS nor has an agreement been entered into.
Diane

-----Original Message-----
From: Josh Adler <josh@lakritzadler.com>
To: Branch, Diane E
Sent: Wed Apr 23 15:38:46 2008
Subject: Courtyard?

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Thanks,

Josh

From: Branch, Diane E <dbranch@Howard.edu>
Sent: Wednesday, April 23, 2008 8:46 PM
To: josh@lakritzadler.com
Subject: Re: Courtyard?

Hey- that's the real estate business.

-----Original Message-----
From: Josh Adler <josh@lakritzadler.com>
To: Branch, Diane E
Sent: Wed Apr 23 20:32:37 2008
Subject: RE: Courtyard?

Dude was blowing smoke at me, I guess. He sure seemed confident about it!

From: Branch, Diane E [mailto:dbranch@Howard.edu]
Sent: Wednesday, April 23, 2008 8:25 PM
To: josh@lakritzadler.com
Cc: Lindsay, Rosalyn T.
Subject: Re: Courtyard?

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Diane

-----Original Message-----
From: Josh Adler <josh@lakritzadler.com>
To: Branch, Diane E
Sent: Wed Apr 23 15:38:46 2008
Subject: Courtyard?

Diane,

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Thanks,

Josh

From: Josh Adler <josh@lakritzadler.com>
Sent: Wednesday, April 23, 2008 9:24 PM
To: 'Branch, Diane E' <dbranch@Howard.edu>
Subject: RE: Courtyard?

☺

From: Branch, Diane E [mailto:dbranch@Howard.edu]
Sent: Wednesday, April 23, 2008 8:46 PM
To: josh@lakritzadler.com
Subject: Re: Courtyard?

Hey- that's the real estate business.

-----Original Message-----
From: Josh Adler <josh@lakritzadler.com>
To: Branch, Diane E
Sent: Wed Apr 23 20:32:37 2008
Subject: RE: Courtyard?

Dude was blowing smoke at me, I guess. He sure seemed confident about it!

From: Branch, Diane E [mailto:dbranch@Howard.edu]
Sent: Wednesday, April 23, 2008 8:25 PM
To: josh@lakritzadler.com
Cc: Lindsay, Rosalyn T.
Subject: Re: Courtyard?

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Be assured- we qre not building a Courtyard Marriott at the CVS nor has an agreement been entered into.
Diane

-----Original Message-----
From: Josh Adler <josh@lakritzadler.com>
To: Branch, Diane E
Sent: Wed Apr 23 15:38:46 2008
Subject: Courtyard?

Diane,

Omar Karim told me Banneker has a deal with Howard (and CVS) to do a Marriott Courtyard on the CVS parcel – you told me specifically that Howard "does NOT want a Marriott Courtyard". What's up with that?

Thanks,

Josh

From: Robb LaKritz <robb@lakritzadler.com>
Sent: Thursday, April 24, 2008 1:00 AM
To: 'Josh Adler' <josh@lakritzadler.com>
Subject: RE: Courtyard?

☺_

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Wednesday, April 23, 2008 8:37 PM
To: robb@lakritzadler.com
Subject: FW: Courtyard?

Dude is full of shit.

From: Branch, Diane E [mailto:dbranch@Howard.edu]
Sent: Wednesday, April 23, 2008 8:25 PM
To: josh@lakritzadler.com
Cc: Lindsay, Rosalyn T.
Subject: Re: Courtyard?

Josh,
Be assured- we qre not building a Courtyard Marriott at the CVS nor has an agreement been entered into.
Diane

-----Original Message-----
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To: Branch, Diane E
Sent: Wed Apr 23 15:38:46 2008
Subject: Courtyard?

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Thanks,

Josh

From: Josh Adler <josh@lakritzadler.com>
Sent: Thursday, April 24, 2008 7:20 PM
To: 'dchristenson@mrea.net'
Subject: 1920 8th Street
Attach: Florida Ave Metro Sites w Metro Entrance.jpg

RESENDING THIS AGAIN WITH FEWER ATTACHMENTS – IT KEPT BOUNCING BACK

Donna,

Thanks for calling today.

Attached are our floor plan sketches and a rendering for our proposed by-right office building at 1920 8th Street. The current plans call for a 47,600 SF building, five stories, thus a footprint of about 9,520 SF. We show about 26 parking spaces in a "tuckunder" type garage that would save a lot of construction cost versus doing a true underground garage, but both are options.

I'm also attaching a Google map showing the immediate surrounding area. Our site is marked "8th Street Lot" and shaded.

Best regards,

Josh Adler
Principal

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

Metro Parcel
Metro Parcel
6th St Parcel
Metro Parcel
Google

From: Josh Adler <josh@lakritzadler.com>
Sent: Thursday, April 24, 2008 7:21 PM
To: 'dchristenson@mrea.net'
Subject: 1920 8th Street
Attach: 1920 8th Floor Plans Sketch 12-11-07.pdf

PART 2 RESENDING

Donna,

Thanks for calling today.

Attached are our floor plan sketches and a rendering for our proposed by-right office building at 1920 8th Street. The current plans call for a 47,600 SF building, five stories, thus a footprint of about 9,520 SF. We show about 26 parking spaces in a "tuckunder" type garage that would save a lot of construction cost versus doing a true underground garage, but both are options.

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Josh Adler
Principal

LAKRITZ ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

cope
010 wisconsin avenue, nw T 202.466.6116
suite 405 F 202.466.6235
washington dc 20007 E GEN@COPEdc.com

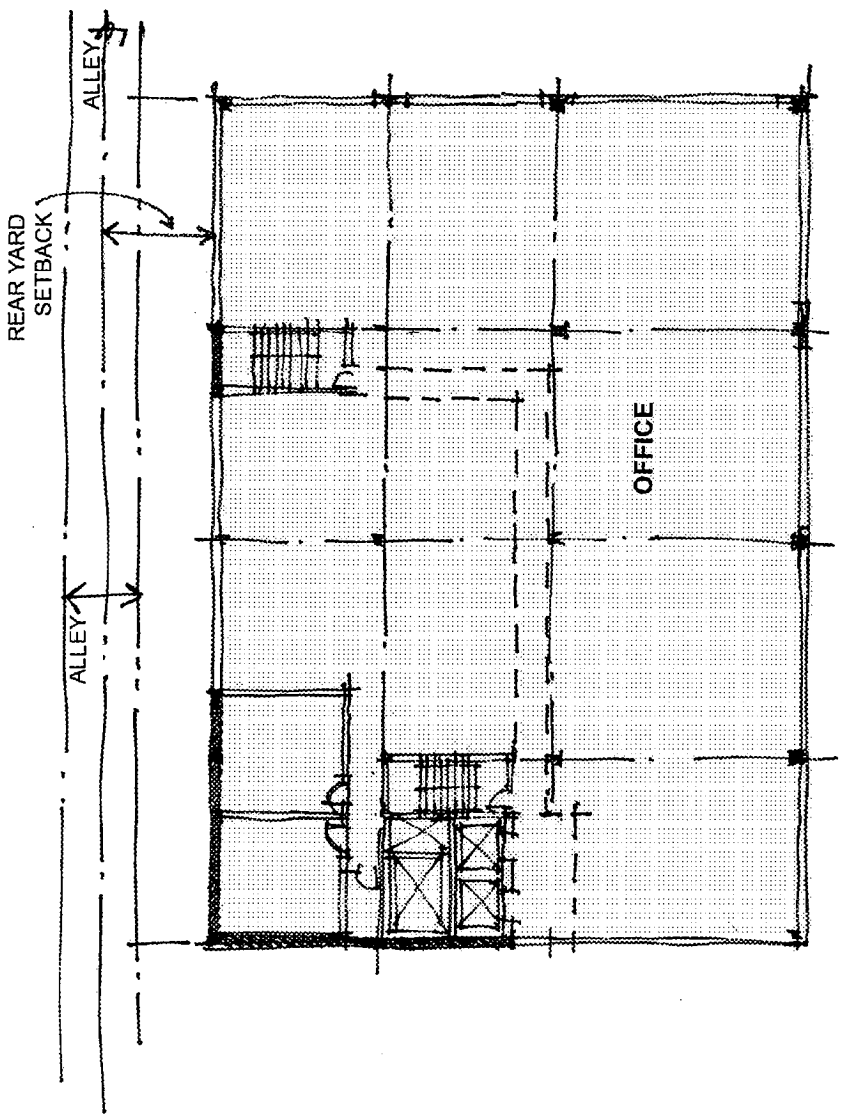
1920 8TH STREET **SK1** *Ground Floor Plan* DT 12/11/07 PN 07037.00

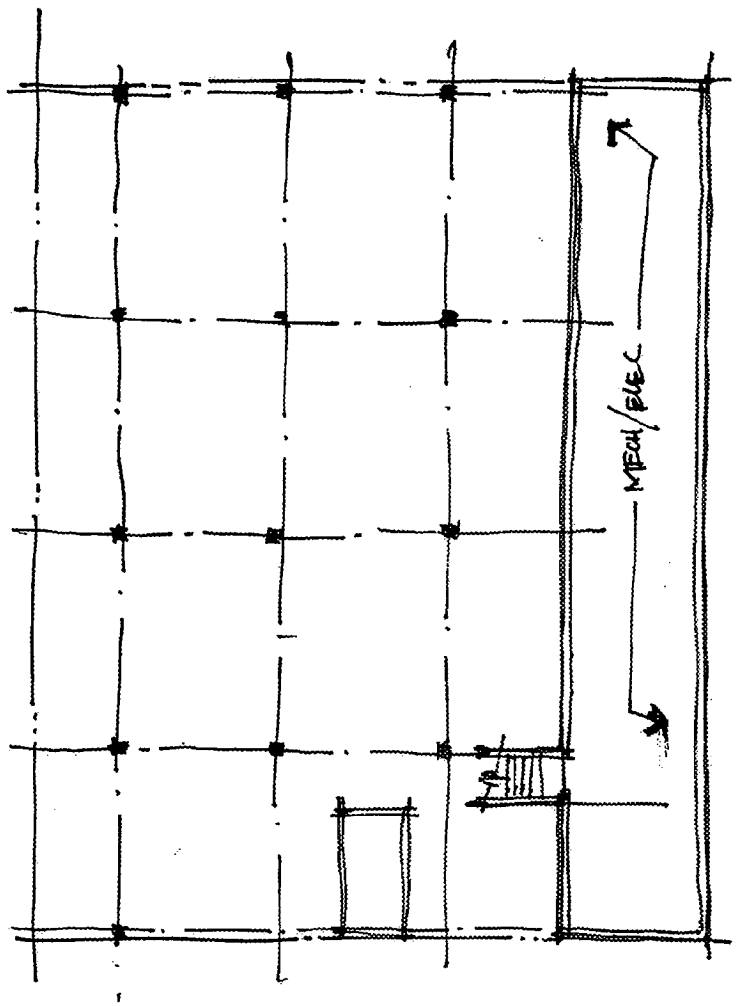
CORE
1010 Wisconsin Avenue, NW T 202.466.6116
Suite 405 F 202.466.6235
Washington, DC 20007 E GENM@COREARC.COM

1920 8TH STREET **SK2**

Upper Ground Floor Plan DT 12/11/07 PN 07037.00

1920 8TH STREET
SK3
Typical Floor Plan
DT 12/11/07
PN 07037.00
010 wisconsin avenue, nw T 202.466.6116
ute 405 F 202.466.6235
ashington dc 20007 E GFN@CORE-dc.com
CORE


ALLEY
REAR YARD
SETBACK
ALLEY
OFFICE


MECH/ELEC

From: Josh Adler <josh@lakritzadler.com>
Sent: Thursday, April 24, 2008 7:22 PM
To: 'dchristenson@mrea.net'
Subject: 1920 8th Street
Attach: 800 Florida Standalone Rendering 12-17-07.jpg

PART 3 RESENDING

Donna,

Thanks for calling today.

Attached are our floor plan sketches and a rendering for our proposed by-right office building at 1920 8th Street. The current plans call for a 47,600 SF building, five stories, thus a footprint of about 9,520 SF. We show about 26 parking spaces in a "tuckunder" type garage that would save a lot of construction cost versus doing a true underground garage, but both are options.

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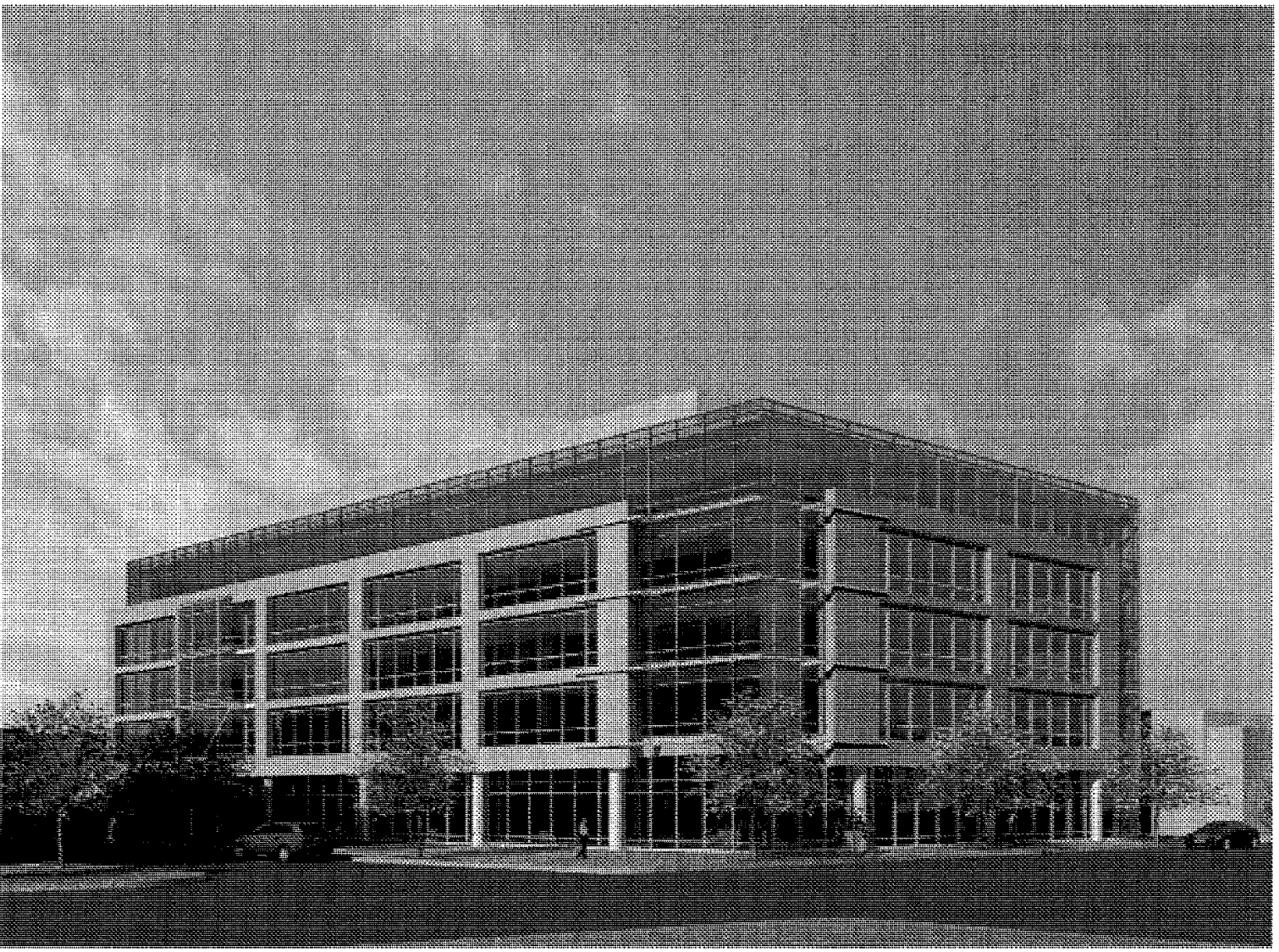
Best regards,

Josh Adler
Principal

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809



From: Josh Adler <josh@lakritzadler.com>
Sent: Thursday, April 24, 2008 7:27 PM
To: 'dchristenson@mrea.net'
Subject: Bounce back

One of the three emails with attachments I just sent bounced back again. Attachment was 5 MB, that's the one your box has been rejecting.

It's the floorplans for 1920 8th st.

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

From: Josh Adler <josh@lakritzadler.com>
Sent: Tuesday, April 29, 2008 2:29 PM
To: 'Malcolm Marshall' <Malcolm.Marshall@cushwake.com>
Subject: 1920 8th Info
Attach: 1920 8th St NW Plat.pdf; 1920 8th Floor Plans Sketch 12-11-07.pdf; 1920 8th street standalone rendering SE view 12-18-07.jpg; 1920 8th street standalone rendering 12-17-07.jpg

---

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809

SUBDIVISION
SQUARE 393
8th STREET, N.W.
PUBLIC ALLEY
10'
WEST
94.33
NORTH
120.0
SOUTH
120.0
46
11,320 SF
EAST
94.33
45
10'

CORE
010 Wisconsin avenue, nw T 202.466.5116
ste 405 F 202.466.6235
washington, dc 20007 E GEN@CORE-dc.com

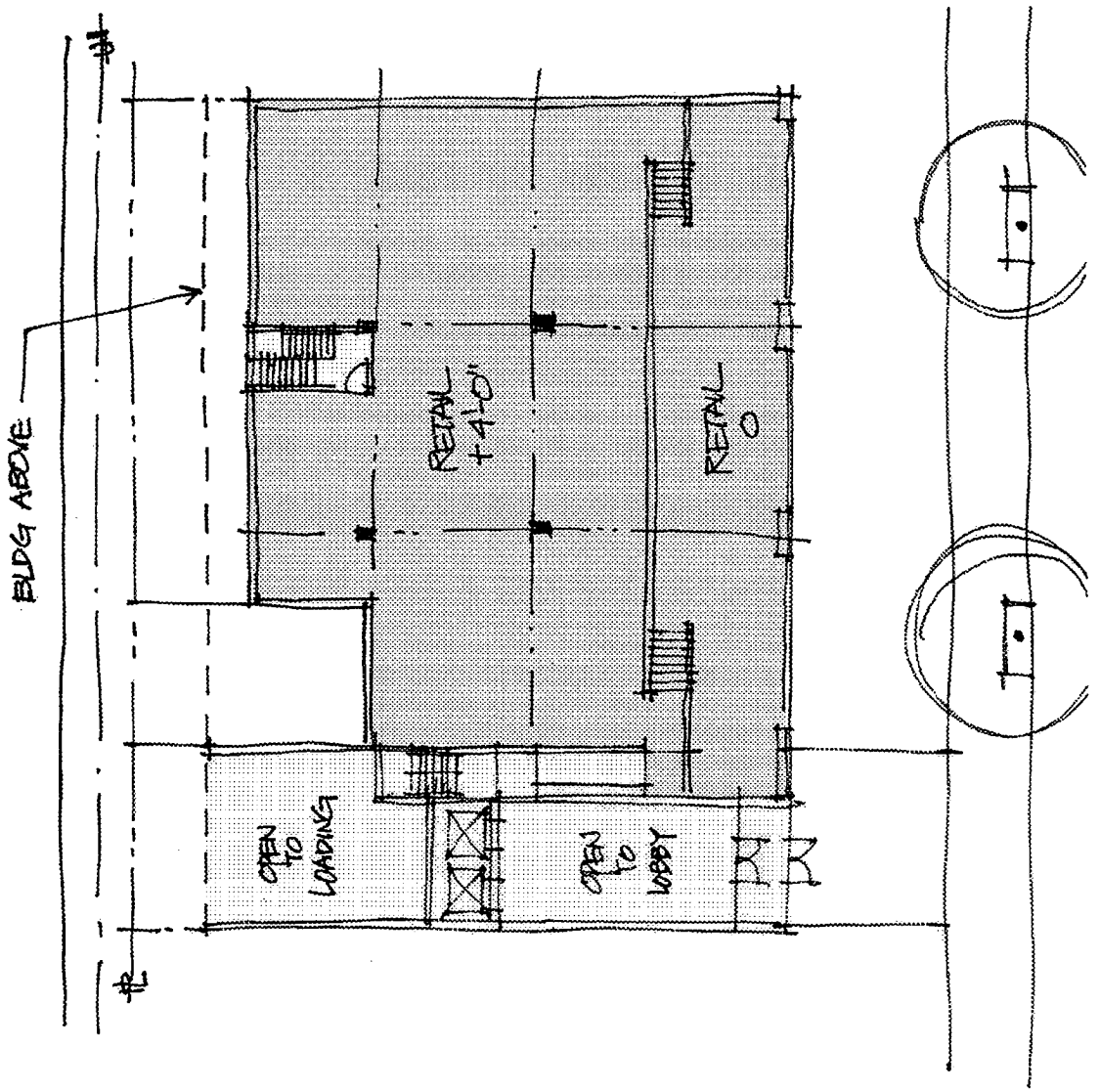
1920 8TH STREET **SK1** Ground Floor Plan DT 12/11/07 PN 07037.00

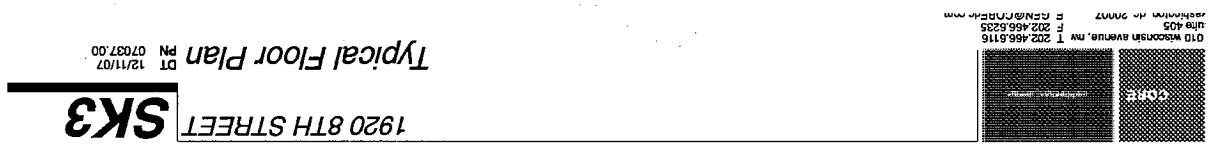
010 wisconsin avenue, nw T 202.466.6116
suite 405 F 202.466.6235
washington, dc 20007 E GEN@COOKFOX.COM

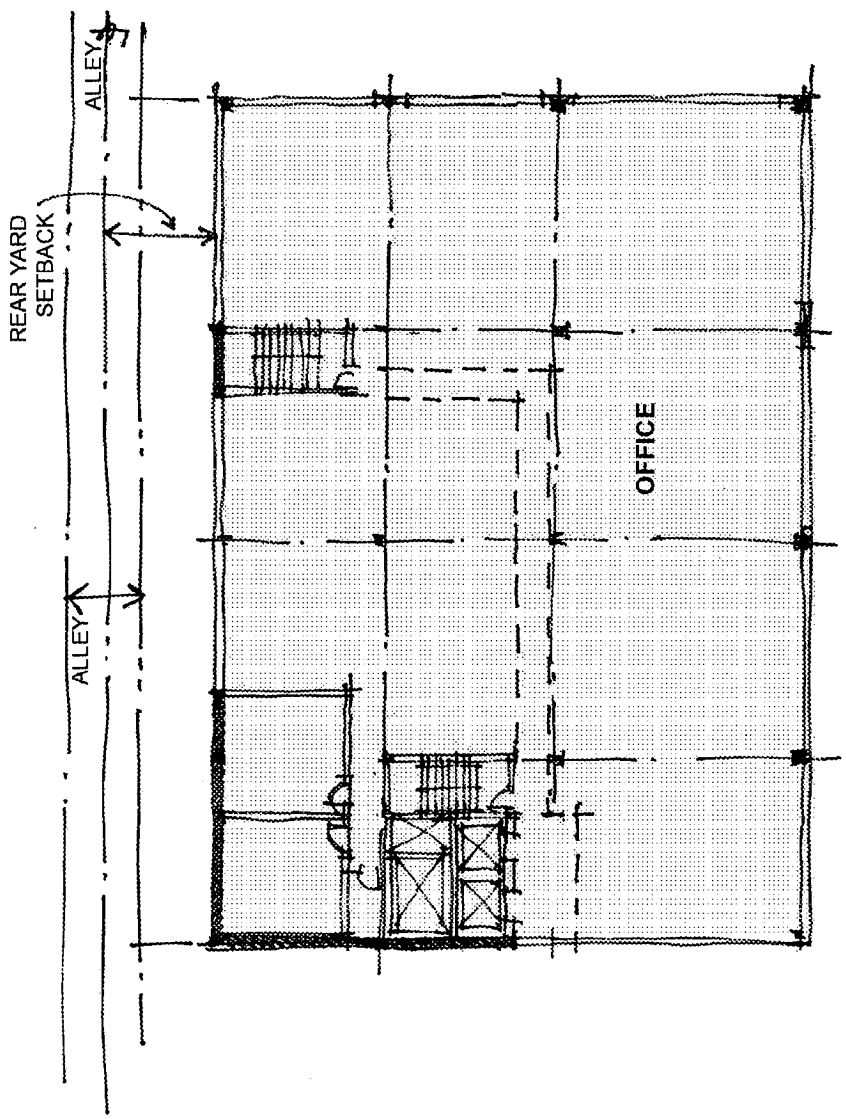
COOKFOX

1920 8TH STREET **SK2**

Upper Ground Floor Plan DT 12/11/07 PN 07037.00




1920 8TH STREET
SK3
Typical Floor Plan
DT 12/11/07
PN 07037.00
CORE
010 wisconsin avenue, nw T 202.466.6116
ute 405 F 202.466.6235
ashington, dc 20007 E GEN@CORE-dc.com

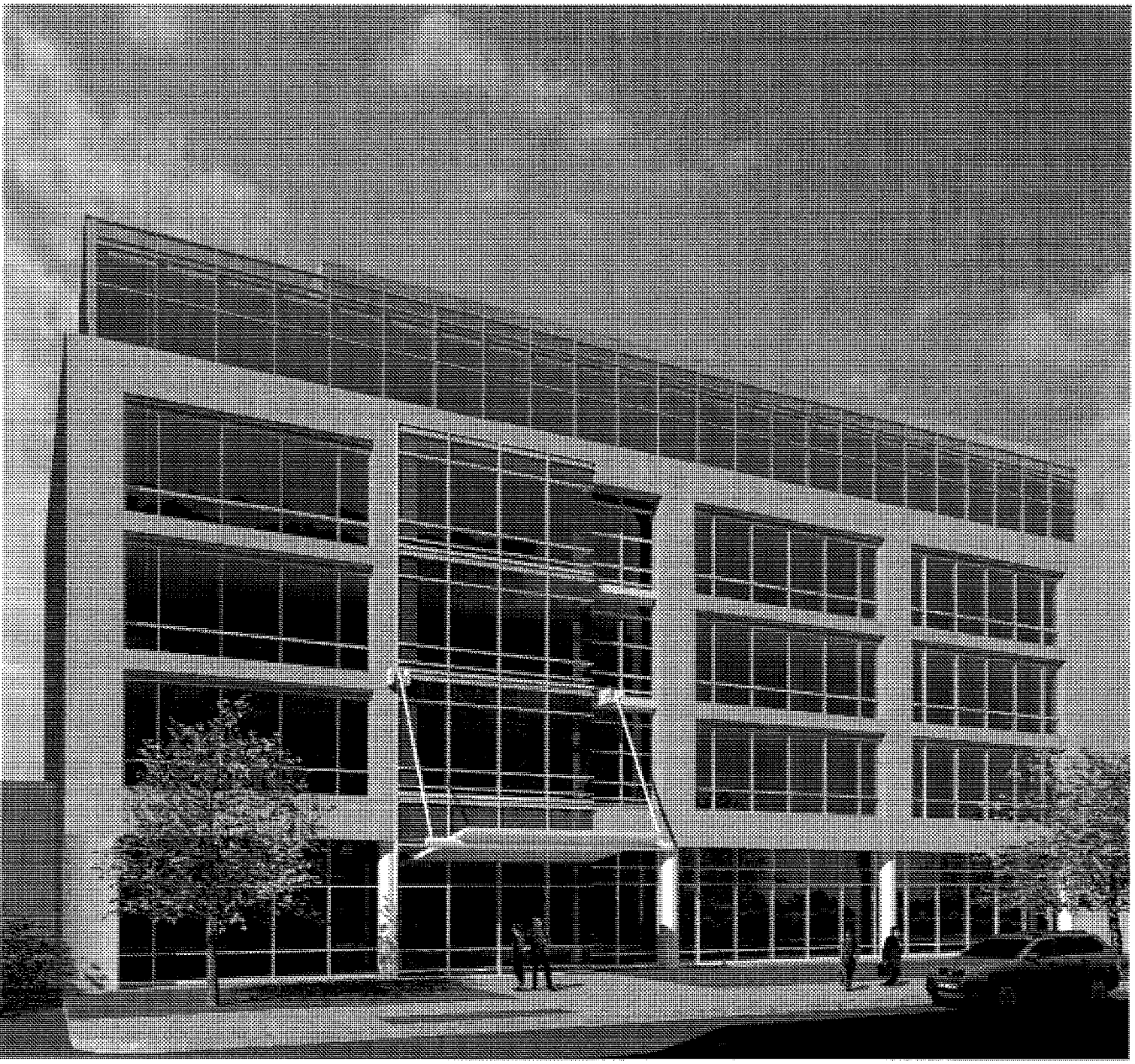

ALLEY
REAR YARD
SETBACK
ALLEY
OFFICE

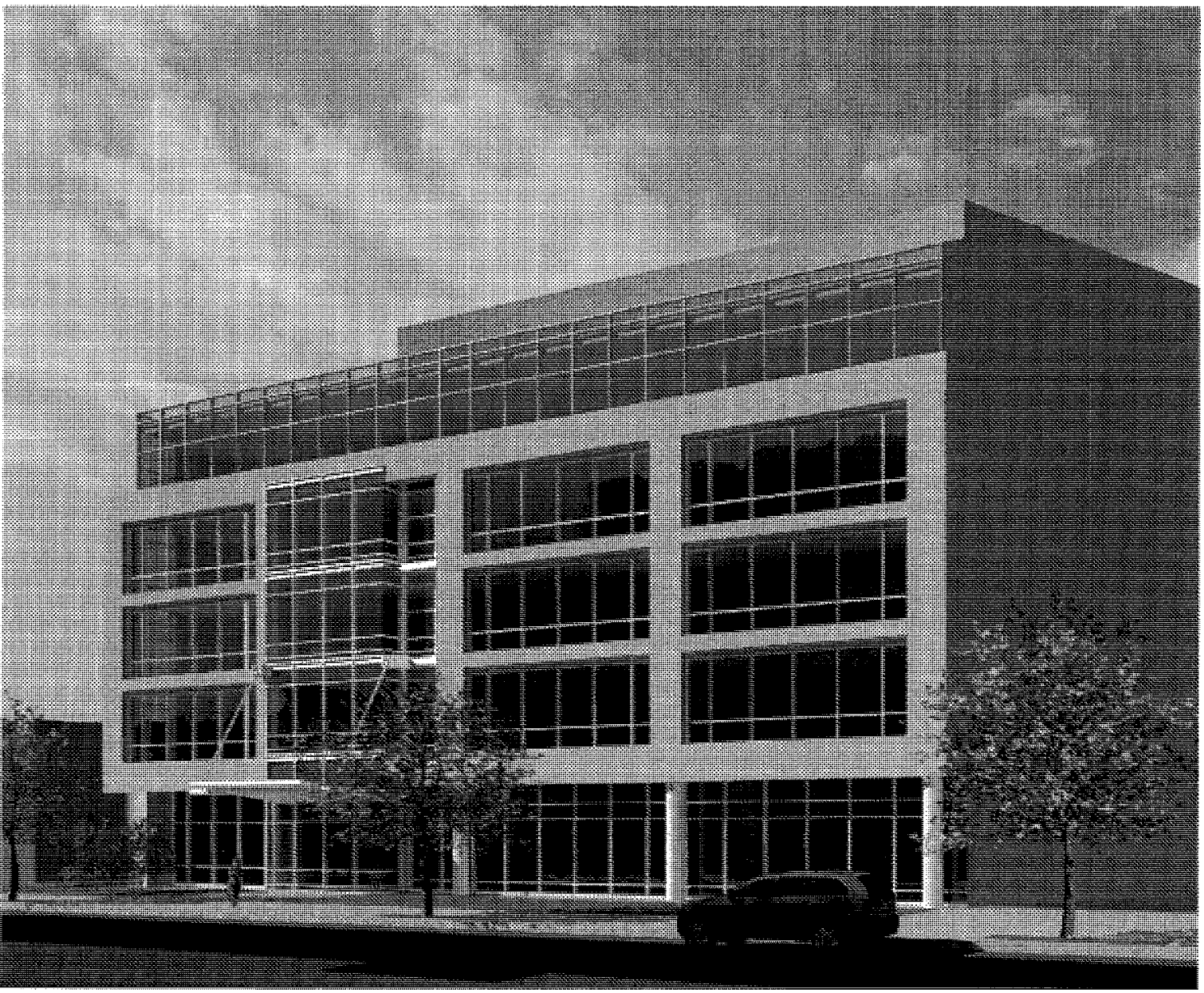
010 Wisconsin Avenue, nw T 202.466.6116
Suite 405 F 202.466.6235
Washington, dc 20007 E RSNR@COOPER.com

COOPER

1920 8TH STREET **SK4**

Lower Mechanical Level Plan DT 12/11/07 PN 07037.00





From: Josh Adler <josh@lakritzadler.com>
Sent: Tuesday, April 29, 2008 4:50 PM
To: 'Robert Cohen' <rcohen@perseusrealty.com>
Subject: 1920 8th Street
Attach: 1920 8th street standalone rendering 12-17-07.jpg; 1920 8th St NW Plat.pdf; 1920 8th Floor Plans Sketch 12-11-07.pdf; Florida Ave Metro Sites w Metro Entrance.jpg; Florida Ave Metro Sites close up.jpg

---

Bob,

Here is some information on the 8th & Florida site we discussed – it marked as "8th Street Parcel" on the Google photos.

Thanks,

Josh

From: Robert Cohen [mailto:rcohen@perseusrealty.com]
Sent: Tuesday, April 29, 2008 4:25 PM
To: Josh Adler
Subject: RE: Georgia / New Hampshire corner site

Josh after looking at the configuration and the size of the site I don't think it will be for us.Thank you for thinking of us.

From: Josh Adler [mailto:josh@lakritzadler.com]
Sent: Tuesday, April 29, 2008 4:15 PM
To: Robert Cohen
Subject: Georgia / New Hampshire corner site

Hi Bob,

Attached is short write-up about our sites at the corner of Georgia and New Hampshire, directly across from the Petworth Metro entrance. Also attached is a plat and a satellite photo.

The summary of the situation is that we have entered into an LOI for a CVS groundlease of the sites, but before we are locked in with CVS, we would like to see if the sites are of interest for sale to a developer who could go vertical there (or could just keep the CVS deal). There is about 49,000 sf of by-right FAR on the combined sites, 65' height limit. Since the development value of the land and the market value of the CVS ground lease are fairly similar, it makes sense to give someone this option.

We thought Perseus might be a good fit.

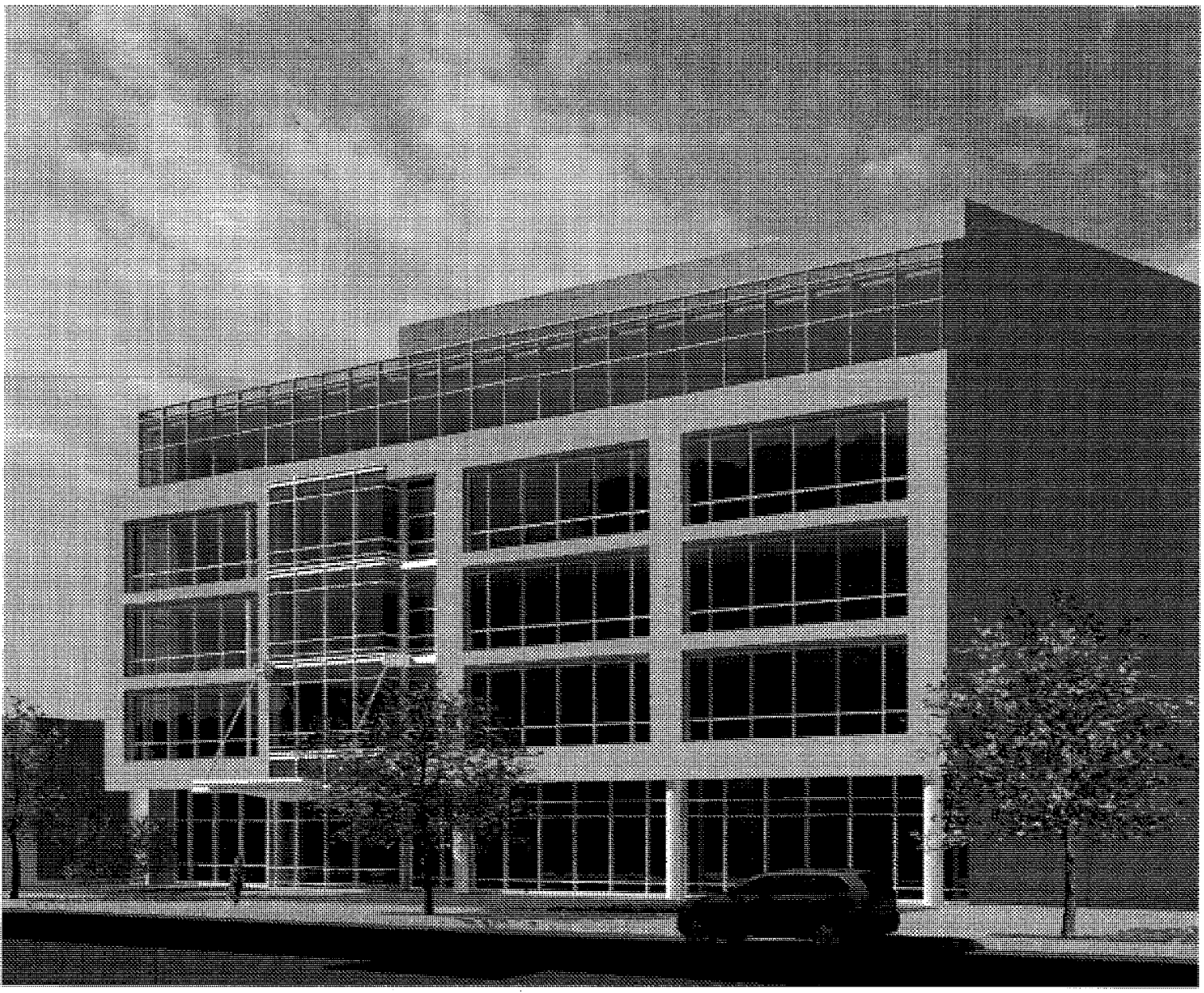
Give me a call to discuss further when you have a chance.

Thanks,

Josh Adler
Principal

LAKRITZ | ADLER

4326 8th St., N.W.
Washington, D.C. 20011
T 202.882.0808
F 202.882.0809



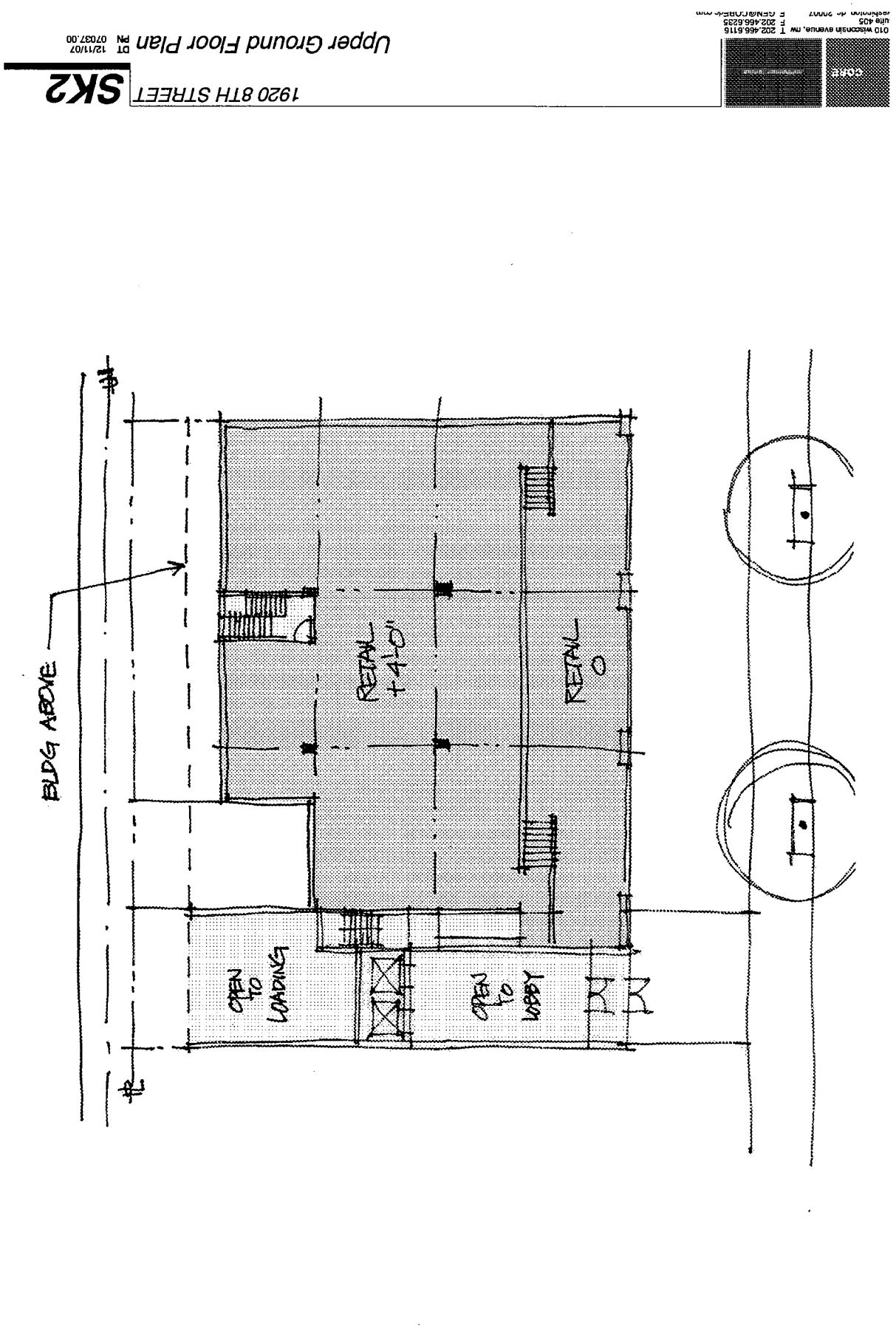
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 016055

010 wisconsin avenue, nw T 202.466.6116
suite 405 F 202.466.6235
washington dc 20007 E GEN@COREdc.com

CORE

1920 8TH STREET **SK1**

Ground Floor Plan PD 12/11/07
PN 07037.00

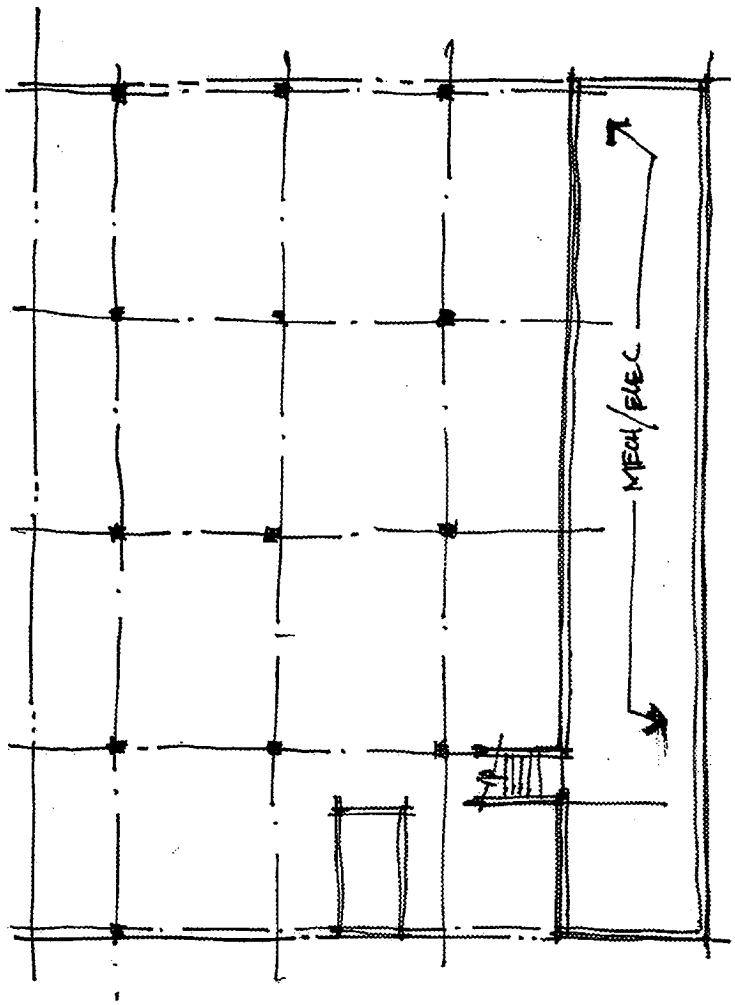

1920 8TH STREET
SK2
Upper Ground Floor Plan
DT 12/11/07
PN 07037.00
010 wisconsin avenue, nw T 202.466.6116
ute 405 F 202.466.6235
ashington dc 20007 E GEN@CORE-dc.com
BLDG ABOVE
RETAIL +4'-0"
RETAIL 0
OPEN TO LOADING
OPEN TO LOBBY

010 wisconsin avenue, nw T 202.466.5116
suite 405 F 202.466.5235
washington, dc 20007 E GEN@CORErdc.com

CORE

1920 8TH STREET **SK3**

Typical Floor Plan DT 12/11/07
PM 07037.00



1920 8TH STREET **SK4**

Lower Mechanical Level Plan

DT 12/11/07
PN 07037.00

010 wisconsin avenue, nw T 202.466.6116
ute 405 F 202.466.6235
ashington dc 20007 E GEN@CORE-dc.com

U St Metro Entrance
Metro Parcel C
Metro Parcel B
8th St Parcel
Metro Parcel A
Google