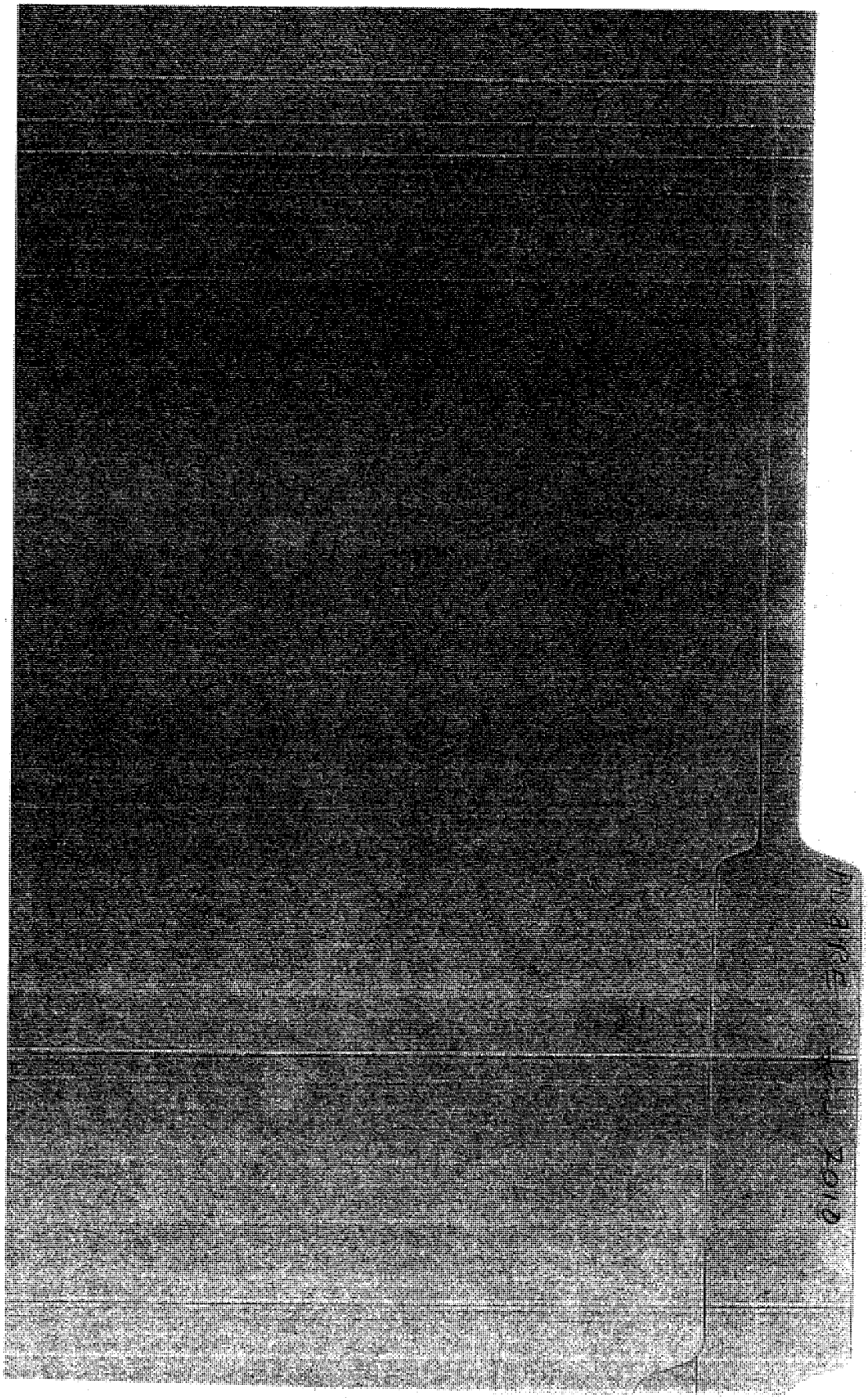


November 6, 2009

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**

| | |
|---|---|
| Base Value to Metro – capitalized lease payment | $2,050,000 |
| 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.

**Additional Revenues**

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.

*Participation in Capital Events*

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.



FOIA CONFIDENTIAL TREATMENT REQUESTED

*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

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Time Extension for Negotiation and Amended Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

Executive Session

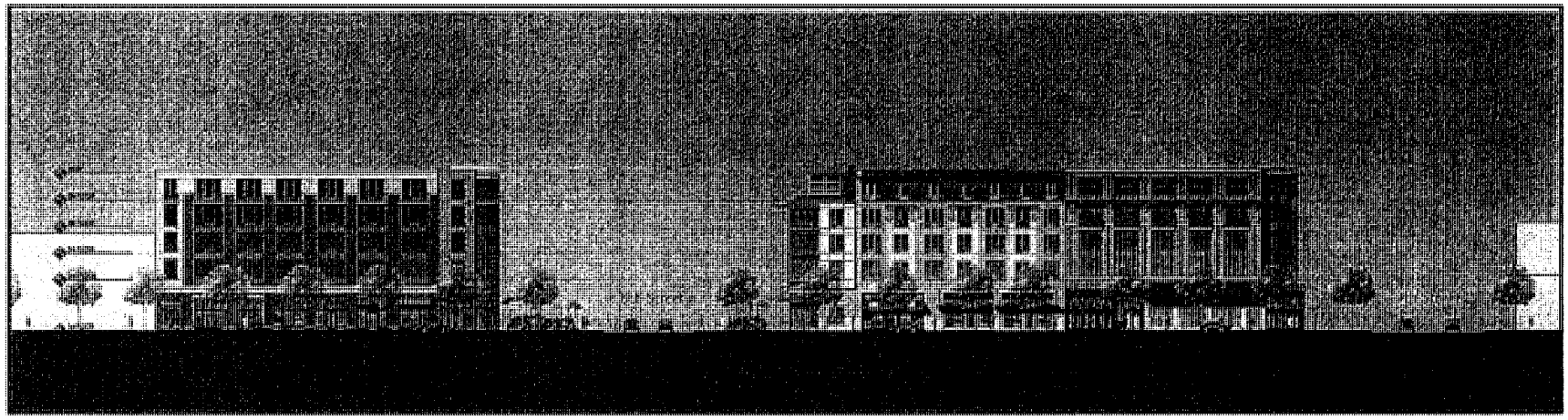
Planning, Development and Real Estate Committee

January 14, 2010

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Obtain Board consideration of (1) a time extension for an amended term sheet and negotiation of a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than May 2010 and (2) an amended term sheet.





WMATA-INV 000007

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

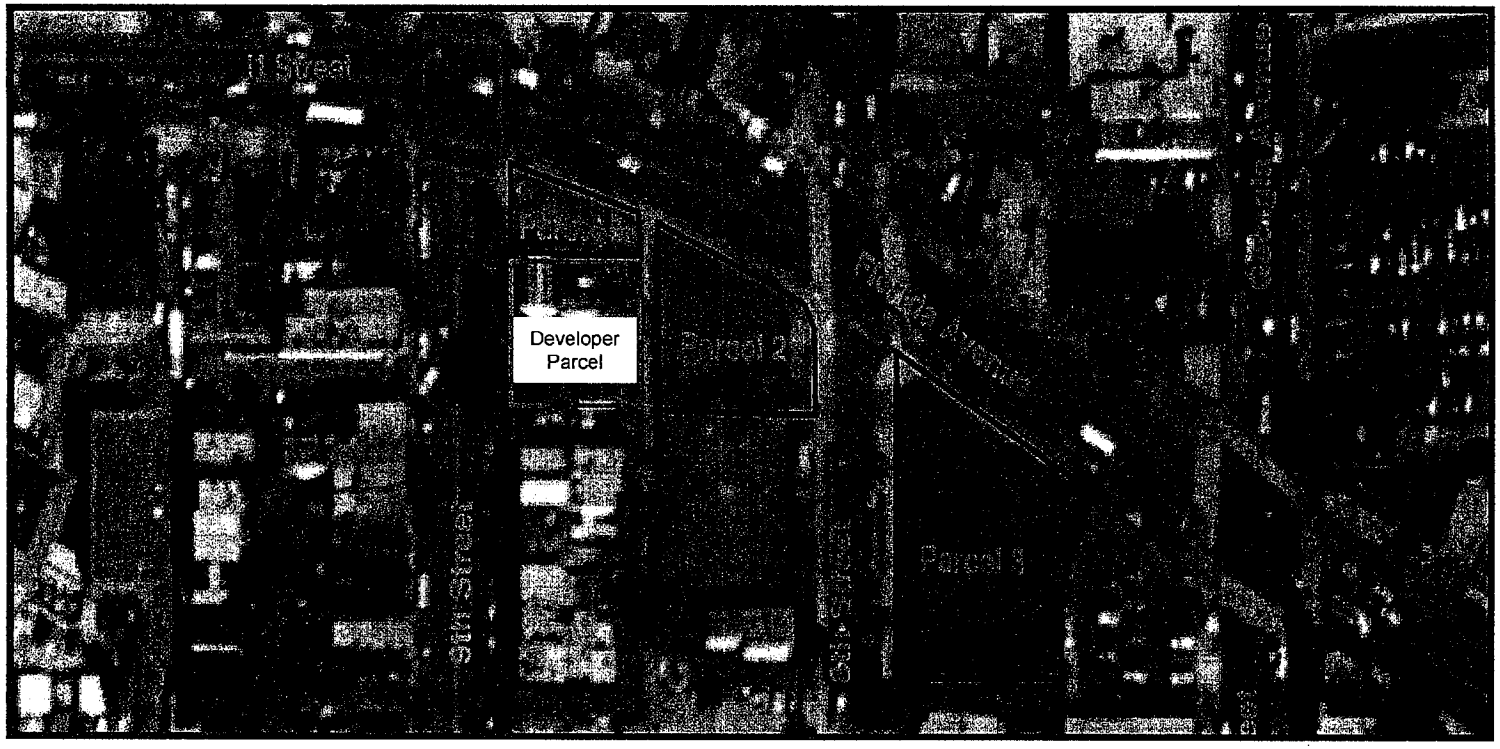
| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate an amended term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate an amended term sheet and joint development agreement. |



WMATA-INV 000008

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status




Developer proposes to combine three Metro parcels with an adjacent, developer-controlled parcel.



WMATA-INV 000009

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

- Term sheet reflects current appraised value, a mandatory Inclusionary Zoning adjustment for affordable housing, and extraordinary costs of constructing facilities over Metro tunnels
- Additional revenues to Metro may be generated through increased density, and through participation in gross revenue and capital events
- Current land values could appreciate significantly upon market recovery



WMATA-INV 000010

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

Obtain Board consideration of:

- A time extension for an amended term sheet and negotiation of a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than May 2010
- An amended term sheet



WMATA-INV 000011

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Amended Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

Executive Session

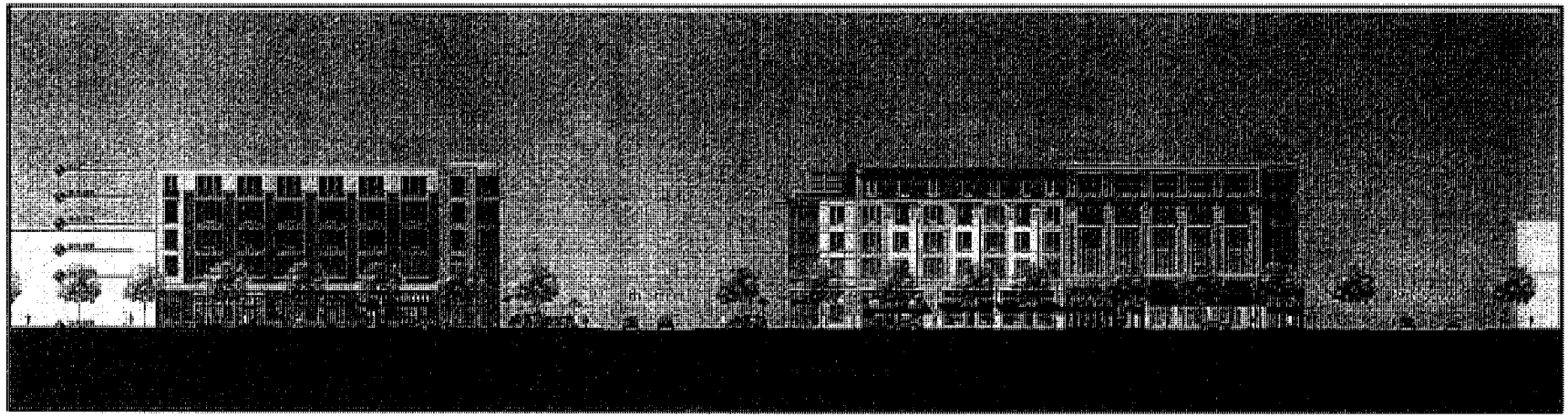
Planning, Development and Real Estate Committee

January 14, 2010

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Obtain Board action on an amended term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site, and obtain Board direction on next steps.





WMATA-INV 000013

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

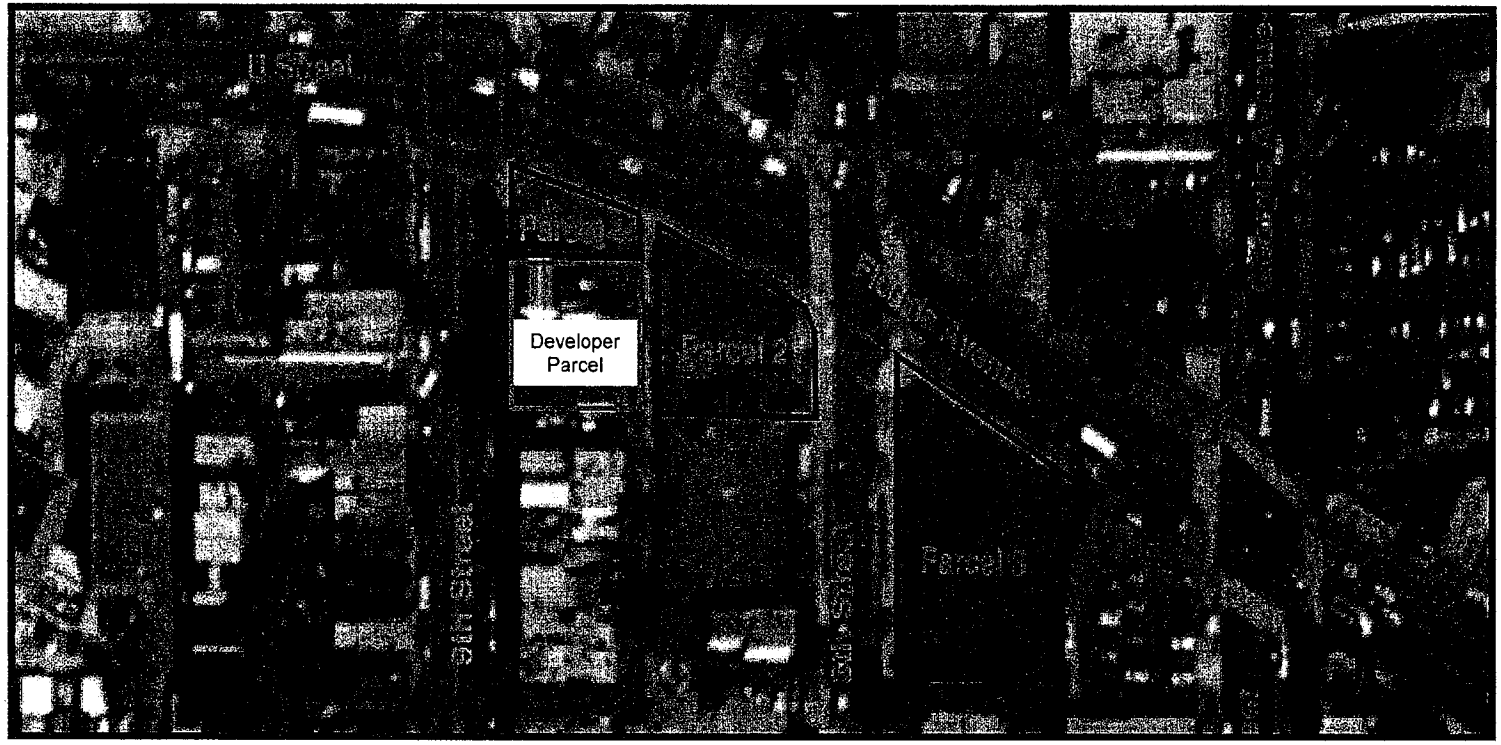
| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate an amended term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate an amended term sheet and joint development agreement. |



WMATA-INV 000014

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status




Developer proposes to combine three Metro parcels with an adjacent, developer-controlled parcel.



WMATA-INV 000015

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

- Term sheet reflects current appraised value, a mandatory Inclusionary Zoning adjustment for affordable housing, and extraordinary costs of constructing facilities over Metro tunnels
- Additional revenues to Metro may be generated through increased density, and through participation in gross revenue and capital events
- Current land values could appreciate significantly upon market recovery



WMATA-INV 000016

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

- Decision on transaction timing is a policy matter for Board deliberation and action
- Consider amended term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site and provide staff direction on whether to move forward with negotiation of joint development agreement and lease.



WMATA-INV 000017

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100527 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Amended Term Sheet Lease Shaw-Howard/FL Ave Site

**PURPOSE:**

Obtain Board consideration of (1) a time extension for an an amended term sheet and negotiation of a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than May 2010 and (2) an amended term sheet.

**DESCRIPTION:**

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project would feature ground floor retail along Florida Avenue, with four stories of housing above, for a base amount of 100,000 sf. If additional density were achieved, Metro would be compensated. At a minimum, the project would include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built); however, the development team is exploring financing to extend affordability.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated an amended term sheet for a 99-year lease of the site with provisions for periodic rent adjustment.

The development team has gained control of adjacent land on 9th Street and proposes to combine that land with the two Metro parcels that are located between 8th and 9th streets. The combined site would allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. Metro would receive 79% of the value of any additional bonus density granted by the District of Columbia; this represents Metro`s share of the combined parcels` size.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities would be reserved in perpetuity for Metro.

Staff is requesting that the Board consider (1) a time extension for an amended term sheet and negotation of a final joint development agreement and lease to be brought to the Board not later than May 2010, and (2) an amended term sheet.

**FUNDING IMPACT:**

Revenue from the project would be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

No recommendation.

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

This Amended and Restated Term Sheet, ("Term Sheet"), for a development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th Streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein. The previous joint development term sheet dated July 17, 2008 is superseded by this Term Sheet.

## 1. Parties

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

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

## 2. Definitive Agreement

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



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

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

a) a ground lease agreement (the "Lease") whereby WMATA will lease the Lease Property to the DEVELOPER for a single term of ninety-nine (99) years, with no renewal or option periods.
b) A conditions, covenants and reservations agreement ("CCRs"), to be recorded among the land records, which will: (i) protect WMATA's interests in its tunnel and associated elements and access thereto; and (ii) include transit oriented development covenants.
c) A co-tenancy agreement ("Co-Tenancy Agreement") between WMATA and DEVELOPER to be recorded among the land records after the CCRs which will control the operation and disposition of the Total Project after the Lease and any replacement lease provided to a lender have either expired or been irrevocably terminated.

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

**3. Property to Be Leased To DEVELOPER**

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

3.2 DEVELOPER will cause an preliminary ALTA survey and title commitment to be prepared within two (2) months of the effective date of the Definitive Agreement and the final ALTA survey (assuming a closed public alley) and title commitment no later than thirty (30) days before the Closing. The final ALTA survey shall be completed early enough for WMATA and DEVELOPER to agree upon the legal descriptions to exclude the existing WMATA tunnel and associated elements.



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**4. Project**

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

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

4.2 Assemblage.

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

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

c) Alley Closing. WMATA will consent to the alley closing prior to Closing, provided that when the portion of the public alley is closed, an easement among the owners will be recorded among the 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



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will become part of the Lease Property in red; the portion that will become part of the DEVELOPER Property is shown in green.

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



FOIA CONFIDENTIAL TREATMENT REQUESTED 

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

## 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.

c) Monthly Rent Payment.

(i) On the 60th anniversary of the Effective Date of the Lease, the DEVELOPER shall begin making monthly base rent payments to WMATA (the "Monthly Lease Payments"). The Monthly Lease Payments amount shall be at Fair Market Value as determined through the three-appraiser method described in the Lease.

(ii) Escalation Rate. The Monthly Lease Payments shall escalate annually at the rate of 3% per year.

(iii) Periodic Rent Revaluation. The Monthly Lease Payments shall be adjusted every ten years. The Monthly Lease Payments will be re-adjusted to then current Fair Market Value as established through the three-appraiser process described above. Monthly Lease Payments will never decrease from the then payable



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Monthly Lease Payments as a result of any Periodic Rent Revaluation.

d) 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.

e) 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



FOIA CONFIDENTIAL TREATMENT REQUESTED

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.

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



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

*NOTE: WMATA expects to adjust these amounts based on the relationship of the Capitalized Lease Payment for a period of 60 years to the fee simple land value.*

b) After Final Certificate of Occupancy: During the first 60 years of the term of the Lease, if HUD insurance no longer remains in place, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those in effect at receipt of the Final Certificate of Occupancy for the Project and for which no increase in Capitalized Lease Payment has been paid, such additional densities or unit totals will require DEVELOPER to pay additional Capitalized Lease Payment. The additional Capitalized Lease Payment payments will be determined through the three-appraiser method, to be defined in the Definitive Agreement and based on the then-remaining time until the 61st year of the term of the Lease. Since the resetting of the base rent in the 61st Lease year will be based on vacant land, there shall be no additional density adjustments after the 60th Lease year.

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

7.6 WMATA Delays: The maximum length of six hundred (600) days to Closing will be extended for delays caused solely by WMATA actions or failure to act, including requesting FTA Approval in accordance with Section 8.5 below. Such extension(s) shall be for the amount of time reasonably necessary to compensate for the delay caused solely by WMATA, *e.g.*, if such a delay causes DEVELOPER to miss a planned filing date which results in a one day-for-one day delay, then the extension shall be measured in days with respect to



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that filing date, however, if the filing date is for some action which is only available in a certain "time window" and the delay causes DEVELOPER to miss the filing date for such "time window," then the extension shall be measured in a period equal to the next available "time window" with respect to that filing date. In no other event, other than Force Majeure Delays as defined in Section 7.7 below, will Closing be delayed, even though DEVELOPER'S schedule may take longer than anticipated.

7.7 Force Majeure Delays: The maximum length of six hundred (600) days to Closing may be extended for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement. Such Force Majeure Delays shall be subject to an increase in the Capitalized Lease Payment, as provided in Section 7.5 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

**8. Conditions to Definitive Agreement Consummation**

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

8.1 Design Approvals: Within ten (10) days of execution of the Definitive Agreement and prior to any final submission to the District, DEVELOPER shall submit to WMATA for its approval a conceptual Total Project site plan in substantial conformance with Exhibit B, including building elevations and floor plans (the "WMATA-Approved Site Plan"). The design of the Total Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Lease Property. WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA within thirty (30) days of receipt of such submission by WMATA.

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

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



FOIA CONFIDENTIAL TREATMENT REQUESTED 

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.



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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



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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.



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## 12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of one hundred fifty (150) days from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.



FOIA CONFIDENTIAL TREATMENT REQUESTED

Agreed this _____ day of 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

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jan '10

COMPARISON OF TERMS - SHAW-HOWARD SITE

| | Original Terms (2008) | Revised Terms (2010) |
|---|---|---|
| Developer: | A LLC to be formed by Banneker Ventures, the District Group, LLC & Metropolis Development Co. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principals are expected to be Banneker Ventures LLC & Banc of America Community Development Corporation |
| Site Description: | The 28,376 SF site consists of 3 separate parcels on the south side of Florida Ave. between 7th & 9th Streets, NW in Washington, DC. The parcels are undeveloped & were used for construction of the Green Line tunnel, which lies partially beneath each parcel. The sites are no longer needed by WMATA. | Same, except that the WMATA parcels are expected to be combined with the developer's adjacent 7,720 SF parcels on 9th St. Developer intends to construct a building which will straddle the WMATA parcels and the adjacent parcels |
| Developer's Proposal: | 104 apartments with 11,750 SF of ground floor retail-arts uses totaling 130,000 SF of above-grade development | 100,711 SF attributed to WMATA site consisting of 10,000 SF of ground floor retail-arts with housing above. At least 8% of housing is expected to be affordable at maximum 80% AMI per District IZ regs. The total development for the combined sites is estimated at 157,000 SF following an alley closing & site consolidation. WMATA is estimated to receive 79% of the value of the combined project. |

*Terms & Conditions of Proposed Ground Lease:*

| | | |
|---|---|---|
| Lease Term: | 60 years | 99 years |
| Lease Closing: | 20 months after development agreement execution | 600 days after development agreement execution |
| Const. Completion | 18 months after lease closing | Same |
| Performance Security: | $250,000 | $250,000 |

WMATA-INV 000036

*Terms & Conditions of Proposed Ground Lease (Continued):*

| | | |
|---|---|---|
| Option Fee: | $100,000 upon Term Sheet approval | Same |
| Pre-Closing Rent: | $100,000/year upon development agreement rising to $130,000/year | $50,000 for 1st year after development agreement; $65,000 for 2nd year; $80,000/year thereafter |
| Additional Density: | $4.20/year rent for additional FAR prior to closing; To be determined by appraisal after closing. | $46.59/FAR with $74.55/FAR deduction for any added Inclusionary Zoning (IZ) affordable housing prior to closing; To be determined by appraisal after closing. |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date | $2,800,000 capitalized lease payment to be paid at closing less Additional Costs Credit TBD |
| Base Rent Escalation: | 1.5%/year for 1st 10 years, then 3%/year thereafter | None |
| Base Rent Revaluation: | Every 10 years | On 50th year, property is appraised to determine monthly rent; monthly rent escalates 3% every year; monthly rent is re-set every 10 years via appraisal. |
| Participating Rent: | None | 1.5% of effective gross income |
| Capital Event Participation: | 10% of net proceeds | 2% of gross for sale or assignment & 10% of adjusted gross on refinance |
| Market Valuation: | $14,000,000 NPV of Developer's offer<br>$7,500,000 Appraised Land Value<br>$525,000 Base 1st Year Rent<br>(Appraisal by Integra in 8/07) | $2,800,000 NPV of Developer's offer<br>$2,800,000 Capitalized Lease Value for first 50 years<br>(Appraised by Harps & Harps in 8/09<br>& Integra in 10/09) |

Raise

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100527 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Amended Term Sheet Lease Shaw-Howard/FL Ave Site

**PURPOSE:**

Obtain Board consideration of (1) a time extension for an an amended term sheet and negotiation of a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than May 2010 and (2) an amended term sheet.

**DESCRIPTION:**

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project would feature ground floor retail along Florida Avenue, with four stories of housing above, for a base amount of 100,000 sf. If additional density were achieved, Metro would be compensated. At a minimum, the project would include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built); however, the development team is exploring financing to extend affordability.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated an amended term sheet for a 99-year lease of the site with provisions for periodic rent adjustment.

The development team has gained control of adjacent land on 9th Street and proposes to combine that land with the two Metro parcels that are located between 8th and 9th streets. The combined site would allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. Metro would receive 79% of the value of any additional bonus density granted by the District of Columbia; this represents Metro`s share of the combined parcels` size.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities would be reserved in perpetuity for Metro.

Staff is requesting that the Board consider (1) a time extension for an amended term sheet and negotation of a final joint development agreement and lease to be brought to the Board not later than May 2010, and (2) an amended term sheet.

**FUNDING IMPACT:**

Revenue from the project would be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

No recommendation.

12/10/09

# WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# The Extension of the Green Line to Anacostia Metrorail Station

## Feasibility Study

## Avenue Improvements

Prepared for

Planning and Development Committee of the Board of Directors

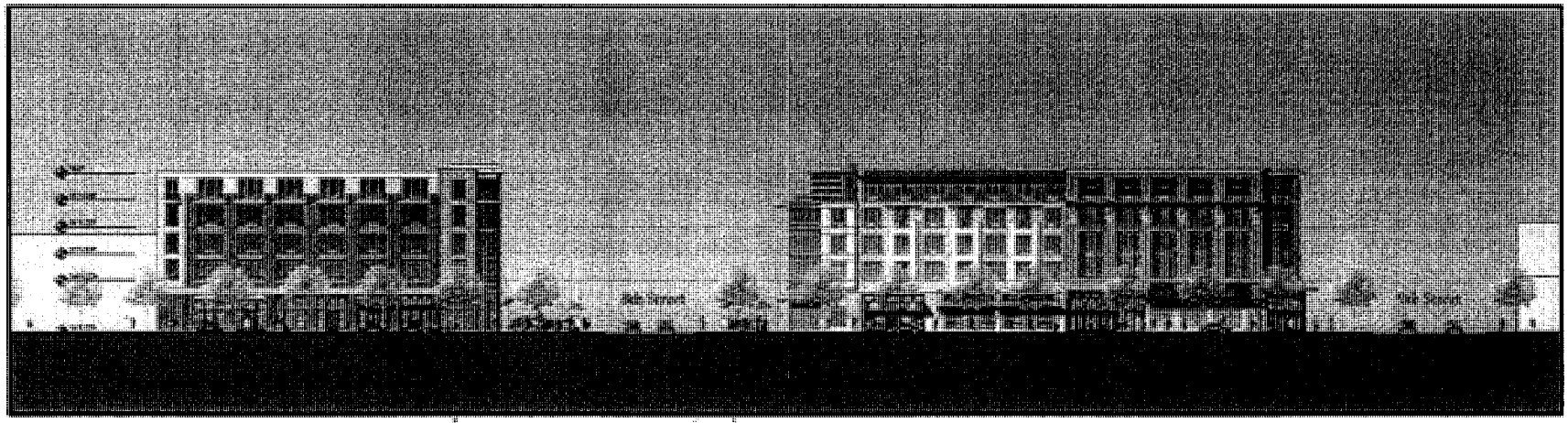
January 14, 2010

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

Obtain Board consideration of (1) a time extension for an amended term sheet and negotiation of a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than May 2010 and (2) an amended term sheet.

Founders Square



N. Randolph St



WMATA-INV 000041

FOIA CONFIDENTIAL TREATMENT REQUESTED

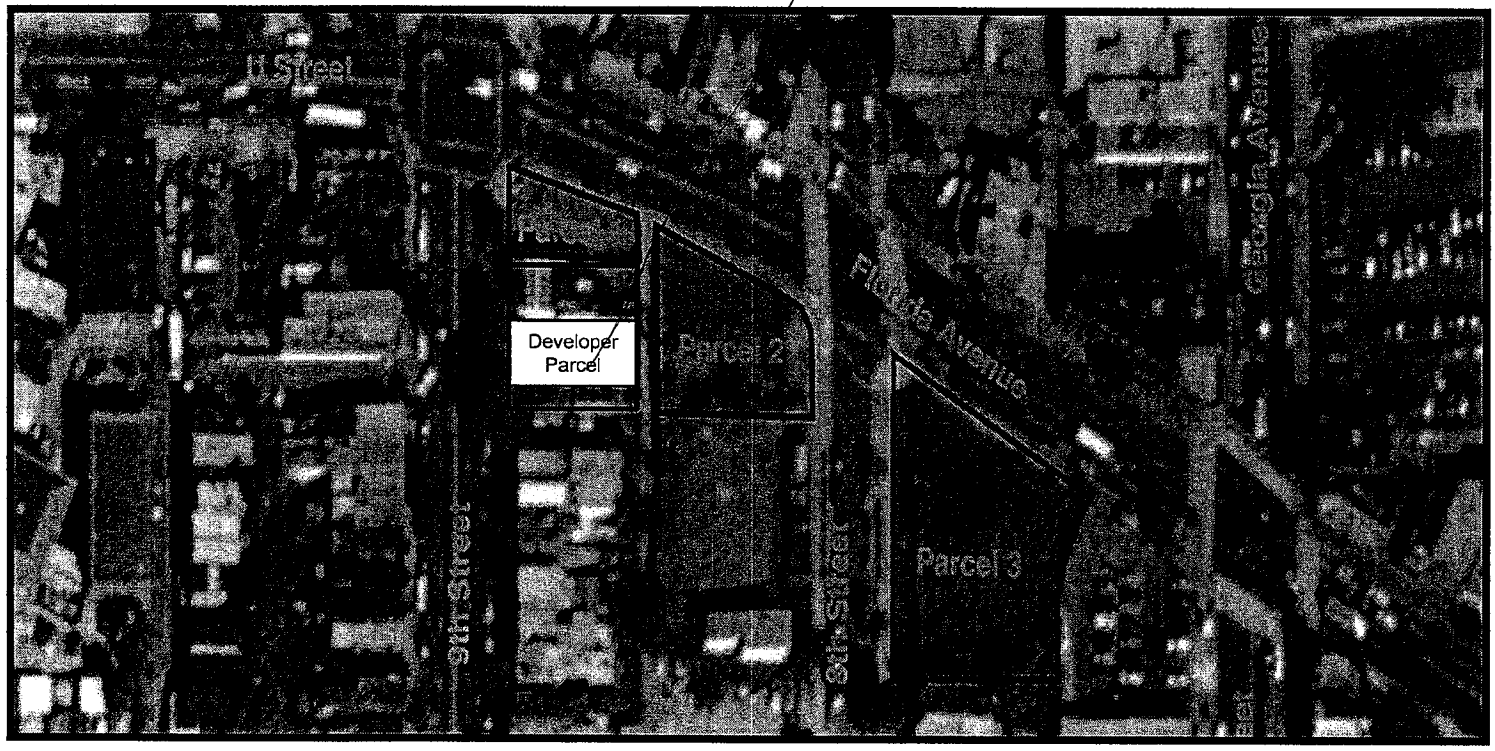
metro

| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate an amended term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate an amended term sheet and joint development agreement. |



WMATA-INV 000042

remove




Developer proposes to combine three Metro parcels with an adjacent, developer-controlled parcel.



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WMATA-INV 000043

FOIA CONFIDENTIAL TREATMENT REQUESTED

metro

- Term sheet reflects current appraised value, a mandatory Inclusionary Zoning adjustment for affordable housing, and extraordinary costs of constructing facilities over Metro tunnels
- Additional revenues to Metro may be generated through increased density, and through participation in gross revenue and capital events
- Current land values could appreciate significantly upon market recovery



WMATA-INV 000044

FOIA CONFIDENTIAL TREATMENT REQUESTED

metro

Obtain Board consideration of:

- A time extension for an amended term sheet and negotiation of a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than May 2010
- An amended term sheet



WMATA-INV 000045

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Tuesday, December 22, 2009 5:22 PM
**To:** Doggett, Rosalyn
**Cc:** 'Anthony James Ives'; 'Tiwana Hicks'; Goldin, Steven
**Subject:** RE: Banneker Financial Information
**Attachments:** Banneker Ventures - Balance Sheet and Income Statement through September 30 2009 (WMATA).pdf; Jazz at Florida Avenue - Sources and Uses (as of 12-22-09).pdf

**Importance:** High

Roz,

As requested, we attach for your records our confidential most recent balance sheet and income statement. Please keep this confidential to only those persons who must review this in connection with any questions by the Board. Also, attached please find our most recent sources and uses for the project.

Omar

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**From:** Doggett, Rosalyn [mailto:RDoggett@wmata.com]
**Sent:** Thursday, December 17, 2009 4:29 PM
**To:** okarim@bannekerventures.com
**Cc:** Goldin, Steven; Montague, Joshua W.
**Subject:** RE: Banneker Financial Information

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.

Omar



WMATA-INV 000046

FOIA CONFIDENTIAL TREATMENT REQUESTED

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 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

Ms. 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.



WMATA-INV 000047

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
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

WMATA-INV 000048

# Banneker Ventures, LLC
## Balance Sheet
### As of September 30, 2009

| | Total |
|---|---|
| ASSETS | |
| Current Assets | |
| Bank Accounts | |
| 1010 Wachovia - Operating | 32,492.36 |
| 1050 Bank of America | 50,000.00 |
| 1060 Suntrust - The Jazz @ Florida Avenue | 260.00 |
| Total Bank Accounts | $ 82,752.36 |
| Accounts Receivable | |
| 1200 Accounts Receivable | 1,751,309.37 |
| Total Accounts Receivable | $ 1,751,309.37 |
| Other Current Assets | |
| 1210 Contract Receivables - Current | 436,939.99 |
| 1610 Member Loan | 220,541.00 |
| 1620 WIP - The Jazz @ Florida Avenue | 177,579.00 |
| Total Other Current Assets | $ 835,059.99 |
| Total Current Assets | $ 2,669,121.72 |
| Fixed Assets | |
| 1702 Furniture and Fixtures | 10,326.14 |
| 1703 Equipment | 4,500.00 |
| 1710 Computers & Software | 5,446.32 |
| 1780 Accumulated Depreciation | -9,039.00 |
| Total Fixed Assets | $ 11,233.46 |
| Other Assets | |
| 1250 Deposits | 208,000.00 |
| 1360 Contract Receivables - Long | 233,376.00 |
| 1900 Investments in 814 Thayer, LLC | -144,734.00 |
| Total Other Assets | $ 296,642.22 |
| TOTAL ASSETS | $ 2,976,997.40 |
| LIABILITIES AND EQUITY | |
| Liabilities | |
| Current Liabilities | |
| Accounts Payable | |
| 2000 Accounts Payable | 1,072,874.66 |
| Total Accounts Payable | $ 1,072,874.66 |
| Credit Cards | |
| 2500 Suntrust Business | 601.58 |
| Total Credit Cards | $ 601.58 |
| Other Current Liabilities | |
| 2101 Payroll Tax Payable | 2,040.09 |
| 2190 Deferred Contract Revenue - Current | 436,939.99 |
| 2250 Advancements | 330,000.00 |
| 2300 Note Payable - Current | 100,000.00 |
| 2305 Loan | 400,000.00 |
| 2310 Accrued Interest Expense | 9,850.00 |
| Total Other Current Liabilities | $ 1,278,830.08 |
| Total Current Liabilities | $ 2,352,306.32 |
| Long Term Liabilities | |
| 2200 Deferred Contract Revenue - Long | 233,376.00 |
| Total Long Term Liabilities | $ 233,376.00 |
| Total Liabilities | $ 2,585,682.32 |
| Equity | |
| 3999 Retained Earnings | 45,952.76 |
| Net Income | 345,819.04 |
| Total Equity | $ 391,771.80 |
| TOTAL LIABILITIES AND EQUITY | $ 2,977,454.12 |

# Banneker Ventures, LLC
## Income Statement
### January - September, 2009

| | | Total |
|---|---|---|
| Income | | |
| 4020 Development | | 12,500.00 |
| 4030 Construction Management | | 3,402,391.02 |
| 4040 Real Estate Advisory | | 77,759.97 |
| Total Income | $ | 3,492,650.99 |
| Cost of Goods Sold | | |
| 5000 Project Mangagement | | 1,233,507.68 |
| Total Cost of Goods Sold | $ | 1,233,507.68 |
| Gross Profit | $ | 2,259,143.31 |
| Expenses | | |
| 6110 Automobile Expense | | 3,216.79 |
| 6120 Bank Service Charges | | 1,188.00 |
| 2250 Advancements | | 14,700.00 |
| 6150 Depreciation Expense | | 3,201.00 |
| 6160 Dues and Subscriptions | | 8,777.29 |
| 6170 Equipment Rental | | 829.37 |
| 6180 Insurance | | 1,323.00 |
| 6200 Interest Expense | | 7,350.00 |
| 6230 Licenses and Permits | | 4,746.50 |
| 6240 Miscellaneous | | 2,431.96 |
| 6250 Postage and Delivery | | 381.86 |
| 6260 Printing and Reproduction | | 1,372.91 |
| 6265 Filing Fees | | 2,374.00 |
| 6270 Professional Fees | | 1,061,369.76 |
| 6290 Rent | | 10,400.00 |
| 6300 Repairs and Maintenance | | 120,465.41 |
| 6313 Security System | | 634.15 |
| 6340 Telephone | | 10,937.61 |
| 6350 Meals and Entertainment | | 5,922.95 |
| 6370 Accounting Software | | 73.87 |
| 6380 Travel | | 15,127.77 |
| 6385 Parking | | 4,623.30 |
| 6390 Utilities | | 12,237.19 |
| 6560 Payroll Expense | | 598,679.74 |
| 6770 Supplies | | 19,857.17 |
| 9999 Uncatagorized | | 1,112.00 |
| Total Expenses | $ | 1,913,333.60 |
| Net Operating Income | $ | 345,809.71 |
| Other Income | | |
| 7010 Interest Income | | 9.33 |
| Total Other Income | $ | 9.33 |
| Net Other Income | $ | 9.33 |
| Net Income | $ | 345,819.04 |

## THE JAZZ @ FLORIDA AVENUE

## SOURCES AND USES OF FUNDS (as of 12-22-09)

| Sources | Residential | Retail | Total |
|---|---|---|---|
| FHA (HUD) Insured Loan | $ 26,274,000 | $ - | $ 26,274,000 |
| Gap Financing - PILOT | - | 4,117,000 | $ 4,117,000 |
| Gap Financing - TIF | - | 3,626,898 | $ 3,626,898 |
| Private Equity - LIHTC Investor | 4,500,000 | - | $ 4,500,000 |
| Private Equity - Developer Investor | 3,316,507 | 881,966 | $ 4,198,473 |
| Private Equity - Deferred Developer Fee | 750,000 | | $ 750,000 |
| **Total Sources of Funds** | **$ 34,840,507** | **$ 8,625,864** | **$ 43,466,371** |

| Uses | Residential | Retail | Total |
|---|---|---|---|
| Land | $ 7,253,736 | $ 1,220,264 | $ 8,474,000 |
| Hard Costs | 17,735,126 | 3,549,374 | 21,284,500 |
| Transaction/Leasing Fees | 369,792 | 62,208 | 432,000 |
| Architectural/MEP, Structural Services | 1,400,414 | 235,586 | 1,636,000 |
| Marketing | 179,800 | 60,200 | 240,000 |
| General and Administrative | 2,244,858 | 477,642 | 2,722,500 |
| Financing Costs | 2,869,606 | 482,741 | 3,352,348 |
| Real Estate Taxes | 53,756 | 9,043 | 62,800 |
| Permit, Utility and Municipal Fees | 438,995 | 73,850 | 512,845 |
| Legal and Accounting | 281,800 | 168,200 | 450,000 |
| Retail | - | 1,629,713 | 1,629,713 |
| Insurance | 16,575 | 2,788 | 19,364 |
| Reserves | 1,733,398 | 291,602 | 2,025,000 |
| Miscellaneous Expenses | 262,651 | 362,651 | 625,303 |
| **Total Uses of Funds** | **$ 34,840,507** | **$ 8,625,864** | **$ 43,466,371** |

as approved 2/10

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100527 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Amended Term Sheet for Shaw-Howard/FL Ave JD Site

**PURPOSE:**

Obtain Board consideration of one time extension for an amended term sheet for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than March 31, 2010.

**DESCRIPTION:**

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project would feature ground floor retail along Florida Avenue, with four stories of housing above, for a base amount of 100,000 sf. If additional density were achieved, Metro would be compensated. At a minimum, the project would include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built); however, the development team is exploring financing to extend affordability.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated an amended term sheet for a 99-year lease of the site with provisions for periodic rent adjustment.

The development team has gained control of adjacent land on 9th Street and proposes to combine that land with the two Metro parcels that are located between 8th and 9th streets. The combined site would allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. Metro would receive 79% of the value of any additional bonus density granted by the District of Columbia; this represents Metro`s share of the combined parcels` size.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities would be reserved in perpetuity for Metro.

Staff is requesting that the Board consider a time extension for an amended term sheet to be brought to the Board not later than March 31, 2010.

**FUNDING IMPACT:**

Revenue from the project would be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

No recommendation.

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100527 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Amended Term Sheet Lease Shaw-Howard/FL Ave Site

**PURPOSE:**

Obtain Board consideration of (1) a time extension for an an amended term sheet and negotiation of a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than May 2010 and (2) an amended term sheet.

**DESCRIPTION:**

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project would feature ground floor retail along Florida Avenue, with four stories of housing above, for a base amount of 100,000 sf. If additional density were achieved, Metro would be compensated. At a minimum, the project would include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built); however, the development team is exploring financing to extend affordability.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated an amended term sheet for a 99-year lease of the site with provisions for periodic rent adjustment.

The development team has gained control of adjacent land on 9th Street and proposes to combine that land with the two Metro parcels that are located between 8th and 9th streets. The combined site would allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. Metro would receive 79% of the value of any additional bonus density granted by the District of Columbia; this represents Metro`s share of the combined parcels` size.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities would be reserved in perpetuity for Metro.

Staff is requesting that the Board consider (1) a time extension for an amended term sheet and negotation of a final joint development agreement and lease to be brought to the Board not later than May 2010, and (2) an amended term sheet.

**FUNDING IMPACT:**

Revenue from the project would be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

No recommendation.

# 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



FOIA CONFIDENTIAL TREATMENT REQUESTED

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.



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## 4. Project

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

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

4.2 Assemblage.

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

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

c) Alley Closing. WMATA will consent to the alley closing prior to Closing, provided that when the portion of the public alley is closed, an easement among the owners will be recorded among the 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



FOIA CONFIDENTIAL TREATMENT REQUESTED

will become part of the Lease Property in red; the portion that will become part of the DEVELOPER Property is shown in green.

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



FOIA CONFIDENTIAL TREATMENT REQUESTED 

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

## 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.

c) Monthly Rent Payment.

(i) On the 60th anniversary of the Effective Date of the Lease, the DEVELOPER shall begin making monthly base rent payments to WMATA (the "Monthly Lease Payments"). The Monthly Lease Payments amount shall be at Fair Market Value as determined through the three-appraiser method described in the Lease.

(ii) Escalation Rate. The Monthly Lease Payments shall escalate annually at the rate of 3% per year.

(iii) Periodic Rent Revaluation. The Monthly Lease Payments shall be adjusted every ten years. The Monthly Lease Payments will be re-adjusted to then current Fair Market Value as established through the three-appraiser process described above. Monthly Lease Payments will never decrease from the then payable



FOIA CONFIDENTIAL TREATMENT REQUESTED

Monthly Lease Payments as a result of any Periodic Rent Revaluation.

d) 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.

e) 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. (1) 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). (2) 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



FOIA CONFIDENTIAL TREATMENT REQUESTED

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.

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



FOIA CONFIDENTIAL TREATMENT REQUESTED

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

*NOTE: WMATA expects to adjust these amounts based on the relationship of the Capitalized Lease Payment for a period of 60 years to the fee simple land value.*

b) After Final Certificate of Occupancy: During the first 60 years of the term of the Lease, if HUD insurance no longer remains in place, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those in effect at receipt of the Final Certificate of Occupancy for the Project and for which no increase in Capitalized Lease Payment has been paid, such additional densities or unit totals will require DEVELOPER to pay additional Capitalized Lease Payment. The additional Capitalized Lease Payment payments will be determined through the three-appraiser method, to be defined in the Definitive Agreement and based on the then-remaining time until the 61st year of the term of the Lease. Since the resetting of the base rent in the 61st Lease year will be based on vacant land, there shall be no additional density adjustments after the 60th Lease year.

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

7.6 WMATA Delays: The maximum length of six hundred (600) days to Closing will be extended for delays caused solely by WMATA actions or failure to act, including requesting FTA Approval in accordance with Section 8.5 below. Such extension(s) shall be for the amount of time reasonably necessary to compensate for the delay caused solely by WMATA, *e.g.*, if such a delay causes DEVELOPER to miss a planned filing date which results in a one day-for-one day delay, then the extension shall be measured in days with respect to



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that filing date, however, if the filing date is for some action which is only available in a certain "time window" and the delay causes DEVELOPER to miss the filing date for such "time window," then the extension shall be measured in a period equal to the next available "time window" with respect to that filing date. In no other event, other than Force Majeure Delays as defined in Section 7.7 below, will Closing be delayed, even though DEVELOPER'S schedule may take longer than anticipated.

7.7 Force Majeure Delays: The maximum length of six hundred (600) days to Closing may be extended for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement. Such Force Majeure Delays shall be subject to an increase in the Capitalized Lease Payment, as provided in Section 7.5 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

**8. Conditions to Definitive Agreement Consummation**

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

8.1 Design Approvals: Within ten (10) days of execution of the Definitive Agreement and prior to any final submission to the District, DEVELOPER shall submit to WMATA for its approval a conceptual Total Project site plan in substantial conformance with Exhibit B, including building elevations and floor plans (the "WMATA-Approved Site Plan"). The design of the Total Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Lease Property. WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA within thirty (30) days of receipt of such submission by WMATA.

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

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



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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.



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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



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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.



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## 12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of one hundred fifty (150) days from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.



FOIA CONFIDENTIAL TREATMENT REQUESTED

Agreed this _____ day of 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

# 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.



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Dec 09

COMPARISON OF TERMS - SHAW-HOWARD SITE

| | Original Terms (2008) | Revised Terms (2009) |
|---|---|---|
| Developer: | A LLC to be formed by Banneker Ventures, the District Group, LLC & Metropolis Development Co. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principals are expected to be Banneker Ventures LLC & Banc of America Community Development Corporation |
| Site Description: | The 28,376 SF site consists of 3 separate parcels on the south side of Florida Ave. between 7th & 9th Streets, NW in Washington, DC. The parcels are undeveloped & were used for construction of the Green Line tunnel, which lies partially beneath each parcel. The sites are no longer needed by WMATA. | Same, except that the WMATA parcels are expected to be combined with the developer's adjacent 7,720 SF parcels on 9th St. Developer intends to construct a building which will straddle the WMATA parcels and the adjacent parcels |
| Developer's Proposal: | 104 apartments with 11,750 SF of ground floor retail-arts uses totaling 130,000 SF of above-grade development | 100,711 SF attributed to WMATA site consisting of 10,000 SF of ground floor retail-arts with housing above. At least 8% of housing is expected to be affordable at maximum 80% AMI per District IZ regs. The total development for the combined sites is estimated at 157,000 SF following an alley closing & site consolidation. WMATA is estimated to receive 79% of the value of the combined project. |

*Terms & Conditions of Proposed Ground Lease:*

| | | |
|---|---|---|
| Lease Term: | 60 years | 99 years |
| Lease Closing: | 20 months after development agreement execution | 600 days after development agreement execution |
| Const. Completion | 18 months after lease closing | Same |
| Performance Security: | $250,000 | $250,000 |

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FOIA CONFIDENTIAL TREATMENT REQUESTED

*Terms & Conditions of Proposed Ground Lease (Continued):*

| | | |
|---|---|---|
| Option Fee: | $100,000 upon Term Sheet approval | Same |
| Pre-Closing Rent: | $100,000/year upon development agreement rising to $130,000/year | $50,000 for 1st year after development agreement; $65,000 for 2nd year; $80,000/year thereafter |
| Additional Density: | $4.20/year rent for additional FAR prior to closing; To be determined by appraisal after closing. | $46.59/FAR with $74.55/FAR deduction for any added Inclusionary Zoning (IZ) affordable housing prior to closing; To be determined by appraisal after closing. |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date | $2,050,000 capitalized lease payment to be paid at closing less Additional Costs Credit TBD |
| Base Rent Escalation: | 1.5%/year for 1st 10 years, then 3%/year thereafter | None |
| Base Rent Revaluation: | Every 10 years | On 60th year, property is appraised to determine monthly rent; monthly rent escalates 3% every year; monthly rent is re-set every 10 years via appraisal. |
| Participating Rent: | None | 1.5% of effective gross income |
| Capital Event Participation: | 10% of net proceeds | 2% of gross for sale or assignment & 2% of adjusted gross on refinance |
| Market Valuation: | $14,000,000 NPV of Developer's offer<br>$7,500,000 Appraised Land Value<br>$525,000 Base 1st Year Rent<br>(Appraisal by Integra in 8/07) | $2,050,000 NPV of Developer's offer<br>$2,050,000 Capitalized Lease Value for first 60 years<br>(Appraised by Harps & Harps in 8/09<br>& Integra in 10/09) |

WMATA-INV 000075

# 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 August 2008. 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 ~~November~~ Dec 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

Washington
Metropolitan Area
Transit Authority

**CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES**

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.

**CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES**

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**

| | |
|---|---|
| Base Value to Metro – capitalized lease payment | $2,050,000 |
| 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.

**Additional Revenues**

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.

*Participation in Capital Events*

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

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**

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*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**

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| 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.

**Additional Revenues**

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.

*Participation in Capital Events*

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.



FOIA CONFIDENTIAL TREATMENT REQUESTED

*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

early version not approved

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100527 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Amended Term Sheet Lease Shaw-Howard/FL Ave Site

**PURPOSE:**

Obtain Board consideration of (1) a time extension for an an amended term sheet and negotiation of a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than May 2010 and (2) an amended term sheet.

**DESCRIPTION:**

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project would feature ground floor retail along Florida Avenue, with four stories of housing above, for a base amount of 100,000 sf. If additional density were achieved, Metro would be compensated. At a minimum, the project would include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built); however, the development team is exploring financing to extend affordability.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated an amended term sheet for a 99-year lease of the site with provisions for periodic rent adjustment.

The development team has gained control of adjacent land on 9th Street and proposes to combine that land with the two Metro parcels that are located between 8th and 9th streets. The combined site would allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. Metro would receive 79% of the value of any additional bonus density granted by the District of Columbia; this represents Metro`s share of the combined parcels` size.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities would be reserved in perpetuity for Metro.

Staff is requesting that the Board consider (1) a time extension for an amended term sheet and negotation of a final joint development agreement and lease to be brought to the Board not later than May 2010, and (2) an amended term sheet.

**FUNDING IMPACT:**

Revenue from the project would be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

No recommendation.

# 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~~ August 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

**CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES**

# 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

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TO: GMGR – John B. Catoe

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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

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**

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Washington, DC 20001
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*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**

| | |
|---|---|
| Base Value to Metro – capitalized lease payment | $2,050,000 |
| 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.

**Additional Revenues**

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.

*Participation in Capital Events*

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.



FOIA CONFIDENTIAL TREATMENT REQUESTED

*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

"It made such a racket," said one close neighbor who asked not to be identified. He was outside shoveling snow when he heard the structure, a rear addition to the semi-detached home, tumble down.

D.C. emergency responders Sunday brought fire engines and a search dog to the scene, but no injuries were reported. Neighbors said later that workers had returned to the property.

Owners Shari Loessberg and Christopher Smart were not in the circa-1900 home they bought this summer for $1.905 million. They sequencing plan with the city when they are digging out space under existing structures, said Tim Dennée, architectural historian with the D.C. Historic Preservatiou Office, who noted that he was not familiar with the details of the Dumbarton Street collapse.

But "the nature of construction is that it's unfinished," he said. "Who knows the state of the structure when they ceased work prior to the snowstorm?"

A D.C. Department of Consumer and Regulatory Affairs investigator found no evidence of wrongdoing in ty to the rear of the home, he said.

"Neighbors are thankful it wasn't much worse," he said, but added that the incident has raised questions about the qualifications necessary for working on Georgetown's historic buildings.

Builders do not have to pass extra scrutiny to work in the District's historic neighborhoods, said Dennée. It's their plans that get a close look from the city's preservation agency.

But "it's in the carrying out of the plans, the implementation, that things go wrong," he added.

# *Mayor gives Lew authority for parks projects*

**By ELIZABETH WIENER**
Current Staff Writer

A dozen stalled park and recreation projects appear to be back on track, with construction responsibility transferred to the much-praised office that is renovating and rebuilding schools across the city.

But the contentious investigation of possible contracting irregularities continues.

Last week, the D.C. Council refused to ratify a controversial $4.2 million contract with Banneker Ventures to oversee construction of the various park and recreation projects, mandating that the Office of Public Education Facilities Modernization take over most of the work.

Two days later, Mayor Adrian Fenty agreed with that plan, announcing that a memorandum of understanding will transfer responsibility to Office of Public Education Facilities Modernization director Allen Lew to "expedite the repair, construction and modernization" of the various recreation centers and parks.

**Lew**

Fenty said he had wanted Lew to do the work all along, a proposal nixed by the council last year. Lew promised that his staff "will get up to speed quickly and will be able to deliver these long-anticipated projects on time and on budget."

The construction and renovation projects transferred from Banneker, a private construction management firm, to Lew's city agency include the 10th Street Park in Ward 2; the Newark Street dog park, Guy Mason Recreation Center and Chevy Chase playground in Ward 3; Raymond Recreation Center in Ward 4; Rosedale Recreation Center in Ward 6; and recreation centers at Kenilworth Parkside in Ward 7 and Bald Eagle and Barry Farms in Ward 8.

Two Ward 1 projects, a new Justice Park and a new sports field at Parkview, were "never property authorized," according to Ward 5 member Harry Thomas, who chairs the committee on parks and recreation. But construction will continue under the supervision of the Office of the Deputy Mayor for Planning and Economic Development so that residents won't be deprived of the promised facilities, Thomas said.

Thomas also said that "there was no contracting authority" for the long-promised renovation of the 7th and N Streets Park in Shaw. But the deputy mayor's office had decided to pay for that project out of general improvement funds, and construction can continue on that basis, Thomas said.

Lew has said that most of the subcontractors slated to work on projects under Banneker Ventures will continue that work, but under his supervision.

There is no precise construction schedule yet. Parks department spokesperson John Stokes said Monday that "conversations regarding the details of the transfer have started, and meetings with community members will begin in early January."

Banneker Ventures and its contracting partner, Regan Associates, will continue oversight of only two D.C. projects — the Walker Jones recreation/library complex, and Deanwood Recreation Center, both funded under separate contracts and well on their way to completion.

But the decision does not end concerns about how and why funds were transferred, starting last spring — from the parks department, through the deputy mayor's office, to the D.C. Housing Authority, and then to a subsidiary that awarded the valuable construction management contract to a small, five-year-old firm whose owner, Omar Karim, is a friend and fraternity brother of the mayor.

Karim, appearing before the council under subpoena, denied any favoritism in the contracting process. Fenty has said he had nothing to do with the awarding of contracts.

The four council committees investigating the parks and recreation contracts had scheduled a roundtable Monday to hear from another Fenty friend, Sinclair Skinner. Skinner's firm, Liberty Engineering and Design, was chosen by Banneker to work on several of the projects, and council members wanted to question Skinner about allegations that his firm had overbilled or been paid before contracts were finalized.

According to housing authority records, Banneker has already been paid $1.9 million for work on the various park projects, with $387,850 of that sum invoiced and paid to Liberty. Staffers say it is not clear from the invoices exactly what work was done.

Monday's hearing was canceled because of inclement weather. Council staffers say it will be rescheduled, although a date has not been set.

Skinner's attorney, Scott Bolden, said Skinner would appear if properly subpoenaed. But he said his client "denies any double-billing or pre-billing. Mr. Skinner is a subcontractor, so he has little or nothing to contribute to this investigation. He didn't even bid on a contract. He submitted his information to Banneker, and Banneker forwarded it to DCHA, which said fine."

Bolden, who is also representing Karim, said the council should terminate its investigation now that the contract with Banneker has been pulled. "There's no sense using taxpayer funds on a process that has been rectified," the attorney said.

Bolden said he has begun negotiating with the housing authority to get payment for work already performed by Banneker and its subcontractors. "There are

See **Parks**/Page 18

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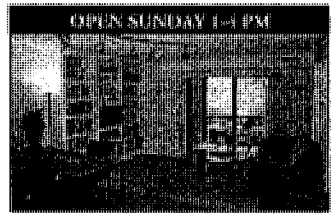


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Georgetown Office

# NORTHWEST REAL ESTATE

## PARKS

From Page 3

a number of legitimate invoices unpaid. These people did the work, and they have to be paid," he said.

If negotiations fail, Bolden said, "I have every expectation of filing suit against the executive and the council. But right now, our focus is on resolution."

The council last week also asked Attorney General Peter Nickles to investigate possible illegalities. Ward 3 member Mary Cheh said she wants Nickles to explore ways to recover funds improperly spent, as well as "consequences for members of the executive branch who approved unlawful actions."

Council members have said the original contracting process violated laws requiring council review of all contracts over $1 million, as well as the "anti-deficiency" act, which makes it illegal to spend funds not appropriated by the council.

## JELLEFF

From Page 1

the end of the year, should put to rest rumors about private development schemes at that latter clubhouse, noted Ward 1 Council member Jim Graham.

Rather than the rumored condos, the sale should "usher in a whole new era" for No. 10 "in terms of what we are going to be able to do," Graham said, noting the tradition of "athletic prowess" at the club.

The Boys & Girls Clubs also will receive promised funding of up to $150,000 to help the group move its headquarters from Silver Spring to the Richard England Clubhouse on Benning Road NE.

The relocation will save the organization about $200,000 in annual rent, and the District will gain the tax revenue from 25 to 30 jobs at the site, said Morrow.

Once the city's ownership is finalized, groups will be able to bid to operate programming at the clubs. Neighborhood organizations critical of the Boys & Girls Clubs, including Friends of Jelleff and #10 Parents Association Inc., have expressed interest in operating their clubhouses.

But it's possible that the properties would come under the umbrella of the city's Department of Parks and Recreation, said Denis James, a member of the Jelleff board as well as of Friends of Jelleff.

That move would scuttle an idea floated earlier this year by Graham to manage the sites via a "D.C. board" of community stakeholders.

"The administration seems to be pursuing the idea that they'll be DPR facilities," James said in an interview, noting that he discussed the issue with former agency interim director Ximena Hartsock.

Though he said that having the Friends group work under the city agency would be preferable to some outcomes — particularly any that would involve the Boys & Girls Clubs — James added that the agency's record shows that "they're not so good at working with the community."

Francis Campbell, chair of Neighbors United, a group formed to fight for control of the Eastern Branch after the Boys & Girls Clubs shuttered it, is focusing on the immediate problem for his organization: money.

"We are trying to secure funding" through corporate and other partnerships to be able to renovate and operate the site, Campbell said. He added that though he is pleased by the approved sale, he is worried that the steep price tag would not leave any money to help neighborhood groups operate the sites.

"It's just a matter of waiting and seeing how the city will dole out the space," Campbell said.

Council members last week congratulated each other — and particularly Chairman Gray — on putting together an agreement that brought to an end two years of uncertainty over the clubhouses' future.

The Boys & Girls Clubs of Greater Washington, which has struggled financially since it merged with the Metropolitan Police Boys & Girls Clubs in 2003, said in 2007 that it would close four D.C. sites and sell or redevelop the real estate. That move triggered neighborhood battles over control of the three sites that the city is purchasing; a fourth, Clubhouse No. 11 in Northeast, was purchased by Friendship Public Charter School over the summer.

The summer's $20 million agreement was reached after an initial proposal by Mayor Adrian Fenty to purchase only the Jelleff site for $15 million was rejected by council members interested in preserving services at all the clubhouses.

WMATA-INV 000098

Nat
Reg
Steve
Mark

11/17

- ~~Lease Term~~ 99 years vs. 60
- Zimmerman - why Closing 20 mo. from now? need all approvals
- " Can't price go ~~down~~ up
  yes it can go down
- $100,000 credit = $29,000
  IS IT A CREDIT AGAINST ~~OPTION~~ DEPOSIT
  ~~FEE~~ or PURCHASE PRICE

* (NOW) Print out a copy of my e-mail to Omar

* Get comparison from (Mark)
* Do (Steve's) walkback from Affordable Housing
  ~~Applicant Methodology~~

* Memo to Board from Nat through Carol
* ~~Mark~~ Mark to do time line issues for Nat

Logistical issue to meet Dec 3 PD&RE
for the

Devel Agreement Negotiations FLAve 8/09

FOIA CONFIDENTIAL TREATMENT REQUESTED

**Doggett, Rosalyn**

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Wednesday, September 09, 2009 5:21 PM
**To:** Meister, Mark K.
**Cc:** Maurice' 'Perry; aives@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Doggett, Rosalyn; John' 'Hagner; Moneme, Emeka; Marshall, Malcolm; Bottigheimer, Nat
**Subject:** RE: Shaw-Howard/Florida Avenue Appraisal

**Importance:** High

Mark,

Thank you for the email with your thoughts on the basic WMATA Financial Terms. Below are our comments:

Can't discuss

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 your 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. We cannot agree to any changes here absent a pro forma + sources + uses of funds table.

Pre-Closing Payments

Okay with amounts but payments would be made quarterly. Standard

Lease has a different # 1,124

Additional Density

WMATA looks to be ~~closed to~~ 60% of alley as slightly above

60% deeded to WMATA

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. After

Your initial coverage can be at 1.11. Capital Events however at 1.25%.

Capital Event Participation

OR ~~pay WMATA~~ as,

Any equity or member loans to receive a 20% return prior to WMATA receiving its 10% of net proceeds. Member loans or equity are indistinguishable. We could agree that equity or member loans not to exceed 40% of the development costs. non-tax credit

Term - WMATA's offer is firm

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%. valued as if vacant

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
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

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**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

---

**From:** Omar Karim [mailto:okarim@bannekerventures.com]
**Sent:** 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,

I will 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,



FOIA CONFIDENTIAL TREATMENT REQUESTED

Any word on the update appraisal results?

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

Capitalized Lease Payment

Value of site with a capitalized lease payment is $1,980,000 as of today based on (1) valuation of site @ $55/sf for residential/retail, (2) proposed WMATA parcels build-out of 124,000 sf, (3) a deduction for the added costs of building over Metro tunnels, and (4) a deduction for 20% affordable housing at 50% of AMI absent any federal or local government subsidy assistance that reduces expenses or increases revenue other than 4% tax credit financing.

Payment at closing (lease execution) must equal today's value of $1,980,000 at WMATA's discount rate of 6.8% per year.

Payment to be increased by 80% of any additional subsidy dollar obtained.

Pre-Closing Payments

$50,000 first 12 months after joint development agreement (jda) execution, payable in advance
$65,000 second 10 months, payable in advance

Additional Density

Payment for additional density at $55/FAR sf for additional density including the to-be-closed alley for non-residential sf over 11,000 sf attributable to the WMATA parcels and $27/FAR sf (assuming 20% of units rented at 50% AMI) for residential sf over 113,000 sf attributable to the WMATA parcels escalated at 6.8% per year from jda execution.

Annual Operating Income Participation

1.5% of Effective Gross Income. Debt Service Coverage Ratio to be at 1.25% or higher to ensure surplus cash for WMATA participation. If no HUD insurance, then payment is unsubordinated to operating expenses.

Capital Event Participation

No exclusions from capital events except admission of initial equity partner. WMATA receives 10% of net proceeds after deduction of debt repayment, original cash equity to develop the project with a return of 20%, member loans to develop the project with a return at market but not to exceed 12%, and transaction costs. Member loans not to exceed 10% of original development costs; equity not to exceed 30% of original development costs. non-tax credit equity

Term

After 60 years, when land is revalued as if vacant, lease rate is market but no less than 5% of land value and annual escalation is 3%.

Any other terms per T. Hicks e-mail summary of 6/25/09 modifying Florida Avenue Economic Terms Chart (last updated 5/26) except that Base Rent and Stabilization are no longer germane to discussions and Project Definition should reflect build-out of 124,000 sf of potential @ 127,692 sf. FAR

Capitalized Lease Payment

Value of site with a capitalized lease payment is $1,980,000 $3,065,000 based on capitalizing Omar's offered $250,000 annual base rent to be paid in the fifth year from now as of today based on (1) valuation of site @ $55/sf for residential/retail, (2) proposed WMATA parcels build-out of 124,000 sf, (3) a deduction for the added costs of building over Metro tunnels, and (4) a deduction for 20% affordable housing at 50% of AMI absent any federal or local government subsidy assistance that reduces expenses or increases revenue other than 4% tax credit financing.

Payment at closing (lease execution) must equal today's value of $1,980,000 $3,065,000 at WMATA's discount rate of 6.8%.

Payment to be increased by 80% of any additional subsidy dollar obtained.

Pre-Closing Payments

$50,000 first 12 months after joint development agreement (jda) execution, payable in advance
$65,000 second 10 months, payable in advance

Additional Density

Payment for additional density at $55/FAR sf for additional density including the to-be-closed alley for non-residential sf over 11,000 sf attributable to the WMATA parcels and $27/FAR sf for residential sf over 113,000 sf attributable to the WMATA parcels escalated annually at 6.8% from jda execution.

Annual Operating Income Participation

1.5% 1.75% or even 3.0% of Effective Gross Income. Debt Service Coverage Ratio to be at 1.25% or higher to ensure surplus cash for WMATA participation.

Capital Event Participation

No exclusions from capital events except admission of initial equity partner. WMATA receives 10% 12% of net proceeds after deduction of debt repayment, original cash equity to develop the project with a return of 20%, member loans to develop the project with a return at market rate for equivalent debt but not to exceed 12%, and transaction costs. Member loans not to exceed 10% of original development costs; equity not to exceed 30% of original development costs.

Any other terms per T. Hicks e-mail summary of 6/25/09 and chart of previously agreed upon items.

Capitalized Lease Payment

Value of site with a capitalized lease payment is $1,980,000 ??as of today based on (1) valuation of site @ $55/sf for residential/retail, (2) proposed WMATA parcels build-out of 124,000 sf, (3) a deduction for the added costs of building over Metro tunnels, and (4) a deduction for 20% affordable housing at 50% of AMI absent any federal or local government subsidy assistance that reduces expenses or increases revenue other than 4% tax credit financing.

Payment at closing (lease execution) must equal today's value of $1,980,000 THIS REPRESENTS AN ANNUAL BASE GROUND RENT OF LESS THAN $150,000, SO PRESUME THERE IS SOME REASON TO GO BELOW THE $250,000 ANNUAL ASSUMED RENT OMAR HAS PROPOSED PRIOR, ALTHOUGH THIS MIGHT BE SOMEWHAT LOWER AS IT NOW APPEARS THE PREPAYMENT WOULD COME TWO YEARS EARLIER. at WMATA's discount rate of 6.8%.

Payment to be increased by 80% AGREE WITH MERIT, BUT MIGHT MAKE HARDER TO GET SUBSIDY UNLESS <50%, of any additional subsidy dollar obtained.

Pre-Closing Payments

$50,000 first 12 months after joint development agreement (jda) execution, payable in advance
$65,000 second 10 months, payable in advance

Additional Density

Payment for additional density at $55/FAR sf for additional density including the to-be-closed alley for non-residential sf over 11,000 sf attributable to the WMATA parcels and $27/FAR sf for residential sf over 113,000 sf attributable to the WMATA parcels escalated at 6.8% ONE TIME OR ANNUALLY? from jda execution.

Annual Operating Income Participation

1.5% of Effective Gross Income. Debt Service Coverage Ratio to be at 1.25% or higher to ensure surplus cash for WMATA participation. DO NOT THINK A FACTOR BECAUSE EGI COMES BEFORE ANY FINANCING PAYDOWNS.

Capital Event Participation

No exclusions from capital events except admission of initial equity partner. DOES THIS CONTRADICT NEEDED ALLOWANCE FOR DEBT REPAYMENT NEXT SENTENCE? WMATA receives 10% 12? PER OMAR DISCUSSION? of net proceeds after deduction of debt repayment, original cash equity to develop the project with a return PER THIRD PARTY CAPITAL STRUCTURE BUT of NOT TO EXCEED 20%, member loans to develop the project with a return at market COST FOR EQUIVALENT DEBT but not to exceed 12%, and transaction costs. Member loans not to exceed 10% of original development costs; equity not to exceed 30% of original development costs.

Any other terms per T. Hicks e-mail summary of 6/25/09 and chart of previously agreed upon items.

## Doggett, Rosalyn

**From:** eric.smart@bolansmart.com
**Sent:** Wednesday, September 09, 2009 2:20 PM
**To:** Doggett, Rosalyn
**Subject:** Re: FL Ave baic financial terms
**Attachments:** Shaw_Howard_Fl_Ave_Basic_Financial_Terms_9-9-09 BSA COMMENTS.doc

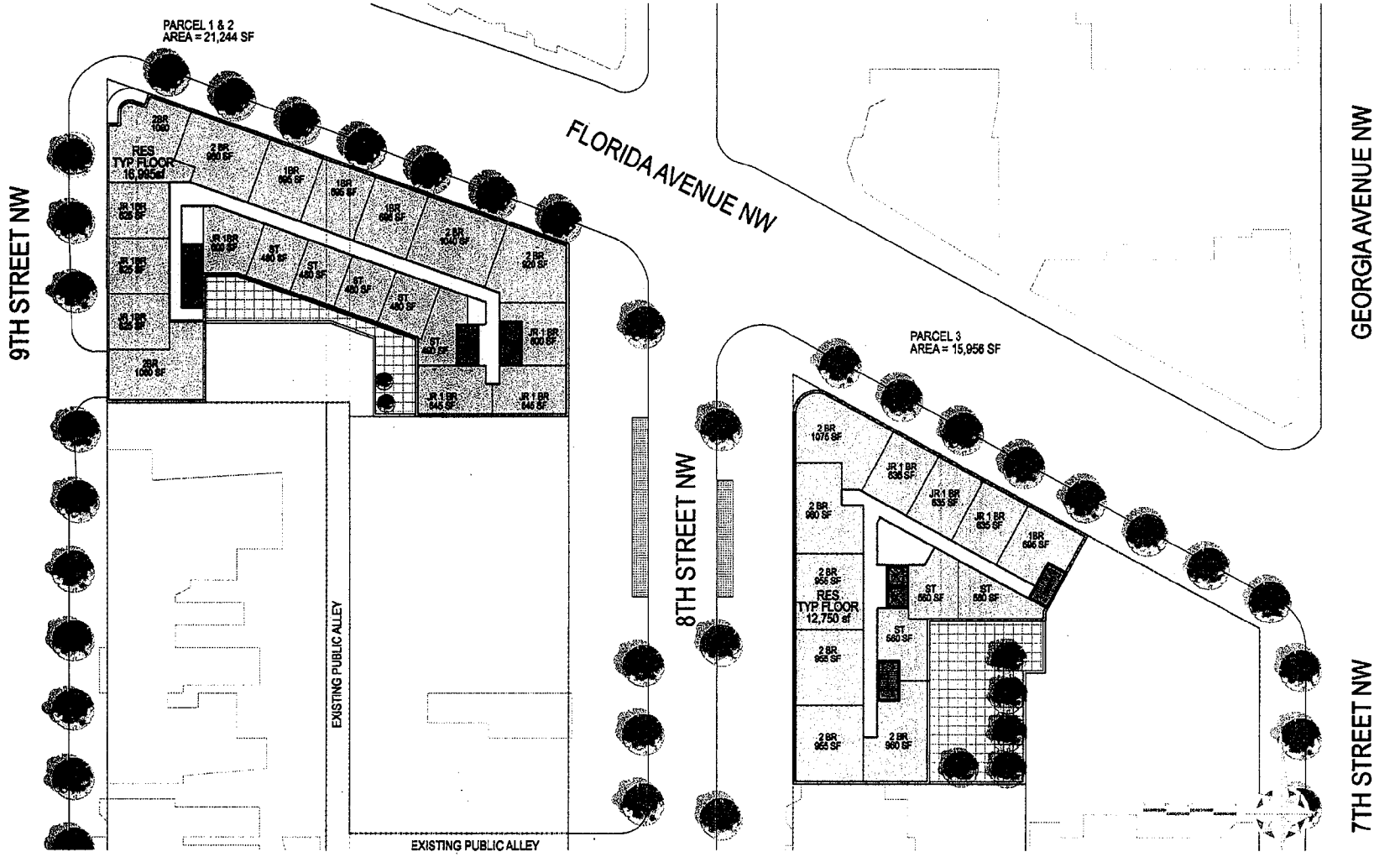
Roz

I left phone message and here are some quick comments.

Eric

On Wed, 09 Sep 2009 11:59:55 -0500 (EST), "Doggett, Rosalyn"
<RDoggett@wmata.com> wrote:
> Any changes or additions?
>
> 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
>
>
>
>
>
--
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

WMATA-INV 000109

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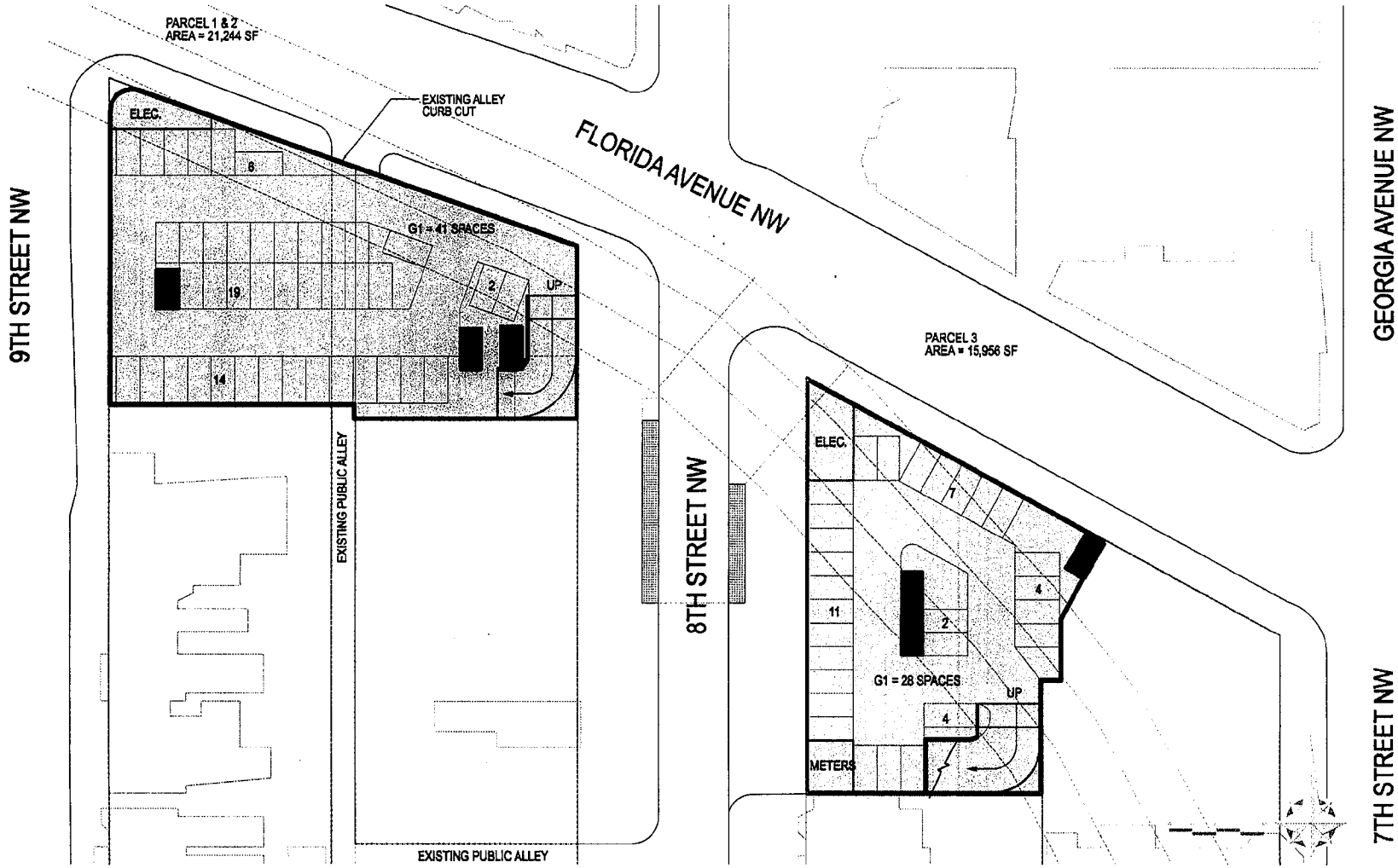
June 2009

Typical Residential Floor Plan



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000110

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June 2009

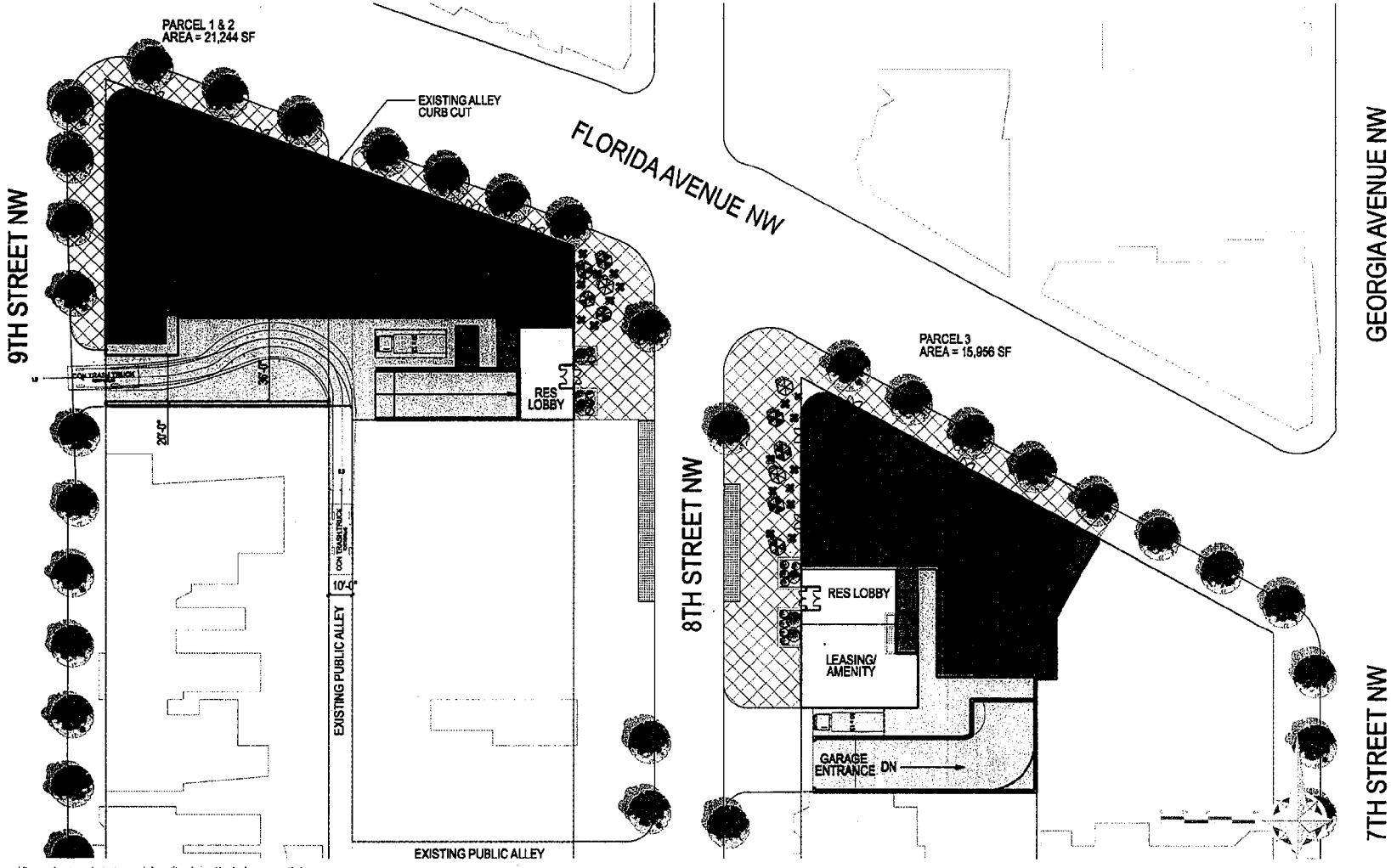
Garage Level Plan

BANNEKER VENTURES / BANC OF AMERICA CDC
TORTI GALLAS AND PARTNERS



THE JAZZ @ FLORIDA AVENUE

FOIA CONFIDENTIAL TREATMENT REQUESTED

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June 2009

First Floor Plan

BANNEKER VENTURES / BANC OF AMERICA CDC
TORTI GALLAS AND PARTNERS



THE JAZZ @ FLORIDA AVENUE

WMATA-INV 000111
FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

**1. Banneker (August 26, 2009) with 60 year ground lease** (based on current verbal described proposed terms; non-capitalized base rent; spring 2009 proforama effective gross income projections; assuming $5.0M appraised land value)

| | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Revenues** | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $50,000 | $65,000 | $80,000 | $80,000 | $80,000 | | | | | | | | | | | | |
| Base Rent (at 95% ocp) | prepaid | | | | | | | $0 | | | | | | | | | | | |
| | annual | | | | | | | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 |
| Total WMATA Base Rent | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 |
| Effective Gross Income | | Banneker projected | | | | | | $2,831,000 | | | | | | | | | | | |
| | 3.00% | EGI growth BSA adjusted | | | | | | $2,500,000 | $2,575,000 | $2,652,250 | $2,731,818 | $2,813,772 | $2,898,185 | $2,985,131 | $3,074,685 | $3,166,925 | $3,261,933 | $3,359,791 | $12,335,312 |
| | 1.50% | WMATA payment | | | | | | | | | | | $43,473 | $44,777 | $46,120 | $47,504 | $48,929 | $50,397 | $185,030 |
| Total WMATA Base Rent With Percentage of EGI | | | | | | | | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $293,473 | $294,777 | $296,120 | $297,504 | $298,929 | $300,397 | $435,030 |
| WMATA Participation | 12.50% | of defined capital events | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $5,000,000 | FY09 value | | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | |
| Terminal Value | $28,600,015 | on land only | | | | | | | | | | | | | | | | | $28,600,015 |
| **Cash Flow** | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $293,473 | $294,777 | $296,120 | $297,504 | $298,929 | $300,397 | $435,030 |
| **Cash Flow w/ residual** | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $293,473 | $294,777 | $296,120 | $297,504 | $298,929 | $300,397 | $29,035,045 |

| NPV | | | | | | |
|---|---|---|---|---|---|---|
| Base Rent | 5.73% | discount rate | $3,743,123 | 6.80% | discount rate | $3,158,180 |
| With Residual | 5.73% | discount rate | $4,753,474 | 6.80% | discount rate | $3,710,373 |
| With EGI and Res | 5.73% | discount rate | $5,419,021 | 6.80% | discount rate | $4,206,086 |
| With Participation | | | not considered | | | |

**2. Banneker (August 26, 2009) with 60 year ground lease** ($250,000 base rent prepaid discounted at 7%. Note if solely capitalized at 7% without regard for limited lease term the prepaid rent would total $3,572,500)

| | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Revenues** | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $50,000 | $65,000 | $80,000 | $80,000 | $80,000 | | | | | | | | | | | | |
| Base Rent (at 95% ocp) | prepaid | | | | | | | $3,065,636 | | | | | | | | | | | |
| | annual | | | | | | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 |
| Total WMATA Base Rent | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $3,065,636 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 |
| Effective Gross Income | | Banneker projected | | | | | | $2,831,000 | | | | | | | | | | | |
| | 3.00% | EGI growth BSA adjusted | | | | | | $2,500,000 | $2,575,000 | $2,652,250 | $2,731,818 | $2,813,772 | $2,898,185 | $2,985,131 | $3,074,685 | $3,166,925 | $3,261,933 | $3,359,791 | $12,335,312 |
| | 1.50% | WMATA payment | | | | | | | | | | | $43,473 | $44,777 | $46,120 | $47,504 | $48,929 | $50,397 | $185,030 |
| Total WMATA Base Rent With Percentage of EGI | | | | | | | | $3,065,636 | $0 | $0 | $0 | $0 | $43,473 | $44,777 | $46,120 | $47,504 | $48,929 | $50,397 | $185,030 |
| WMATA Participation | 12.50% | of defined capital events | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $5,000,000 | FY09 value | | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | |
| Terminal Value | $28,600,015 | on land only | | | | | | | | | | | | | | | | | $28,600,015 |
| **Cash Flow** | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $3,065,636 | $0 | $0 | $0 | $0 | $43,473 | $44,777 | $46,120 | $47,504 | $48,929 | $50,397 | $185,030 |
| **Cash Flow w/ residual** | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $3,065,636 | $0 | $0 | $0 | $0 | $43,473 | $44,777 | $46,120 | $47,504 | $48,929 | $50,397 | $28,785,045 |

| NPV | | | | | | |
|---|---|---|---|---|---|---|
| Base Rent | 5.73% | discount rate | $2,734,966 | 6.80% | discount rate | $2,614,459 |
| With Residual | 5.73% | discount rate | $3,745,317 | 6.80% | discount rate | $3,166,652 |
| With EGI and Res | 5.73% | discount rate | $4,410,863 | 6.80% | discount rate | $3,662,365 |
| With Participation | | | not considered | | | |

WMATA-INV 000112

Shaw-Howard/Florida Avenue Basic Financial WMATA Terms 9-09-09

Exclude WMATA share of alley if closed

## Capitalized Lease Payment

Value of site under 20% @ 50% AMI affordable housing with a capitalized lease payment is $1,980,000 as of today. Based on (1) valuation of site @ $55/sf for residential/retail, (2) proposed site buildout of 124,000 sf, and a (3) deduction for the added costs of building over Metro tunnels. ~~The~~

~~Capitalized lease~~
Payment at Closing (lease execution) would equal today's value of $1,980,000 at WMATA's discount rate of 6.8%
~~Payments can include~~
~~Closing~~ Price is increased by 80% of any subsidy received for affordable housing

## Pre-Closing Payments -

$50,000 first 12 months
$65,000 second 12 months

## Additional Density

At $55/sf escalated ~~at 3%~~ for non-res over 11,000 sf and res over 113,000 sf $2?/sf for less deductions for affordable housing, if applicable, but not for tunnel costs already taken into account, escalated ~~at 3%~~ at 6.8% / year

~~Capital Event~~
## Operating Income Participation

1.5% of Effective Gross Income
At any capital event, Debt Service Coverage Ratio must be not less than 1.25% to ensure Surplus Cash ~~to WMATA~~ for WMATA EGI

## Capital Event Participation

12.5 of net proceeds at market
Return on member loans ~~at~~, not to exceed 12%
Cash ROE at market, not to exceed 20%.
Member loans not to exceed 10% of Dev Cost
Equity not to exceed 30% of Dev Cost

Appraisal is done on MOR. MOR = 12

Omar is asking for a feasibility study based on his assumptions + what he can afford

**Florida Avenue Term Sheet Negotiation Issues**

We would start with Omar's pro forma and sources and uses of funds table. When last we met with him, he recognized that he had at least a $1 million gap, and, that, I assume, is why he was going to apply for (in addition to tax credits: 4%, 9%?) TIF for retail. Who know? We have no current, solid information.

Further, if we write down the land cost, he really has no incentive to get other financing.

However, this is an outline of what we should ask for:

1. Any advantage (TIF, tax abatement, greater than assumed equity infusion through tax credits, etc. ) that reduces expenses or increases the income in the development and operating pro formas that Omar give us and that we agree upon should be reflected in rent adjustments to WMATA: 80 cents on the dollar x 6.8%.
2. Further, since WMATA's share of effective gross income must come from "surplus cash" under HUD insurance , we would need to include in any contract a debt service coverage ratio at all times of at least 1.2; higher, of course, if HUD required it. Otherwise, the project could be overleveraged and there would not be operating cash for WMATA to receive after a sale or refinancing
3. If there is no HUD insurance, then our participation in income would not be subordinated.
4. We assume that any prepaid capitalized base rent would be paid at lease closing, not at stabilization. We do not do any deals that are structured other than with payments at closing.
5. On capital event "premium rent" I am not sure if the Rhode Island Avenue lease is more or less advantageous than what we had tentatively agreed to since many transactions are excluded from a capital event in the RI Avenue lease.
6. If they have less than 20% (at 90%?) WMATA will get the difference: ~~at 80%~~ anything over 80%. Median will be at $55/s.f. x 6.8%
7. Any additional density will be at $55/sf x 6.8%

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000115

124
55
620
620
6,820

+ 7.5 - 450
7.150

## Doggett, Rosalyn

**From:** thicks [thicks@bannekerventures.com]
**Sent:** Monday, July 06, 2009 6:41 PM
**To:** Doggett, Rosalyn
**Cc:** Maurice' 'Perry; arashid@bannekerventures.com; okarim@bannekerventures.com; eric.smart@bolansmart.com; Moneme, Emeka; Montague, Joshua W.; Meister, Mark K.; Bottigheimer, Nat
**Subject:** FW: The Jazz Economic Terms (as of June 23, 2009)

**Importance:** High

Mrs. Doggett,
We are following up with regards to items #1, 5, and 11 below. Please advise us as to the status of each. Thanks kindly.
Tiwana

**Tiwana Z. Hicks**
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
Office: (202) 393-5460
Fax: (202) 347-9047
Cell: (202) 486-1863
thicks@bannekerventures.com

---

**From:** thicks [mailto:thicks@bannekerventures.com]
**Sent:** Thursday, June 25, 2009 1:51 PM
**To:** 'Doggett, Rosalyn'
**Cc:** 'jwmontague@wmata.com'; 'MMeister@wmata.com'; 'eric.smart@bolansmart.com'; 'nbottigheimer@wmata.com'; 'emoneme@wmata.com'; 'okarim@bannekerventures.com'; 'Perry, Maurice'; 'arashid@bannekerventures.com'
**Subject:** The Jazz Economic Terms (as of June 23, 2009)
**Importance:** High

Mrs. Doggett,
As a follow-up to our conference call on June 23, 2009, below please find a status update for each item in red font.

no $800,000 up front

1. PROJECT - For purposes of accounting for revenue/rent, the base rent of $250,000 that we are agreeing to pay WMATA remains unchanged. The 1.5% of EGI generated by the improvements on the WMATA parcels (which is about 79% of the total project improvements) excludes any EGI generated by the improvements on the adjacent properties. We are in the process of consulting with legal counsel on how to structure a financial scenario to account for the adjacent parcels in the event of a default on the mortgage and will get back with you soon. WMATA is waiting on the results of Appraisal due in July. Developer has requested abstract of Appraisal. WMATA will advise Developer if abstract of Appraisal will be shown to Developer. Developer would like to be informed of this decision by July 2, 2009. Developer to provide formalized financial scenario regarding adjacent parcels by July 9, 2009.
2. FTA APPROVAL – Yes, we agree to add the language contained in the WMATA Draft Column. Parties are in agreement. Issue resolved.
3. CHANGE OF CONTROL – We agree that there shall be no Change of Control prior to execution of the Lease Agreement. After execution of the Lease Agreement there shall be no Change of Control without WMATA's prior written approval, which shall not be unreasonably withheld. Parties are in agreement. Issue resolved.
4. PRE-STABILIZATION PERIOD AMOUNTS – Our offer remains unchanged. Issue remains contingent upon results of Appraisal.
5. INSURANCE – Has Josh received a response from the Risk Management division? WMATA to provide response to Developer's comments by July 2, 2009.
6. GUARANTOR – Banc of America CDC is the Guarantor. BoA CDC to provide updated financial information to WMATA by July 2, 2009.
7. STABILIZATION – Please explain how the results of the outside appraisal will affect Stabilization? Has the new appraisal been ordered? Does the appraisal company have experience doing appraisals that include affordable housing? When do you expect to have the results of the new appraisal? Pursuant to WMATA, issue remains contingent upon results of Appraisal.
8. AFFORDABLE HOUSING – We are in agreement to delete "minimum". 20% is fine. We are in the process of reviewing the IZ regulations. Based on our preliminary review of the IZ regulations, the regulations will apply to



FOIA CONFIDENTIAL TREATMENT REQUESTED 

we did not agree

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. OK 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. we said no

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. 5 year

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
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thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED 

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Tuesday, September 08, 2009 12:13 PM
**To:** Montague, Joshua W.
**Cc:** Maurice' 'Perry; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Doggett, Rosalyn; John' 'Hagner; Moneme, Emeka; Marshall, Malcolm; Meister, Mark K.; Bottigheimer, Nat
**Subject:** The Jazz @ Florida Avenue - Comments to JDA and Elevations and Sections
**Attachments:** WINSTON-#4178271-v2-Joint_Development_Agreement_for_The_Jazz_@_Florida_Avenue.DOC; WINSTON-#4178271-v1&2-Joint_Development_Agreement_for_The_Jazz_@_Florida_Avenue.DOC; WINSTON-#4178303-v2-Joint_Development_Agreement_Definitions_for_The_Jazz_@_Florida_Avenue.DOC; WINSTON-#4178303-v1&2-Joint_Development_Agreement_Definitions_for_The_Jazz_@_Florida_Avenue.DOC; Jazz @ Florida Avenue - Elevations and Sections (as of 9-8-09).pdf

Josh,

As promised, we attach for your review the following:

1. Revised JDA;
2. Redline of the JDA showing all changes from the latest version that WMATA sent us;
3. Revised Definitions/Defined Terms for the JDA
4. Redline of the Definitions/Defined Terms showing all changes from the latest version that WMATA sent us
5. Latest Elevations and Sections from Torti Gallas

Our attorney, John Hagner, provided footnotes to many of the changes in the document which should clarify why changes were made to the documents. The revised JDA addresses most, if not all, of the principal elements of the deal, including the proposed financial structure, how the adjacent parcels will be handled, etc. As discussed, we are proposing to pay the entire Base Rent for the 60-year Initial Term under a capitalized lease structure in addition to paying WMATA a % of Effective Gross Income. The balance of the issues are properly addressed in the Lease which we expect to get over to you by the end of the week if not by early next week. However, we believe that significant progress can be made with the revised JDA. Other than the JDA, Lease and Elevations and Sections, I believe this is all of the information that we promised you all except the updated pro forma which we will provide as soon as we get the updated results of the appraisal from you all. As mentioned to Nat, Marshall and Yohance, it will take a few days for us to turn the pro forma around after we receive the results of the appraisal. We have already began updating it and if we get the results today, we should be able to send you all something by Thursday or Friday at the latest.

My best,

Omar

Omar A. Karim
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(202) 393-5460 phone
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**Doggett, Rosalyn**

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Thursday, August 27, 2009 6:00 PM
**To:** Doggett, Rosalyn
**Cc:** 'Tiwana Hicks'; eric.smart@bolansmart.com
**Subject:** RE:

**Importance:** High

Ms. Hicks,

Thanks for your email. Eric and I had a great conversation yesterday. Below please find answers to your questions:

1. 157,000 sf. 132 units, 20% of which are affordable. 79% of the projected is allocated to WMATA property and the balance to the adjacent properties that we control, which is the % of land that WMATA and BV/BoA controls.
2. Project costs is $41.5M. Sources include HUD-insured loan, TIF which is allocated 100% to non-residential uses (dollar amount TBD as the note is still being underwritten), tax credits, which is being allocated to the affordable housing units only (dollar amount TBD as the project is still being underwritten by DHCD) and developer equity, exact dollar amount to be determined once our TIF and tax credits are finalized. Regardless of the uncertainty of the exact amount of any public subsidies we may receive, we remain committed to moving forward with this project in an expeditious manner and break ground by the schedule that we promised from the date of JDA/Lease approval.
3. Not sure what your question is here. The sources of equity will come from Banneker and BoA CDC.
4. We expect to send you comments by next week. Since we were trying to figure out a way to address WMATA's concerns about the adjacent parcels, this took some time to figure out how it would be done in the documents. Our solution is to capitalize our lease payments (which Eric and I discussed briefly on Tuesday and more in depth on Wednesday). We hope that we could all agree to have the Staff recommend the JDA and Lease be approved by the Committee and Board at the October 2009 meeting. In order to get there, we believe that we would have to follow a schedule that looks something like the following:
   - BV/BoA sends you our comments to the JDA and Lease by 9/3;
   - WMATA has 2 weeks (9/4-9/18) to review our comments;
   - WMATA and BV/BoA meet in person for several days (say 9/21-9/25) going through all of the comments and agreeing to terms page by page. We each could bring our laptops to make changes on the spot;
   - Take 9/28 and 9/29 to clean up any final edits
   - 9/29, WMATA staff sends to senior staff its recommendations for the Florida Avenue JDA and Lease be approved by the Committee and Board at the October Board meeting.

Please let me know if this is acceptable to you.

Btw, in one of your previous emails, you mentioned that you all would be forwarding the results of the appraisal. Can we still expect to receive it? If so, when do you think this will occur?

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

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**From:** Doggett, Rosalyn [mailto:RDoggett@wmata.com]
**Sent:** Thursday, August 27, 2009 10:04 AM
**To:** 'Omar A. Karim'
**Cc:** eric.smart@bolansmart.com
**Subject:**

Omar,



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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
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Washington, DC 20001

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**WMATA Joint Development Summary of Outstanding Issues in Updated Term Sheet**
**Shaw-Howard/Florida Avenue Sites**
**(WMATA comments in red font as of September 17, 2009)**

| Section in Term Sheet | Agreed-Upon Issue | Developer Proposal |
|---|---|---|
| 1.2 | Developer | Banneker Ventures and Banc of America CDC |
| 2 | Definitive Agreement | Lease term to begin with earlier of 20 months after approval of JDA or start of construction |
| 3 | Property to Be Leased by Developer | Estimated 28,400 square feet of land on Florida Avenue NW |
| 4 | Entire Project | Approx. 157,000 FAR gross sq. ft., including 132 apartments, 20,000 square feet of retail and 71 below-grade parking spaces |
| 5 | Due Diligence | Agreed |
| 6 | Security Deposit | Agreed. $100,000 Proposal Security check to be credited toward $250,000 Security Deposit |
| 7.2 | Pre-Closing Payments | $50,000 for first year; $65,000 for second year; payments to be made quarterly and prorated for partial quarters [ assumes closing in 20 months after jda – but jda crosses out- intent unclear] longer than 2 years = additional pre-closing payments |
| 7.3 | Base Rent | $1,980,000 payment at execution of Lease. This represents the entire Base Rent for the initial 60-year Initial Term and will be paid at Closing under a capitalized lease structure for the Initial Term. Should execution of Lease occur after 9/12/10, Base Rent to be increased by 6.8% on annualized basis. WMATA to agree to reasonable critical path schedule which will be an Exhibit to the JDA whereby WMATA will agree to timely reviews of all drawings, applications, etc. so that project can stay on schedule and Developer will not be subject to increase in Base Rent. |
| 7.3.1 – 7.3.4 | Periodic Rent Increases | Initial Lease Term – Non-applicable because Developer to pay capitalized lease |
| 7.3.5 | Lease Period | Initial Lease Term – 60 years. Developer to have option to extend lease for additional 39 years. |
| 7.4 | Capital Event Participation | Initial Lease Term – 10% of Net Proceeds from any refinancing after the initial permanent loan closing and after all initial member loans and equity have been repaid with member loans and equity having received an after tax 20% IRR and tax credit investors having received a market rate return that the tax credit investor requires. Member loans and equity not to exceed 30% of development costs after tax credit investment deduction. During Initial Lease Term, Developer to have at least 1.2 DSC on any senior loans other than FHA-insured senior loans [or public subsidies; explain-- won't FHA make the call?] |
| 7.5 | Periodic Rent Revaluation | Initial Lease Term – No longer applicable. |
| 7.6 – 7.10 | Miscellaneous Items | Addressed in JDA. No major changes to original Term Sheet [TBD] |
| 7.7 | Proposal Security | At JDA approval, $100,000 check to be credited toward $250,000 Security Deposit |
| 7.11 | Additional Density | Developer to pay WMATA for any additional density beyond 164,754 which is 4.5 FAR if the project is maxed out (or 130,014 SF 127, 800 sf attributable to WMATA parcels plus alley portion). [WMATA should get 3.1% increase on $1.98 million to account for difference between 124,000 sf on which appraisal was based and 127,800 FAR portion of 164,754 sf.] This is |



WMATA-INV 000121

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| Section in Term Sheet | Agreed-Upon Issue | Developer Proposal |
|---|---|---|
| | | necessary as the project is only in schematic phase and changes are certain to happen, including a possible decrease in the proposed FAR (due to historic or other issues) or increase in the proposed FAR or type of uses (resid vs. retail [ok- Cannot agree to a cap on the amount of changes in type as this may reduce the project's competitiveness to other projects in the market and limit our ability to lease the project's spaces. If Developer provides less residential space, then we will receive less tax credits and thus make the project even that much more difficult to finance.] Developer to pay WMATA for any density increases above a 4.5 FAR at $55/FAR SF for retail SF attributable to WMATA parcels and $16$27/FAR SF (not same rate as for alley) for residential SF attributable to WMATA parcels. [alley rate assumed extra costs of building over the tunnel. $27 does not since all tunnel costs have been incorporated in base price] |
| New sub-section | Participation Rent | <u>Initial Lease Term</u><br>WMATA to receive 1.5% of Effective Gross Income [delete this part of sentence because of disparity between cost of WMATA land and adjacent parcels, as a tradeoff for other rent foregone and because of the added value to the adjacent parcels from combining with WMATA Florida Ave land] on WMATA-developed parcels only, which is 79% of total project.] With any FHA-insured senior loans, WMATA to receive 1% of EGI w/o Surplus Cash limitation before project expenses. After project expenses, but before Developer participation in cash flow, WMATA to receive balance due (0.5% of EGI). No Participating Rent after initial term. If no FHA-insured loan, WMATA gets 1.5% of EGI before expenses but after debt service on senior loan. Any EGI not paid in a given year accumulates at 6.8% and is paid out of cash flow or capital event proceeds before equity.<br><br><u>Extension Term [in this section below all language about entire and complete should be deleted- very easy to do a partial sale or refi on this project with separate blocks]</u><br>Base Rent to be market rate % of land value but no less than 5% percent of the market value of land as vacant [ delete with the then-present improvements. ] WMATA to receive annual escalation of Base Rent of 3%. Upon the earlier of ten years after commencement of extended term, or either a complete refinancing of the Entire Project during the Extension Term, or a transfer of the Developer's entire interest in the Entire Project during the Extension Term (by assignment of Lease and sale of Developer's land and improvements or transfer of all the Developer's membership interests within a 12-month period – effectively a sale) the Base Rent will be reset at higher of then-existing Base Rent or new Base Rent equal to market rate % of land value but no less than 5% of the market value of land as vacant with the use limited to the then-existing improvements. Once reset under this method, the Base Rent is reset every ten years thereafter based on the fair market value of the land as vacant with the use limited to the then-existing improvements. |
| 8 | Conditions to JDA | Addressed in JDA. No major changes to original Term Sheet |

| Section in Term Sheet | Agreed-Upon Issue | Developer Proposal |
|---|---|---|
| | Consummation | |
| 9.1 – 9.7 and 9.9 – 9.11 | Special Considerations | Addressed in JDA. No major changes to original Term Sheet |
| 9.8 | Guaranty | Guarantor to guarantee commencement and Final Completion of the Entire Project per Approved Development Plan. At closing, Guarantor net worth to exceed "hard" costs of Entire Project. Upon completion of the Entire Project, the Guarantee shall be released. |
| 10 | Indemnification | Addressed in JDA. No major changes to original Term Sheet |
| 11 | Insurance Requirements | To be addressed in Lease. |
| New Section | Affordable Housing | 20% of all residential units [delete attributable to WMATA parcels] shall be affordable at 50% of the area median income. Lease to comply with FHA lending requirements. [Developer cannot agree that WMATA will participate in split of additional subsidies that project may apply for in the future as project costs could increase prior to construction and Developer may be forced to seek the gap funding from somewhere, including member loans, private equity or public subsidies. In fact, yesterday our General Contractor informed us that the infrastructure costs that it was running in our latest budget should be increased by 300% because infrastructure sub-contractors are charging a premium to work on WMATA-related projects these days.] Developer agreed to 50-50 on 9/11. Infrastructure accounted for in appraisal |
| New Section | Cotenancy Agreement | [Major WMATA compact and business problem and, even if no problem, could only apply to Square 393] At closing, WMATA and Developer will enter into and record a cotenancy agreement (a form of which will be attached as an exhibit to the JDA) which will control the operation, leasing, and disposition of the Entire Project after expiration or termination of the Lease. WMATA and Developer will select a professional manager to manage the Entire Project and direct the manager to include a larger reserve in the project budget to ensure that neither owner would ever be required to separately fund any capital improvements, etc. |
| New Section | Developer Land/Additional Density/Alley Closing | WMATA land and Developer land in Sq. 393 to be resubdivided into single lot after partial closing of public alley. Developer to pay WMATA density that would be allocated to WMATA parcels when alley is closed. Current alley is 1,025 SF. About ½ of alley will be deeded to WMATA. This would represent 512 SF. Buildable SF would be about 2,560 on WMATA land. Based on WMATA's value of land, land is valued at $16 per FAR/SF. Developer would pay WMATA $16 x 2560= $40,960 at closing as additional Base Rent. [NB- actual amounts to be determined by survey] |

7.8 38 %
12.4 62 %
20.2

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9/15/09

**WMATA Joint Development Summary of Outstanding Issues in Updated Term Sheet**
**Shaw-Howard/Florida Avenue Sites**
**(as of September 15, 2009)**

a reasonable ~~[illegible]~~ said earlier than wanted 20 months for closing

| Section in Term Sheet | Agreed-Upon Issue | Developer Proposal |
|---|---|---|
| 1.2 | Developer | Banneker Ventures and Banc of America CDC |
| 2 | Definitive Agreement | Lease term to begin with earlier of 20 months after approval of JDA or start of construction |
| 3 | Property to Be Leased by Developer | Estimated 28,400 square feet of land on Florida Avenue NW |
| 4 | Entire Project | Approx. 157,000 FAR gross sq. ft., including 132 apartments, 20,000 square feet of retail and 71 below-grade parking spaces Project is 20% at 50% AMI. WMATA portion is ——— |
| 5 | Due Diligence | Agreed check |
| 6 | Security Deposit | Agreed. $100,000 Proposal Security to be credited toward $250,000 Security Deposit |
| 7.2 | Pre-Closing Payments | $50,000 for first year; $65,000 for second year; payments to be made quarterly and prorated for partial quarters |
| 7.3 | Base Rent | $1,980,000 payment at execution of Lease. This represents the entire Base Rent for the initial 60-year Initial Term and will be paid at Closing under a capitalized lease structure for the Initial Term. Should execution of Lease occur after 9/12/10, Base Rent to be increased by 6.8% on annualized basis. WMATA to agree to critical path schedule which will be an Exhibit to the JDA whereby WMATA will agree to timely reviews of all drawings, applications, etc. so that project can stay on schedule and Developer will not be subject to increase in Base Rent. AND NO FORCE MAJEURE |
| 7.3.1 – 7.3.4 | Periodic Rent Increases | Initial Lease Term – Non-applicable because Developer to pay capitalized lease |
| 7.3.5 | Lease Period | Initial Lease Term – 60 years. Developer to have option to extend lease for additional 39 years. |
| 7.4 | Capital Event Participation | Initial Lease Term – 10% of Net Proceeds from any refinancing after the initial permanent loan closing and after all member loans and equity have been repaid with member loans and equity having received a 20% ~~annualized~~ after tax IRR return and tax credit investors having received a market rate return that the tax credit investor requires. Member loans and equity not to exceed 30% of development costs. During Initial Lease Term, Developer to have at least 1.2 DSC on any senior loan other than FHA-insured senior loans ~~or public subsidies~~ unless lender doesn't require so |
| 7.5 | Periodic Rent Revaluation | Initial Lease Term – No longer applicable |
| 7.6 – 7.10 | Miscellaneous Items | Addressed in JDA. No major changes to original Term Sheet check |
| 7.7 | Proposal Security | At JDA approval, $100,000 to be credited toward $250,000 Security Deposit check |
| 7.11 | Additional Density | Developer to pay WMATA for any additional density beyond 164,754 which is 4.5 FAR if the project is maxed out (or ~~130,014 sf~~ 127,800 sf) attributable to WMATA parcels. This is necessary as the project is only in schematic phase and changes are certain to happen, including a possible decrease in the proposed FAR (due to historic or other issues) or increase in the proposed FAR or type of uses (resid vs. retail). Cannot agree to a cap on the amount of changes in FAR as this may reduce the project's competitiveness to other projects in the market and limit our ability to |

we don't ask for a cap on changes, just agreement that we get paid slightly less now

$\frac{3800}{124000} = 3.\%$ = $2,041,380 WMATA deal based on 124,000 sf to (127,800) if we want to go ~~[illegible]~~ increase rent

WMATA-INV 000124

FOIA CONFIDENTIAL TREATMENT REQUESTED

| Section in Term Sheet | Agreed Upon Issue | Developer Proposal |
|---|---|---|
| | | ~~lease the project's spaces.~~ If Developer provides less residential space, then we will receive less tax credits and thus make the project even that much more difficult to finance. Developer to pay WMATA for any density increases above a 4.5 FAR at $55/FAR SF for retail SF attributable to WMATA parcels and $16/FAR SF (same rate as for alley) for residential SF attributable to WMATA parcels. |
| New sub-section | Participation Rent | Initial Lease Term<br>WMATA to receive 1.5% of Effective Gross Income on WMATA-developed parcels only, which is 79% of total project. With any FHA-insured loan, WMATA to receive 1% of EGI w/o Surplus Cash limitation before project expenses. After project expenses, but before Developer participation in cash flow, WMATA to receive balance due (0.5% of EGI). No Participating Rent after Initial Term.<br><br>Extension Term<br>Base Rent to be 5% percent of the market value of land as vacant ~~with the then-present improvements.~~ WMATA to receive annual escalation of Base Rent of 3%. Upon the earlier of ten years after commencement of extended term, or either ~~a complete~~ refinancing of the ~~Entire~~ Project during the Extension Term, or a transfer of the Developer's ~~entire~~ interest in the ~~Entire~~ Project during the Extension Term (by assignment of Lease and sale of Developer's land and improvements or transfer of ~~all the~~ Developer's membership interests ~~within a 12-month period~~ effectively a sale) the Base Rent will be reset at higher of then-existing Base Rent or new Base Rent equal to 5% of the market value of land ~~as vacant with the use limited to the then-existing improvements~~. Once reset under this method, the Base Rent is reset every ten years thereafter based on the fair market value of the land ~~as vacant with the use limited to the then-existing improvements~~. |
| 8 | Conditions to JDA Consummation | Addressed in JDA. No major changes to original Term Sheet |
| 9.1 – 9.7 and 9.9 – 9.11 | Special Considerations | Addressed in JDA. No major changes to original Term Sheet |
| 9.8 | Guaranty | Guarantor to guarantee commencement and Final Completion of the Entire Project per Approved Development Plan. At closing, Guarantor net worth to exceed "hard" costs of Entire Project. Upon completion of the Entire Project, the Guarantee shall be released. |
| 10 | Indemnification | Addressed in JDA. No major changes to original Term Sheet |
| 11 | Insurance Requirements | To be addressed in Lease. |
| New Section | Affordable Housing | 20% of all residential units ~~attributable to WMATA parcels~~ shall be affordable at 50% of the area median income. Lease to comply with FHA lending requirements. Developer cannot agree that WMATA will participate in split of additional subsidies that project may apply for in the future as project costs could increase prior to construction and Developer may be forced to seek the |

WMATA-INV 000125

| Section in Term Sheet | Agreed-Upon Issue | Developer Proposal |
|---|---|---|
| | | gap funding from somewhere, including member loans, private equity or public subsidies. In fact, yesterday our General Contractor informed us that the infrastructure costs that it was running in our latest budget should be increased by 300% because infrastructure sub-contractors are charging a premium to work on WMATA-related projects these days. covered in appraisal |
| New Section | Cotenancy Agreement<br>makes unclear what happens in 1st 60 years? | At closing, WMATA and Developer will enter into and record a cotenancy agreement (a form of which will be attached as an exhibit to the JDA) which will control the operation, leasing, and disposition of the Entire Project after expiration or termination of the Lease. WMATA and Developer will select a professional manager to manage the Entire Project and direct the manager to include a larger reserve in the project budget to ensure that neither owner would ever be required to separately fund any capital improvements, etc. The reserve will go to WMATA for run |
| New Section | Developer Land/Additional Density/Alley Closing | WMATA land and Developer land in Sq. 393 to be resubdivided into single lot after partial closing of public alley. Developer to pay WMATA density that would be allocated to WMATA parcels when alley is closed. Current alley is 1,025 SF. About ½ of alley will be deeded to WMATA. This would represent 512 SF. Buildable SF would be about 2,560 on WMATA land. Based on WMATA's value of land, land is valued at $16 per FAR/SF. Developer would pay WMATA $16 x 2560= $40,960 at closing as additional Base Rent. Actual amounts to be determined by Survey |

Co-tenancy, if accepted, could apply ONLY to Square 393.

Josh?

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9/11/09 Discussion

**WMATA Joint Development Summary of Outstanding Issues in Updated Term Sheet**
**Shaw-Howard/Florida Avenue Sites**
**(as of September 11, 2009)**

| Section in Term Sheet | Open Issue | Developer Proposal | |
|---|---|---|---|
| 7.3 | Base Rent | $1,980,000 payment at execution of Lease. This represents the entire Base Rent for the initial 60-year Initial Term will be paid at Closing under a capitalized lease structure for the Initial Term. 6.8% increase ~~after~~ one year after 9/11/09 | OK |
| 7.3.5 | Lease Period | Initial Lease Term to be 60 years. Developer to have option to extend lease for an additional 39 years at then market rate of interest, not less than 5%, times fair market value of land as vacant but to be used with then-present improvements. Annual escalation to be 1%. | TBD |
| 7.4 | Capital Event Participation | 10% of Net Proceeds from any refinancing ~~after the~~ initial permanent loan closing and after all member loans ~~and equity have been repaid~~ with member loans and equity having received a 20% annualized ~~return and tax credit~~ investors having received an agreed upon market return. 1.2~~m~~ 1.2 debt service coverage requirement applies only to refinancing after initial permanent loan. Limitation on % | TBD |
| 7.7 | Proposal Security | At JDA approval, $100,000 to be credited toward $250,000 Security Deposit | OK |
| New sub-section | Participation Rent | 1.5% of Effective Gross Income of Entire Project (WMATA-developed parcels ~~and Developer-owned parcels~~) [expect FHA to allow 1% of EGI w/o Surplus Cash limitation] | OK |
| 9.8 | Guaranty | Guarantor to guarantee commencement and Final Completion of the Entire Project per Approved Development Plan. At closing, Guarantor net worth to exceed "hard" costs of Entire Project. Upon completion of the Entire Project, the Guarantee shall be released. | OK |
| New Section | Cotenancy Agreement | At closing, WMATA and Developer will enter into and record a cotenancy agreement (a form of which will be attached as an exhibit to the JDA) which will control the operation, leasing, and disposition of the Entire Project after expiration or termination of the Lease. WMATA and Developer will select a professional manager to manage the Entire Project and direct the manager to include a larger reserve in the project budget to ensure that neither owner would ever be required to separately fund any capital improvements, etc. | WMATA to look further at agreement |
| New Section | Developer Land/Additional Density/Alley Closing | WMATA land and Developer land in Sq. 393 to be resubdivided into single lot after partial closing of public alley. Developer to pay WMATA density that would be allocated to WMATA parcels when alley is closed. Current alley is 1,025 SF. About ½ of alley will be deeded to WMATA. This would represent 512 SF. Buildable SF would be about 2,560 on WMATA land. Based on WMATA's value of land, land is valued at $16 per FAR/SF. Developer would pay WMATA $16 x 2560= $40,960 at closing. | |

% rent 1st 60 years

3% last 39

1,025 X .6 X 4.5 X $6 = $44,280

WCSR 4202036v1B

WMATA-INV 000127

**WMATA Joint Development Summary of Outstanding Issues in Updated Term Sheet**
**Shaw-Howard/Florida Avenue Sites**
**(as of September 11, 2009)**

$65,000 = good for 12 months

| Section in Term Sheet | Agreed Upon Issue | |
|---|---|---|
| 1.2 | Developer | Banneker Ventures and Banc of America CDC |
| 2 | Definitive Agreement | Lease term to begin with earlier of 20 months after approval of JDA or start of construction. At our kick-off meeting with the District of Columbia Department of Housing and Community Development, we were informed that our project must be 10% complete by 12/31/10 and 100% complete by 12/31/11. As such, we will have to get in the ground before 20 months after the JDA. In fact, we will have to start construction by September 30, 2010 at the latest in order to retain any gap financing for the Project. We will develop a critical path schedule and forward to WMATA which will include all WMATA design reviews, etc. so as to maintain this schedule. |
| 3 | Property to Be Leased by Developer | Estimated 28,400 square feet of land on Florida Avenue NW. |
| 4 | Entire Project | Approx. 157,000 FAR gross sq. ft., including 132 apartments, 20,000 square feet of retail and 71 below-grade parking spaces 79% of total res + retail |
| 5 | Due Diligence | Agreed |
| 6 | Security Deposit | Agreed. $100,000 Proposal Security to be credited toward $250,000 Security Deposit |
| 7.2 | Pre-Closing Payments | Agreed but payments to be made quarterly and prorated for partial quarters |
| 7.3.1 – 7.3.4 | Periodic Rent Increases | Non-applicable because Developer to pay capitalized lease |
| 7.5 | Periodic Rent Revaluation | No longer applicable |
| 7.6 – 7.11 | Miscellaneous Items | Addressed in JDA. No major changes to original Term Sheet |
| 8 | Conditions to JDA Consummation | Addressed in JDA. No major changes to original Term Sheet |
| 9.1 – 9.7 and 9.9 – 9.11 | Special Considerations | Addressed in JDA. No major changes to original Term Sheet |
| 10 | Indemnification | Addressed in JDA. No major changes to original Term Sheet |
| 11 | Insurance Requirements | To be addressed in Lease. |
| Other | Affordable Housing | 20% of all residential units shall be affordable at 50% of the area median income. Lease to comply with FHA lending requirements. |

WCSR 4202036v1B

FOIA CONFIDENTIAL TREATMENT REQUESTED

**Doggett, R**

**From:** Tiwana Hicks [thicks@bannekerventures.com]
**Sent:** Thursday, September 17, 2009 10:32 AM
**To:** Montague, Joshua W.
**Cc:** 'Maurice' 'Perry'; okarim@bannekerventures.com; Neil.Albert@dc.gov; Yohance S. Fuller; Doggett, Rosalyn; John' 'Hagner; Moneme, Emeka; Marshall, Malcolm; Meister, Mark K.; Bottigheimer, Nat
**Subject:** Outline of Cotenancy Agreement for The Jazz @ Florida Avenue
**Attachments:** WINSTON-#4204842-v1A-Outline_of_Cotenancy_Agreement_for_The_Jazz_@_Florida_Avenue.doc

Josh:

Attached pl[illegible] [illegible]e Outline of Cotenancy Agreement for The Jazz @ Florida Avenue. We believe this outline strikes an effecti[illegible] [illegible]tween providing enough details for WMATA to make an "informed" decision to go forward with the cotenancy [illegible]ment after the Ground Lease, but avoiding some of the granular details that will get resolved in the final Coten[illegible] [illegible]greement. We look forward to discussing its contents in further detail at Friday's meeting.

Sincerely,

Tiwana

Tiwana Z. H[illegible]
Banneker V[illegible]
729 15th Stree[illegible] [illegible]te 400
Washington, D[illegible]
T: (202) 393-[illegible]
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thicks@ban[illegible] [illegible].com

Outline of Cotenancy Agreement
For the Mixed-Use, Transit-Oriented, Multifamily and Retail Project
To be known as The Jazz @ Florida Avenue

Cotenants: Washington Metropolitan Area Transit Authority ("WMATA"); and
The Jazz @ Florida Avenue, LLC ("Developer")

---

1. Recitals

   A. Describe Ground Lease of WMATA Land from WMATA to Developer

   B. Cotenancy Agreement to facilitate the continued operation of the Joint Project after the expiration or termination of the Ground Lease; but not operative until Ground Lease expires with no further renewal right or is terminated without any Leasehold Mortgagee obtaining a new Ground Lease

   What happens before 60 year expiration

   C. Description of land and undivided interest in Improvements owned by each Cotenant, excluding the WMATA Reserved Areas and Interests from the Cotenancy Agreement; use of Assessment and Taxation Lots to define undivided interests in Square 393; WMATA owns entire portion of Joint Project in Square 416

   D. Cotenancy Agreement to "run with the land" and be senior to all Mortgages and any other voluntary liens on the Joint Project but not senior to Declaration of Covenants, Conditions and Restrictions on WMATA Land and Improvements only.

2. Formation of Cotenancy

   A. Events which Trigger the Operation of the Cotenancy Agreement; Creation of Cotenancy; for all purposes after the expiration or final termination of the Ground Lease and any successor lease, WMATA shall own in fee simple the WMATA Percentage of the Joint Project and Developer shall own in fee simple the Developer Percentage of the Joint Project

   B. Disclaimer of Entity Status, *i.e.*, no partnership, joint venture, etc.

   C. Each Cotenant will Report as Direct Owner, not as a Partner or Venturer and determine its own income, gain, loss, deduction and credit, if any, with respect to its undivided interest in the Joint Property.

   looks like a duck

   D. No Cotenant is the Agent for the other Cotenant

   E. Each Cotenant indemnifies the other for any violation of the agreement to report to all taxing authorities as a direct owner to the extent the Cotenant is required to report to taxing authorities



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000130

F. All major or material decisions concerning the collective interests in the Joint Project shall be made by unanimous vote of the Cotenants.

3. Use of the Property

A. Then-present use cannot be changed except by joint decision of the Cotenants or a change in law or expiration of some use restriction on the Joint Project

B. No Cotenant or Affiliate shall occupy or rent space in the Joint Project unless on market terms approved by the other Cotenant

4. Professional Property Management of the Joint Project

A. Criteria for and selection of Property Manager by joint decision; compensation of Property Manager

B. Standards by which the Property Manager's performance will be evaluated and compensation will be set

C. Specific provisions to be included in the Property Management Agreement

(i) Property Manager to control the operation, leasing, maintaining, insuring, refurbishing, improving and all other ownership activities concerning the Joint Project, subject to standards and restrictions in the Cotenancy Agreement and in the Property Management Agreement. The Property Manager shall be authorized to take emergency actions reasonably necessary to prevent imminent injury, harm or damage to persons or property.

(ii) The Property Manager shall operate, lease, maintain, insure, refurbish and improve the Joint Project in a manner consistent with the customs and practices in the District of Columbia for mixed-use, Transit-Oriented Development projects with similar quality and location.

(iii) The Property Management Agreement may have an initial term of not more than three years; after which there are automatic annual renewals except that after the initial term either Cotenant can terminate on not less than 90 days' written notice to force the selection of a new Property Manager

(iv) The Property Management Agreement shall contain a customary indemnity of the Property Manager by the Cotenants, however, the Property Manager's recovery will be limited first, to insurance proceeds, and second, to proceeds from the Joint Project

(v) All funds to be maintained in segregated bank accounts in a manner to protect them from the Property Manager's bankruptcy



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000131

(vi) The Joint Project shall be operated in a manner to maintain conservative levels of operating and capital improvement reserves so the there is a very small risk of a need for WMATA or the Developer to invest additional funds into the Joint Project. This will require reserves to be maintained at higher levels than a private owner would typically maintain. Reserves will be conservatively invested. Specific reserves for working capital, major repairs and capital improvements will be maintained at a level to be agreed upon by the Cotenants; provided, however, if they cannot agree, the reserves for working capital, major repairs and capital improvements shall be maintained at two times the then custom and practice in the District of Columbia for mixed-use, Transit-Oriented Development projects with similar quality and location

(vii) WMATA and Developer shall each have full access to all books and records maintained by the Property Manager which are applicable to the Joint Project. The Property Manager shall provide sufficient information to WMATA and Developer for each to file any tax returns they are obligated to file.

(viii) The Property Manager shall maintain as a joint expense comprehensive insurance coverage for the Joint Project with the Cotenants as the named insureds with a waiver of any imputation of liability between the Cotenants, if available at a commercially reasonable premium. Insurance coverages shall not be less than the highest of (i) WMATA's then standard insurance requirements for completed and occupied joint development projects; (ii) the U.S. Government's then standard insurance requirements for multifamily projects financed with a government-insured permanent loan; or (iii) the then customs and practices in the District of Columbia for mixed-use, Transit-Oriented Development projects with similar quality and location.

5. Allocation and Distribution of Income, Gain, Loss, Deduction and Credit, if any

A. To the extent either WMATA or Developer can avoid some ordinary or capital expense or obtain a higher rent or other income from its undivided share of the Joint Project due to its being tax-exempt or having some other status which justifies a benefit only on its portion of the Joint Project, then such expense savings or benefit shall be allocated solely to the Cotenant who produced it. Subject to adjustments for the preceding sentence, the net proceeds from the operation of the Joint Project after the payment of all expenses and funding of all reserves will be distributed monthly by the Property Manager with the WMATA Percentage thereof being paid to WMATA and the Developer Percentage thereof being paid to Developer.

6. Sale of All or Undivided Interest in the Joint Project



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000132

A. If there is a sale or disposition of the entire Joint Project in a single transaction, after the repayment of any cash flow shortfall loan(s), WMATA shall be paid the WMATA Percentage of the net sales proceeds and Developer shall be paid the Developer Percentage of the net sales proceeds.

B. Any sale by a Cotenant of its undivided interest in the Joint Project shall be subject and subordinate to the lien, operating and effect of the Cotenancy Agreement. After the repayment of any cash flow shortfall loan caused by the selling Cotenant, the proceeds of any such sale shall be separately paid to the selling Cotenant without any control by the other Cotenant or Property Manager.

7. No Financing of the Joint Project without Joinder of All Cotenants; Financing of a Cotenant's Undivided Interest; Cash Shortfall Loan

A. Any financing of the Joint Project shall require the joint approval and joinder of both WMATA and Developer in their sole discretion.

B. WMATA and Developer shall be entitled to separately finance their undivided interests in the Joint Project on a basis which is absolutely and unconditionally subordinate to the lien, operation and effect of the Cotenancy Agreement. After the repayment of any cash flow shortfall loan caused by the borrowing Cotenant, the proceeds of any such financing shall be separately paid to the borrower Cotenant without any control by the other Cotenant or Property Manager. Mortgagees of either Cotenant shall receive copies of notices of default under the Cotenancy Agreement, shall have an extended cure period and right to cure any default by their borrower, and shall have the right to enforce their lien on a Cotenant's interest and substitute a qualified Person in place of the borrower Cotenant without any right of first offer or right of last refusal requirements.

C. After expending the reserves, if there is a cash flow shortfall from operations which both Cotenants do not fund proportionately, then either Cotenant shall have the option of loaning both its pro rata share and the other Cotenant's pro rata share of the shortfall on terms which are not less favorable than four percent (4%) per annum above the interest rate the Cotenants could have jointly obtained from an institutional lender based on a secured financing of the net cash flow from the Joint Project. All cash flow and other proceeds distributable to the Cotenants and the net proceeds of the sale or financing of the non-lending Cotenant's undivided interest shall first be used to repay such loans before being distributed or released to either Cotenant.

8. Condemnation and Casualty Loss.

A. Upon a full condemnation, the net condemnation proceeds will be distributed pro rata to the Cotenants.

B. Upon a partial condemnation, the net condemnation proceeds shall be distributed to the Cotenants in proportion to who owned the condemned portion of the Joint



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000133

Project and the WMATA Percentage and Developer Percentage readjusted on an equitable basis after any partial condemnation.

C. Upon any casualty loss, the insurance proceeds shall be used to rebuild the Joint Project with any rent loss/business interruption insurance proceeds used for their intended purpose. If there is a minor uninsured loss which can be covered with net cash flow from the Joint Project over a maximum five year period, then the Cotenants shall seek to finance the cost to repair using the Joint Project as collateral and repair the uninsured loss. If there is a major uninsured loss which cannot be covered with net cash flow from the Joint Project over a maximum five year period, the Cotenants shall either jointly agree upon a plan for repairing the loss or the Joint Project shall be sold "as is."

9. Right of First Refusal Prior to Partition

A. Each Cotenant shall waive its right of partition so long as there is a loan encumbering both Cotenants' interest in the Joint Project, unless all secured lenders consent to such partition.

B. Both Cotenants shall waive their right of partition to the extent they both can legally do so.

C. If both Cotenants cannot legally waive their right of partition, then neither Cotenant shall be required to waive its right of partition. However, before either Cotenant can seek partition, it must offer its entire undivided interest in the Joint Project to the other Cotenant at its pro rata share of the fair market value of the Joint Project. The fair market value of the Joint Project shall be determined by the three appraiser method for an all-cash sale with the costs of the appraisals treated as an operating expense. Upon determination of the fair market value, the partitioning Cotenant shall have the right for 30 days to withdraw for a minimum of five years its request to partition the Joint Project. If the partitioning Cotenant does not withdraw its request for partition, then the non-partitioning Cotenant shall have 45 days to determine whether to offer to the partitioning Cotenant a cash price equal to the partitioning Cotenant's pro rata share of the fair market value of the Joint Project. If the non-partitioning Cotenant makes such an offer, the partitioning Cotenant must accept it, whereupon the non-partitioning Cotenant shall have 90 days to close. If the non-partitioning Cotenant fails to make such an offer or makes the offer and fails to close, the partitioning Cotenant shall thereafter for a period of six months have the right to seek partition of the Joint Project. No Cotenant shall request partition of the Joint Project earlier than five years after such Cotenant's withdrawal of the request for partition after the determination of the fair market value of the Joint Project.

10. Restrictions and Prohibitions on Transfer, Right of First Offer and Last Refusal upon any Cotenant's Sale of its Interest in the Joint Project



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000134

A. Either Cotenant may sell, convey or master lease their entire interest in the Joint Project, but not any partial interest, subject to the restrictions and requirements in this section. If WMATA then enforces a list or definition of Persons who are prohibited from acquiring ownership of WMATA joint development projects, then the Developer shall not sell, convey or master lease its interest in the Joint Project to any Person on such list or who meets such definition. The restriction on transferring an interest to a prohibited Person and any restrictions agreed to with any Mortgagee are the only restrictions that shall apply to transfers and/or encumbrances of interests within the Developer's entity. The Cotenancy Agreement shall expressly prohibit more than two Cotenants for the Joint Project.

B. The restrictions on selling, conveying and master leasing a Cotenant's interest in the Joint Project do not apply to any Mortgage encumbering such Cotenant's interest or the foreclosure sale or deed in lieu of foreclosure to a Mortgagee or its wholly-owned subsidiary.

C. Subject to the exclusion for a Mortgagee, any sale, conveyance or master lease of either WMATA's or Developer's entire undivided interest in the Joint Project shall be made expressly subject and subordinate to the Cotenancy Agreement after compliance with the right of first offer and last refusal in the next two paragraphs.

D. If either WMATA or Developer desire to sell their entire undivided interest in the Joint Project at anytime after the expiration or final termination of the Ground Lease, the selling Cotenant must first offer its entire interest to the other Cotenant for a minimum period of sixty (60) Days at a price and on terms the offeror plans to offer the public. If the offeree does not accept the offer within such sixty (60) Day period, then the offeror shall have a period of nine (9) months to sell its entire interest at a price and on terms not less favorable to the offeror than those offered to the offeree.

E. If the offeror desires to sell its entire interest in the Joint Project at a price or on terms less favorable than those previously offered to the offeree, then the offeror shall again offer its entire interest in the Joint Project to the other Cotenant on such reduced price and/or terms, including the right to match any contract the offeror has entered into, for a minimum period of thirty (30) Days. If the offeree does not accept the revised offer within such thirty (30) Day period and match any contract the offeror has entered into, then the offeror shall have a period of six (6) months to sell its entire interest in the Joint Project at a price and on terms not less favorable to the offeror than those re-offered to the offeree.

11. Cross-Indemnities

A. Due to the undivided joint ownership, the Cotenants shall maintain general commercial liability insurance and excess (umbrella) liability insurance in the amounts provided above. The insurance is intended to be the primary source of



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000135

protection for each Cotenant from the negligence/wrongful conduct of the other Cotenant.

B. Each Cotenant shall indemnify the other Cotenant for any liability in excess of available insurance proceeds cause by the Cotenant's negligence or willful misconduct. Recovery on the indemnification above the available insurance proceeds shall be limited to proceeds from the indemnifying Cotenant's interest in the Joint Project if WMATA is still a Cotenant because of WMATA's inability to give an indemnity without express budget authorization by its Board.

12. The Cotenancy Agreement shall terminate upon the earliest of: (i) the merger of the interests when the entire Joint Project is owned by one Person without any Mortgage encumbering less than the entire Joint Project and without any recorded agreement prohibiting such merger; (ii) the Improvements become obsolete and no longer have any useful life as confirmed by the Cotenants; or (iii) the unanimous agreement of the Cotenants to terminate the Cotenancy Agreement without any Mortgage encumbering less than the entire Joint Project and without any recorded agreement prohibiting such merger.

13. Cotenancy Agreement "runs with the land" and is binding on all assignees and successors of WMATA and Developer. Each Cotenant shall be liable only for events which occurred during its actual period of ownership. Upon any assignment of Cotenant's undivided interest in the Joint Project, the assignee must assume the obligations of the selling Cotenant under the Cotenancy Agreement from and after the date of its acquisition. Any Mortgagee of only a Cotenant's undivided interest shall not be obligated to assume the Cotenant's obligations under the Cotenancy Agreement until it acquires such undivided interest by an enforcement action under its loan documents.

14. All customary and necessary "miscellaneous" provisions will be included.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000136

Meeting with Banneker tomorrow

Mark and I have discussed the proposal below and want to put it out to you for consideration:

Background

- The developer has asked for a co-tenancy agreement in Square 393, the western-most of the two blocks where they want to combine property they "control" (7700 sf) with property we own (12400 sf).
- We discussed with our general counsel today: She believes such a deal would be tantamount to a partnership forbidden by our Compact.
- Further, we believe that the proposal: 50-50 decision making and control is not attractive to us and would definitely be not attractive to anyone to whom we might have to market our part of this property in the event of developer default. (Further, we would not include the separate Square 416 property in any "co-tenancy" as the developer has requested.) We have asked Bolan Smart to have their partner Alvarez and Marsal (the Lehman Bros. bankruptcy czar) opine on this. The co-tenancy outline arrived from the developer's attorney around noon today 9/17.
- Therefore, the proposal is a potential deal breaker.
- Remedies would be 1) or them to drop the properties they control which make for a better total building site or2) for us to sell the properties on that square and, potentially, both squares.

Appraisal

- The final appraisal from Harps & Harps arrived around noon today 9/17. I t considers only matter of right zoning and inclusionary zoning.
- It values the site at $4 million: [$55/FAR sf x 124,000 sf (slightly less than full buildout) at $6.8M with deductions of $500,000 for IZ and $2.3M for extraordinary costs of building over the tunnel. ]
- It values a capitalized lease at $3.134 million.

Developer Pro Formas

- Though not fully complete, they arrived Tuesday morning. Examined by Eric Smart + WMATA staff.
- It incorporates the $1.98 M we proposed for affordable housing and, compared to March previous proposals, shows that 1) addition of nearly $2M to developer fee in additional to other payouts to management team 2)even counting extraordinary tunnel costs they are paying 2.6 times what they are proposing to pay for WMATA land for land not even on Florida Ave (the 7700 sf) and 3) they have underestimated rent collection by their own estimation.

- All told, these additions plus full buildout of our site and allowance for value of alley closing would allow us to :
  1) Request a SALE PRICE of $4.6M for of all three of our parcels on Florida Avenue.
  2) Eric Smart believes that Banneker was expecting an appraisal price between $4 and $5 million based on his prior discussions with them.
- The advantages to all would be clear: no co-tenancy issue, no elaborate dealings with Banneker for WMATA and, for Banneker's part, all the upside and no elaborate dealings with WMATA.
- Counsel would not object to a sale, nor, we suspect, would FTA, based on past conversations (though they might object to an offer below the last lowest offer) and we could meet the appraisal.
- Cleaner and simpler for all.

We are working on adjustments to the term sheet Banneker sent on Tuesday afternoon and will have them later today. HOWEVER, SHOULD WE PUT A SALE PROPOSAL ON THE TABLE TOMORROW?

# RE: Title matters and JDA issues

Montague, Joshua W.

**Sent:** Thursday, September 03, 2009 6:20 PM

**To:** Doggett, Rosalyn; Meister, Mark K.

---

Here is a brief, but still wordy, list that summarizes the differences between the latest JDA/Lease drafts and the Term Sheet. Please let me know if I can revise, explain, or help in any way.

Also, it is important to remember that we do not have any feedback from Developer on the last drafts of the lease/JDA; so it is impossible to state which terms are concerning them in the latest drafts.

*JDA & Lease Terms vs. Term Sheet*:

1. Parties –
    a. Developer replaced approved members of development team with Bank of America CDC ("BOACDC"). BOACDC will also serve as the guarantor.
    b. Parties are still working out whether BOACDC meets "minimum financial tests" as required by the Term Sheet.
2. Lease Term –
    a. Term Sheet described a 60 year lease term.
    b. WMATA's last draft of Lease had a 60 year term with two option periods totaling 33 years.
3. Project -
    a. Under Term Sheet, Developer agreed to lease three parcels from WMATA so it could build the proposed/accepted project.
    b. An affordable housing requirement was not mentioned in Term Sheet.
    c. Developer was contemplating additional density, so parties agreed to additional density/consideration formula in term sheet. Developer now says it is not going for additional density. So, parties have not addressed how this agreed upon formula would change due to affordable housing requirement, housing market crash, etc.
    d. After Term Sheet approval, Developer informed WMATA that it intended to purchase the adjacent lots. Developer informed WMATA that they intended to build a building which traversed WMATA's land and said adjacent parcel(s).
        i. WMATA General Counsel objected because: (i) it was unfeasible for WMATA to be the landlord on half of a building; and (ii) this was not part of WMATA offer; and (iii) Developer has not offered anything additional to WMATA for taking on this additional burden.
        ii. In December 2008, Developer asked WMATA to consider an offer before rejecting, to which WMATA agreed. Developer has frequently promised to provide details of an offer. But, to date, Developer has not provided any further information.
4. Pre-stabilization period term -
    a. Under Term Sheet, this period was supposed to last up to 45 months.
    b. Developer has requested that we extend this period up to 54 months.
    c. In last draft of JDA, WMATA left this issue as "open".
5. Rent and other payments -
    a. Developer has significantly lowered its offer due to affordable housing issues.
    b. WMATA has said it is waiting for the following info:
        i. New appraisal results; and
        ii. Developer's federally insured financing requirements. This will put limitations on what type of rent Developer can pay. An example is that some federally insured mortgages do not allow 1) fixed-graduations in rent or 2) rent increases based on future



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000139

appraisals during the life of the mortgage.

c. The last draft of the JDA/ Lease have left all of the various rent payments as "open".

6. Design and Construction approvals
   a. Term Sheet:
      i. Developer has 10 days after execution of the JDA to send to WMATA a conceptual Project site plan for WMATA's approval. Developer must obtain WMATA's approval within 60 days.
      ii. WMATA has the right to approve or disapprove of Construction Drawings.
   b. JDA / Lease:
      i. The standard JDA/Lease language is a much more detailed process whereby WMATA reviews all drawings and government approvals before developer activity.
      ii. The basic process is the same: (1) Development plan; and (2) Construction drawings. But, the language is much more detailed and there are time deadlines to keep both parties moving forward.
      iii. Please note that WMATA staff thought this was especially important here due to the presence of the tunnel.
7. Construction Bonds
   a. Terms sheet required developer to provide WMATA with 100% Payment and Performance Bonds.
   b. During last draft of JDA/Lease, WMATA staff suggested requirement that Developer procure a restoration bond to protect the WMATA tunnel until all below ground construction activity was completed.
8. Insurance:
   a. Term sheet required the developer, its consultants, its contractors, and its subcontractors to maintain the required insurance policies.
   b. Developer is trying to get WMATA to accept only Developer *or* Contractor to be required to carry the required policies.
   c. WMATA Office of Risk provided guidelines for insurance in latest draft of Lease. On some policies, all parties are required to carry insurance policy. On other policies, only one specific party required.

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**From:** Doggett, Rosalyn
**Sent:** Thursday, September 03, 2009 4:20 PM
**To:** Meister, Mark K.; Montague, Joshua W.
**Subject:** Title matters and JDA issues

Josh is preparing a list of JDA issues as best we can figure it out. It seems to me that these are the items we sent to Yohance plus the financial terms. I will add to, edit, the list, if needed.

Josh talked to Omar while trying to reach Tiwana. Omar has had a title search done, is expecting it tomorrow, I think, and will send us a copy. I am not sure how soon that will be.

rdoggett@wmata.com
202-962-2208 phone
202-962-2396 fax



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000140

List of Items Needed from Banneker 9/1/09

Lease and Joint Development Agreement

WMATA drafts were sent to Banneker 7/24, and at least two exhibits (guaranty and covenants, conditions and cross easements later in August) . Until we get a response, it is not possible to say how far we are apart.

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.

Proposed sources of funds to develop the project: private and public, and proposed uses of those funds (in broad development pro forma categories)

Terms of developer's financing, including Federally-insured financing terms that are supposed to be included in the lease. WMATA may need to have HUD/FHA to waive certain terms if they are not acceptable.

Design

Elevations and sections for site plan Scroll down

Site Control and Development Allocation

Evidence of site control (square and lot number) of the adjacent parcel(s) that Banneker proposes to combine with WMATA's.

The method of combining the two sites so that WMATA retains control of its portion in any disposition. Though a capitalized lease might deal with base rent monetary defaults it does not cover other types of defaults (failure to protect tunnel, failure to pay additional rent, etc.) wherein WMATA's recourse would be to regain control of the property.

The actual size of the parcel(s); if the same as Moddie Turay, a prior proposer, they comprise 3,051 sf (Square 393, Lot 826), a little less than 10% of combined site sf.

Basis for allocation of development and costs, value, and operating and capital event proceeds between the WMATA and non-WMATA portions of the sites

The amount of residential FAR sf, retail FAR sf, residential units allocated to the each portion of the sites

Additional Approvals Needed

Historic preservation — take down completely

Alley closing

HFA, FHA and DHCD

Other

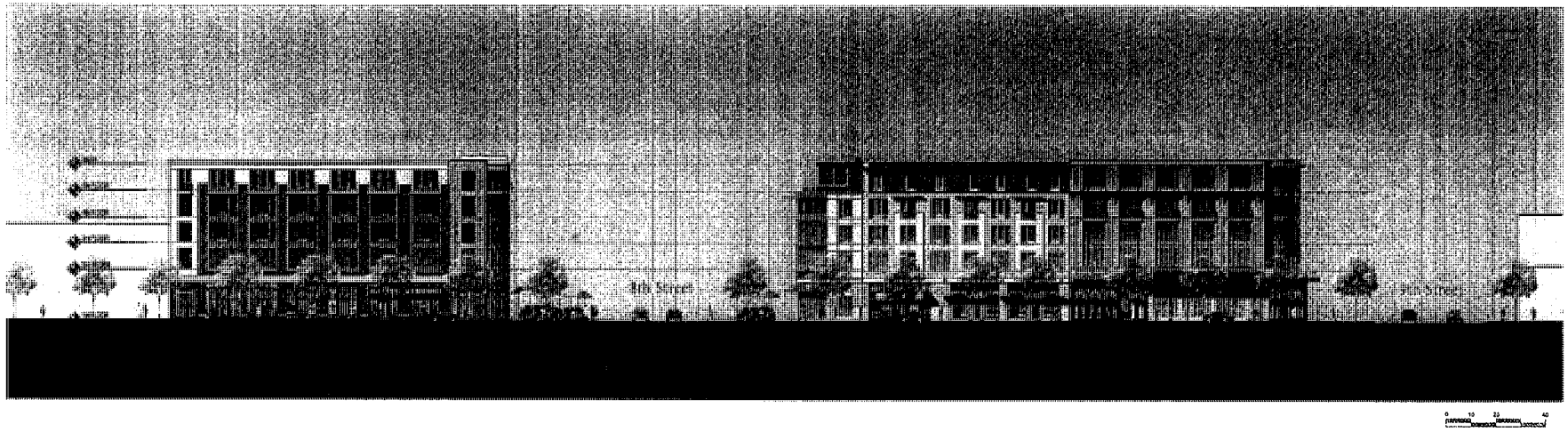
BACDC (Bank of America Community Development Corporation) Guaranty

Since BACDC is making the completion guaranty, assurance from an independent third party (e.g., the bank's auditor) that it has sufficient funds in its balance sheet (verifying amount stated by BACDC treasurer) to make a guaranty and from its president a statement that it can independently (of the parent corporation) make a guaranty commitment

Hagner says BofA cannot guaranty

Co-tenancy agreement outline
for Carol — from John by Monday

FOIA CONFIDENTIAL TREATMENT REQUESTED



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Exterior Building Elevation - Florida Avenue

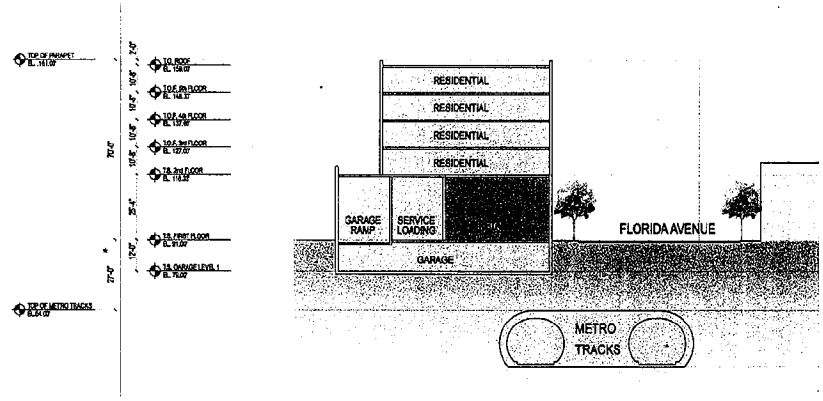
September 9, 2009

BANNEKER VENTURES, LLC / BANC OF AMERICA CDC
TORTI GALLAS AND PARTNERS

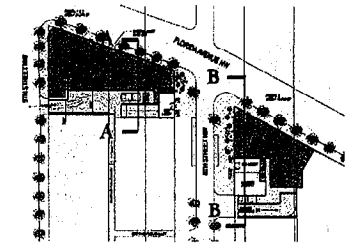
THE JAZZ @ FLORIDA AVENUE

WMATA-INV 000143

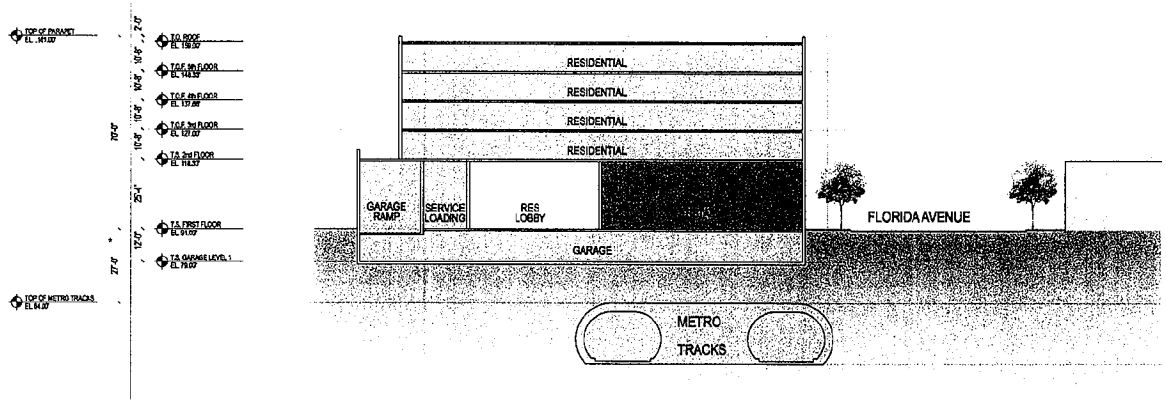
FOIA CONFIDENTIAL TREATMENT REQUESTED




Section A




Key Plan




Section B

0 10 20 40

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Sections

September 9, 2009

BANNEKER VENTURES, LLC / BANC OF AMERICA CDC
TORTI GALLAS AND PARTNERS

THE JAZZ @ FLORIDA AVENUE

WMATA-INV 000144

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.

   O'Mar proposes 50-50

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.

   anything above a 10% differential from 124000 = $55 + $27

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

   O'Mar says OK

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

Hagner to propose

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.

9/11
C Omar, Mark M
Hagner et al
Tom

1. Omar provides revised section by section

refi ~~with~~ at 1.2

2. 223 (f) HUD for refi.

3. No restriction on DSCR ~~not~~ for a market, Non-HUD loan

HUD loan refinance = 1.2

4. Ron drops asking further evidence of BACDC

5. Co-tenancy

Need consolidated lot for development
agreement as to operating standards
agreement on capital reserves
individual sale of interests ...

WMATA could not self-insure, would have to buy

6. Revaluation - Wells Fargo  Revalue at cap event but subordinate

39 years - 1 time rent adjustment
base rent 3%
reset rent after capital event
reappraisal after 10 years

6. Anything above 60 years, John to send proposal
7. New terms on Tuesday
8. Gave up 10% wiggle room

Capitalized Lease Payment

Value of site with a capitalized lease payment is $1,980,000 as of today based on (1) valuation of site @ $55/sf for residential/retail, (2) proposed WMATA parcels build-out of 124,000 sf, (3) a deduction for the added costs of building over Metro tunnels, and (4) a deduction for 20% affordable housing at 50% of AMI absent any federal or local government subsidy assistance that reduces expenses or increases revenue other than 4% tax credit financing.

Payment at closing (lease execution) must equal today's value of $1,980,000 at WMATA's discount rate of 6.8% per year.

Payment to be increased by 80% of any additional subsidy dollar obtained.

Pre-Closing Payments

$50,000 first 12 months after joint development agreement (jda) execution, payable in advance
$65,000 second 10 months, payable in advance

Additional Density

Payment for additional density at $55/FAR sf for additional density including the to-be-closed alley for non-residential sf over 11,000 sf attributable to the WMATA parcels and $27/FAR sf (assuming 20% of units rented at 50% AMI) for residential sf over 113,000 sf attributable to the WMATA parcels escalated at 6.8% per year from jda execution.

Annual Operating Income Participation

1.5% of Effective Gross Income. Debt Service Coverage Ratio to be at 1.25% or higher to ensure surplus cash for WMATA participation. If no HUD insurance, then payment is unsubordinated to operating expenses.

Capital Event Participation

No exclusions from capital events except admission of initial equity partner. WMATA receives 10% of net proceeds after deduction of debt repayment, original cash equity to develop the project with a return of 20%, member loans to develop the project with a return at market but not to exceed 12%, and transaction costs. Member loans not to exceed 10% of original development costs; equity not to exceed 30% of original development costs.

Term

After 60 years, when land is revalued as if vacant, lease rate is market but no less than 5% of land value and annual escalation is 3%.

Any other terms per T. Hicks e-mail summary of 6/25/09 modifying Florida Avenue Economic Terms Chart (last updated 5/26) except that Base Rent and Stabilization are no longer germane to discussions and Project Definition should reflect build-out of 124,000 sf of potential @ 127,692 sf. FAR

# Florida Avenue – Economic Terms

| JDA | Team Street | WMATA Draft | Agreed Upon Economic Terms |
|---|---|---|---|
| **Developer** | Banneker, District Development, Metropolis | Banneker, District Development, Metropolis | **Agreed:** Banneker and BACDC |
| **Project** | Single phase, including minimum:<br>Gross FAR: 130,014 sf<br>Units: 104<br>Retail: 11,750 sf<br>Parking: 47 spaces | Single phase, including minimum:<br>Gross FAR: 130,014 sf<br>Units: 104<br>Retail: 11,750 sf<br>Parking: 47 spaces | **Agreed:** Single Phase<br>Gross FAR: 130,1014 sf<br>(WMATA parcels only) |
| **Improvements** | No mention of ownership or purchase of improvements. | Developer owns all improvements but ownership rights automatically transfer to WMATA at end of Lease. | **Agreed:**<br>Developer owns all improvements but ownership rights automatically transfer to WMATA at end of Lease. |
| **Pre-stabilization period** | Stabilization or 45 months | Stabilization or 45 months | **Agreed:** Stabilization or 54 months |
| **Lease closing** | On or before 20 months | On or before 20 months | **Agreed:** On or before 20 months |
| **Pre-stabilization period payments** | *Note: paragraph 7.8 appears to have a typo in reference to payments during extensions of pre-stabilization period due to WMATA delay.* | Payments are due from effective date of JDA to Stabilization (at which time rent payments begin) | **Agreed:** Payments are due from effective date of JDA to Stabilization (at which time rent payments begin) |
| **Deposit** | Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer | Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer | **Agreed:** Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer within 10 business days |
| **Completion Bond** | Not mentioned (only have performance and payment) | 120% of replacement costs | **Agreed:** N/A |
| **FTA Approval** | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; JDA will include appropriate termination provisions in the case FTA denies. approval | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; Said agreement is automatically terminated if FTA denies approval and all appeals are exhausted. | **Agreed:** WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Economic Terms

| Lease | Term Sheet | WMATA Draft | Agreed Upon Terms or Status |
|---|---|---|---|
| **Developer** | See JDA | See JDA | See JDA |
| **Guarantor** | Requires guarantor for "remediation of all hazardous materials as required by the Definitive Agreement or by applicable law…and the timely payment and performance of all Developer obligations under the Definitive Agreement." *Q – was guaranty contemplated to be for lease also?* | Required guarantor with net worth exceeding 3 times value of project | **Agreed:** Required guarantor with net worth equal to cost to complete project per approved plans and specifications. |
| **Stabilization** | TBD in JDA | 90% occupancy | **Agreed:** 92.5% project occupancy |
| **Density Adjustment Rent** | Add to base rent based on formula in Section 7.11 of term sheet. | Add to base rent based on formula in Section 7.11 of term sheet. | **Agreed:** Add to base rent based on formula in Section 7.11 of term sheet. |
| **Affordable Housing** | No mention | No mention | **Agreed:** A minimum of 20% of the total number of units |
| **Right to assign Lease** | Section 1.2 states that Developer's interest in the Project or the Improvements may not be assigned or sold without the written consent of WMATA. | Not assignable prior to Final Completion; only assignable upon WMATA consent after Final Completion | **Agreed:** WMATA agreed to insert "reasonableness" language in JDA and Lease |
| **Right of First Offer** | N/A; *Q – was this mentioned in negotiations? What is normal consideration to WMATA for this right?* | N/A | N/A |
| **Environ Condition** | Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS | Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS | **Agreed:** Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer takes property AS IS, WHERE IS |
| **Insurance** | See JDA | See JDA | **Agreed:** See JDA |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Economic Terms

| Lease | Term Sheet | WMATA Draft | Agreed Upon Terms or Status |
|---|---|---|---|
| **Term** | 60 year lease | 60-year lease | **Open:** 60 year lease with option to extend. Rosslyn Doggett to provide language. |
| **Base Rent** | $597,000 in quarterly payments | $597,000 in quarterly payments | **Open:** $250K base rent, plus $800K pre-payment paid at construction loan closing, plus 1.5% of Effective Gross Income paid thru term of lease. |
| **Escalation (Years 1 to 10)** | 1.5% increase *(note: may have been typo on term sheet)* | 1.5% increase | N/A |
| **Escalation (Years 11 to end)** | 3% increase | 3% increase | N/A |
| **Periodic Rent Revaluation** | Upon Capital Event or every 10 years | Upon Capital Event or every 10 years | N/A |
| **Capital Event Participation** | 10% of gross income from Capital Event | 10% of gross income from Capital Event | **Open:** 10 % of any income from Capital Event after repayment of all debt, member loans, outstanding member loans, accrued interest, equity and preferred return on equity. Member loans to receive no more than 16% annual interest and equity to receive no more than 20% annual interest before WMATA participation |
| **Late Charge** | TBD in JDA | 20% of delinquent amount | **Agreed:** 5% |
| **Default interest rate** | Not mentioned. | 15% or 10% over prime (whichever is higher) | **Agreed:** 4% over prime |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Economic Terms

| JDA | Term Sheet | WMATA draft | Agreed Upon Terms or Status |
|---|---|---|---|
| **Change of control** | Section 1.2 states that WMATA consent is needed to: 1) include other parties in the Developer (except for equity finance partners) and 2) assign or sell Developer's interest in the Project or the Improvements. | Prior to Final Completion – no change of control;<br>After Final Completion – only change of control upon WMATA approval. | **Agreed:**<br>Prior to Final Completion – no change of control;<br>After Final Completion – Developer can change control freely among Developer members, including Tax Credit Syndicators. |
| **Pre-stabilization period payment amounts** | First 15 months: $100,000/year<br>Next 12 months: $115,000/year<br>Thereafter: $130,000 per year | First 15 months: $100,000/year<br>Next 12 months: $115,000/year<br>Thereafter: $130,000 per year | **Open:**<br>First 18 months: $50,000/year<br>Next 12 months: $65,000/year<br>Thereafter: $80,000 per year |
| **Insurance** | WMATA policy: According to Kim Brown, we will require insurance on everybody. | Everybody: Developer, contractor, subcontractor, etc. | **Open:** WMATA to provide alternative insurance language |

FOIA CONFIDENTIAL TREATMENT REQUESTED

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**WMATA Joint Development Summary of Outstanding Issues in Updated Term Sheet**
**Shaw-Howard/Florida Avenue Sites**
**(WMATA comments in red font as of September 17, 2009)**

| Section in Term Sheet | Agreed Upon Issue | Developer Proposal |
|---|---|---|
| 1.2 | Developer | Banneker Ventures and Banc of America CDC |
| 2 | Definitive Agreement | Lease term to begin with earlier of 20 months after approval of JDA or start of construction |
| 3 | Property to Be Leased by Developer | Estimated 28,400 square feet of land on Florida Avenue NW |
| 4 | Entire Project | Approx. 157,000 FAR gross sq. ft., including 132 apartments, 20,000 square feet of retail and 71 below-grade parking spaces |
| 5 | Due Diligence | Agreed |
| 6 | Security Deposit | Agreed. $100,000 Proposal Security check to be credited toward $250,000 Security Deposit |
| 7.2 | Pre-Closing Payments | $50,000 for first year; $65,000 for second year; payments to be made quarterly and prorated for partial quarters [ assumes closing in 20 months after jda – but jda crosses out- intent unclear] longer than 2 years = additional pre-closing payments |
| 7.3 | Base Rent | $1,980,000 payment at execution of Lease. This represents the entire Base Rent for the initial 60-year Initial Term and will be paid at Closing under a capitalized lease structure for the Initial Term. Should execution of Lease occur after 9/12/10, Base Rent to be increased by 6.8% on annualized basis. WMATA to agree to reasonable critical path schedule which will be an Exhibit to the JDA whereby WMATA will agree to timely reviews of all drawings, applications, etc. so that project can stay on schedule and Developer will not be subject to increase in Base Rent. |
| 7.3.1 – 7.3.4 | Periodic Rent Increases | Initial Lease Term – Non-applicable because Developer to pay capitalized lease |
| 7.3.5 | Lease Period | Initial Lease Term – 60 years. Developer to have option to extend lease for additional 39 years. |
| 7.4 | Capital Event Participation | Initial Lease Term – 10% of Net Proceeds from any refinancing after the initial permanent loan closing and after all initial member loans and equity have been repaid with member loans and equity having received an after tax 20% IRR and tax credit investors having received a market rate return that the tax credit investor requires. Member loans and equity not to exceed 30% of development costs after tax credit investment deduction. During Initial Lease Term, Developer to have at least 1.2 DSC on any senior loans other than FHA-insured senior loans [or public subsidies; explain-- won't FHA make the call?] |
| 7.5 | Periodic Rent Revaluation | Initial Lease Term – No longer applicable. |
| 7.6 – 7.10 | Miscellaneous Items | Addressed in JDA. No major changes to original Term Sheet [TBD] |
| 7.7 | Proposal Security | At JDA approval, $100,000 check to be credited toward $250,000 Security Deposit |
| 7.11 | Additional Density | Developer to pay WMATA for any additional density beyond 164,754 which is 4.5 FAR if the project is maxed out (or 130,014 SF 127,800 sf attributable to WMATA parcels plus alley portion). [WMATA should get 3.1% increase on $1.98 million to account for difference between 124,000 sf on which appraisal was based and 127,800 FAR portion of 164,754 sf.] This is |

WMATA-INV 000153

| Section in Term Sheet | Topic | Revised Language |
|---|---|---|
| | | [illegible] |
| New sub-section | Participation Rent | Initial Lease Term<br>WMATA to receive [illegible] disparity between cost of WMATA [illegible] forgone and because of the added value to [illegible] Florida Ave land) on WMATA [illegible] EHA-insured senior loans WMATA to receive [illegible] project expenses. After project expenses [illegible] WMATA to receive balance due [illegible] Participating Rent after [illegible] EHA-insured loan. WMATA gets [illegible] loan. Any ECI not paid in a given year accumulates at [illegible] and is paid [illegible] capital event proceeds before equity.<br><br>Extension Term – In this section [illegible] deleted. Very [illegible] a partial sale or [illegible] base Rent to [illegible] land as vacant – delete with [illegible] escalation of [illegible] term, or either a complete [illegible] transfer of the Developer's [illegible] assignment of Lease and sale of [illegible] Developer's membership interest within [illegible] will be reset at higher of the existing base Rent [illegible] land value but no less than [illegible] then existing improvements. Once reset under [illegible] years thereafter based on the fair market value of the land as vacant with the use limited to the then-existing improvements. |
| 8 | Conditions to JDA | Addressed in JDA. No major changes to original Term Sheet |

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| Section in Term Sheet | Agreed Upon Issue | Developer Position |
|---|---|---|
| | Consummation | |
| 9.1 – 9.7 and 9.9 – 9.11 | Special Considerations | Addressed in JDA. No major changes to original Term Sheet |
| 9.8 | Guaranty | Guarantor to guarantee commencement and Final Completion of the Entire Project per Approved Development Plan. At closing, Guarantor net worth to exceed "hard" costs of Entire Project. Upon completion of the Entire Project, the Guarantee shall be released. |
| 10 | Indemnification | Addressed in JDA. No major changes to original Term Sheet |
| 11 | Insurance Requirements | To be addressed in Lease. |
| New Section | Affordable Housing | 20% of all residential units [delete attributable to WMATA parcels] shall be affordable at 50% of the area median income. Lease to comply with FHA lending requirements. [Developer cannot agree that WMATA will participate in split of additional subsidies that project may apply for in the future as project costs could increase prior to construction and Developer may be forced to seek the gap funding from somewhere, including member loans, private equity or public subsidies. In fact, yesterday our General Contractor informed us that the infrastructure costs that it was running in our latest budget should be increased by 300% because infrastructure sub-contractors are charging a premium to work on WMATA-related projects these days.] Developer agreed to 50-50 on 9/11. Infrastructure accounted for in appraisal |
| New Section | Cotenancy Agreement | [Major WMATA compact and business problem and, even if no problem, could only apply to Square 393] At closing, WMATA and Developer will enter into and record a cotenancy agreement (a form of which will be attached as an exhibit to the JDA) which will control the operation, leasing, and disposition of the Entire Project after expiration or termination of the Lease. WMATA and Developer will select a professional manager to manage the Entire Project and direct the manager to include a larger reserve in the project budget to ensure that neither owner would ever be required to separately fund any capital improvements, etc. |
| New Section | Developer Land/Additional Density/Alley Closing | WMATA land and Developer land in Sq. 393 to be resubdivided into single lot after partial closing of public alley. Developer to pay WMATA density that would be allocated to WMATA parcels when alley is closed. Current alley is 1,025 SF. About ½ of alley will be deeded to WMATA. This would represent 512 SF. Buildable SF would be about 2,560 on WMATA land. Based on WMATA's value of land, land is valued at $16 per FAR/SF. Developer would pay WMATA $16 x 2560= $40,960 at closing as additional Base Rent. [NB- actual amounts to be determined by survey] |

WMATA-INV 000155

**WMATA Joint Development Summary of Outstanding Issues in Updated Term Sheet**
**Shaw-Howard/Florida Avenue Sites**
**(WMATA comments in red font as of September 17, 2009)**

| Section in Term Sheet | Agreed Upon Issue | Developer Proposal |
|---|---|---|
| 1.2 | Developer | Banneker Ventures and Banc of America CDC |
| 2 | Definitive Agreement | Lease term to begin with earlier of 20 months after approval of JDA or start of construction |
| 3 | Property to Be Leased by Developer | Estimated 28,400 square feet of land on Florida Avenue NW |
| 4 | Entire Project | Approx. 157,000 FAR gross sq. ft., including 132 apartments, 20,000 square feet of retail and 71 below-grade parking spaces |
| 5 | Due Diligence | Agreed |
| 6 | Security Deposit | Agreed. $100,000 Proposal Security check to be credited toward $250,000 Security Deposit |
| 7.2 | Pre-Closing Payments | $50,000 for first year; $65,000 for second year; payments to be made quarterly and prorated for partial quarters [ assumes closing in 20 months after jda – but jda crosses out- intent unclear] longer than 2 years = additional pre-closing payments |
| 7.3 | Base Rent | $1,980,000 payment at execution of Lease. This represents the entire Base Rent for the initial 60-year Initial Term and will be paid at Closing under a capitalized lease structure for the Initial Term. Should execution of Lease occur after 9/12/10, Base Rent to be increased by 6.8% on annualized basis. WMATA to agree to reasonable critical path schedule which will be an Exhibit to the JDA whereby WMATA will agree to timely reviews of all drawings, applications, etc. so that project can stay on schedule and Developer will not be subject to increase in Base Rent |
| 7.3.1 – 7.3.4 | Periodic Rent Increases | Initial Lease Term – Non-applicable because Developer to pay capitalized lease |
| 7.3.5 | Lease Period | Initial Lease Term – 60 years. Developer to have option to extend lease for additional 39 years. |
| 7.4 | Capital Event Participation | Initial Lease Term – 10% of Net Proceeds from any refinancing after the initial permanent loan closing and after all initial member loans and equity have been repaid with member loans and equity having received an after tax 20% IRR and tax credit investors having received a market rate return that the tax credit investor requires. Member loans and equity not to exceed 30% of development costs after tax credit investment deduction. During Initial Lease Term, Developer to have at least 1.2 DSC on any senior loans other than FHA-insured senior loans [or public subsidies; explain-- won't FHA make the call?] |
| 7.5 | Periodic Rent Revaluation | Initial Lease Term – No longer applicable. |
| 7.6 – 7.10 | Miscellaneous Items | Addressed in JDA. No major changes to original Term Sheet [TBD] |
| 7.7 | Proposal Security | At JDA approval, $100,000 check to be credited toward $250,000 Security Deposit |
| 7.11 | Additional Density | Developer to pay WMATA for any additional density beyond 164,754 which is 4.5 FAR if the project is maxed out (or 130,014 SF 127,800 sf attributable to WMATA parcels plus alley portion). [WMATA should get 3.1% increase on $1.98 million to account for difference between 124,000 sf on which appraisal was based and 127,800 FAR portion of 164,754 sf.] This is |

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| Section in Term Sheet | Subject Matter | Revised Term |
|---|---|---|
| | | [illegible] |
| New sub-section | Participation Rent | Initial Lease Term<br>WMATA to receive 15% of the net Base Rent [illegible] disparity between cost of WMATA [illegible] foregone and because of the [illegible] Florida Ave land from WMATA [illegible] THA Mount Vernon Square [illegible] project expenses. After all other expenses [illegible] WMATA to receive balance [illegible] THA insured loan. WMATA [illegible] loan. Any [illegible] capital event proceeds [illegible]<br><br>Extension Term. [illegible] Base Rent to be market rate [illegible] and as vacant [illegible] escalation of Base Rent of 3% [illegible] transfer of the Developer's [illegible] assignment of Lease and sale [illegible] Developer's membership interest [illegible] will be reset at higher of the existing [illegible] and value but no less than 5% [illegible] then-existing improvements. Once reset under this method, the Base Rent [illegible] years thereafter based on the [illegible] then-existing improvements. |
| 8 | Conditions to JDA | Addressed in JDA. No major changes to original Term Sheet |

FOIA CONFIDENTIAL TREATMENT REQUESTED

| Section in Term Sheet | Agreed Upon Issue | Developer Proposal |
|---|---|---|
| | Consummation | |
| 9.1 – 9.7 and 9.9 – 9.11 | Special Considerations | Addressed in JDA. No major changes to original Term Sheet |
| 9.8 | Guaranty | Guarantor to guarantee commencement and Final Completion of the Entire Project per Approved Development Plan. At closing, Guarantor net worth to exceed "hard" costs of Entire Project. Upon completion of the Entire Project, the Guarantee shall be released. |
| 10 | Indemnification | Addressed in JDA. No major changes to original Term Sheet |
| 11 | Insurance Requirements | To be addressed in Lease. |
| New Section | Affordable Housing | 20% of all residential units [delete attributable to WMATA parcels] shall be affordable at 50% of the area median income. Lease to comply with FHA lending requirements. [Developer cannot agree that WMATA will participate in split of additional subsidies that project may apply for in the future as project costs could increase prior to construction and Developer may be forced to seek the gap funding from somewhere, including member loans, private equity or public subsidies. In fact, yesterday our General Contractor informed us that the infrastructure costs that it was running in our latest budget should be increased by 300% because infrastructure sub-contractors are charging a premium to work on WMATA-related projects these days.] Developer agreed to 50-50 on 9/11. Infrastructure accounted for in appraisal |
| New Section | Cotenancy Agreement | [Major WMATA compact and business problem and, even if no problem, could only apply to Square 393] At closing, WMATA and Developer will enter into and record a cotenancy agreement (a form of which will be attached as an exhibit to the JDA) which will control the operation, leasing, and disposition of the Entire Project after expiration or termination of the Lease. WMATA and Developer will select a professional manager to manage the Entire Project and direct the manager to include a larger reserve in the project budget to ensure that neither owner would ever be required to separately fund any capital improvements, etc. |
| New Section | Developer Land/Additional Density/Alley Closing | WMATA land and Developer land in Sq. 393 to be resubdivided into single lot after partial closing of public alley. Developer to pay WMATA density that would be allocated to WMATA parcels when alley is closed. Current alley is 1,025 SF. About ½ of alley will be deeded to WMATA. This would represent 512 SF. Buildable SF would be about 2,560 on WMATA land. Based on WMATA's value of land, land is valued at $16 per FAR/SF. Developer would pay WMATA $16 x 2560= $40,960 at closing as additional Base Rent. [NB: actual amounts to be determined by survey] |

FOIA CONFIDENTIAL TREATMENT REQUESTED

FL. Ave "Additional Costs"

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Monday, March 08, 2010 11:06 AM
**To:** Doggett, Rosalyn; Goldin, Steven
**Subject:** RE: Jazz @ Florida Avenue - $100K credit

These are the same documents that we reviewed in November. Below is the email that was sent out after we reviewed:

RE: Additional Costs Credit

The highest Additional Costs Credit that we could reasonably ascertain is **$29,622.**

That 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.

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**From:** Doggett, Rosalyn
**Sent:** Saturday, March 06, 2010 8:44 AM
**To:** Goldin, Steven; Montague, Joshua W.
**Subject:** FW: Jazz @ Florida Avenue - $100K credit



WMATA-INV 000160

FOIA CONFIDENTIAL TREATMENT REQUESTED

Josh, this may be what we looked over in November and reduced to $30,000 on the basis that the invoices covered costs not related to the sale or were outside the dates of the period in which we all were considering a sale. Please check. Also I do not think that we should allow him to reduce his performance security. None of our other projects go ahead on such a thin margin, and it is chump change for a decently capitalized developer.

I will be out of email range starting now.

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**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** 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
okarim@bannekerventures.com

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**From:** Tiwana Hicks [mailto:thicks@bannekerventures.com]
**Sent:** Friday, March 05, 2010 12:46 PM
**To:** 'Omar A. Karim'
**Subject:** Email regarding $100K credit



WMATA-INV 000161

FOIA CONFIDENTIAL TREATMENT REQUESTED

**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
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



WMATA-INV 000162

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Friday, November 13, 2009 6:24 PM
**To:** Bottigheimer, Nat
**Cc:** Goldin, Steven; Doggett, Rosalyn; O'Keeffe, Carol B.
**Subject:** FW:

RE: Additional Costs Credit

Rosalyn and I went over the information provided from the Developer again.

The highest Additional Costs Credit that we could reasonably ascertain is **$29,622**.

That 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.

Please let me know if you have any questions.

Josh



WMATA-INV 000163

FOIA CONFIDENTIAL TREATMENT REQUESTED

**From:** Montague, Joshua W.
**Sent:** Wednesday, November 04, 2009 3:26 PM
**To:** Bottigheimer, Nat
**Cc:** Meister, Mark K.; O'Keeffe, Carol B.
**Subject:** RE:

Here are comments:

1. Torti Gallas:
    a. $19,800 for architecture/engineering work.
    b. No description of work.
    c. What does this have to do with lease-sale? Wouldn't this be the same either way?
    d. This information does not fall under attorney-client privilege.
2. Holland and Knight:
    a. $1,774.50 for zoning work (work description per previous discussions with developer).
    b. No description of work.
    c. What does this have to do with lease-sale? Wouldn't this be the same either way?
    d. Invoice says is for outstanding balance, makes no mention of relevant work or dates.
3. Womble Carlyle:
    a. Does not make distinction on dates or lease-sale.
    b. It appears that the amount in question is only $15,770.
    c. Since the developer won't let us see actual invoice, can John Hagner certify the amount related to lease-sale to us?
4. Salaries:
    a. Has salaries for all of September and October. However: 1) sale was offered on 9/18; and 2) Mr. Graham made offer on 10/22.
    b. Impossible to say whether or not concentrated 50% of time on this project.

---

**From:** Bottigheimer, Nat
**Sent:** Wednesday, November 04, 2009 2:53 PM
**To:** Montague, Joshua W.
**Cc:** Meister, Mark K.; O'Keeffe, Carol B.
**Subject:** Fw:

Josh, could you review these materials and comment on them as to detail, total, etc?



WMATA-INV 000164

Thanks,

Nat

---

**From:** Tiwana Hicks
**To:** Bottigheimer, Nat; Goldin, Steven
**Cc:** 'Omar A. Karim Esquire ' ; Yohance S. Fuller
**Sent:** Wed Nov 04 14:48:59 2009
**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
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**
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C: (202) 486-1863
thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000165

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Friday, November 13, 2009 4:29 PM
**To:** Doggett, Rosalyn
**Subject:** FW:
**Attachments:** Jazz Salaries.pdf; Womble Carlyle Sandridge & Rice Expenses (Sept to Oct).pdf; Torti Gallas and Partners Expenses (Sept and Oct 09).pdf; Holland & Knight LLP Expenses (Sept and Oct 09).pdf

---

**From:** Bottigheimer, Nat
**Sent:** Wednesday, November 04, 2009 2:53 PM
**To:** Montague, Joshua W.
**Cc:** Meister, Mark K.; O'Keeffe, Carol B.
**Subject:** Fw:

Josh, could you review these materials and comment on them as to detail, total, etc?

Thanks,

Nat

---

**From:** Tiwana Hicks
**To:** Bottigheimer, Nat; Goldin, Steven
**Cc:** 'Omar A. Karim Esquire ' ; Yohance S. Fuller
**Sent:** Wed Nov 04 14:48:59 2009
**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
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



WMATA-INV 000166

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

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thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000167

**The Jazz @ Florida Avenue Development Project**
**Developer Staff Payroll**
**In connection with change of deal from Lease to Sale**

| Staff Person | Salary Pay Period (September 09) | Salary Pay Period (October 09) | Description of Work Performed |
|---|---|---|---|
| T. Hicks – Development Manager | $ 7,500.00 | $ 7,500.00 | Attend meetings with Banc of America ("BoA") and WMATA; review of WMATA appraisal of sites under a sale scenario; supervise and engage independent appraiser to review WMATA's appraisal; review and participate in negotiation of economic terms of deal under a sale scenario; order, coordinate and review title search results in connection with sale; conference calls and meetings with attorneys to discuss sale scenario versus lease; spent significant time updating the project's financial model to change deal from long-term lease to sale; met with and negotiated terms of equity investment with investors as a result of change from lease to sale; update project schedule to reflect sale; met with entire project team to discuss impact of sale scenario on deal. |
| A. Ives – Chief Financial Officer | $ 9,166.66 | $ 9,166.66 | Update financial model; attend meetings with BoA and WMATA; analyzed updated appraisal results from WMATA appraiser; confer with independent appraiser; conference calls and meetings with attorneys; review and negotiate economic terms of deal under a sale scenario wit WMATA; participated in multiple meetings with project's various debt and equity investors to discuss impact that purchase of WMATA sites would have on project versus a long-term lease; led discussions with structuring investment of equity into project with investors as a result of purchase versus lease. |
| O. Karim – Principal | $ 12,500.00 | $ 12,500.00 | Attend meetings with BoA and WMATA to discuss change of deal from lease to sale; participated in multiple calls with WMATA staff to change Term Sheet from lease to sale structure; review of WMATA appraisal; led negotiations of economic terms of deal under a sale scenario; prepare correspondences to WMATA regarding change of deal from lease to sale; led multiple discussions with debt and equity investors as a result of change in deal structure; coordinated multiple calls with legal team to discuss impact of change of structure on deal; worked on financial model changing structure from lease to sale. |
| **Total Salaries** | **$ 29,166.66** | **$ 29,166.66** | **$29,166.66** |
| Time Allocated to Jazz | 50% | 50% | |
| **Total Salaries Allocated to Jazz (in connection with change of deal from sale to lease)** | **$14,583.33** | **$14,583.33** | |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# TORTI GALLAS AND PARTNERS

Architects of Community

**VIA E-MAIL**

Principals
John Francis Torti, FAIA
Thomas M. Gallas, CPA
Tunca Iskir
Robert S. Wallach, RA
Sylvia S. Munero
Cheryl A. O'Neill
Charles G. Coleman, III, RA
Daniel Ashtary, AIA
Bruce D. Kennett, AIA
Sherief Elfar, AIA
Robert S. Goodill
Neal I. Payton, AIA
Chaiwat Pilanun
Lawrence V. Antoine, AIA, AICP
Patrice E. McGinn
Feng Xiao, AIA
Thomas E. Danco, AIA
Raymond M. Jenkins, AIA
Paul R. Mortensen, RA
Erik J. Aulestia, AICP
Mark Bombaugh
Darwin J. Feuerstein, ASLA
Troy McGhee
Brian E. O'Looney, AIA

October 29, 2009

The Jazz @ Florida Avenue, LLC
c/o Omar A. Karim
729—15th Street, NW
Suite 400
Washington, DC 20005

**Re: WMATA Site Florida Avenue, NW—Washington, DC**
**Architectural and Engineering Services Outstanding Balance**
**Torti Gallas Project No. 07138.01**

Dear Omar,

Per your request, please note your outstanding balance for Architectural and Engineering services provided August thru October of 2009, for the project noted above is $19,800. Please contact me if you have any additional questions.

None of these expenses had to do with change from lease to sale

Sincerely,
TORTI GALLAS AND PARTNERS, INC.

Sherief Elfar, AIA, CDT
Principal

cc: Kathleen O'Donnell / Torti Gallas
Stephanie Farrell, LEED AP/ Torti Gallas

G:\RES\07138.SHA\00GN\1C6B\1CB#_1G_091029_Outstanding Balance Letter.doc

Torti Gallas and Partners, Inc.
Washington, DC: 1300 Spring Street, 4th floor Silver Spring, Maryland 20910 301.588.4800 301.650.2255 fax
Los Angeles, California: 523 West 6th Street, Suite 212 Los Angeles, California 90014 213.607.0070 213.607.0077 fax
Istanbul, Turkey: Göksu Evleri, Şakayık Sok. B69A | Beykoz 34815 İstanbul +90.216.465.8026 +90.532.696.6405 GSM +90.216.465.8027 fax
www.tortigallas.com

**WOMBLE CARLYLE SANDRIDGE & RICE**
*A PROFESSIONAL LIMITED LIABILITY COMPANY*
SEVENTH FLOOR
1401 EYE STREET, NW
WASHINGTON, D.C. 20005
TELEPHONE (202) 857-4400
FACSIMILE (202) 467-6910

OTHER OFFICES:

ATLANTA, GA
BALTIMORE, MD
CHARLOTTE, NC
GREENSBORO, NC
GREENVILLE, SC
RALEIGH, NC
RESEARCH TRIANGLE PARK, NC
TYSONS CORNER, VA
WILMINGTON, DE
WINSTON-SALEM, NC

November 4, 2009
62811.0001.5
Bill Number 1843924
STATEMENT FOR SERVICES RENDERED

The Jazz @ Florida Avenue, LLC
c/o Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005

RE: The Jazz @ Florida Avenue, Washington, DC

| | |
|---|---|
| FOR PROFESSIONAL SERVICES RENDERED THRU 10/31/2009 | $15,770.70 |
| DISBURSEMENTS THRU 10/31/2009 | $14.00 |
| **CURRENT TOTAL** | **$15,784.70** |

OUTSTANDING RECEIVABLES AS OF November 4, 2009

| | |
|---|---|
| ~~BILL NO. 1837751 09/24/2009~~ | ~~$24,567.55~~ |
| BILL NO. 1843547 10/30/2009 | $24,195.35 |
| **TOTAL BALANCE DUE** | **$64,567.60** |

20.20

Jazz @ Florida Avenue, LLC, The
The Jazz @ Florida Avenue, Washington, DC

62811.0001.5/1843924

**ITEMIZED SERVICES BILL**

| Date: | Description: | Attorney: | Hours: |
|---|---|---|---|
| 10/06/2009 | [redacted] | Hagner, John D. | 0.30 |
| 10/07/2009 | [redacted] | Hagner, John D. | 0.10 |
| 10/08/2009 | [redacted] | Hagner, John D. | 0.70 |
| 10/09/2009 | [redacted] | Hagner, John D. | 2.70 |
| 10/12/2009 | [redacted] | Hagner, John D. | 6.50 |
| 10/15/2009 | [redacted] | Hagner, John D. | 1.20 |
| 10/16/2009 | [redacted] | Hagner, John D. | 3.10 |
| 10/19/2009 | [redacted] | Hagner, John D. | 0.80 |



FOIA CONFIDENTIAL TREATMENT REQUESTED

Jazz @ Florida Avenue, LLC, The
The Jazz @ Florida Avenue, Washington, DC

62811.0001.5/1843924

**ITEMIZED SERVICES BILL**

| | | | |
|---|---|---|---|
| 10/20/2009 | [redacted] | Hagner, John D. | 0.50 |
| 10/20/2009 | [redacted] | Hagner, John D. | 0.60 |
| 10/20/2009 | [redacted] | Hagner, John D. | 0.40 |
| 10/20/2009 | [redacted] | Hagner, John D. | 0.40 |
| 10/20/2009 | [redacted] | Hagner, John D. | 0.30 |
| 10/21/2009 | [redacted] | Hagner, John D. | 2.80 |
| 10/22/2009 | [redacted] | Hagner, John D. | 0.30 |
| 10/23/2009 | [redacted] | Hagner, John D. | 0.20 |
| 10/24/2009 | [redacted] | Hagner, John D. | 1.40 |
| 10/26/2009 | [redacted] | Hagner, John D. | 0.90 |



FOIA CONFIDENTIAL TREATMENT REQUESTED

**ITEMIZED SERVICES BILL**

| | | | |
|---|---|---|---|
| 10/28/2009 | [redacted] | Hagner, John D. | 3.30 |
| 10/29/2009 | [redacted] | Hagner, John D. | 3.10 |
| 10/30/2009 | [redacted] | Hagner, John D. | 0.10 |

**Total for Services:** $ 15,770.70



FOIA CONFIDENTIAL TREATMENT REQUESTED

Jazz @ Florida Avenue, LLC, The
The Jazz @ Florida Avenue, Washington, DC

62811.0001.5/1843924

**DISBURSEMENTS AND OTHER CHARGES**

| Date: | Description: | Amount: |
|---|---|---|
| Sep 8, 2009 | Taxi<br>John D. Hagner - Taxis to/from meeting with WMATA | $ 14.00 |
| | **Total Disbursements:** | $ 14.00 |

Any disbursement appearing on our statements as Business Meals and Entertainment is stated at cost. The Revenue Reconciliation Act of 1993 reduced the deductibility of these expenses to you from 80% to 50%. We maintain the supporting documentation for these costs and will make the documentation available to you upon request.



FOIA CONFIDENTIAL TREATMENT REQUESTED

**TIMEKEEPER SUMMARY**

| Attorney: | | Hours: | Amount: | Rate: |
|---|---|---|---|---|
| Hagner, John D. | | 29.70 | $ 15,770.70 | $ 531.00 |
| | Totals: | 29.70 | $ 15,770.70 | |



FOIA CONFIDENTIAL TREATMENT REQUESTED

**WOMBLE CARLYLE SANDRIDGE & RICE**
*A PROFESSIONAL LIMITED LIABILITY COMPANY*
SEVENTH FLOOR
1401 EYE STREET, NW
WASHINGTON, D.C. 20005
TELEPHONE (202) 857-4400
FACSIMILE (202) 467-6910

OTHER OFFICES:

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GREENVILLE, SC
RALEIGH, NC
RESEARCH TRIANGLE PARK, NC
TYSONS CORNER, VA
WILMINGTON, DE
WINSTON-SALEM, NC

October 30, 2009
62811.0001.5
Bill Number 1843547
STATEMENT FOR SERVICES RENDERED

The Jazz @ Florida Avenue, LLC
c/o Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005

RE: The Jazz @ Florida Avenue, Washington, DC

| | |
|---|---|
| FOR PROFESSIONAL SERVICES RENDERED THRU 09/30/2009 | $24,166.35 |
| DISBURSEMENTS THRU 09/30/2009 | $29.00 |
| **CURRENT TOTAL** | **$24,195.35** |

| | |
|---|---|
| OUTSTANDING RECEIVABLES AS OF October 30, 2009 | |
| BILL NO. 1837751 09/24/2009 | $24,587.55 |
| **TOTAL BALANCE DUE** | **$48,782.90** |

**ITEMIZED SERVICES BILL**

| Date: | Description: | Attorney: | Hours: |
|---|---|---|---|
| 09/01/2009 | [redacted] | Hagner, John D. | 4.10 |
| 09/02/2009 | [redacted] | Hagner, John D. | 4.20 |
| 09/03/2009 | [redacted] | Hagner, John D. | 0.80 |
| 09/04/2009 | [redacted] | Hagner, John D. | 1.20 |
| 09/05/2009 | [redacted] | Hagner, John D. | 2.00 |
| 09/06/2009 | [redacted] | Hagner, John D. | 10.10 |
| 09/07/2009 | [redacted] | Hagner, John D. | 1.20 |
| 09/08/2009 | [redacted] | Hagner, John D. | 2.20 |
| 09/09/2009 | [redacted] | Hagner, John D. | 0.20 |
| 09/10/2009 | [redacted] | Hagner, John D. | 0.10 |
| 09/11/2009 | [redacted] | Hagner, John D. | 6.50 |
| 09/13/2009 | [redacted] | Hagner, John D. | 0.10 |



FOIA CONFIDENTIAL TREATMENT REQUESTED

Jazz @ Florida Avenue, LLC, The
The Jazz @ Florida Avenue, Washington, DC

62811.0001.5/1843547

**DISBURSEMENTS AND OTHER CHARGES**

| Date: | Description: | Amount: |
|---|---|---|
| Sep 11, 2009 | Taxi<br>John D. Hagner - Taxis to/from meeting at WMATA | $ 15.00 |
| Sep 18, 2009 | Taxi<br>John D. Hagner - Taxis to/from meeting at WMATA | $ 14.00 |
| | **Total Disbursements:** | $ 29.00 |

Any disbursement appearing on our statements as Business Meals and Entertainment is stated at cost. The Revenue Reconciliation Act of 1993 reduced the deductibility of these expenses to you from 80% to 50%. We maintain the supporting documentation for these costs and will make the documentation available to you upon request.



FOIA CONFIDENTIAL TREATMENT REQUESTED

**TIMEKEEPER SUMMARY**

| Attorney: | Hours: | Amount: | Rate: |
|---|---|---|---|
| Hagner, John D. | 45.90 | $ 24,166.35 | $ 526.50 |
| Totals: | 45.90 | $ 24,166.35 | |



FOIA CONFIDENTIAL TREATMENT REQUESTED

Jazz @ Florida Avenue, LLC, The
The Jazz @ Florida Avenue, Washington, DC

62811.000

**ITEMIZED SERVICES BILL**

| | | | | |
|---|---|---|---|---|
| 09/14/2009 | [redacted] | Hagner, John D. | | 0.10 |
| 09/15/2009 | [redacted] | Hagner, John D. | | 2.00 |
| 09/16/2009 | [redacted] | Hagner, John D. | | 4.50 |
| 09/17/2009 | [redacted] | Hagner, John D. | | 1.80 |
| 09/18/2009 | [redacted] | Hagner, John D. | | 2.80 |
| 09/21/2009 | [redacted] | Hagner, John D. | | 0.60 |
| 09/22/2009 | [redacted] | Hagner, John D. | 4.8 hours | 0.70 |
| 09/23/2009 | [redacted] | Hagner, John D. | | 0.70 |
| | | **Total for Services:** | $ 24,166.35 | |



FOIA CONFIDENTIAL TREATMENT REQUESTED

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TYSONS CORNER, VA
WILMINGTON, DE
WINSTON-SALEM, NC

October 30, 2009
62811.0001.5
Bill Number 1843547
STATEMENT FOR SERVICES RENDERED

The Jazz @ Florida Avenue, LLC
c/o Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005

RE: The Jazz @ Florida Avenue, Washington, DC

| | |
|---|---|
| FOR PROFESSIONAL SERVICES RENDERED THRU 09/30/2009 | $24,166.35 |
| DISBURSEMENTS THRU 09/30/2009 | $29.00 |
| **CURRENT TOTAL** | **$24,195.35** |
| OUTSTANDING RECEIVABLES AS OF October 30, 2009 | |
| BILL NO. 1837751 09/24/2009 | $24,587.55 |
| **TOTAL BALANCE DUE** | **$48,782.90** |

| **If paying by check**, please remit payment on receipt to the following address: | **If paying by wire**, please remit payment on receipt as follows: |
|---|---|
| PO Box 601879<br>Charlotte, North Carolina 28260-1879<br><br>**PLEASE RETURN THIS PAGE WITH PAYMENT** | Wachovia Bank, N.A.<br>1525 W.T. Harris Blvd.<br>Charlotte, NC 28288<br>ABA no. 0 5 3 0 0 0 2 1 9<br>Swift Code: P N B P U S 3 3<br><br>For Credit To:<br>Womble Carlyle Sandridge & Rice, PLLC<br>One West Fourth Street<br>Winston-Salem, NC 27101<br>Account no. 2 0 8 7 3 1 1 0 4 0 4 0 8 |
| Please *do not* use the above address for trust funds or retainer payments. Please send all trust funds and retainer payments directly to One West Fourth Street, Winston-Salem, NC 27101. | PLEASE include our bill # and 10-digit client/matter# on EFT, or e-mail remittance advice to AccountsReceivable@wcsr.com. |
| **Tax Identification Number 56-0308470** | |

Holland & Knight

Tel 202 955 3000
Fax 202 955 5564

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801
www.hklaw.com

October 28, 2009

Norman M. Glasgow, Jr.
202 419 2460
norman.glasgowjr@hklaw.com

Omar Karim
Banneker Ventures
729 15th Street, NW
Suite 400
Washington, DC 20005

Re: Jazz Project, 7th and Florida Avenue, NW

Dear Omar:

You have inquired as to the outstanding balance that is owed on this project. Our outstanding receivables are in the amount of $1,774.50.

Very truly yours,

Norman M. Glasgow, Jr.

cc: Tiwana Hicks

# 8935088_v1

Questions for B of A and BV as of 3/13/09

What projects did you directly supervise and were final decision maker on?

Size, scope, status of those projects, especially, construction budget for each project

What staff or consultants such as a hired CM did you use?

Are those people still on your staff-- if not, who substitutes?

Who will have final decision making on a) overall development and b) construction on this FL Ave project?

.....

As directed by the Board, I will call Metropolis to confirm my belief (which I did not state to the Board) that Metropolis dropped out because it could not get control over construction/development decision making. O. Karim has told me that Metropolis dropped out because Scott Pannick, its president, is ill (brain tumor).

With regard to the documents that Omar Karim sent on his firm's experience, I spoke yesterday with Tom Regan, of Regan Associates, a builder whom I have known for 25 years and who is working with Banneker on two projects: 1) Walker Jones Ed. Center, 70% complete, fast tracked, with Regan Associates as decision maker. 2) Deanwood Rec. Center, with Banneker in control and Regan as fee builder, so far only demolition of existing facilities underway. He confirmed the facts as presented in writing and stated on the phone by Omar. He indicated that Banneker staff has been in a trailer at Walker Jones with his staff for 18 months and has been "learning" the CM business, some Banneker staff are more experienced than others." He did not have an opinion on their ability to build the FL Ave properties because, he said, he did not know enough about them even though I gave a brief description. He did not volunteer anything else about Banneker's competence as a builder.

I will call other firms mentioned in his experience documents, even though references have not been given.

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Goldin, Steven
**Sent:** Wednesday, December 02, 2009 10:51 AM
**To:** Doggett, Rosalyn
**Subject:** FW: Florida Ave

**Importance:** High

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Wednesday, December 02, 2009 10:44 AM
**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
**Importance:** High

Steve,

We are trying to figure out a way to provide the Board with comfort in a deal that we work out with the Staff to move this project forward. As such, based on the memo that you all sent to the Board on 11/6/09, as well as conversations that Staff is having with the Board about the initial NPV that Staff told the Board that we had agreed to pay them in early 2008 versus the current NPV that we agreed to pay most recently ($3.03M - $4.28M from the 11/6/09 memo), prior to today's noon meeting, can you send us a quick breakdown of how the Staff came up with the NPV and land appraisal presented to the Board last year and compare it with the NPV and appraisal that the Staff presented to the Board on 11/5/09. We believe that the NPV that we offered for the land in 07 and 08 is $7-8.5M, depending on the discount rate used. If the new land value based on the independent appraisals that WMATA obtained is now $2.2M, our current offer of $3.03M - $4.28M would be consistent with the old land value (lets say $4M), and old NPV, say $7.5M. Thus, the new offer would be consistent with the new appraisal. Moreover, since we were selected, IZ rules were put into place, which further reduces the value of the land. Thus, any old NPV that we offered (lets say $7.5M), would even be reduced because of the IZ rules now in effect. When we meet later today, we are prepared to discuss providing WMATA with some increase in the capitalized lease payment; however, in order to do so, we need to have an understanding of what NPV WMATA told the Board we offered initially as the Board is using this old value to compare it with the new value. However, as you and the other staff have been well aware since we initially submitted our offer in 2007, because we are using FHA-insured financing, we will not be allowed to re-set the amount paid to WMATA during the term of the loan period because FHA does not allow it. WMATA staff is well aware of these rules as it has done many Joint Development projects that were FHA-insured.

Thank you in advance.

Omar



WMATA-INV 000184

FOIA CONFIDENTIAL TREATMENT REQUESTED

**From:** Goldin, Steven [mailto:sgoldin@wmata.com]
**Sent:** Tuesday, December 01, 2009 2:05 PM
**To:** Omar A. Karim
**Cc:** Montague, Joshua W.; Welch, Kermit A.; Doggett, Rosalyn
**Subject:** Florida Ave

Omar

We 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



WMATA-INV 000185

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** <eric.smart@bolansmart.com> [eric.smart@bolansmart.com]
**Sent:** Tuesday, April 29, 2008 4:49 PM
**To:** Doggett, Rosalyn
**Subject:** Re: Florida Ave npv

Roz

With a ground rent established at over 6.5% of the appraised value, plus 3.0% annual increases, the effective yield on the current appraised value keeps increasing over time, gradually growing to upwards of 35% of current appraised value by year 60 of the ground lease. Discounting this growing income stream at anything less than the combination of the yield rate plus the escalations will result in a higher NPV than the appraised value. This is why the ability of WMATA to leverage its cost of funds vs the private sector's discounts can be very advantageous, attributed both to setting an appraised current value predicated on private sector blended financing costs and the ability for WMATA to essentially keep the spead between its cost of funds and the private sector's alternative costs of term financing. While adding a residual value after 60 years is provides an additional kicker, the bulk of the difference relates to the spread between the escalating ground lease yield rate and WMATA's
discount rate.

Eric

On Mon, 28 Apr 2008 2:04:32 -0500 (EST), "Rosalyn Doggett"
<rdoggett@wmata.com> wrote:
> I had a question about how the NPV ($14M with residual) could be so
> far
above
> the current estimate of land value ($7.5M). Can you help me out on
this one?
> Thanks.
>
>
>
--
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



WMATA-INV 000186

FOIA CONFIDENTIAL TREATMENT REQUESTED

**BSA Table 1**

**Florida Avenue / Shaw - Proposal Comparisons**

| | | | 1<br>2008 | 2<br>2009 | 3<br>2010 | 4<br>2011 | 5<br>2012 | 6<br>2013 | 7<br>2014 | 8<br>2015 | 9<br>2016 | 10<br>2017 | 11<br>2018 | 12<br>2019 | 13<br>2020 | 14<br>2021 | 15<br>2022 | 60<br>2067 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Banneker / District - lease (mid December 2007)** | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $60,000 | $100,000 | $100,000 | | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | |
| Base Rent | 3.000% | fixed annual escalations | | | | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $2,617,307 |
| Other Base Rent Adjustment | | not applicable | | | | | | | | | | | | | | | | |
| Total Gross Revenue | | | $160,000 | $100,000 | $100,000 | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $2,617,307 |
| WMATA Participation | 10.00% | of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $7,947,280 | FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ residual** | | | $160,000 | $100,000 | $100,000 | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $48,075,772 |
| **NPV** | | | | | | | | | | | | | | | | | | |
| Base Rent | 5.73% | discount rate | $12,338,401 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $14,036,328 | | | | | | | | | | | | | | | |
| **Banneker / District - lease (March 2008)** | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $60,000 | $100,000 | $115,000 | $130,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | |
| Base Rent | $500,000 | unpaid year 4, then escalated @ 1.03% to next year | | | | | | | | | | | | | | | | |
| | [illegible] | fixed annual escalations years 6 to 14 | | | | | $597,400 | $605,256 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | | |
| | 3.000% | fixed annual escalations years 15+ | | | | | | | | | | | | | | | $692,096 | $2,617,226 |
| Other Base Rent Adjustment | | not applicable | | | | | | | | | | | | | | | | |
| Total Gross Revenue | | | $160,000 | $100,000 | $115,000 | $130,000 | $597,400 | $605,256 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | $692,096 | $2,617,226 |
| WMATA Participation | 10.00% | of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 | FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ residual** | | | $160,000 | $100,000 | $115,000 | $130,000 | $597,400 | $605,256 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | $692,096 | $48,075,692 |
| **NPV** | | | | | | | | | | | | | | | | | | |
| Base Rent | 5.73% | discount rate | $12,339,898 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $14,037,825 | | | | | | | | | | | | | | | |

WMATA-INV 000187

FOIA CONFIDENTIAL TREATMENT REQUESTED

**BSA Table 1**

**Florida Avenue / Shaw - Proposal Comparisons**

| | | | 1<br>2008 | 2<br>2009 | 3<br>2010 | 4<br>2011 | 5<br>2012 | 6<br>2013 | 7<br>2014 | 8<br>2015 | 9<br>2016 | 10<br>2017 | 11<br>2018 | 12<br>2019 | 13<br>2020 | 14<br>2021 | 15<br>2022 | 50<br>2067 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Banneker / District - lease (mid December 2007)** | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $60,000 | $100,000 | $100,000 | | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | |
| Base Rent | 3.000% | fixed annual escalations | | | | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $2,817,307 |
| Other Base Rent Adjustment | | not applicable | | | | | | | | | | | | | | | | |
| Total Gross Revenue | | | $160,000 | $100,000 | $100,000 | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $2,817,307 |
| WMATA Participation | 10.00% | of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $7,947,280 | FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ residual** | | | $160,000 | $100,000 | $100,000 | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $48,075,772 |
| **NPV** | | | | | | | | | | | | | | | | | | |
| Base Rent | 9.00% | discount rate | $6,495,797 | | | | | | | | | | | | | | | |
| With Residual | 9.00% | discount rate | $6,778,279 | | | | | | | | | | | | | | | |
| **Banneker / District - lease (March 2008)** | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $60,000 | $100,000 | $115,000 | $130,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | |
| Base Rent | [redacted] | unpaid year 4, then escalated @ 1.03% to next year | | | | | | | | | | | | | | | | |
| | [redacted] | fixed annual escalations years 6 to 14 | | | | | $597,400 | $605,256 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | | |
| | 3.000% | fixed annual escalations years 15+ | | | | | | | | | | | | | | | $692,096 | $2,617,226 |
| Other Base Rent Adjustment | | not applicable | | | | | | | | | | | | | | | | |
| Total Gross Revenue | | | $160,000 | $100,000 | $115,000 | $130,000 | $597,400 | $605,256 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | $692,096 | $2,617,226 |
| WMATA Participation | 10.00% | of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 | FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ residual** | | | $160,000 | $100,000 | $115,000 | $130,000 | $597,400 | $605,256 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | $692,096 | $48,075,692 |
| **NPV** | | | | | | | | | | | | | | | | | | |
| Base Rent | 9.00% | discount rate | $6,473,544 | | | | | | | | | | | | | | | |
| With Residual | 9.00% | discount rate | $6,755,026 | | | | | | | | | | | | | | | |

WMATA-INV 000188

FOIA CONFIDENTIAL TREATMENT REQUESTED

| CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2008 | |
|---|---|
| **CATEGORY** | **Developer: The Jazz @ Florida Avenue LLC to be formed by Banneker Ventures LLC, the District Development Group, LLC and Metropolis Development Company LLC** |
| Site Description | The 28,892 sf site consists of three separate parcels on the south side of Florida Avenue, NW , between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA. |
| Developer's Proposal | 104 apartments with 11,750 sf ground floor retail/arts uses (total 130,000 sf of development) |
| Proposed Contract | Lease - 60 years |
| Construction Schedule | Lease Closing: 20 months after development agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Performance Security | $250,000 |
| Option Fee | $100,000 upon Term Sheet approval |
| Pre-stabilization Rent | $100,000/year upon development agreement execution rising to $130,000 |
| Additional Density | If prior to closing, $4.20/year/additional gross FAR sf. (plus escalation) |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date |
| Base Rent Escalation | For first 10 years base rent escalates at 1.5%/year, thereafter at 3%/year |
| Base Rent Revaluation | Every 10 years |
| Capital Event Participation | 10% of net proceeds |
| Appraised Market Value<br>$7,500,000 land value<br>$525,000 rental value | NPV to WMATA over Term of Lease<br>$14 million |
| Appraisal by Integra Realty 8/07 | |

WMATA-INV 000189

FOIA CONFIDENTIAL TREATMENT REQUESTED

## CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2008

| CATEGORY | **Developer: The Jazz @ Florida Avenue LLC to be formed by Banneker Ventures LLC, the District Development Group, LLC and Metropolis Development Company LLC** |
|---|---|
| Site Description | The 28,892 sf site consists of three separate parcels on the south side of Florida Avenue, NW , between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA. |
| Developer's Proposal | 104 apartments with 11,750 sf ground floor retail/arts uses (total 130,000 sf of development) |
| Proposed Contract | Lease - 60 years |
| Construction Schedule | Lease Closing: 20 months after development agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Performance Security | $250,000 |
| Option Fee | $100,000 upon Term Sheet approval |
| Pre-stabilization Rent | $100,000/year upon development agreement execution rising to $130,000 |
| Additional Density | If prior to closing, $4.20/year/additional gross FAR sf. (plus escalation) |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date |
| Base Rent Escalation | For first 10 years base rent escalates at 1.5%/year, thereafter at 3%/year |
| Base Rent Revaluation | Every 10 years |
| Capital Event Participation | 10% of net proceeds |
| Appraised Market Value<br>$7,500,000 land value<br>$525,000 rental value<br><br>Appraisal by Integra Realty 8/07 | NPV to WMATA over Term of Lease<br>$14 million |

WMATA-INV 000190

FOIA CONFIDENTIAL TREATMENT REQUESTED

11/7/08

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

| | | 1<br>2008 | 2<br>2009 | 3<br>2010 | 4<br>2011 | 5<br>2012 | 6<br>2013 | 7<br>2014 | 8<br>2015 | 9<br>2016 | 10<br>2017 | 11<br>2018 | 12<br>2019 | 13<br>2020 | 14<br>2021 | 15<br>2022 | $0<br>2067 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Banneker / District - lease** | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | |
| Option Fee | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | $60,000 | $100,000 | $100,000 | | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | |
| Base Rent | 3.00% fixed annual escalations | | | | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $2,617,307 |
| Other Base Rent Adjustment | not applicable | | | | | | | | | | | | | | | | |
| Total Gross Revenue | | $160,000 | $100,000 | $100,000 | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $2,617,307 |
| WMATA Participation | 10.00% of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $7,947,280 FY08 assessed values<br>3.00% annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ residual** | | $160,000 | $100,000 | $100,000 | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $48,075,772 |
| **NPV** | | | | | | | | | | | | | | | | | |
| Base Rent | 5.73% discount rate | $12,338,401 | | | | | | | | | | | | | | | |
| With Residual | 5.73% discount rate | $14,036,328 | | | | | | | | | | | | | | | |

5.9% discount rate

**Moodie Turay / Clark - lease** (Option One: illustrative without alley closing, assumed 130,000 FAR with initial value held at $65 / FAR)

| | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Revenues** | | | | | | | | | | | | | | | | | |
| Option Fee | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | $10,000 per month | $90,000 | $120,000 | $120,000 | $120,000 | | | | | | | | | | | | |
| Offeror Land Valuation | 2.00% pre stabilization escalator | $8,450,000 | $8,619,000 | $8,791,380 | $8,967,208 | $9,146,552 | | | | | | | | | | | |
| Base Rent | 8.00% of offeror land valuation | $0 | $0 | $0 | $0 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 |
| Base Rent Adjustment | 3.00% 10 yr compounded | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $281,153 | $2,476,086 |
| Total Gross Revenue | | $190,000 | $120,000 | $120,000 | $120,000 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $1,012,877 | $3,207,810 |
| WMATA Participation | 5.00% of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 FY08 assessed values<br>3.00% annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ Residual** | | $190,000 | $120,000 | $120,000 | $120,000 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $731,724 | $1,012,877 | $48,666,275 |
| **NPV** | | | | | | | | | | | | | | | | | |
| Base Rent | 5.73% discount rate | $10,161,978 | | | | | | | | | | | | | | | |
| With Residual | 5.73% discount rate | $11,767,887 | | | | | | | | | | | | | | | |
| With Base Rent Escal | 9.00% disc rate on escalation | $13,574,499 | (illustrative) | | | | | | | | | | | | | | |
| With Base Rent Escal | 5.73% disc rate on escalation | $16,966,012 | (illustrative) | | | | | | | | | | | | | | |

**Moodie Turay / Clark - lease** (Option Two: illustrative without alley closing, assumed 130,000 FAR with initial value held at $61.50 / FAR)

| | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Revenues** | | | | | | | | | | | | | | | | | |
| Option Fee | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | $10,000 per month | $90,000 | $120,000 | $120,000 | $120,000 | | | | | | | | | | | | |
| Offeror Land Valuation | 3.00% pre stabilization escalator | $7,995,000 | $8,234,850 | $8,481,896 | $8,736,352 | $8,998,443 | | | | | | | | | | | |
| Base Rent | 8.00% of offeror land valuation | $0 | $0 | $0 | $0 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 |
| Base Rent Adjustment | 3.00% 10 yr compounded | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $276,601 | $2,435,991 |
| Total Gross Revenue | | $190,000 | $120,000 | $120,000 | $120,000 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $996,476 | $3,155,866 |
| WMATA Participation | 5.00% of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 FY08 assessed values<br>3.00% annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ Residual** | | $190,000 | $120,000 | $120,000 | $120,000 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $719,875 | $996,476 | $48,614,332 |
| **NPV** | | | | | | | | | | | | | | | | | |
| Base Rent | 5.73% discount rate | $10,003,812 | | | | | | | | | | | | | | | |
| With Residual | 5.73% discount rate | $11,609,720 | | | | | | | | | | | | | | | |
| With Base Rent Escal | 9.00% disc rate on escalation | $13,387,078 | (illustrative) | | | | | | | | | | | | | | |
| With Base Rent Escal | 5.73% disc rate on escalation | $16,723,673 | (illustrative) | | | | | | | | | | | | | | |

WMATA-INV 000191

BSA
12/20/07

BSA Table 2
Florida Avenue / Shaw - December 2007 Proposals

| | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 60 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2068 |
| **Lakritz Adler - lease** | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | | | | | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | $4,890,000 | | | | | | | | | | | | | |
| Base Rent | 1.80% | fixed annual escalations | | | | | $223,253 | $227,272 | $231,362 | $235,527 | $239,766 | $244,082 | $248,476 | $252,948 | $257,501 | $262,136 | $266,855 | $595,559 |
| Other Base Rent Adjustment | | not applicable | | | | | | | | | | | | | | | | |
| Total Gross Revenue | | | $100,000 | $0 | $0 | $0 | $223,253 | $227,272 | $231,362 | $235,527 | $239,766 | $244,082 | $248,476 | $252,948 | $257,501 | $262,136 | $266,855 | $595,559 |
| WMATA Participation | 0.00% | not offered | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $7,947,280 | FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ residual** | | | $100,000 | $0 | $0 | $0 | $223,253 | $227,272 | $231,362 | $235,527 | $239,766 | $244,082 | $248,476 | $252,948 | $257,501 | $262,136 | $266,855 | $46,054,025 |
| NPV | | | | | | | | | | | | | | | | | | |
| Base Rent | 5.73% | discount rate | $4,330,076 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $5,028,003 | | | | | | | | | | | | | | | |
| **Banneker / District - lease** | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $60,000 | $100,000 | | | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | |
| Base Rent | 3.00% | fixed annual escalations | | | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $712,880 | $2,695,826 |
| Other Base Rent Adjustment | | not applicable | | | | | | | | | | | | | | | | |
| Total Gross Revenue | | | $160,000 | $100,000 | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $712,880 | $2,695,826 |
| WMATA Participation | 10.00% | of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $7,947,280 | FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ residual** | | | $160,000 | $100,000 | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $712,880 | $48,154,291 |
| NPV | | | | | | | | | | | | | | | | | | |
| Base Rent | 5.73% | discount rate | $13,037,046 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $14,734,973 | | | | | | | | | | | | | | | |
| **Moodie Turay / Clark - lease**(illustrative without alley closing, assumed 127,000 FAR with initial value held at $65 / FAR) | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | $10,000 | per month | $90,000 | $120,000 | $120,000 | | | | | | | | | | | | | |
| Offeror Land Valuation | 2.00% | pre stabilization escalator | $8,255,000 | $8,420,100 | $8,588,502 | $8,760,272 | | | | | | | | | | | | |
| Base Rent | 8.00% | of offeror land valuation | $0 | $0 | $0 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 |
| Base Rent Adjustment | 3.00% | 10 yr compounded | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $241,024 | $241,024 | $2,371,515 |
| Total Gross Revenue | | | $190,000 | $120,000 | $120,000 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $941,846 | $941,846 | $3,072,337 |
| WMATA Participation | 5.00% | of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 | FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ Residual** | | | $190,000 | $120,000 | $120,000 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $700,822 | $941,846 | $941,846 | $48,530,802 |
| NPV | | | | | | | | | | | | | | | | | | |
| Base Rent | 5.73% | discount rate | $10,310,276 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $11,916,185 | | | | | | | | | | | | | | | |
| With Base Rent Escal | 9.00% | disc rate on escalation | $13,667,833 | (illustrative) | | | | | | | | | | | | | | |
| With Base Rent Escal | 5.73% | disc rate on escalation | $16,916,124 | (illustrative) | | | | | | | | | | | | | | |

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

## CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2008

| CATEGORY | **Developer: The Jazz @ Florida Avenue LLC to be formed by Banneker Ventures LLC, the District Development Group, LLC and Metropolis Development Company LLC** |
|---|---|
| Site Description | The 28,892 sf site consists of three separate parcels on the south side of Florida Avenue, NW , between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA. |
| Developer's Proposal | 104 apartments with 11,750 sf ground floor retail/arts uses (total 130,000 sf of development) |
| Proposed Contract | Lease - 60 years |
| Construction Schedule | Lease Closing: 20 months after development agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Performance Security | $250,000 |
| Option Fee | $100,000 upon Term Sheet approval |
| Pre-stabilization Rent | $100,000/year upon development agreement execution rising to $130,000 |
| Additional Density | If prior to closing, $4.20/year/additional gross FAR sf. (plus escalation) |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date |
| Base Rent Escalation | For first 10 years base rent escalates at 1.5%/year, thereafter at 3%/year |
| Base Rent Revaluation | Every 10 years |
| Capital Event Participation | 10% of net proceeds |
| Appraised Market Value<br>$7,500,000 land value<br>$525,000 rental value | NPV to WMATA over Term of Lease<br>$14 million |
| Appraisal by Integra Realty 8/07 | |

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WMATA-INV 000193

3/09

## Shaw-Howard University Station (Florida Avenue)

- WMATA requested full proposals and received three in October 2007
- Metro Board selected Banneker Ventures team (Banneker, District Development Group, and Metropolis) as developer in June 2008
- Staff has been negotiating a joint development agreement with the developer (time delay explained below)
- No public hearing is required
- No Metro facilities will be displaced

## Proposed Uses

- Residential units: 103
- Retail of 11,757 square feet

## Business Relationship

- Term Sheet stipulated that it was to be a 60 year ground lease
- Staff and developer have discussed in negotiations differ lease terms (total of 99 years, base term of 50 years and with a 49 year extension)

## Major Negotiating Issue

- The Board requested an affordable housing component in approving the developer selection and term sheet for the three Shaw Howard /Florida Avenue properties. The Board did not define the percentage of units or income level for the affordable component.

- In contract negotiations, the developer has proposed a 20% affordable component, consistent with a recommendation for the largest of the three parcels in the adopted DUKE plan for the area. The developer further indicated that it was advised that the affordability should range toward the low end of Area Median Income (AMI) and proposed 20% of the housing at 50% of AMI, consistent with requirements for low income housing tax credit (LIHTC) financing.

- The developer was further advised that it would receive no subsidy of any kind from the city to offset costs of providing affordable housing.

- Largely, though not wholly, because of these constraints, in contract negotiations, the developer proposed lowering its initial ground lease payment from nearly $600,000 per year to $150,000 per year.

- In most jurisdictions, there is a stated affordable housing policy and Metro can require developers to follow that stated policy. The District has passed but not implemented am exclusionary zoning law. In this case the developer is being asked to provide more than would be required in that law, and is asking Metro to reduce the required ret payments accordingly. It is a Board decision to decide if Metro should provide such a subsidy.

- Staff is preparing a Board memo addressing this and other deal structure issues

**Other Major Issues**

- Board was concerned about Banneker's ability to successfully develop the property due to limited experience and was satisfied as long as Metropolis remained as a joint development partner. Banneker's first partner (Donatelli Development) withdrew before oral presentations.
- Metropolis has now withdrawn and Banneker is attempting to find a qualified, suitable replacement partner, but has not been successful or at least has not indicated to WMATA staff that it has a replacement partner
- Banneker has apparent problems securing adequate financing
- Staff will need to return to the Board if financial deal is less than approved by Board ($13 million NPV)
- Staff consultant analysis of Banneker's new pro forma projects a $5 million loss in value to WMATA as originally proposed and approved by Board

## Doggett, Rosalyn

**From:** Goldin, Steven
**Sent:** Tuesday, October 27, 2009 9:42 AM
**To:** Maurice Perry
**Subject:** RE: Florida Ave

Thank you

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**From:** Maurice Perry [mailto:maurice.perry@bankofamerica.com]
**Sent:** Tuesday, October 27, 2009 9:34 AM
**To:** Goldin, Steven
**Subject:** RE: Florida Ave

Steve,

Yes, BOACDC is still working with Banneker Ventures on the Jazz project.

Thanks,
Maurice Perry

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**From:** Goldin, Steven [mailto:sgoldin@wmata.com]
**Sent:** Tuesday, October 27, 2009 9:10 AM
**To:** Perry, Maurice
**Subject:** FW: Florida Ave

Maurice

Please confirm that BOACDC is currently Banneker Ventures partner in this project.

Thank you
Steve Goldin

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**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Monday, October 26, 2009 9:59 AM
**To:** Goldin, Steven
**Cc:** thicks@bannekerventures.com
**Subject:** RE: Florida Ave

Steve,

As discussed this morning, BOACDC remains our partner on the Jazz. Should we replace them, we will give you sufficient notice and the replacement will be with a suitable partner with the financial wherewithal that you and your staff will be comfortable with.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005



FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

3/16

**COMPARISON OF TERMS - SHAW-HOWARD U/FLORIDA AVENUE SITE**

| | Original - 2008 | 1st Revision - January 2010 | 2nd Revision - March 2010 |
|---|---|---|---|
| Developer: | A LLC to be formed by Banneker Ventures, the District Group, LLC & Metropolis Development Co. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principals are Banneker Ventures LLC and Banc of America Community Development Corp. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principal is Banneker Ventures LLC. |
| Site Description: | The 28,376 SF site consists of 3 separate parcels on the south side of Florida Ave. between 7th & 9th Streets, NW in Washington, DC. The parcels are undeveloped & were used for construction of the Green Line tunnel, which lies partially beneath each parcel. The sites are no longer needed by WMATA. | Same as original, but WMATA parcels to be combined with developer's adjacent 7,720 sf parcels on 9th St. Developer will construct building that straddles the Metro and Developer parcels. | Same as original |
| Developer's Proposal: | 104 apartments with 11,750 SF of ground floor retail-arts uses totaling 130,000 SF of above-grade development | 100,711 SF on Metro site: 10,000 ground floor retail-arts with housing above. 8% affordable. Combined sites development of 157,000 SF. Metro gets 79% of value of combined sites. | 153,000 sf consisting of 14,600 sf of ground floor retail-arts with 138 apartments above. At least 8% of housing is expected to be affordable at maximum 80% AMI per DC Inclusionary Zoning regulations. |
| *Terms & Conditions of Praposed Ground Lease:* | | | |
| Lease Term: | 60 years | 99 years | 75 years |
| Lease Closing: | 20 months after development agreement execution | 600 days after development agreement execution | 630 days after development agreement execution |
| Default Provision: | No provision | No provision | Lease is in default if garage/foundation level not complete in 210 days (7 months) after lease closing |
| Construction Completion | 18 months after lease closing | Same as original | Same as original |
| Performance Security: | $250,000 | Same as original | Same as original |
| Option Fee: | $100,000 upon Term Sheet approval | Same as original | Same as original |
| Pre-Closing Rent: | $100,000/year upon development agreement rising to $130,000/year | $50,000 for 1st year after development agreement; $65,000 for 2nd year; $80,000/year thereafter | Same as January |
| Additional Density: | $4.20/year rent for additional FAR prior to closing; to be determined by appraisal after closing | $46.59/FAR with $74.55/FAR deduction for any added Inclusionary Zoning (IZ) affordable housing prior to closing; to be determined by appraisal after closing | Same as January |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date | $2,800,000 capitalized lease payment at closing less Additional Costs Credit TBD | $5,200,000 capitalized lease payment to be paid at closing less Additional Costs Credit TBD |



WMATA-INV 000197

FOIA CONFIDENTIAL TREATMENT REQUESTED

**COMPARISON OF TERMS - SHAW-HOWARD U/FLORIDA AVENUE SITE**

| | Original - 2008 | 1st Revision - January 2010 | 2nd Revision - March 2010 |
|---|---|---|---|
| Base Rent Escalation: | 1.5%/year for 1st 10 years, then 3%/year thereafter | None | None |
| Base Rent Revaluation: | Every 10 years | On 50th year, property is appraised to determine monthly rent; monthly rent escalates 3% every year; monthly rent is re-set every 10 years via appraisal | Same as January |
| Participating Rent: | None | 1.5% of effective gross income | None |
| Capital Event Participation: | 10% of net proceeds | 2% of gross for sale or assignment & 2% of adjusted gross on refinance | Same as January |
| Estimated Value to Metro: | $14,000,000 NPV of Developer's offer | $2,800,000 NPV of Developer's offer for first 50 years. No residual land value included | $5,783,000 NPV of Developer's offer for first 50 years including residual land value |
| Appraised Value of Property: | $7,500,000 Appraised Land Value (did not include reduction for costs of building over Metro Tunnels est. at $2.3 million by Metro in 2008) $525,000 Base 1st Year Rent (Appraisal by Integra in August 2007) | $2,020,000 Capitalized Lease Value (Appraisal by Harps & Harps in August 2009 and Integra in October 2009) | Same as January |



WMATA-INV 000198

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**COMPARISON OF TERMS - SHAW-HOWARD U/FLORIDA AVENUE SITE**

| | Original - 2008 | 1st Revision - January 2010 | 2nd Revision - March 2010 |
|---|---|---|---|
| Developer: | A LLC to be formed by Banneker Ventures, the District Group, LLC & Metropolis Development Co. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principals are Banneker Ventures LLC and Banc of America Community Development Corp. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principal is Banneker Ventures LLC. |
| Site Description: | The 28,376 SF site consists of 3 separate parcels on the south side of Florida Ave. between 7th & 9th Streets, NW in Washington, DC. The parcels are undeveloped & were used for construction of the Green Line tunnel, which lies partially beneath each parcel. The sites are no longer needed by WMATA. | Same as original, but WMATA parcels to be combined with developer's adjacent 7,720 sf parcels on 9th St. Developer will construct building that straddles the Metro and Developer parcels. | Same as original |
| Developer's Proposal: | 104 apartments with 11,750 SF of ground floor retail-arts uses totaling 130,000 SF of above-grade development | 100,711 SF on Metro site: 10,000 ground floor retail-arts with housing above. 8% affordable. Combined sites development of 157,000 SF. Metro gets 79% of value of combined sites. | 153,000 sf consisting of 14,600 sf of ground floor retail-arts with 138 apartments above. At least 8% of housing is expected to be affordable at maximum 80% AMI per DC Inclusionary Zoning regulations. |
| *Terms & Conditions of Proposed Ground Lease:* | | | |
| Lease Term: | 60 years | 99 years | 75 years |
| Lease Closing: | 20 months after development agreement execution | 600 days after development agreement execution | 630 days ~~after development~~ agreement execution |
| Default Provision: | No provision | No provision | Lease is in default if garage/foundation level not complete in ~~540 days (18~~ months) after ~~development agreement execution~~ 210 days lease closing |
| Construction Completion | 18 months after lease closing | Same as original | ~~Same as original~~ |
| Performance Security: | $250,000 | Same as original | Same as original |
| Option Fee: | $100,000 upon Term Sheet approval | Same as original | Same as original |
| Pre-Closing Rent: | $100,000/year upon development agreement rising to $130,000/year | $50,000 for 1st year after development agreement; $65,000 for 2nd year; $80,000/year thereafter | Same as January |
| Additional Density: | $4.20/year rent for additional FAR prior to closing; to be determined by appraisal after closing | $46.59/FAR with $74.55/FAR deduction for any added Inclusionary Zoning (IZ) affordable housing prior to closing; to be determined by appraisal after closing | Same as January |



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000199

FOIA CONFIDENTIAL TREATMENT REQUESTED

**COMPARISON OF TERMS - SHAW-HOWARD U/FLORIDA AVENUE SITE**

| | Original - 2008 | 1st Revision - January 2010 | 2nd Revision - March 2010 |
|---|---|---|---|
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date | $2,800,000 capitalized lease payment at closing less Additional Costs Credit TBD | $5,200,000 capitalized lease payment to be paid at closing less Additional Costs Credit TBD |
| Base Rent Escalation: | 1.5%/year for 1st 10 years, then 3%/year thereafter | None | None |
| Base Rent Revaluation: | Every 10 years | On 50th year, property is appraised to determine monthly rent; monthly rent escalates 3% every year; monthly rent is re-set every 10 years via appraisal. | Same as January but no ~~[illegible]~~ reset after year 50 |
| Participating Rent: | None | 1.5% of effective gross income | ~~Same as January~~ None |
| Capital Event Participation: | 10% of net proceeds | 2% of gross for-sale or assignment & 2% of adjusted gross on refinance | Same as January |
| Estimated Value to Metro: | $14,000,000 NPV of Developer's offer | $2,800,000 NPV of Developer's offer for first 50 years. No residual land value included | $5,783,000 NPV of Developer's offer for first 50 years including residual land value |
| Appraised Value of Property: | $7,500,000 Appraised Land Value (did not include reduction for costs of building over Metro Tunnels est. at $2.3 million by Metro in 2008) $525,000 Base 1st Year Rent (Appraisal by Integra in August 2007) | $2,020,000 Capitalized Lease Value (Appraisal by Harps & Harps in August 2009 and Integra in October 2009) | Same as January |



WMATA-INV 000200

FOIA CONFIDENTIAL TREATMENT REQUESTED

**COMPARISON OF TERMS - SHAW-HOWARD U/FLORIDA AVENUE SITE**

| | Original - 2008 | 1st Revision - January 2010 | 2nd Revision - March 2010 |
|---|---|---|---|
| Developer: | A LLC to be formed by Banneker Ventures, the District Group, LLC & Metropolis Development Co. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principals are Banneker Ventures LLC and Banc of America Community Development Corp. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principal is Banneker Ventures LLC. |
| Site Description: | The 28,376 SF site consists of 3 separate parcels on the south side of Florida Ave. between 7th & 9th Streets, NW in Washington, DC. The parcels are undeveloped & were used for construction of the Green Line tunnel, which lies partially beneath each parcel. The sites are no longer needed by WMATA. | Same as original, but WMATA parcels to be combined with developer's adjacent 7,720 sf parcels on 9th St. Developer will construct building that straddles the Metro and Developer parcels. | Same as original |
| Developer's Proposal: | 104 apartments with 11,750 SF of ground floor retail-arts uses totaling 130,000 SF of above-grade development | 100,711 SF on Metro site: 10,000 ground floor retail-arts with housing above. 8% affordable. Combined sites development of 157,000 SF. Metro gets 79% of value of combined sites. | 153,000 sf consisting of 14,600 sf of ground floor retail-arts with 138 apartments above. At least 8% of housing is expected to be affordable at maximum 80% AMI per DC Inclusionary Zoning regulations. |
| *Terms & Conditions of Proposed Ground Lease:* | | | |
| Lease Term: | 60 years | 99 years | 75 years |
| Lease Closing: | 20 months after development agreement execution | 600 days after development agreement execution | 630 days after development agreement execution |
| Default Provision: | No provision | No provision | Lease is in default if garage/foundation level not complete in 210 days (7 months) after lease closing |
| Construction Completion | 18 months after lease closing | Same as original | Same as original |
| Performance Security: | $250,000 | Same as original | Same as original |
| Option Fee: | $100,000 upon Term Sheet approval | Same as original | Same as original |
| Pre-Closing Rent: | $100,000/year upon development agreement rising to $130,000/year | $50,000 for 1st year after development agreement; $65,000 for 2nd year; $80,000/year thereafter | Same as January |
| Additional Density: | $4.20/year rent for additional FAR sf prior to closing; to be determined by appraisal after closing | $46.59/FAR sf with $74.55/FAR sf deduction for any added Inclusionary Zoning (IZ) affordable housing prior to closing; to be determined by appraisal after closing | Same as January |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date | $2,800,000 capitalized lease payment at closing less Additional Costs Credit TBD | $5,200,000 capitalized lease payment to be paid at closing less Additional Costs Credit TBD |



WMATA-INV 000201

FOIA CONFIDENTIAL TREATMENT REQUESTED

**COMPARISON OF TERMS - SHAW-HOWARD U/FLORIDA AVENUE SITE**

| | Original - 2008 | 1st Revision - January 2010 | 2nd Revision - March 2010 |
|---|---|---|---|
| Base Rent Escalation: | 1.5%/year for 1st 10 years, then 3%/year thereafter | None | None |
| Base Rent Revaluation: | Every 10 years | On 50th year, property is appraised to determine monthly rent; monthly rent escalates 3% every year; monthly rent is re-set every 10 years via appraisal | Same as January |
| Participating Rent: | None | 1.5% of effective gross income | None |
| Capital Event Participation: | 10% of net proceeds | 2% of gross for sale or assignment & 2% of adjusted gross on refinance | Same as January |
| Estimated Value to Metro: | $14,000,000 NPV of Developer's offer | $2,800,000 NPV of Developer's offer for first 50 years. No residual land value included | $5,783,000 NPV of Developer's offer for first 50 years including residual land value |
| Appraised Value of Property: | $7,500,000 Appraised Land Value (did not include reduction for costs of building over Metro Tunnels est. at $2.3 million by Metro in 2008) $525,000 Base 1st Year Rent (Appraisal by Integra in August 2007) | $2,020,000 Capitalized Lease Value (Appraisal by Harps & Harps in August 2009 and Integra in October 2009) | Same as January |



WMATA-INV 000202

FOIA CONFIDENTIAL TREATMENT REQUESTED

3/17

**COMPARISON OF TERMS - SHAW-HOWARD U/FLORIDA AVENUE SITE**

| | Original - 2008 | 1st Revision - January 2010 | 2nd Revision - March 2010 |
|---|---|---|---|
| Developer: | A LLC to be formed by Banneker Ventures, the District Group, LLC & Metropolis Development Co. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principals are Banneker Ventures LLC and Banc of America Community Development Corp. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principal is Banneker Ventures LLC. |
| Site Description: | The 28,376 SF site consists of 3 separate parcels on the south side of Florida Ave. between 7th & 9th Streets, NW in Washington, DC. The parcels are undeveloped & were used for construction of the Green Line tunnel, which lies partially beneath each parcel. The sites are no longer needed by WMATA. | Same as original, but WMATA parcels to be combined with developer's adjacent 7,720 sf parcels on 9th St. Developer will construct building that straddles the Metro and Developer parcels. | Same as original |
| Developer's Proposal: | 104 apartments with 11,750 SF of ground floor retail-arts uses totaling 130,000 SF of above-grade development | 100,711 SF on Metro site: 10,000 ground floor retail-arts with housing above. 8% affordable. Combined sites development of 157,000 SF. Metro gets 79% of value of combined sites. | 153,000 sf consisting of 14,600 sf of ground floor retail-arts with 138 apartments above. At least 8% of housing is expected to be affordable at maximum 80% AMI per DC Inclusionary Zoning regulations. |
| *Terms & Conditions of Proposed Ground Lease:* | | | |
| Lease Term: | 60 years | 99 years | 75 years |
| Lease Closing: | 20 months after development agreement execution | 600 days after development agreement execution | 630 days after development agreement execution |
| Default Provision: | No provision | No provision | Lease is in default if garage/foundation level not complete in 210 days (7 months) after lease closing |
| Construction Completion | 18 months after lease closing | Same as original | Same as original |
| Performance Security: | $250,000 | Same as original | Same as original |
| Option Fee: | $100,000 upon Term Sheet approval | Same as original | Same as original |
| Pre-Closing Rent: | $100,000/year upon development agreement rising to $130,000/year | $50,000 for 1st year after development agreement; $65,000 for 2nd year; $80,000/year thereafter | Same as January |
| Additional Density: | $4.20/year rent for additional FAR sf prior to closing; to be determined by appraisal after closing | $46.59/FAR sf with $74.55/FAR sf deduction for any added Inclusionary Zoning (IZ) affordable housing prior to closing; to be determined by appraisal after closing | Same as January |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date | $2,800,000 capitalized lease payment at closing less Additional Costs Credit TBD | $5,200,000 capitalized lease payment to be paid at closing less Additional Costs Credit TBD |



WMATA-INV 000203

FOIA CONFIDENTIAL TREATMENT REQUESTED

**COMPARISON OF TERMS - SHAW-HOWARD U/FLORIDA AVENUE SITE**

| | Original - 2008 | 1st Revision - January 2010 | 2nd Revision - March 2010 |
|---|---|---|---|
| Base Rent Escalation: | 1.5%/year for 1st 10 years, then 3%/year thereafter | None | None |
| Base Rent Revaluation: | Every 10 years | On 50th year, property is appraised to determine monthly rent; monthly rent escalates 3% every year; monthly rent is re-set every 10 years via appraisal | Same as January |
| Participating Rent: | None | 1.5% of effective gross income | None |
| Capital Event Participation: | 10% of net proceeds | 2% of gross for sale or assignment & 2% of adjusted gross on refinance | Same as January |
| Estimated Value to Metro: | $14,000,000 NPV of Developer's offer | $2,800,000 NPV of Developer's offer for first 50 years. No residual land value included | $5,783,000 NPV of Developer's offer for first 50 years including residual land value |
| Appraised Value of Property: | $7,500,000 Appraised Land Value (did not include reduction for costs of building over Metro Tunnels est. at $2.3 million by Metro in 2008) $525,000 Base 1st Year Rent (Appraisal by Integra in August 2007) | $2,020,000 Capitalized Lease Value (Appraisal by Harps & Harps in August 2009 and Integra in October 2009) | Same as January |



WMATA-INV 000204

FOIA CONFIDENTIAL TREATMENT REQUESTED

COMPARISON OF TERMS - SHAW-HOWARD SITE

| | Original Terms (2008) | Revised Terms (March 2010) | Terms in January 2010 |
|---|---|---|---|
| Developer: | A LLC to be formed by Banneker Ventures, the District Group, LLC & Metropolis Development Co. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principal is Banneker Ventures LLC | Banneker + BACDC |
| Site Description: | The 28,376 SF site consists of 3 separate parcels on the south side of Florida Ave. between 7th & 9th Streets, NW in Washington, DC. The parcels are undeveloped & were used for construction of the Green Line tunnel, which lies partially beneath each parcel. The sites are no longer needed by WMATA. | Same | Same but WMATA parcels to be combined with developer's adjacent 7,720 sf parcels on 9th St. Developer will construct a building that straddles the Metro and Developer parcels. |
| Developer's Proposal: | 104 apartments with 11,750 SF of ground floor retail-arts uses totaling 130,000 SF of above-grade development | 153,000 sf consisting of 14,600 sf of ground floor retail-arts with 138 apartments above. At least 8% of housing is expectd to be affordable at maximum 80% AMI per DC Inclusionary Zoning regulations. | 100,711 SF on Metro site: 10,000 ground floor retail-arts with housing above. 8% affordable. Combined sites development of 157,000 SF. Metro gets 79% of value of combined sites. |
| *Terms & Conditions of Proposed Ground Lease:* | | | |
| Lease Term: | 60 years | 75 years | 99 years |
| Lease Closing: | 20 months after development agreement execution | 630 days after development agreement execution | 600 days after development agreement execution |
| Default Provision: | | Lease is in default if garage/foundation level not complete in 840 days (28 months) after development agreement execution | no provision |
| Const. Completion | 18 months after lease closing | Same | same |
| Performance Security: | $250,000 | $250,000 | same |

WMATA-INV 000205

| | | | |
|---|---|---|---|
| Option Fee: | $100,000 upon Term Sheet approval | Same | same |
| Pre-Closing Rent: | $100,000/year upon development agreement rising to $130,000/year | $50,000 for 1st year after development agreement; $65,000 for 2nd year; $80,000/year thereafter | same as March |
| Additional Density: | $4.20/year rent for additional FAR prior to closing; to be determined by appraisal after closing | $46.59/FAR with $74.55/FAR deduction for any added Inclusionary Zoning (IZ) affordable housing prior to closing; to be determined by appraisal after closing | same as March |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date | $5,200,000 capitalized lease payment to be paid at closing less Additional Costs Credit TBD | $2,800,000 capitalized lease payment at closing less Additional Costs Credit TBD |
| Base Rent Escalation: | 1.5%/year for 1st 10 years, then 3%/year thereafter | None | none |
| Base Rent Revaluation: | Every 10 years | On 50th year, property is appraised to determine monthly rent; monthly rent escalates 3% every year; monthly rent is re-set every 10 years via appraisal. | same as March |
| Participating Rent: | None | 1.5% of effective gross income | same as March |
| Capital Event Participation: | 10% of net proceeds | 2% of gross for sale or assignment & 2% of adjusted gross on refinance | same as March |
| Market Valuation: | $14,000,000 NPV of Developer's offer | $5,783,000 NPV of Developer's offer for first 50 years including residual land value | $2,800,000 for first 50 years no residual land value included |
| | $7,500,000 Appraised Land Value* | $2,020,000 | same as March |
| | $525,000 Base 1st Year Rent (Appraisal by Integra in 8/07) | (Appraisal by Harps & Harps in 8/09 and Integra in 10/09) | same as March |
| | *Did not include reduction for costs of building over Metro Tunnels est. at $2.3 million by Metro in 2008 | | |

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar Karim [okarim@bannekerventures.com]
**Sent:** Friday, February 26, 2010 9:35 AM
**To:** Anthony James Ives; Tiwana Hicks; Doggett, Rosalyn; Goldin, Steven
**Cc:** Eric Smart; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Montague, Joshua W.; Wallace, Maria A; Johnson, Shariyka; Bushnaq, Tariq
**Subject:** Re: Followup on Florida Avenue

Fantastic. 3:30 it is.

Omar A. Karim
Banneker Ventures, LLC
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Washington, DC 20005
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(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

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**From:** "Doggett, Rosalyn" <RDoggett@wmata.com>
**Date:** Fri, 26 Feb 2010 09:27:22 -0500
**To:** okarim@bannekerventures.com<okarim@bannekerventures.com>; Anthony James Ives<aives@bannekerventures.com>; Tiwana Hicks<thicks@bannekerventures.com>; Goldin, Steven<sgoldin@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>; Wallace, Maria A<mawallace@wmata.com>; Johnson, Shariyka<sjohnson1@wmata.com>
**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



WMATA-INV 000207

FOIA CONFIDENTIAL TREATMENT REQUESTED

Great. Please let us know if Tues at 3pm is okay with you all. If so, see you all then.

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okarim@bannekerventures.com

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**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

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.



WMATA-INV 000208

FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar

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(301) 523-1810 cell
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>
**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

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:



WMATA-INV 000209

FOIA CONFIDENTIAL TREATMENT REQUESTED

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.

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 projects.

Omar

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---

**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>
**Subject:** Followup on Florida Avenue

Good afternoon, Omar. Per our staff review this morning, we have the following comments/requests:



WMATA-INV 000210

FOIA CONFIDENTIAL TREATMENT REQUESTED

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
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WMATA-INV 00021

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**To:** Goldin, Steven; Montague, Joshua W.; Bottigheimer, Nat
**Subject:** RE: Florida Avenue - Term Sheet

Regarding Omar's 4 POINTS below:

1. Omar did say in his e-mail of 2/23 in which he offered $5.2 million at closing that he was incorporating the npv of Effective Gross Income (that Eric calculated as worth $843,000 npv). WE WILL RELUCTANTLY ACCEPT OMAR'S POINT ON THIS ONE.
2. No problem with this change; it is another way of saying the same thing. WE WILL ACCEPT OMAR'S POINT ON THIS ONE.
3.
4. To the best of my knowledge this is a NEW point. I do not mind conceding as it is quite possible that as one nears the end of a lease term, the value will not increase and we have a 3%/year escalator on the rent after a reset in year 50. (Note, however, that it will hurt us in renegotiations as will inevitably occur in year 50 because a negotiator will not agree to resets in less than 25 years.) Nevertheless, WE WILL ACCEPT OMAR'S POINT ON THIS ONE.
5. THE REDLINE THAT OMAR SENT BACK TODAY INCLUDES A NUMBER OF CHANGES TO THE TERMS "WE AGREED TO" in November. In other words, when it comes to Metro wanting changes, there can be none. When it come to Banneker wanting changes, that's ok.

---

**From:** Goldin, Steven
**Sent:** Tuesday, March 16, 2010 11:39 AM
**To:** Montague, Joshua W.; Bottigheimer, Nat
**Cc:** Doggett, Rosalyn
**Subject:** RE: Florida Avenue - Term Sheet

We need to bring this to closure. Roz and Josh, what do you recommend as a compromise on all 4 issues?
Steve

---

**From:** Montague, Joshua W.
**Sent:** Tuesday, March 16, 2010 11:37 AM
**To:** Goldin, Steven; Bottigheimer, Nat
**Cc:** Doggett, Rosalyn
**Subject:** RE: Florida Avenue - Term Sheet

I do not believe we have agreed on these terms.



WMATA-INV 000212

FOIA CONFIDENTIAL TREATMENT REQUESTED

#2 – The point of the time limit to get to grade is to ensure that this project does not linger. By tying it to closing, the developer can let the project linger by just pushing back closing. Additionally, WMATA does not get paid until closing. So, this time limit also ensures that the developer closes in a timely fashion and WMATA gets its money.

#3 – There were Capital Events in the previous version of the Term Sheet that went to the WMATA Board in November. Some of these Capital Event terms could allow the Developer to easily skirt around WMATA's participation (e.g., sales to other members or sales to wholly owned entities or sales to publicly traded companies).

Josh

---

**From:** Goldin, Steven
**Sent:** Tuesday, March 16, 2010 11:30 AM
**To:** Bottigheimer, Nat
**Cc:** Doggett, Rosalyn; Montague, Joshua W.
**Subject:** RE: Florida Avenue - Term Sheet

Josh/Roz

Have we agreed to all of these items?

# 1 and 4 are pretty major changes at this point. Is there a market reset on the 25 year ground lease extension?

Steve

---

**From:** Bottigheimer, Nat
**Sent:** Tuesday, March 16, 2010 11:25 AM
**To:** Goldin, Steven
**Cc:** Doggett, Rosalyn
**Subject:** Re: Florida Avenue - Term Sheet

Pls update all materials to reflect these changes, including comparison of terms spreadsheet.

---

**From:** Goldin, Steven
**To:** Bottigheimer, Nat



WMATA-INV 000213

FOIA CONFIDENTIAL TREATMENT REQUESTED

**Sent**: Tue Mar 16 11:18:52 2010
**Subject**: FW: Florida Avenue - Term Sheet
fyi

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**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.

Can 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

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(202) 393-5460 phone
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WMATA-INV 000214

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Tuesday, February 23, 2010 4:54 PM
**To:** Doggett, Rosalyn
**Cc:** 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
**Subject:** Follow-up re Jazz @ Florida Avenue

**Importance:** High

Roz,

Per our call this morning, Banneker, our develop partner and investors for The Jazz @ Florida Avenue project (collectively, the "Developer") are prepared to increase our offer to WMATA as follows:

1. Make a capitalized lease payment of **$5.2M** at Closing. This is a 130% increase in value over WMATA's appraised value of $2.2M, and a 70% increase in value over our previous base offer of $3.03M, which includes the NPV of the capitalized lease plus the NPV of the EGI payments. This base offer is inclusive of the projected **$2.8M loss in land value** (as calculated by WMATA's appraiser Richard Harps) due to the 8% IZ requirement and the additional hard and soft costs incurred by the Project as a result of building over the WMATA tunnel.

2. Because of some of the concerns raised by WMATA staff, we would are prepared to move forward with developing the Project solely on the WMATA parcels (28,347 SF). We will forgo our purchase of the adjacent 9th Street parcels, thereby relieving any potential complications that would arise with the necessity of a Co-Tenancy Agreement, also allowing us to free up capital that would have been used toward purchasing those parcels, and instead use these funds to pay WMATA more funds at Closing. We will also not pursue an alley closing.

3. We will build the project at 4.5 FAR (as of right if not for the mandatory IZ rules that went into effect after our selection) plus the 20% bonus (0.9 FAR) that we would get because of the IZ units, bringing the total FAR to 5.4 FAR. The Project will consist of 153,000 GSF, with 137 residential units (with 12 IZ units), 14,000 SF and 41 parking spaces. Developer would pay WMATA an agreed upon rate of $ per FAR for any SF that it builds above the 153,000 SF.

4. The initial term of the lease will be for 50 years, with a 49 year option and resets to market value every 10 years after the initial 50 year term.

5. All other terms will remain consistent (i.e., participation in Capital Events, etc.).

A $5.2M upfront, non-contingent payment to WMATA is significantly higher than the recent appraisal completed by WMATA and close to our initial offer to WMATA in 2007, excluding the imposition of the IZ units and market conditions. Based on our analysis of our initial offer, **the NPV of the offer, using reasonable interest rate assumptions, would have been about $11M,** which is no where close to the $14M that WMATA staff informed us that this is what they calculated our offer to be. If this is the case, assuming that the market conditions brought the value down by 20% (which is conservative), this would bring the offer from $11M to $8.8M. Because we have to build IZ units, which force us to go from a stick build construction type to a light gauge steel product, and at the same time



WMATA-INV 000215

FOIA CONFIDENTIAL TREATMENT REQUESTED

loose money on all of the IZ units as they do not support themselves without a subsidy, which the District does not provide for IZ units, this causes the value of the offer to go from $8.8M to the $5.2M that we are now offering, excluding WMATA's other participation rights in the Project.

As we have discussed previously, to date, the Developer has incurred over $1M since being selected by WMATA. We continue to remain hopeful that the exhaustive amount of money and time spent by Developer and WMATA in bringing this Project will produce a TOD project that all parties can be proud of. We look forward to seeing you on Friday at 2:30 and finalizing this last term of the deal so that we can get the JDA and Lease complete and presented to the Board at the next possible Board meeting. Should you have any questions prior to Friday, please feel free to contact us.

Warmest regards, I remain

Sincerely,

Omar

Omar A. Karim
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(202) 393-5462 fax
(301) 523-1810 cell



WMATA-INV 000216

from Josh
3/16

remove
~~yes, leave in~~ 1.2
DSCR

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

This Amended and Restated Term Sheet, ("Term Sheet"), for a development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th Streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein. The previous joint development term sheet dated July 17, 2008 is superseded by this Term Sheet.

**1. Parties**

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

1.2 The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company (the "DEVELOPER") will be the developer of the Project (as defined in Section 4 below). The DEVELOPER'S initial principals shall be Banneker Ventures, LLC, a District of Columbia limited liability company ("Banneker"), and Banc of America Community Development Corporation, a North Carolina corporation qualified to do business in the District of Columbia ("BACDC"), subject to the substitution of a different principal for BACDC upon WMATA's approval, not to be unreasonably withheld.

1.3 At or after the Closing until the "Completion of the Project" (as defined in Section 4.3 below), DEVELOPER shall be permitted to only admit other members who are tax credit investors, tax credit syndicators and equity investors for the Project so long as such admissions are not a disguised sale of the Project or transfer of control to another developer, except in the limited circumstance where there is an imminent default under the tax credits and the tax credit syndicator exercises its right to replace the manager of the Project. After the Completion of the Project, there shall be limited restrictions on the DEVEOPER'S principals and the identity of any successor lessee/owner of the Project.

**2. Definitive Agreement**

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



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Definitive Agreement within three (3) business days of Board approval of the Definitive Agreement.

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

a) A ground lease agreement (the "Lease") whereby WMATA will lease the Lease Property to the DEVELOPER for an initial term of fifty (50) years, with an option ~~periods totaling~~ for an additional twenty-five (25) years. period

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

2.3 The execution of the Lease ("Closing") will take place no later than six hundred thirty (630) days after the WMATA Board approves the Definitive Agreement. The Definitive Agreement shall terminate no later than the Completion of the Project with any surviving obligations being included in the CCRs.

**3. Property to Be Leased To DEVELOPER**

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

3.2 DEVELOPER will cause a preliminary ALTA survey and title commitment to be prepared within ~~two (2) months of the effective date of the Definitive Agreement~~ three (3) months of the expiration of the Study Period 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.



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**4. Project**

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

4.1 DEVELOPER's improvements (the "Developer Improvements") are a minimum 153,000 gross square feet including: (i) approximately 138 residential apartment units, (ii) approximately 14,000 gross square feet of retail/arts use, and (iii) approximately 41 parking spaces contingent on District of Columbia ("District") approvals.

4.2 The Developer Improvements will be built in a single phase on the Lease Property.

4.3 "Completion of the Project" is hereby defined as: (i) the issuance of one or more final certificates of occupancy for all residential apartment units and common areas, including parking; and (ii) one or more "shell" certificates of occupancy or equivalent for the retail portions of the Project, subject to completion of the tenant improvements for each unoccupied retail space; and (iii) repair, subject to WMATA's approval, of any damage to WMATA's property caused by Developer or its contractors, subcontractors or consultants; and (iv) satisfaction of all requirements of the WMATA Design Construction Standards applicable to the Developer Improvements.

4.4 Project Schedule. The parties shall attach an agreed upon project schedule (the "Project Schedule") as an exhibit to the Definitive Agreement. It shall be a default of the Definitive Agreement if the DEVELOPER has not constructed building foundations on all three parcels, to at least street level, within ~~840 days of the Effective Date of the Definitive Agreement~~210 days of Closing.

**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. DEVELOPER and its consultants who physically alter the Lease Property will be obligated, at their sole cost and expense, to restore the Lease Property to the similar condition existing immediately prior to those activities.

**6. Security Deposit**

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) less the Additional Costs Credit (as defined in Section 7.5 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 or an election of remedies. If the Security Deposit is applied in



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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 Project.

**7. Consideration**

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

7.2 Pre-Closing Payments. The DEVELOPER shall make quarterly non-refundable Pre-Closing Payments beginning upon the effective date of the Definitive Agreement. Pre-Closing Payments shall be prorated for partial quarters. Pre-Closing Payments shall be made according to the following:

a) Pre-Closing Payments for the first twelve (12) months will be $50,000.00 per year, payable in advance in quarterly instalments of $12,500.00.

b) Pre-Closing Payments will increase to $65,000.00 per year for the next twelve (12) months.

c) Beginning the twenty-fifth (25th) month and continuing until execution of the Lease, Pre-Closing Payments shall be $80,000.00 per year.

7.3 Rent.

a) Capitalized Lease Payment. DEVELOPER shall make a lump sum initial Capitalized Lease Payment of Five Million Two Hundred Thousand Dollars ($5,200,000), less the Additional Costs Credit, at Closing. This payment represents the entire base rent for the Lease Property for the initial fifty (50) year term of the Lease. In no event will any part of the Capitalized Lease Payment be refunded.

b) Monthly Rent Payment. On the 50th anniversary of the Effective Date of the Lease, the DEVELOPER shall begin making monthly base rent payments to WMATA (the "Monthly Lease Payments"). The Monthly Lease Payments amount shall be at Fair Market Value as determined through the three-appraiser method described in the Lease.



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(i) Escalation Rate. The Monthly Lease Payments shall escalate annually at the rate of 3.00% per year.

(ii) Periodic Rent Revaluation. The Monthly Lease Payments shall be adjusted every ten years. The Monthly Lease Payments will be re-adjusted to then current Fair Market Value as established through the three-appraiser process described in the Lease. Monthly Lease Payments will never decrease from the then payable Monthly Lease Payments as a result of any Periodic Rent Revaluation.

~~c) Participation Rent. Developer shall pay Participation Rent, at one and a half percent (1.50%) of Effective Gross Income to WMATA.~~

~~(i) Effective Gross Income shall be defined in the Lease as all gross revenue generated from the Lease Property, including but not limited to rents, licenses, advertisements, and service fees.~~

~~(ii) Payment of Participation Rent shall begin at the earlier of (1) the DEVELOPER's receipt of Effective Gross Income or (2) if no Effective Gross Income is generated prior to Final Completion of the Project, the amount of Effective Gross Income DEVELOPER was projected to receive under the Project Schedule in the Definitive Agreement.~~

~~(iii) So long as DEVELOPER's senior loan is HUD insured, Participation Rent shall be paid to WMATA in accordance with the HUD requirements which allow the maximum return to WMATA. At all times during the Lease term, the debt service coverage ratio on any senior loans, other than HUD-insured senior loans or public subsidies, shall be no less than 1.20:1.00.~~

~~(iv) Any Participation Rent not paid in a given year shall accumulate interest at six and two tenths percent (6.20%) and be paid from the next annual cash flow or from Capital Event proceeds prior to any return on, or return of, equity.~~

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~~d)~~c) Capital Event Participation. Capital Events (defined below) shall be permitted in accordance with this Section 7.3(~~d~~c). Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation").

(i) A "Capital Event" will include, but not be limited to, any of the following by DEVELOPER: (1) assignments of the Definitive Agreement or the Lease, (2) sales or re-financings of the Developer Improvements, (3) dispositions or transfers of membership interests, (4) transfers among existing members, and (5) 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: (A) transfers for estate planning purposes; and (B) transfers required for the initial debt and equity of the Project before the permanent loan closing. The Parties agree that Non-Capital Events, which will require WMATA approval, but not WMATA monetary participation, also exist and will be defined in the Definitive Agreement.

(ii) For Capital Events that involve transfer or disposition of interests in the Developer or the Developer's interest in the Project, WMATA's share will be two percent (2.00%) of the gross proceeds. Gross proceeds are defined as all transaction revenues received by the DEVELOPER (and any affiliated persons or entities receiving income from this event).

(iii) For Capital Events that involve any refinance or financial restructuring from which the DEVELOPER realizes proceeds, WMATA's share will be two percent (2.00%) of the adjusted gross proceeds. The adjusted gross proceeds are defined as all transaction revenues to the DEVELOPER (and any affiliated persons or entities receiving income from this event) less the original senior mortgage debt on the Developer Improvements that is paid-off out of said Capital Event proceeds.

(iv) To confirm DEVELOPER's original project debt and equity, within thirty days of the Closing, DEVELOPER will provide WMATA with documentation confirming such amounts. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100.00%) of the original Project cost, including both hard and soft costs.

7.4 Additional Density: If at any time during the first 50 years of the Lease, DEVELOPER has received approval for additional density over 153,000 gross

square feet attributable to the Lease Property, DEVELOPER will adjust the Capitalized Lease Payment. The measurement of gross FAR square feet shall be the highest amount generated by the Lease Property, whether used on the Lease Property or not, in (i) any final zoning approval by the District of Columbia; (ii) building permit approval; or (iii) an amount approved in any revisions to the building permit prior to issuance of the final certificates of occupancy.

a) Prior to Closing: If the DEVELOPER receives approval for additional density prior to Closing, the additional density Capitalized Lease Payment adjustment shall be as follows:
   (i) An upward adjustment in the Capitalized Lease Payment by $46.59/gross FAR square feet for additional density generated by the Lease Property over 153,000 gross FAR square feet; and
   (ii) After the additional density consideration in 7.3(a)(i) is added, a downward adjustment in the Capitalized Lease Payment by $74.55/gross FAR square feet for such additional density generated by the Lease Property which increases the Project's affordable housing requirement pursuant to the District's mandatory Inclusionary Zoning regulations (Chapter 26 of the Zoning Regulations of the District) over 8,705 gross FAR square feet.

b) After Closing: If any time between Closing and the end of the first 50 years of the term of the Lease, any densities or unit totals actually constructed on the Developer Improvements that are more than those in effect at Closing and for which no increase in Capitalized Lease Payment has been paid, DEVELOPER shall pay an additional Capitalized Lease Payment. The additional Capitalized Lease Payment payments will be determined through the three-appraiser method, to be defined in the Lease and based on the then-remaining time until the end of the 50th year of the term of the Lease. Since the resetting of the base rent at the end of the 50th Lease year will be based on FAR value of the land as vacant, there shall be no additional density adjustments after the 50th Lease year.

7.5 Additional Costs Credit. The term "Additional Costs Credit" is defined to be the amount of staff salaries and 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 salaries and third-party costs delivered to WMATA for verification, which may be redacted to exclude any confidential or privileged information. Based on the acceptable invoices submitted by DEVELOPER, WMATA has calculated the Additional Costs Credit to be $30,000.



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7.6 Additional Consideration: The Capitalized Lease Payment, including any adjustments made under Section 7.3 above, shall be increased annually by six and 2/10ths percent (6.20%) per year from the execution of the Definitive Agreement, if Closing or Additional Density occurs later than six hundred thirty (630) days from execution of the Definitive Agreement. No Additional Consideration increase shall be applied for any delay caused by WMATA under Section 7.7. If Additional Density occurs after Closing, then only the increase in the Capitalized Lease Payment for such Additional Density shall be subject to the 6.20% annual increase.

7.7 WMATA Delays: The maximum length of six hundred thirty (630) days to Closing will be extended for delays caused solely by WMATA actions or failure to act, including requesting FTA Approval in accordance with Section 8.5 below. Such extension(s) shall be for the amount of time reasonably necessary to compensate for the delay caused solely by WMATA, *e.g.*, if such a delay causes DEVELOPER to miss a planned filing date which results in a one day-for-one day delay, then the extension shall be measured in days with respect to that filing date, however, if the filing date is for some action which is only available in a certain "time window" and the delay causes DEVELOPER to miss the filing date for such "time window," then the extension shall be measured in a period equal to the next available "time window" with respect to that filing date. In order to receive an extension hereunder, DEVELOPER must provide WMATA with written Notice of said WMATA Delay within thirty (30) days of the commencement of said delay. In no other event, other than Force Majeure Delays as defined in Section 7.8 below, will Closing be delayed, even though DEVELOPER'S schedule may take longer than anticipated.

7.8 Force Majeure Delays: The maximum length of six hundred thirty (630) 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 7.6 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In order to receive an extension hereunder, DEVELOPER must provide WMATA with written Notice of said Force Majeure Delay within thirty (30) days of the commencement of said delay. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

**8. Conditions to Consummation of the Definitive Agreement**

If each of the following conditions is not satisfied pursuant to the terms of this Term Sheet and the Definitive Agreement, then DEVELOPER shall have the right to terminate



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this Term Sheet or the Definitive Agreement, as applicable, pursuant to the terms therein. If DEVELOPER terminates this Term Sheet, WMATA shall return the Proposal Security to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof, expressly survive termination of this Term Sheet. DEVELOPER shall have the right to terminate the Definitive Agreement, and receive the Security Deposit back from WMATA, pursuant to the terms of the Definitive Agreement.

8.1 Design Approvals: Within ten (10) days of execution of the Definitive Agreement, and prior to any final submission to the District, DEVELOPER shall submit to WMATA for its approval a conceptual Project site plan in substantial conformance with Exhibit B, including building elevations and floor plans (the "Project Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Lease Property. WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA within thirty (30) days of receipt of such submission by WMATA.

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

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

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

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

8.6 Financing Contingency: DEVELOPER shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Project and as shall otherwise be reasonably satisfactory to DEVELOPER and WMATA.



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**9. Special Considerations**

9.1 Community Contact: Within one hundred twenty (120) days of the execution of the Definitive Agreement DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement. WMATA will include a list of all such groups as part of the Definitive Agreement.

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

a) DEVELOPER will solely fund any and all costs of ~~obtaining~~ applying for the Approvals. WMATA will not incur any costs in connection with the Approvals either in the actual Approvals process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

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

c) WMATA shall cooperate with DEVELOPER in all zoning and other related Approvals.

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

9.4 WMATA Review and Approval of Project Site Plan: In the event that DEVELOPER makes any modifications to the Project Site Plan previously approved by WMATA (the "Approved Site Plan"), even if required by the District

or other governmental authority, such modifications will be subject to WMATA's approval, not to be unreasonably withheld, delayed or conditioned.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the improvements on the Lease Property that materially and adversely affect WMATA's operations. The design and construction plans for such improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation, WMATA's Adjacent Construction Project Manual, Revision 3, dated December 2008 (collectively, "WMATA Design and Construction Standards"). If the DEVELOPER commences construction of the Developer Improvements within three (3) years of the Effective Date of the Definitive Agreement, the DEVELOPER may use the version of the WMATA Design and Construction Standards that is in effect on the Effective Date of the Definitive Agreement, without subsequent amendments or revisions, with respect to the Approvals, the Project Site Plan, and the design and construction plans for the Developer Improvements. If construction of the Developer Improvements commences after the third anniversary of the Effective Date of the Definitive Agreement, the most recent versions of the WMATA Design and Construction Standards, then in existence, as amended and revised from time to time, shall be applicable to the Project. The Project will be reviewed in accordance with, and must conform to the requirements of, the aforementioned documents.

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Developer Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of Developer Improvements shall be insured by one hundred percent (100.00%) 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 Dollars ($1,000,000) plus the cost of enforcing the Guaranty against the guarantor. The Guaranty will be released by WMATA upon the Completion of the Project. The Definitive Agreement will include a minimum financial test to be met by the guarantor.



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The adequacy of security to be further discussed in the Definitive Agreement. The Guaranty will unconditionally guarantee to WMATA:

a) the completion of infrastructure required by either the District or WMATA;
b) the remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities;
c) the required parties maintain the insurance required by WMATA under the Definitive Agreement; and in the event such insurance is not 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; and
d) the restoration of the Lease Property to the condition it was in on the date of Closing should work cease on the excavation portion of the project above the Lease Property prior to completion of the foundation to street level; and

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

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

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

**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



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all surveys, tests, investigations, construction, operations on the Lease Property and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to WMATA Transit Facilities located under the Lease Property or breach of any agreement with WMATA, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. Both the Lease and the CCRs shall contain indemnification of WMATA.

**11. Insurance Requirements**

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

**12. Non-Binding Intent**

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of one hundred fifty (150) days from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.



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Agreed this _____ day of March, 2010, by

**Washington Metropolitan Area Transit Authority**

By: _____
Steven E. Goldin
Director, Office of Station Area Planning and Asset Management
Department of Planning and Joint Development

**The Jazz @ Florida Avenue, LLC**

By: _____

Title: _____



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55,000 nsf X 46.59

2,556,950
− 171,465

2,385,485
2,800,000

5,185,485

8700
6400
2300
X74.55

171,465

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## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Monday, November 09, 2009 10:40 AM
**To:** Doggett, Rosalyn
**Subject:** RE: FL Ave

I agree. The change of the Capital Event was a last minute switch and was poorly done. We tried to just rely on the language of the Rhode Island transaction for Term Sheet purposes.

I would like to take this extra time to work on that definition.

Do you see anything else wrong with it? Let me know and I will take a shot at drafting corrected language.

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**From:** Doggett, Rosalyn
**Sent:** Monday, November 09, 2009 10:36 AM
**To:** Montague, Joshua W.
**Subject:** RE: FL Ave

For the record, I think that the Capital events definitions could use improvement:

A non-capital event should not include the developer's ability to sell out to his equity partners and walk away with a profit without WMATA participation. I also do not understand why the developer has to give information about equity when equity does not appear to be a deduction from gross proceeds; I may be missing something, to be sure.

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**From:** Montague, Joshua W.
**Sent:** Monday, November 09, 2009 10:18 AM
**To:** Doggett, Rosalyn
**Subject:** FL Ave

Attached is the clean and Redline versions of the final term sheet.



WMATA-INV 000233

# RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

we count residual land value

John Hagner [JHagner@wcsr.com]

**Sent:** Thursday, November 05, 2009 2:15 AM

**To:** aives@bannekerventures.com; okarim@bannekerventures.com; thicks@bannekerventures.com; O'Keeffe, Carol B.; Montague, Joshua W.; Bottigheimer, Nat

**Cc:** Yohance S. Fuller; jkass@dccouncil.us; Doggett, Rosalyn; Marshall, Malcolm; Meister, Mark K.; Goldin, Steven

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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.

Integra

we are a landlord, NOT an institutional investor

Before responding to the specific statements, let me ~~first offer~~ an observation on WMATA's return on its land. In my experience, ~~institutional investors~~ consider their "total return" on their investments, not just their net ~~income. Total return~~ on land for a tax-exempt landlord from a ground lease has three components: (1) the rent (or net operating income) from the leasing of the land; plus (2) the appreciation (or depreciation) in the value of the land over the term of the lease, assuming the tenant does not have a fixed-price purchase option for the land (which the Developer does not have); plus (3) the discounted present value of the improvements which revert to the landlord upon the expiration of the lease. In the District of Columbia, commercial land has not depreciated over any long period of time since the British burned the Capitol in 1814. None of your comments acknowledge that WMATA receives the entire appreciation in the value of the land over the term of the lease and the value of the reverted improvements as part of its "return" on the land. Even if WMATA considers such appreciation an "unrealized gain" on its land, it is still a gain that institutional investors recognize. WMATA could realize and monetize such gain through a financing transaction if it chose to do so

yes
yes residual value
NO

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.

we don't count "guesses"

1. our Board deals with hard numbers
2. we are eating low rents at bottom of market
3. [illegible] WMATA do well

this is one all, not yours, John



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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. not a full hedge

no deduct for building over tunnel

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. he's right you are right - we would not do b), we would do c)

most other use affordable deduct market to 0 FAR ~~FAR~~ SF.

we should say "substantially" the same methodology

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. agree delete

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." he is just negotiating

In one 20-year reset instead of 3 10-year resets

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000235

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.

based on a 3% escalation, not to our advantage

I do not have the Developer's approval to make the above proposals a "counter offer." If you want me to ask the Developer to approve them, I'll be glad to make that request.

We also inserted comments to your specific statements below. Each comment is typed in ALL CAPS and preceded by ***[Hagner, John]***.

We appreciate the time and effort everyone at WMATA has expended to finalize the Term Sheet. Thank you for being so diligent in trying to get these issues resolved.

With kind regards,

John

---

**John D. Hagner**
**Womble Carlyle Sandridge & Rice, PLLC** | 1401 Eye St., NW | Suite 700 | Washington, DC 20005-2225
T: 202.857.4404 | F: 202.261.0004 | E: jhagner@wcsr.com | W: www.wcsr.com

**From:** Bottigheimer, Nat [mailto:NBottigheimer@wmata.com]
**Sent:** Wednesday, November 04, 2009 9:02 PM
**To:** O'Keeffe, Carol B.; Montague, Joshua W.; aives@bannekerventures.com; okarim@bannekerventures.com; thicks@bannekerventures.com; Hagner, John
**Cc:** Goldin, Steven; Doggett, Rosalyn; Meister, Mark K.; Marshall, Malcolm; jkass@dccouncil.us; Yohance S. Fuller
**Subject:** RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

John--

I heard a problem and I didn't hear a solution. Also, for the reasons laid out below, I don't understand at all your concept that we're making an above market imposition on the Developer.

Here are our premises:

It's our land.***[Hagner, John]*** IT IS WMATA'S LAND AND WMATA ALONE IS RECEIVING THE BENEFIT OF THE APPRECIATION IN THE VALUE OF THE LAND OVER THE ENTIRE TERM OF THE LEASE.

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.

then should it be 4%?



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000236

Without going to a spreadsheet, if we were simply to mark to market each decade, in year one of any given decade we'd get 4% less than the rental income available to a building owner on average. The next year we'd get 8% less than full value, the next year 12% less than full value, each year the same until the last year of the decade, when we'd be getting 42% below full value. That's a lot of value to leave on the table by marking to market each decade and holding constant for 10 years. Having a 3% escalation rate each year through the decade is intended to keep the rent to us, the land-owner, comparable but slightly below the long-term average increase in value until the next reset. The language we've provided is intended to keep us at rent levels close to market value for each year of the remaining 39 years of the lease without giving away the game, as your proposals would appear to have us do.***[Hagner, John]*** BASED ON MY REASONS PROVIDED ABOVE, I RESPECTFULLY DISAGREE WITH YOUR ANALYSIS. THE APPRAISERS CONSIDER THESE FACTORS IN SETTING THE FAIR MARKET RENT.

not enough

Other premises:

At Twinbrook, we negotiated a lease with JBG with precisely the terms we proposed.***[Hagner, John]*** DID JBG HAVE THE BENEFIT OF REVIEWING THE APPRIASAL AND RENT CALCULATION SO IT KNEW HOW WMATA DETERMINED THE RENT? IF IT DID NOT, IT MAY NOT HAVE KNOWN HOW WMATA DETERMINED THE RENT. IF IT DID, THEN, ASSUMING ALL OTHER ECONOMIC TERMS OF JBG'S LEASE WERE SIMILAR TO THE DEVELOPER'S, JBG ACCEPTED WHAT WE ARE OBJECTING TO.

Long-term leases are finance-able at terms less than 99 years.***[Hagner, John]*** TRUE, BUT IN MY EXPERIENCE, THEY CANNOT BE FINANCED WITH UNLIMITED INCREASES IN THE RENT EVERY TEN YEARS.

Oh, now a conditional unfinanceable

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.

not effective

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000237

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 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.

So when who knows what will be we did with JBG + Wells Fargo

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000238

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---

**From:** O'Keeffe, Carol B.
**Sent:** Wednesday, November 04, 2009 5:43 PM
**To:** John Hagner
**Cc:** Montague, Joshua W.
**Subject:** RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

John, Josh is sending a revision that puts in a different reset that Nat will accept; he had not agreed to 99 years and is only willing to go forward with the reset provisions that Josh will send. We have spoken with Mr. Karim who seems to have accepted it, but this is an impossible way to do a deal. I know that you are not causing it.

---

**From:** John Hagner [mailto:JHagner@wcsr.com]
**Sent:** Wednesday, November 04, 2009 5:38 PM
**To:** O'Keeffe, Carol B.
**Cc:** Montague, Joshua W.
**Subject:** Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

Carol: I'm on a large conference call which I can't get out of. I'll listen to your voicemail and call you as soon as I'm off.
John
John D. Hagner
Womble Carlyle Sandridge & Rice, PLLC
202.857.4404 Direct
Sent from my Blackberry. Please excuse typos.

---

**From**: O'Keeffe, Carol B. <cokeeffe@wmata.com>
**To**: Yohance S. Fuller <Yohance.Fuller@dc.gov>; Omar A. Karim <okarim@bannekerventures.com>; Montague, Joshua W. <jwmontague@wmata.com>
**Cc**: aives@bannekerventures.com <aives@bannekerventures.com>; mmckinney@bannekerventures.com <mmckinney@bannekerventures.com>; Tiwana Hicks <thicks@bannekerventures.com>; Neil.Albert@dc.gov <Neil.Albert@dc.gov>; Hagner, John; Bottigheimer, Nat <NBottigheimer@wmata.com>; Doggett, Rosalyn <RDoggett@wmata.com>; Goldin, Steven <sgoldin@wmata.com>
**Sent**: Wed Nov 04 17:25:10 2009
**Subject**: RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites
Not yet; we are working on it and will call John Hagner.

---

**From:** Yohance (EOM) Fuller [mailto:yohance.fuller@dc.gov]
**Sent:** Wednesday, November 04, 2009 5:22 PM
**To:** Omar A. Karim; Montague, Joshua W.
**Cc:** aives@bannekerventures.com; mmckinney@bannekerventures.com; Tiwana Hicks; Neil.Albert@dc.gov; O'Keeffe, Carol B.; John Hagner; Bottigheimer, Nat; Doggett, Rosalyn; Goldin, Steven



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000239

**Subject:** RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

Josh/Nat –

I'm writing to confirm whether both parties are in agreement and that WMATA staff is prepared to recommend approval of the term sheet during the committee meeting and special board meeting tomorrow. Please advise.

Thanks,

Yohance

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Wednesday, November 04, 2009 3:45 PM
**To:** 'Montague, Joshua W.'
**Cc:** 'Bottigheimer, Nat'; 'O'Keeffe, Carol B.'; 'Goldin, Steven'; 'Doggett, Rosalyn'; Fuller, Yohance (EOM); Albert, Neil (EOM); 'John Hagner'; 'Tiwana Hicks'; mmckinney@bannekerventures.com; aives@bannekerventures.com
**Subject:** FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites
**Importance:** High

Josh,

In preparation of tomorrow's Board meeting, attached are the following:

1. Amended and Restated Term Sheet revised in accordance with the discussions since Monday, which finalizes our understanding; and
2. "Redline...#157; of the Amended and Restated Term Sheet against the version that we provided to WMATA on November 2, 2009 at 6:20p.

The revised language on Capital Events was taken from the term sheet for Rhode Island Ave., and the concept of adjusting the base rent for additional density stops after the first 60 years because the re-appraisal will be based on the Leased Property as if vacant, thereby assuming the maximum density has been constructed on the land.

Please contact me with any questions or comments.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000240

FOIA CONFIDENTIAL TREATMENT REQUESTED

**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)
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2. Resetting the Monthly Lease Payments to Fair Rental Value every ten years makes the Lease un-financeable after the 60th lease year. No institutional lender will make a loan longer than ten years under these circumstances, which eliminates all the Federal and GSE (Government Sponsored Entities, *i.e.*, Fannie Mae and Freddie Mac) as lenders. To be precise, the lender will only make a loan that self-amortizes in ten years because no institutional lender will take the risk of an unlimited base rent increase while their loan is still unpaid. I'm sharing this from actual experience of litigating an almost identical issue for almost five years in the District of Columbia where the tenant under a long-term ground lease which had periodic repricing to full market rent could not refinance the leasehold estate on a permanent loan basis. This meant the tenant could not refinance the leasehold estate to pay for the needed renovation of the building and the substantial tenant improvements and lease brokerage fees to prepare for a full-building tenant. As you would expect, the tenant sued the landlord to modify the ground lease. I can't share anymore because the litigation settled under a strict confidentiality 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



WMATA-INV 000241

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

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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:** John Hagner [mailto:JHagner@wcsr.com]
**Sent:** Wednesday, November 04, 2009 5:38 PM
**To:** O'Keeffe, Carol B.



WMATA-INV 000242

FOIA CONFIDENTIAL TREATMENT REQUESTED

**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.

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**From:** O'Keeffe, Carol B. <cokeeffe@wmata.com>
**To:** Yohance S. Fuller <Yohance.Fuller@dc.gov>; Omar A. Karim <okarim@bannekerventures.com>; Montague, Joshua W. <jwmontague@wmata.com>
**Cc:** aives@bannekerventures.com <aives@bannekerventures.com>; mmckinney@bannekerventures.com <mmckinney@bannekerventures.com>; Tiwana Hicks <thicks@bannekerventures.com>; Neil.Albert@dc.gov <Neil.Albert@dc.gov>; Hagner, John; Bottigheimer, Nat <NBottigheimer@wmata.com>; Doggett, Rosalyn <RDoggett@wmata.com>; Goldin, Steven <sgoldin@wmata.com>
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WMATA-INV 000243

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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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

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000244

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar Karim [okarim@bannekerventures.com]
**Sent:** Wednesday, November 04, 2009 10:42 PM
**To:** Anthony James Ives; Tiwana Hicks; John Hagner; O'Keeffe, Carol B.; Montague, Joshua W.; Bottigheimer, Nat
**Cc:** Yohance S. Fuller; jkass@dccouncil.us; Doggett, Rosalyn; Marshall, Malcolm; Meister, Mark K.; Goldin, Steven
**Subject:** Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites

Nat,

Thanks for your thoughts. We appreciate them. For purposes of tomorrow, we accept the Term Sheet as sent to us this evening.

Following approval of the Term Sheet, we will give more thought to this particular issue to help come up with a way to meet your goals. Should we be able to come up with an agreeable solution prior to finalizing the JDA 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

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**From:** "Bottigheimer, Nat" <NBottigheimer@wmata.com>
**Date:** Wed, 4 Nov 2009 21:01:52 -0500
**To:** O'Keeffe, Carol B.<cokeeffe@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>; aives@bannekerventures.com<aives@bannekerventures.com>; okarim@bannekerventures.com<okarim@bannekerventures.com>; thicks@bannekerventures.com<thicks@bannekerventures.com>; jhagner@wcsr.com<jhagner@wcsr.com>
**Cc:** Goldin, Steven<sgoldin@wmata.com>; Doggett, Rosalyn<RDoggett@wmata.com>; Meister, Mark K.<MMeister@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>; jkass@dccouncil.us<jkass@dccouncil.us>; Yohance S. Fuller<Yohance.Fuller@dc.gov>
**Subject:** RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites



WMATA-INV 000245

FOIA CONFIDENTIAL TREATMENT REQUESTED

John--

I heard a problem and I didn't hear a solution. Also, for the reasons laid out below, I don't understand at all your concept that we're making an above market imposition on the Developer.

Here are our premises:

It's our land.

Long-term real estate values in the DC region have grown faster than 3%. A location on U Street in between U Street and Shaw/Howard stations has growth potential and value stability unlike the vast majority of property in the region, and its long-term appreciation value is significant.

Agreeing to a lease that is based on an escalation rate less than the the property's probable long-term appreciation rate is selling ourselves short. Marking to market each decade and then holding constant for each 10-year period while property values and lease-rates available to building owners appreciate is leaving significant value on the table each year in a decade.

Without going to a spreadsheet, if we were simply to mark to market each decade, in year one of any given decade we'd get 4% less than the rental income available to a building owner on average. The next year we'd get 8% less than full value, the next year 12% less than full value, each year the same until the last year of the decade, when we'd be getting 42% below full value. That's a lot of value to leave on the table by marking to market each decade and holding constant for 10 years. Having a 3% escalation rate each year through the decade is intended to keep the rent to us, the land-owner, comparable but slightly below the long-term average increase in value until the next reset. The language we've provided is intended to keep us at rent levels close to market value for each year of the remaining 39 years of the lease without giving away the game, as your proposals would appear to have us do.

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



WMATA-INV 000246

# FW: Follow-up to PDRE

Meister, Mark K.

**Sent:** Friday, November 06, 2009 3:31 PM
**To:** Doggett, Rosalyn
**Importance:** High
**Attachments:** Memo to the Board Florida ~1.doc (37 KB)

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FYI.

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**From:** Bottigheimer, Nat
**Sent:** Friday, November 06, 2009 3:29 PM
**To:** Sequeira, Loyda
**Cc:** Catoe, John B.; Green, Jennifer A.; Goldin, Steven; O'Keeffe, Carol B.; Montague, Joshua W.; Meister, Mark K.; Pant, Shiva K.; Chambliss, Leenda M.
**Subject:** Follow-up to PDRE
**Importance:** High

Loyda-

PDRE asked yesterday for some additional detail about the economics of the Florida Avenue project. Attached is a draft Board memo addressing the points we think they wanted to know more about.

Carol O'Keeffe, her staff, and my staff have reviewed this. Who else needs to review, edit, and final format?

Thanks very much,

Nat



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000247

November 6, 2009

MEMORANDUM FOR: Chairman and Members of the Board

SUBJECT: Supplementary Information Regarding Shaw-Howard/Florida Avenue Joint Development Project

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 attached materials 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**

Residual Land Value + fixed rent & escalations

| | | |
|---|---|---|
| Base Value to Metro – capitalized lease payment | $2,050,000 ✓ | |
| Potential Value from additional development density | 1,250,000 ✓ | |
| Net Present Value (NPV) of Rents, Years 61-99 | 70,000 ✓ ? | not a known but relates to residual land value |
| NPV of participating rent (effective gross income) | 280,000 NO | |
| NPV of participation in capital events | 630,000 NO | |

| | |
|---|---|
| Total potential value | $3,030,000 - $4,280,000 |
| Land appraised value | $2,200,000 - $3,450,000 |

**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.

+ 275000 x 50
− 200000 x 80

Rent + Residual Value

**Additional Revenues**

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.

*Participation in Capital Events*

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.

*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.

John B. Catoe, Jr.
General Manager

**From:** thedoggettgroup@cs.com
**To:** eric.smart@bolansmart.com
**Cc:** rdoggett@wmata.com; jmontague@wmata.com
**Subject:** Florida Avenue Participation
**Date:** Sun, Nov 15, 2009 11:00 pm

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Please give me a call Monday morning. I would like to see if you can do a quick, but reasonable, caculation relating 10% participation in net proceeds to 2% participation in gross proceeds for capital events. I will have to define terms and do not have the info here but can provide it tomorrow.
Thx



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000251

**From:** Mail Delivery Subsystem <MAILER-DAEMON@cs.com>
**To:** Thedoggettgroup@cs.com
**Subject:** Returned mail: see transcript for details
**Date:** Sun, Nov 15, 2009 11:01 pm

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The original message was received at Sun, 15 Nov 2009 23:00:50 -0500
from imo-ma02.mx.aol.com [64.12.78.137]

*** ATTENTION ***

Your e-mail is being returned to you because there was a problem with its delivery. The address which was undeliverable is listed in the section labeled: "----- The following addresses had permanent fatal errors -----".

The reason your mail is being returned to you is listed in the section labeled: "----- Transcript of Session Follows -----".

The line beginning with "<<<" describes the specific reason your e-mail could not be delivered. The next line contains a second error message which is a general translation for other e-mail servers.

Please direct further questions regarding this message to the e-mail administrator or Postmaster at that destination.

--AOL Postmaster

----- The following addresses had permanent fatal errors -----
<jmontague@wmata.com>
(reason: 550 Mailbox unavailable or access denied - <jmontague@wmata.com>)

----- Transcript of session follows -----
... while talking to janus.wmata.com.:
>>> RCPT To:<jmontague@wmata.com>
<<< 550 Mailbox unavailable or access denied - <jmontague@wmata.com>
550 5.1.1 <jmontague@wmata.com>... User unknown

Final-Recipient: RFC822; jmontague@wmata.com
Action: failed
Status: 5.1.1
Remote-MTA: DNS; janus.wmata.com
Diagnostic-Code: SMTP; 550 Mailbox unavailable or access denied -
<jmontague@wmata.com>
Last-Attempt-Date: Sun, 15 Nov 2009 23:01:02 -0500

Return-Path: <Thedoggettgroup@cs.com>
Received: from imo-ma02.mx.aol.com (imo-ma02.mx.aol.com [64.12.78.137])
by imr-da06.mx.aol.com (8.14.1/8.14.1) with ESMTP id nAG40oge032641;
Sun, 15 Nov 2009 23:00:50 -0500
Received: from Thedoggettgroup@cs.com
by imo-ma02.mx.aol.com (mail_out_v42.5.) id 9.ceb.69cae0a2 (37165);
Sun, 15 Nov 2009 23:00:45 -0500 (EST)
Received: from smtprly-md02.mx.aol.com (smtprly-md02.mx.aol.com [64.12.143.155])
by cia-ma04.mx.aol.com (v126.13) with ESMTP id MAILCIAMA044-d41f4b00ce6817b;
Sun, 15 Nov 2009 23:00:45 -0500
Received: from webmail-m085 (webmail-m085.sim.aol.com [64.12.224.197]) by
smtprly-md02.mx.aol.com (v126.13) with ESMTP id MAILSMTPRLYMD025-d41f4b00ce6817b;
Sun, 15 Nov 2009 23:00:40 -0500
To: eric.smart@bolansmart.com
Subject: Florida Avenue Participation
Date: Sun, 15 Nov 2009 23:00:40 -0500



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000252

FOIA CONFIDENTIAL TREATMENT REQUESTED

**BSA Table 2 (Nov 09)** **Florida Avenue / Shaw - Participation Scenarios Assuming Sale Every Ten Years**

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | building completion | | | | | | | 1 | 10 | 20 | 30 | 40 | 50 | 60 | 70 | |
| | ground lease | 1 | 2 | 3 | 4 | 5 | 6 | 15 | 25 | 35 | 45 | 55 | 65 | 75 | 99 | |
| | November | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2023 | 2033 | 2043 | 2053 | 2063 | 2073 | 2083 | 2107 | |
| **1. Net Proceeds Participation** | | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | | |
| Sale Proceeds | 5.00% annual increase to year 65 of ground lease | | | | | | | $48,886,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,994 | $560,375,577 | $560,375,577 | | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | | |
| Cost Basis | 100.00% of acquisition cost | | | | | | | $37,500,000 | $48,886,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,994 | $560,375,577 | | |
| Defined Cost Basis | 100.00% of acquisition cost | | | | | | | ($37,500,000) | ($48,886,839) | ($79,598,931) | ($129,658,271) | ($211,199,661) | ($344,021,994) | ($560,375,577) | | |
| Capital Event Proceeds | | | | | | | | $11,386,839 | $30,732,092 | $50,059,340 | $81,541,390 | $132,822,332 | $216,353,583 | $0 | | |
| WMATA Participation | 10.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $1,136,684 | $3,073,209 | $5,005,934 | $8,154,139 | $13,282,233 | $21,635,358 | $0 | | $0 |
| WMATA NPV | 5.78% discount rate | $3,976,729 | | | | | | | | | | | | | | |
| **2. Gross Proceeds Participation Net of Any Deducts** | | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | | |
| Sale Proceeds | 5.00% annual increase to year 65 of ground lease | | | | | | | $48,886,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,994 | $560,375,577 | $560,375,577 | | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | | |
| Cost Basis | 0.00% of acquisition cost | | | | | | | $37,500,000 | $48,886,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,994 | $560,375,577 | | |
| Defined Cost Basis | 0.00% of acquisition cost | | | | | | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | | |
| Capital Event Proceeds | | | | | | | | $48,886,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,994 | $560,375,577 | $560,375,577 | | |
| WMATA Participation | 2.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $977,337 | $1,591,978 | $2,593,165 | $4,223,993 | $6,880,440 | $11,207,512 | $11,207,512 | | $0 |
| WMATA NPV | 5.78% discount rate | $2,412,175 | | | | | | | | | | | | | | |
| **3. Gross Proceeds Participation After Initial Debt Deduct** | | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | | |
| Sale Proceeds | 5.00% annual increase to year 65 of ground lease | | | | | | | $48,886,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,994 | $560,375,577 | $560,375,577 | | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | | |
| Cost Basis | 100.00% of acquisition cost | | | | | | | $37,500,000 | $48,886,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,994 | $560,375,577 | | |
| Defined Cost Basis | 80.00% of acquisition cost | | | | | | | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | | |
| Capital Event Proceeds | | | | | | | | $18,886,839 | $49,598,931 | $99,658,271 | $181,199,661 | $314,021,994 | $530,375,577 | $530,375,577 | | |
| WMATA Participation | 2.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $377,337 | $991,978 | $1,993,165 | $3,623,993 | $6,280,440 | $10,607,512 | $10,607,512 | | $0 |
| WMATA NPV | 5.78% discount rate | $1,789,065 | | | | | | | | | | | | | | |

WMATA-INV 000253

FOIA CONFIDENTIAL TREATMENT REQUESTED

**BSA Table 1 (Nov 09)** **Florida Avenue / Shaw - Participation Scenarios Assuming Sale Every Ten Years**

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | building completion | | | | | | | 1 | 10 | 20 | 30 | 40 | 50 | 60 | 70 | |
| | ground lease | | 1 | 2 | 3 | 4 | 5 | 6 | 15 | 25 | 35 | 45 | 55 | 65 | 75 | 99 |
| | November | | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2023 | 2033 | 2043 | 2053 | 2063 | 2073 | 2083 | 2107 |
| **1. Net Proceeds Participation** | | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 3.00% | annual increase to year 65 of ground lease | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| | 0.00% | annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 100.00% | of acquisition cost | | | | | | | $37,500,000 | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | |
| Defined Cost Basis | 100.00% | of acquisition cost | | | | | | | ($37,500,000) | ($40,317,491) | ($54,183,337) | ($72,817,874) | ($97,861,134) | ($131,517,181) | ($176,748,093) | |
| Capital Event Proceeds | | | | | | | | | $2,817,491 | $13,865,846 | $18,634,537 | $25,043,260 | $33,656,047 | $45,230,913 | $0 | |
| WMATA Participation | 10.00% | of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $281,749 | $1,386,585 | $1,863,454 | $2,504,326 | $3,365,605 | $4,523,091 | $0 | $0 |
| WMATA NPV | 5.78% | discount rate | $1,261,342 | | | | | | | | | | | | | |
| **2. Gross Proceeds Participation Net of Any Deducts** | | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 3.00% | annual increase to year 65 of ground lease | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| | 0.00% | annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 0.00% | of acquisition cost | | | | | | | $37,500,000 | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | |
| Defined Cost Basis | 0.00% | of acquisition cost | | | | | | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | |
| Capital Event Proceeds | | | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| WMATA Participation | 2.00% | of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $806,350 | $1,083,667 | $1,456,357 | $1,957,223 | $2,630,344 | $3,534,962 | $3,534,962 | $0 |
| WMATA NPV | 5.78% | discount rate | $1,307,967 | | | | | | | | | | | | | |
| **3. Gross Proceeds Participation After Initial Debt Deduct** | | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 3.00% | annual increase to year 65 of ground lease | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| | 0.00% | annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 100.00% | of acquisition cost | | | | | | | $37,500,000 | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | |
| Defined Cost Basis | 80.00% | of acquisition cost | | | | | | | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | |
| Capital Event Proceeds | | | | | | | | | $10,317,491 | $24,183,337 | $42,817,874 | $67,861,134 | $101,517,181 | $146,748,093 | $146,748,093 | |
| WMATA Participation | 2.00% | of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $206,350 | $483,667 | $856,357 | $1,357,223 | $2,030,344 | $2,934,962 | $2,934,962 | $0 |
| WMATA NPV | 5.78% | discount rate | $684,856 | | | | | | | | | | | | | |

WMATA-INV 000254

FOIA CONFIDENTIAL TREATMENT REQUESTED

**BSA Table 3 (Nov 09)** **Florida Avenue / Shaw - Participation Scenarios Assuming Sale Every Ten Years**

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | building completion | | | | | | | 1 | 10 | 20 | 30 | 40 | 50 | 60 | 70 | |
| | ground lease | | 1 | 2 | 3 | 4 | 5 | 6 | 15 | 25 | 35 | 45 | 55 | 65 | 75 | 99 |
| | November | | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2023 | 2033 | 2043 | 2053 | 2063 | 2073 | 2083 | 2107 |
| **1. Net Proceeds Participation** | | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 1.50% | annual increase to year 65 of ground lease | | | | | | | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | $73,296,593 | |
| | 0.00% | annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 100.00% | of acquisition cost | | | | | | | $37,500,000 | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | |
| Defined Cost Basis | 100.00% | of acquisition cost | | | | | | | ($37,500,000) | ($34,816,225) | ($40,405,650) | ($46,892,407) | ($54,420,552) | ($63,157,273) | ($73,296,593) | |
| Capital Event Proceeds | | | | | | | | | ($2,683,775) | $5,589,425 | $6,486,756 | $7,528,146 | $8,736,720 | $10,138,321 | $0 | |
| WMATA Participation | 10.00% | of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | ($268,378) | $558,943 | $648,676 | $752,815 | $873,672 | $1,013,932 | $0 | $0 |
| WMATA NPV | 5.78% | discount rate | $252,287 | | | | | | | | | | | | | |
| **2. Gross Proceeds Participation Net of Any Deducts** | | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 1.50% | annual increase to year 65 of ground lease | | | | | | | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | $73,296,593 | |
| | 0.00% | annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 0.00% | of acquisition cost | | | | | | | $37,500,000 | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | |
| Defined Cost Basis | 0.00% | of acquisition cost | | | | | | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | |
| Capital Event Proceeds | | | | | | | | | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | $73,296,593 | |
| WMATA Participation | 2.00% | of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $696,324 | $808,113 | $937,848 | $1,088,411 | $1,263,145 | $1,465,932 | $1,465,932 | $0 |
| WMATA NPV | 5.78% | discount rate | $881,407 | | | | | | | | | | | | | |
| **3. Gross Proceeds Participation After Initial Debt Deduct** | | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 1.50% | annual increase to year 65 of ground lease | | | | | | | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | $73,296,593 | |
| | 0.00% | annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 100.00% | of acquisition cost | | | | | | | $37,500,000 | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | |
| Defined Cost Basis | 80.00% | of acquisition cost | | | | | | | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | |
| Capital Event Proceeds | | | | | | | | | $4,816,225 | $10,405,650 | $16,892,407 | $24,420,552 | $33,157,273 | $43,296,593 | $43,296,593 | |
| WMATA Participation | 2.00% | of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $96,324 | $208,113 | $337,848 | $488,411 | $663,145 | $865,932 | $865,932 | $0 |
| WMATA NPV | 5.78% | discount rate | $258,297 | | | | | | | | | | | | | |

WMATA-INV 000255

FOIA CONFIDENTIAL TREATMENT REQUESTED

**BSA Table 4 (Nov 09)** **Florida Avenue / Shaw - Participation Scenarios Assuming Sale Every Ten Years**

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | building completion | | | | | | 1 | 10 | 20 | 30 | 40 | 50 | 60 | 70 | |
| | ground lease | 1 | 2 | 3 | 4 | 5 | 6 | 15 | 25 | 35 | 45 | 55 | 65 | 75 | 99 |
| | November | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2023 | 2033 | 2043 | 2053 | 2063 | 2073 | 2083 | 2107 |
| **1. Net Proceeds Participation** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 3.00% annual increase to year 65 of ground lease | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 100.00% of acquisition cost | | | | | | | $37,500,000 | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | |
| Defined Cost Basis | 100.00% of acquisition cost | | | | | | | ($37,500,000) | ($40,317,491) | ($54,183,337) | ($72,817,874) | ($97,861,134) | ($131,517,181) | ($176,748,093) | |
| Capital Event Proceeds | | | | | | | | $2,817,491 | $13,865,846 | $18,634,537 | $25,043,260 | $33,656,047 | $45,230,913 | $0 | |
| WMATA Participation | 10.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $281,749 | $1,386,585 | $1,863,454 | $2,504,326 | $3,365,605 | $4,523,091 | $0 | $0 |
| WMATA NPV | 5.78% discount rate | $1,261,342 | | | | | | | | | | | | | |
| **2. Gross Proceeds Participation Net of Any Deducts** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 3.00% annual increase to year 65 of ground lease | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 0.00% of acquisition cost | | | | | | | $37,500,000 | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | |
| Defined Cost Basis | 0.00% of acquisition cost | | | | | | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | |
| Capital Event Proceeds | | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| WMATA Participation | 2.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $806,350 | $1,083,667 | $1,456,357 | $1,957,223 | $2,630,344 | $3,534,962 | $3,534,962 | $0 |
| WMATA NPV | 5.78% discount rate | $1,307,967 | | | | | | | | | | | | | |
| **3. Gross Proceeds Participation After Initial Debt Deduct** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 3.00% annual increase to year 65 of ground lease | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 100.00% of acquisition cost | | | | | | | $37,500,000 | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | |
| Defined Cost Basis | 80.00% of acquisition cost | | | | | | | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | |
| Capital Event Proceeds | | | | | | | | $10,317,491 | $24,183,337 | $42,817,874 | $67,861,134 | $101,517,181 | $146,748,093 | $146,748,093 | |
| WMATA Participation | 3.70% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $381,747 | $894,783 | $1,584,261 | $2,510,882 | $3,756,136 | $5,429,679 | $5,429,679 | $0 |
| WMATA NPV | 5.78% discount rate | $1,286,984 | | | | | | | | | | | | | |

WMATA-INV 000256

FOIA CONFIDENTIAL TREATMENT REQUESTED

| CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2008 | |
|---|---|
| **CATEGORY** | **Developer: An LLC to be formed by Banneker Ventures LLC, the District Development Group, LLC and Metropolis Development Company LLC** |
| Site Description | The 28,892 sf site consists of three separate parcels on the south side of Florida Avenue, NW , between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA. |
| Developer's Proposal | 104 apartments with 11,750 sf ground floor retail/arts uses (total 130,000 sf of development) |
| Proposed Contract | Lease - 60 years |
| Construction Schedule | Lease Closing: 20 months after development agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Performance Security | $250,000 |
| Option Fee | $!00,000 upon Term Sheet approval |
| Pre-stabilization Rent | $100,000/year upon development agreement execution rising to $130,000 |
| Additional Density | Prior to closing, $4.20/year/additional gross FAR sf. Thereafter by appraisal. |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date |
| Base Rent Escalation | For first 10 years base rent escalates at 1.5%/year, thereafter at 3%/year |
| Base Rent Revaluation | Every 10 years |
| Capital Event Participation | 10% of net proceeds |
| Appraised Market Value<br>$7,500,000 land value<br>$525,000 rental value | NPV to WMATA over Term of Lease<br>$14 million |
| Appraisal by Integra Realty 8/07 | |



WMATA-INV 000257

FOIA CONFIDENTIAL TREATMENT REQUESTED

| CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2008 | |
|---|---|
| **CATEGORY** | **Developer: An LLC to be formed by Banneker Ventures LLC, the District Development Group, LLC and Metropolis Development Company LLC** |
| Site Description | The 28,892 sf site consists of three separate parcels on the south side of Florida Avenue, NW , between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA. |
| Developer's Proposal | 104 apartments with 11,750 sf ground floor retail/arts uses (total 130,000 sf of development) |
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| Construction Schedule | Lease Closing: 20 months after development agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Performance Security | $250,000 |
| Option Fee | $!00,000 upon Term Sheet approval |
| Pre-stabilization Rent | $100,000/year upon development agreement execution rising to $130,000 |
| Additional Density | Prior to closing, $4.20/year/additional gross FAR sf. Thereafter by appraisal. |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date |
| Base Rent Escalation | For first 10 years base rent escalates at 1.5%/year, thereafter at 3%/year |
| Base Rent Revaluation | Every 10 years |
| Capital Event Participation | 10% of net proceeds |
| Appraised Market Value<br>$7,500,000 land value<br>$525,000 rental value | NPV to WMATA over Term of Lease<br>$14 million |
| Appraisal by Integra Realty 8/07 | |



WMATA-INV 000258

FOIA CONFIDENTIAL TREATMENT REQUESTED

**From:** Goldin, Steven
**Sent:** Friday, November 13, 2009 11:50 AM
**To:** Wyner, Jonathan S.
**Subject:** RE: revised web pages

These look good

---

**From:** Wyner, Jonathan S.
**Sent:** Friday, November 13, 2009 11:23 AM
**To:** Goldin, Steven
**Subject:** revised web pages
**Importance:** High

Here are revised web pages – as suggested by Nat...I have also put hard copies in your in-box....

We need to get the program back on track quickly as I had set aside a month (November) for CSAC review before getting to IT...we may need to get them the web pages on a piece-by-piece basis rather than all at once....

Please advise,

Thanks,

jonathan

Jonathan Stuart Wyner, CPM®, CCIM
Senior Transit Oriented Development Specialist
Washington Metropolitan Area Transit Authority
Office of Station Area Planning & Asset Management
Department of Planning & Joint Development
600 Fifth Street, NW, #5B-A
Washington, DC 20001
202/962-1577



WMATA-INV 000259

List of Items Needed from Banneker 9/1/09

Lease and Joint Development Agreement

WMATA drafts were sent to Banneker 7/24, and at least two exhibits (guaranty and covenants, conditions and cross easements later in August) . Until we get a response, it is not possible to say how far we are apart.

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.

Proposed sources of funds to develop the project: private and public, and proposed uses of those funds (in broad development pro forma categories)

Terms of developer's financing, including Federally-insured financing terms that are supposed to be included in the lease. WMATA may need to have HUD/FHA to waive certain terms if they are not acceptable.

Design

Elevations and sections for site plan

Site Control and Development Allocation

Evidence of site control (square and lot number) of the adjacent parcel(s) that Banneker proposes to combine with WMATA's.

The method of combining the two sites so that WMATA retains control of its portion in any disposition. Though a capitalized lease might deal with base rent monetary defaults it does not cover other types of defaults (failure to protect tunnel, failure to pay additional rent, etc.) wherein WMATA's recourse would be to regain control of the property.

The actual size of the parcel(s); if the same as Moddie Turay, a prior proposer, they comprise 3,051 sf (Square 393, Lot 826), a little less than 10% of combined site sf.

Basis for allocation of development and costs, value, and operating and capital event proceeds between the WMATA and non-WMATA portions of the sites

The amount of residential FAR sf, retail FAR sf, residential units allocated to the each portion of the sites

Additional Approvals Needed

Historic preservation

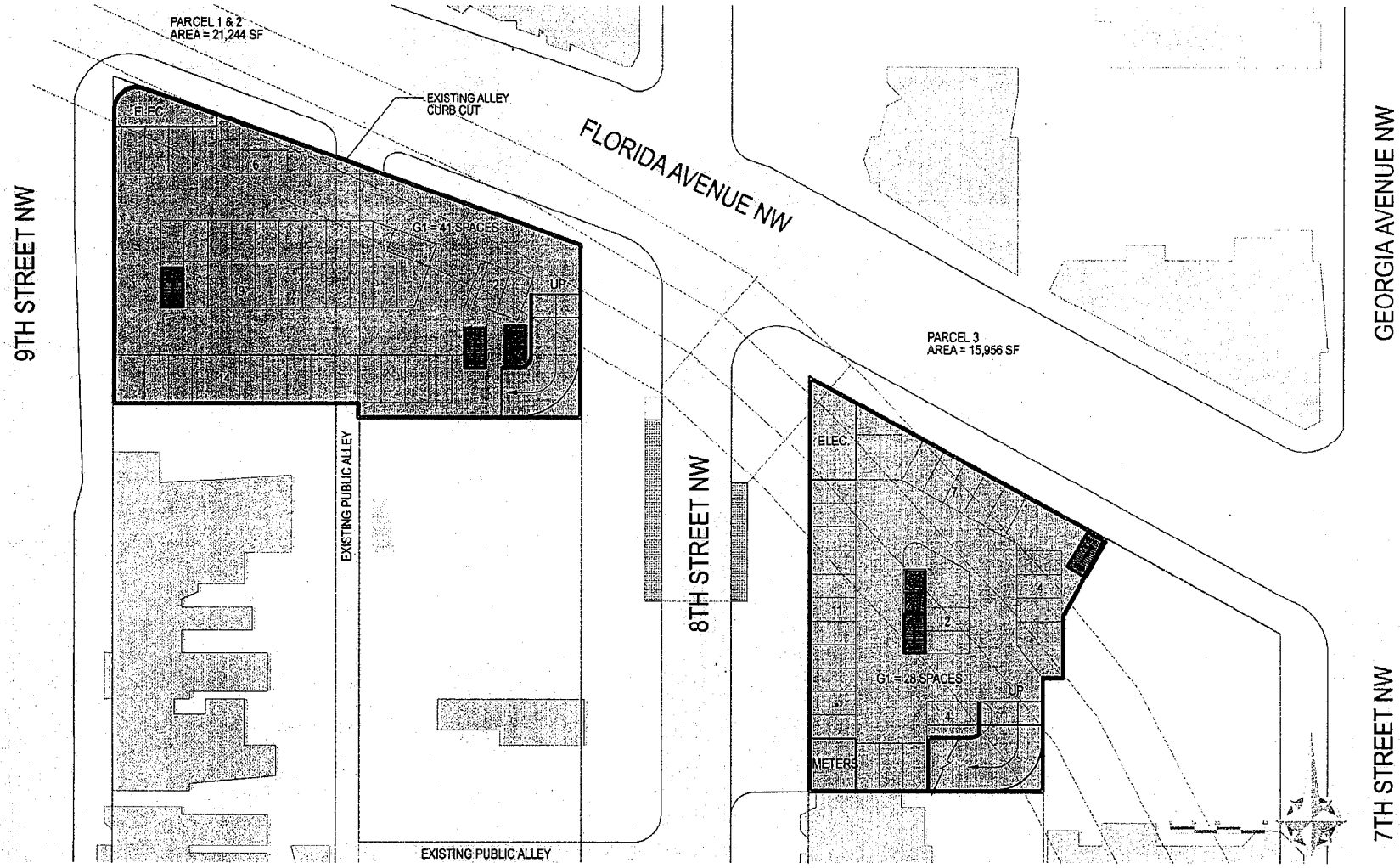
Alley closing

HFA, FHA and DHCD

Other

BACDC (Bank of America Community Development Corporation) Guaranty

Since BACDC is making the completion guaranty, assurance from an independent third party (e.g., the bank's auditor) that it has sufficient funds in its balance sheet (verifying amount stated by BACDC treasurer) to make a guaranty and from its president a statement that it can independently (of the parent corporation) make a guaranty commitment




Garage Level Plan

BANNEKER VENTURES / BANC OF AMERICA CDC
TORTI GALLAS AND PARTNERS



THE JAZZ @ FLORIDA AVENUE

WMATA-INV 000262
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.

WELCOME TO WASHINGTON District of Columbia

MAYOR Adrian M. Fenty

Prev

# Property Detail

**Address:** 9TH ST NW

**SSL:** 0393 0044

## Record Details

| | | | |
|---|---|---|---|
| **Neighborhood:** | OLD CITY II | **Sub-Neighborhood:** | G |
| **Use Code:** | 191 - Vacant True | **Class 3 Exception:** | No |
| **Tax Type:** | E9 - WMATA | **Tax Class:** | 003 - Vacant |
| **Homestead Status:** | ** Not receiving the Homestead Deduction | | |
| **Assessor:** | GREGORY GLOVER | | |
| **Gross Building Area:** | | **Ward:** | 1 |
| **Land Area:** | 3,799 | **Triennial Group:** | 2 |

## Owner and Sales Information

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

## Tax Year 2010 Preliminary Assessment Roll

| | Current Value | Proposed New Value (2010) |
|---|---|---|
| **Land:** | $1,052,590 | $1,052,590 |
| **Improvements:** | Not Available | Not Available |
| **Total Value:** | $1,052,590 | $1,052,590 |
| **Taxable Assessment:** * | $1,052,590 | $1,052,590 |

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

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

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WELCOME TO WASHINGTON District of Columbia

MAYOR Adrian M. Fenty

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# Property Detail

**Address:** FLORIDA AV NW

**SSL:** 0393 0045

## Record Details

| | | | |
|---|---|---|---|
| **Neighborhood:** | OLD CITY II | **Sub-Neighborhood:** | G |
| **Use Code:** | 191 - Vacant True | **Class 3 Exception:** | No |
| **Tax Type:** | E9 - WMATA | **Tax Class:** | 003 - Vacant |
| **Homestead Status:** | ** Not receiving the Homestead Deduction | | |
| **Assessor:** | GREGORY GLOVER | | |
| **Gross Building Area:** | | **Ward:** | 1 |
| **Land Area:** | 8,621 | **Triennial Group:** | 2 |

## Owner and Sales Information

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

## Tax Year 2010 Preliminary Assessment Roll

| | Current Value | Proposed New Value (2010) |
|---|---|---|
| **Land:** | $2,388,620 | $2,388,620 |
| **Improvements:** | Not Available | Not Available |
| **Total Value:** | $2,388,620 | $2,388,620 |
| **Taxable Assessment:** * | $2,388,620 | $2,388,620 |

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

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

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WELCOME TO WASHINGTON District of Columbia

MAYOR Adrian M. Fenty



Prev

# Property Detail

**Address:** 0716 FLORIDA AV NW

**SSL:** 0416 0018

## Record Details

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

## Owner and Sales Information

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

## Tax Year 2010 Preliminary Assessment Roll

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

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

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

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# Property Detail

**Address:** 0710 FLORIDA AV NW

**SSL:** 0416 0031

## Record Details

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

## Owner and Sales Information

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

## Tax Year 2010 Preliminary Assessment Roll

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

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

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

View Tax Information | View Payments

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 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



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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.

Finally, obviously without a working model of the proforma one cannot readily review or validate the numbers. Nonetheless do you want us to pose some key questions in a more formal manner?

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



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**WMATA Joint Development Summary of Outstanding Issues in Updated Term Sheet**
**Shaw-Howard/Florida Avenue Sites**
**(as of September 15, 2009)**

| Section in Term Sheet | Agreed-Upon Issue | Developer Proposal |
|---|---|---|
| 1.2 | Developer | Banneker Ventures and Banc of America CDC |
| 2 | Definitive Agreement | Lease term to begin with earlier of 20 months after approval of JDA or start of construction |
| 3 | Property to Be Leased by Developer | Estimated 28,400 square feet of land on Florida Avenue NW |
| 4 | Entire Project | Approx. 157,000 FAR gross sq. ft., including 132 apartments, 20,000 square feet of retail and 71 below-grade parking spaces |
| 5 | Due Diligence | Agreed |
| 6 | Security Deposit | Agreed. $100,000 Proposal Security to be credited toward $250,000 Security Deposit |
| 7.2 | Pre-Closing Payments | $50,000 for first year; $65,000 for second year; payments to be made quarterly and prorated for partial quarters |
| 7.3 | Base Rent | $1,980,000 payment at execution of Lease. This represents the entire Base Rent for the initial 60-year Initial Term and will be paid at Closing under a capitalized lease structure for the Initial Term. Should execution of Lease occur after 9/12/10, Base Rent to be increased by 6.8% on annualized basis. WMATA to agree to critical path schedule which will be an Exhibit to the JDA whereby WMATA will agree to timely reviews of all drawings, applications, etc. so that project can stay on schedule and Developer will not be subject to increase in Base Rent. |
| 7.3.1 – 7.3.4 | Periodic Rent Increases | Initial Lease Term – Non-applicable because Developer to pay capitalized lease |
| 7.3.5 | Lease Period | Initial Lease Term – 60 years. Developer to have option to extend lease for additional 39 years. |
| 7.4 | Capital Event Participation | Initial Lease Term – 10% of Net Proceeds from any refinancing after the initial permanent loan closing and after all member loans and equity have been repaid with member loans and equity having received a 20% annualized return and tax credit investors having received a return that the tax credit investor requires. Member loans or equity not to exceed 30% of development costs. During Initial Lease Term, Developer to have at least 1.2 DSC on any senior loans other than FHA-insured senior loans or public subsidies. |
| 7.5 | Periodic Rent Revaluation | Initial Lease Term – No longer applicable |
| 7.6 – 7.10 | Miscellaneous Items | Addressed in JDA. No major changes to original Term Sheet |
| 7.7 | Proposal Security | At JDA approval, $100,000 to be credited toward $250,000 Security Deposit |
| 7.11 | Additional Density | Developer to pay WMATA for any additional density beyond 164,754 which is 4.5 FAR if the project is maxed out (or 130,014 SF attributable to WMATA parcels). This is necessary as the project is only in schematic phase and changes are certain to happen, including a possible decrease in the proposed FAR (due to historic or other issues) or increase in the proposed FAR or type of uses (resid vs. retail). Cannot agree to a cap on the amount of changes in type as this may reduce the project's competitiveness to other projects in the market and limit our ability to |

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| Section in Term Sheet | Agreed Upon Issue | Developer Proposal |
|---|---|---|
| | | lease the project's spaces. If Developer provides less residential space, then we will receive less tax credits and thus make the project even that much more difficult to finance. Developer to pay WMATA for any density increases above a 4.5 FAR at $55/FAR SF for retail SF attributable to WMATA parcels and $16/FAR SF (same rate as for alley) for residential SF attributable to WMATA parcels. |
| New sub-section | Participation Rent | Initial Lease Term<br>WMATA to receive 1.5% of Effective Gross Income on WMATA developed parcels only, which is 79% of total project. With any FHA insured loans, WMATA to receive 1% of EGI w/o Surplus Cash limitation before project expenses. After project expenses, but before Developer participation in cash flow, WMATA to receive balance due (0.5% of EGI). No Participating Rent after initial term.<br><br>Extension Term<br>Base Rent to be 5% percent of the market value of land as vacant with the then-present improvements. WMATA to receive annual escalation of Base Rent of 3%. Upon the earlier of ten years after commencement of extended term, or either a complete refinancing of the Entire Project during the Extension Term, or a transfer of the Developer's entire interest in the Entire Project during the Extension Term (by assignment of Lease and sale of Developer's land and improvements or transfer of all the Developer's membership interests within a 12-month period – effectively a sale) the Base Rent will be reset at higher of then-existing Base Rent or new Base Rent equal to 5% of the market value of land as vacant with the use limited to the then-existing improvements. Once reset under this method, the Base Rent is reset every ten years thereafter based on the fair market value of the land as vacant with the use limited to the then-existing improvements. |
| 8 | Conditions to JDA Consummation | Addressed in JDA. No major changes to original Term Sheet |
| 9.1 – 9.7 and 9.9 – 9.11 | Special Considerations | Addressed in JDA. No major changes to original Term Sheet |
| 9.8 | Guaranty | Guarantor to guarantee commencement and Final Completion of the Entire Project per Approved Development Plan. At closing, Guarantor net worth to exceed "hard" costs of Entire Project. Upon completion of the Entire Project, the Guarantee shall be released. |
| 10 | Indemnification | Addressed in JDA. No major changes to original Term Sheet |
| 11 | Insurance Requirements | To be addressed in Lease. |
| New Section | Affordable Housing | 20% of all residential units attributable to WMATA parcels shall be affordable at 50% of the area median income. Lease to comply with FHA lending requirements. Developer cannot agree that WMATA will participate in split of additional subsidies that project may apply for in the future as project costs could increase prior to construction and Developer may be forced to seek the |

| Section in Term Sheet | Agreed-Upon Issue | Developer Proposal |
|---|---|---|
| | | gap funding from somewhere, including member loans, private equity or public subsidies. In fact, yesterday our General Contractor informed us that the infrastructure costs that it was running in our latest budget should be increased by 300% because infrastructure sub-contractors are charging a premium to work on WMATA-related projects these days. |
| New Section | Cotenancy Agreement | At closing, WMATA and Developer will enter into and record a cotenancy agreement (a form of which will be attached as an exhibit to the JDA) which will control the operation, leasing, and disposition of the Entire Project after expiration or termination of the Lease. WMATA and Developer will select a professional manager to manage the Entire Project and direct the manager to include a larger reserve in the project budget to ensure that neither owner would ever be required to separately fund any capital improvements, etc. |
| New Section | Developer Land/Additional Density/Alley Closing | WMATA land and Developer land in Sq. 393 to be resubdivided into single lot after partial closing of public alley. Developer to pay WMATA density that would be allocated to WMATA parcels when alley is closed. Current alley is 1,025 SF. About ½ of alley will be deeded to WMATA. This would represent 512 SF. Buildable SF would be about 2,560 on WMATA land. Based on WMATA's value of land, land is valued at $16 per FAR/SF. Developer would pay WMATA $16 x 2560= $40,960 at closing as additional Base Rent. |

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Florida Avenue Affordable Housing Notes 6-1-09

AFFORDABLE HOUSING IN THE DUKE PLAN DEVELOPMENT FRAMEWORK FOR A CULTURAL DESTINATION DISTRICT WITHIN WASHGTON, DC'S GREATER SHAW/U STREET (PR 16-176) Approved by DC Council June 21, 2005

- P. 8. IV Planning Process- Under Stakeholder Development Goals, Land Development, Design and Preservation, "6. Develop 20 to 30% affordable housing in residential development, particularly on publicly owned land."
- P. 9. V Market Analyses-Overview- Under Affordable Housing "Public and private sites within this Project Area should be developed to accommodate a percentage of very affordable units."
- P. 11. VII Public Policy and Placemaking, Meeting Programmatic Objectives- "This Framework challenges public and private asset holders to develop mixed use, mixed-income developments wherein affordable housing units are created at not less than 20% of total units, but preferably at the community's and DC Council's preference of 30% minimum and at rates that reach the extremely low income (0-30% of AMI)."
- P. 20. Planning and Implementation Principles, Placemaking A. Subdistrict C. WMATA (larger 16,472 sf site) +Howard University-CVS Site- 20-30% Affordable Housing Target
- P. 46. Planning and Implementation Principles, F. Local Access and Participation, Recommendations, Affordable Housing- "2)Encourage Howard University and ...WMATA... to include the provision of affordable units as a selection criterion in seeking development proposals for the site at Seventh Street and Florida Avenue (Square 0416)."

- Other relevant matters, p. 20 a) the plan calls for higher density on large WMATA site (65-90', optimizing density within parking constraints of Metro tunnel) b) p. 38 Design Guidelines, Mixed Land Uses- seems to propose ground floor retail with upper floor housing for all WMATA sites on Florida Ave c) p. 44 calls for destination uses on larger WMATA site at l7th and Florida, d) p.45 encourages LSDBE opportunities

OTHER ISSUES/CONSIDERATIONS AS OF 6/1/09

1. The current Banneker proposal meets npv test if Eric Smart methodology for residual use is employed (escalating and discounting current $5.1M OME land value appraisal vs. capitalizing end rent stream over 60 years).
2. I had Eric discount the rent at 5.73% which was the rate we used in evaluating the initial proposal. However, it could be argued that if the rent is lowered to "market" the discount rate we are using today ought to be current (7.1%). In that case the proposal would not meet the npv test.
3. The current Banneker proposal of $250,000 rent starting in 4.5 years does not conform to OME appraisal's estimate that rent should be 7.5% of land value today although Eric argues that there is a prepaid base rent element of $800,000 that effectively kicks rent up to $300,000. To meet OME, rent would need to be $380,000 today.
4. Under the Arts Overlay District which pertains to this site, "below market" housing is defined as up to 80% AMI but that definition is not necessarily relevant to this project as DUKE and IZ probably trump it.

INCLUSIONARY ZONING

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COMPARISON OF TERMS - SHAW-HOWARD SITE

| | Original Terms (2008) | Revised Terms (2009) |
|---|---|---|
| Developer: | A LLC to be formed by Banneker Ventures, the District Group, LLC & Metropolis Development Co. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principals are expected to be Banneker Ventures LLC & Banc of America Community Development Corporation |
| Site Description: | The 28,376 SF site consists of 3 separate parcels on the south side of Florida Ave. between 7th & 9th Streets, NW in Washington, DC. The parcels are undeveloped & were used for construction of the Green Line tunnel, which lies partially beneath each parcel. The sites are no longer needed by WMATA. | Same, except that the WMATA parcels are expected to be combined with the developer's adjacent 7,720 SF parcels on 9th St. Developer intends to construct a building which will straddle the WMATA parcels and the adjacent parcels |
| Developer's Proposal: | 104 apartments with 11,750 SF of ground floor retail-arts uses totaling 130,000 SF of above-grade development | 100,711 SF attributed to WMATA site consisting of 10,000 SF of ground floor retail-arts with housing above. At least 8% of housing is expected to be affordable at maximum 80% AMI per District IZ regs. The total development for the combined sites is estimated at 157,000 SF following an alley closing & site consolidation. WMATA is estimated to receive 79% of the value of the combined project. |
| *Terms & Conditions of Proposed Ground Lease:* | | |
| Lease Term: | 60 years | 99 years |
| Lease Closing: | 20 months after development agreement execution | 600 days after development agreement execution |
| Const. Completion | 18 months after lease closing | Same |
| Performance Security: | $250,000 | $250,000 |

WMATA-INV 000275

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*Terms & Conditions of Proposed Ground Lease (Continued):*

| | | |
|---|---|---|
| Option Fee: | $100,000 upon Term Sheet approval | Same |
| Pre-Closing Rent: | $100,000/year upon development agreement rising to $130,000/year | $50,000 for 1st year after development agreement; $65,000 for 2nd year; $80,000/year thereafter |
| Additional Density: | $4.20/year rent for additional FAR prior to closing; To be determined by appraisal after closing. | $46.59/FAR with $74.55/FAR deduction for any added Inclusionary Zoning (IZ) affordable housing prior to closing; To be determined by appraisal after closing. |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date | $2,050,000 capitalized lease payment to be paid at closing less Additional Costs Credit TBD |
| Base Rent Escalation: | 1.5%/year for 1st 10 years, then 3%/year thereafter | None |
| Base Rent Revaluation: | Every 10 years | On 60th year, property is appraised to determine monthly rent; monthly rent escalates 3% every year; monthly rent is re-set every 10 years via appraisal. |
| Participating Rent: | None | 1.5% of effective gross income |
| Capital Event Participation: | 10% of net proceeds | 2% of gross for sale or assignment & 2% of adjusted gross on refinance |
| Market Valuation: | $14,000,000 NPV of Developer's offer<br>$7,500,000 Appraised Land Value<br>$525,000 Base 1st Year Rent<br>(Appraisal by Integra in 8/07) | $2,050,000 NPV of Developer's offer<br>$2,050,000 Capitalized Lease Value for first 60 years<br>(Appraised by Harps & Harps in 8/09<br>& Integra in 10/09) |

WMATA-INV 000276

List of Items Needed from Banneker 9/1/09

Lease and Joint Development Agreement

WMATA drafts were sent to Banneker 7/24, and at least two exhibits (guaranty and covenants, conditions and cross easements later in August) . Until we get a response, it is not possible to say how far we are apart.

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.

Proposed sources of funds to develop the project: private and public, and proposed uses of those funds (in broad development pro forma categories)

Terms of developer's financing, including Federally-insured financing terms that are supposed to be included in the lease. WMATA may need to have HUD/FHA to waive certain terms if they are not acceptable.

Design

Elevations and sections for site plan

Site Control and Development Allocation

Evidence of site control (square and lot number) of the adjacent parcel(s) that Banneker proposes to combine with WMATA's.

The method of combining the two sites so that WMATA retains control of its portion in any disposition. Though a capitalized lease might deal with base rent monetary defaults it does not cover other types of defaults (failure to protect tunnel, failure to pay additional rent, etc.) wherein WMATA's recourse would be to regain control of the property.

The actual size of the parcel(s); if the same as Moddie Turay, a prior proposer, they comprise 3,051 sf (Square 393, Lot 826), a little less than 10% of combined site sf.

Basis for allocation of development and costs, value, and operating and capital event proceeds between the WMATA and non-WMATA portions of the sites

The amount of residential FAR sf, retail FAR sf, residential units allocated to the each portion of the sites

Additional Approvals Needed

Historic preservation

Alley closing

HFA, FHA and DHCD

Other

BACDC (Bank of America Community Development Corporation) Guaranty

Since BACDC is making the completion guaranty, assurance from an independent third party (e.g., the bank's auditor) that it has sufficient funds in its balance sheet (verifying amount stated by BACDC treasurer) to make a guaranty and from its president a statement that it can independently (of the parent corporation) make a guaranty commitment

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Tuesday, September 01, 2009 1:06 PM
**To:** Doggett, Rosalyn
**Subject:** RE: Jazz @ Florida Avenue Appraisal

Hi Roz,

What do you mean by firm evidence of site control?

If you need me, I am free to come up and discuss at any time today. Here is a list off the top of my head. Feel free to amend in any way.

1. A response to the WMATA drafts. It is impossible to say how far apart we are until we get any response from the Development team on the JDA/Lease/Exhibits drafts sent to Developer.
2. Terms of the adjacent parcel plan. This should include:
    a. Terms of Default situations where WMATA would have the right to terminate the lease. Why is this acceptable to WMATA? How does WMATA terminate on ½ of a building? To give an idea of concerns, potential defaults include:
        i. Failure to pay Rent (which they may try to capitalize – making it a non-issue during the term of the lease),
        ii. Failure to pay "Additional" Rent (which cannot by its nature be capitalized),
        iii. Violations of the terms of our lease (e.g., failure to maintain the proper insurance, failure to report a capital event, failure to indemnify WMATA, etc.), and
        iv. Failure to protect the WMATA tunnel and our rights associated thereto.
    b. Protections for WMATA to ensure:
        i. Benefits of capital events are adequately appropriated to WMATA and non-WMATA parcels;
        ii. Costs of construction/operations/capital events are adequately appropriated to WMATA and non-WMATA parcels; and
        iii. Affordable housing is adequately appropriated to WMATA and non-WMATA parcels.
    c. What additional consideration is developer offering WMATA for the additional benefits involved.
3. Terms of Developer's financing, including the Federally-insured financing terms that are supposed to be included in the Lease. There may be terms that are unacceptable to WMATA and so we may have to get HUD/FHA/Etc. to waive some terms.
4. Proof of adequacy of guarantor.

---

**From:** Doggett, Rosalyn
**Sent:** Tuesday, September 01, 2009 12:11 PM
**To:** Montague, Joshua W.
**Subject:** FW: Jazz @ Florida Avenue Appraisal

I have no idea who Yohance is . I forget and was unable to check because I was at a PGP meeting this am, do we have firm evidence of site control.

Please give me your list.

---

**From:** Bottigheimer, Nat
**Sent:** Tuesday, September 01, 2009 11:10 AM
**To:** Meister, Mark K.; Doggett, Rosalyn
**Cc:** Moneme, Emeka; Yohance S. Fuller; Marshall, Malcolm
**Subject:** FW: Jazz @ Florida Avenue Appraisal

I have explained that we are trying to accomplish terms sheet and JDA in December, not just the terms sheet. We could conceivably be done with a terms sheet IN October, but with the two tracking so closely together it didn't make sense to me from Board agenda and Board agenda process points of view to have a terms sheet Board item in October and a JDA item in December – I thought it would be more efficient to do them together. Neil may still want this item in October, though, but it would have to be a terms sheet and we'd have to have information from Omar sufficient for that.

Yohance, for your meeting tomorrow morning, Malcolm's direct number is 962-1584. Mark Meister's is 962-1589.

Thanks very much,

Nat

---

**From:** Meister, Mark K.
**Sent:** Tuesday, September 01, 2009 9:42 AM
**To:** Wallace, Maria A; Bottigheimer, Nat
**Subject:** RE: Jazz @ Florida Avenue Appraisal

We expect receipt of the final appraisal report this week. The appraisal was scheduled to be delivered on or about August 15th, but we had some concerns with the appraiser's architectural consultant's estimate of the cost to build over the WMATA tunnel. We have obtained what we believe to be a more realistic estimate from our in-house estimator.

Jon -
Roy
Joel -

Omar
Maurice
CM guy

Twanna Hicks 3/17

1. Parkside
DDOT to build ped. bridge along with $3M
98 units senior hsg to start in Oct.
Lano (Alan Novak) is partner, devel. Mandarin Hotel

2. Bank committed to DC, will do one or 2 proj/year
Maurice is sole guy here, supported by asst mgr in
Jazz } this year's projects
Parkside
a. Heads up memo sent to Charlotte ok'd
Looked at surveys, site design, etc
b. Next: more due diligence
agreement with WMATA
firm term basic deal points
go to internal review doc
will allow interest $ for WMATA lease part + design docs
BADC provide pre dev financing, guarantees equity for construc loan
3. BADC likes to be in a deal for 3-5 years, until stabilization
they will stay longer if needed

---

Bannecker intends to bring on a CM firm
Maurice seconds that
" would be responsible for all approvals
would look to BV to do more hands-on work
Day-to-Day Responsibility = BV

Metropolis was devel + CM
Maurice: will have a CM to do the foundations + the over the tunnel. When he gets out of the ground, he will do stick construction
will attend weekly meetings
will sign the checks
he'll participate in all ~~equity~~ design, constr. mtgs.

do you need name of CM -

Marcus has worked with HFA

Thurs 9-11:30
2-4

Smallest, 9th + V - has two parcels next door
Went sales contracts - Josh worried about ½ bldg

Marcus: City ~~still~~ wants to move the project forward &
will agree to help "a lot has changed"

not reasonable to ask him for a letter of intent
for the city

O man 3/13/09

Bannekar + Regan have a partnership where they alternate
B heads up Deanwood
Regan heads up Walker Jones

Bannekar is CM on the Yards

O man is building the fastest project ever
Walker Jones
3-4 staff members in trailer everyday on site

O man has a CM division

B/A CDC
will have a 3rd party CM firm

3/13/09

25 Stern

Tom Regan 23

W-J Regan has program mgr. contract everyone

Deanwood - ~~[illegible]~~
Bamaker is signatory
fee project for Regan
They (Bamaker) make decisions
He's worked with them for 18 mont
+ educating Bamaker folks at Walker Jones

neither of these projects is a residential project
people on these jobs are learning over 18 months

Duane Oates is pretty savvy right now ~~[illegible]~~

3/18/09

Lisa Bineham said call: Ramsey Ramsey Meiser Sr. VP of Development 496 6632
Building 160

BV is devel. partner
DC wanted FCE to partner with local DBE's
BV is NOT the lead
FCE has identified scopes ~~they~~ BV can perform
DCRA permitting
DCHFA ~~[illegible]~~ discussions re bonds
20% affordable

With respect to dealing with architect or GC is ~~[illegible]~~ FCE. Duane attends weekly mtgs. with contractor, is helpful.

~~The~~ BV is not an equity partner

Ramsey likes Duane a lot bright guy, to
From phys + dev. standpoint, he thinks that could manage the project. He doesn't know about financing strength.

3/16/09

Morrie Malone 588 1438 cell 437 6707

---

Steve Green 465 7001

[redacted] Site 2

20% partner 20% co-master developer
no selection of any construction mgr
~~would be 20% co.~~
They have the right to build their own bldg on N Capitol
Steve doesn't know the sf.
No buildings are financed
~~They~~ Bannecker would have ~~to~~ raise debt + equity

In negotiation with DC on LDA site
Doing due diligence on other sites today with DC
Design + permit 1st bldg over course of year

Alex Novak bought some Parkside land. City Interests may be down City Interests / Urban American Shopping

BADC may be buying some Novak land on Parkside

3/16

Pam Bunky 628.1930

"This is so political, she hates to say anything"

She thought that this was a done deal so why am I calling her?
The statements are not factual
She had other representatives

She had other professionals & other people managing 6th St & Icon

FOR THE RECORD, BONDY DEM, DECLINES TO COMMENT

3/23/09

Thayer Ave.

Lawrence Cager
MoCo Dept Hsg & Community Affairs

County has made interim (replacement) site acquisition loan. Next round of 9% State tax credit

Probably partnering with ~~[illegible]~~ Montgomery Housing Partnership's - Montgomery Housing * initial meeting only last week

He knows they are meeting with their contractor

* reason - ~~exp~~ MHP is experienced in MD you lose points if you

Replacement loan = $2.9M

Richard Nelson

3/24/09

Merrick Malone / Metropolis

A. Bannerker wanted to run everything

B. Merrick wanted to manage his risk but could not

C. Merrick said he would stay in until they got a replacement

D. ~~Merrick heard about~~ Bannerker told him nothing about BADC

E. Neil ~~[illegible]~~ gave them an inkling of BADC last week

F. Merrick: (1) "You need a company for a WMATA project" (Told Bannerker)

(2) "No one in Bannerker has built a doghouse"

Scott had a non malignant growth removed from brain stem last July

## Doggett, Rosalyn

**From:** Bottigheimer, Nat
**Sent:** Friday, March 06, 2009 4:04 PM
**To:** Doggett, Rosalyn
**Cc:** Washington, Joel R.
**Subject:** FW: Banc of AmericaBACDC LOI
**Attachments:** Banc of America LOI - Jazz @ Florida Avenue.pdf

**Importance:** High

Roz...fyi

-----Original Message-----
From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Friday, March 06, 2009 3:00 PM
To: Moneme, Emeka
Cc: Maurice' 'Perry; 'Tiwana Hicks'; Bottigheimer, Nat
Subject: Banc of AmericaBACDC LOI
Importance: High

Emeka,

As promised, attached please find a copy of the LOI between Banc of America CDC and Banneker Ventures in connection with the Jazz @ Florida Avenue project. Will call you to follow-up.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

equity partner

-----Original Message-----
From: Perry, Maurice [mailto:maurice.perry@bankofamerica.com]
Sent: Friday, March 06, 2009 2:47 PM
To: okarim@bannekerventures.com
Cc: thicks
Subject: BACDC LOI

Omar,

Please see the attached. I'll send you the original letter as well.

Thanks.
Maurice



FOIA CONFIDENTIAL TREATMENT REQUESTED

Bank of America

Community Development Banking

March 6, 2009

Mr. Omar A. Karim
Banneker Ventures, LLC
700 12th Street NW, Suite 700
Washington, DC 2005

RE: The Jazz @ Florida Avenue
Washington, DC

Dear Omar:

I am writing to confirm the interest of Banc of America Community Development Corporation ("BACDC") in working with Banneker Ventures, LLC ("BVLLC") or an affiliate of Banneker Ventures, LLC ("Banneker") to become a Co-Developer of and provide direct equity investment into the proposed development known as The Jazz @ Florida Avenue, situated along the 700 and 800 blocks of Florida Avenue in Northwest, Washington, DC. We have been working with you through refinements to the development program and further due diligence and we retain a high level of interest in structuring a partnership that allows for BACDC to become a partner and provide equity investment for gap funding as well as other technical and financial support for the project.

We understand that the proposed development program is a mixed-use community consisting of 153,770 gross square foot of residential and retail space. A total of 20% of the units will be affordable to persons who earn 60% of the area median income. Total development costs for this project are approximately $40,124,371 and BACDC would have interest in providing gap funding via a direct equity investment through a partnership agreement with BVLLC or an affiliate. We intend to work closely with our colleagues at Bank of America to provide a complete financing package that could potentially include both debt and equity syndication, if needed.

Banc of America CDC is the nation's first and most productive Bank-owned community development corporation. We have a broad range of experience on projects similar to The Jazz @ Florida Avenue and in creative equity partnerships. We look forward to working with you on this project and providing support for the continued revitalization of this historic neighborhood.

Sincerely,

Maurice Perry
Vice President
Banc of America CDC

730 15th Street NW, 8th Floor, Washington, DC 20005

Recycled Paper

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** eric.smart@bolansmart.com
**Sent:** Monday, January 18, 2010 10:01 AM
**To:** Doggett, Rosalyn
**Subject:** Jan 18 week

Roz

1) Omar called per your message from Friday. We discussed revenue inputs based on the signed term sheet from July 2008. Omar asked what discount rate applied. I told him that for various reasons WMATA is not able to provide, but that using a discount rate on the low side of 6.0% would be consistent with prior discussions that he has had with WMATA. Omar said he would be running some numbers that he would like to review with us early this week. I told him that while I would need to review any additional comments with WMATA, I figured that I could nonetheless comment on his use of inputs and the math involved.

2) We finally have a meeting set with JBG for Tuesday, Jan 19 to go through Rod's assertions of incremental benefit to WMATA from the proposed parking reductions.

3) I am tracking the Navy Yard Chiller site emails trying to set up a meeting.

4) For the PGP meetings scheduled for Wednesday morning we have no new info or dialogue as yet to process from Taylor pending release of their feasibility report. We recieved some minor clarifications regarding their prior submitted cash flow illustration which we will come prepared to review with your team. In addition, I will call Jennifer today or tomorrow to inquire if they have any preliminary indications concerning the feasibility study, or any other considerations that may be different from what they presented last fall.

5) For this Wednesday afternoon JD staff meeting we plan on bringing five team members, including three from A&M plus myself and Pam. Might seem like overkill, and I won't let it become overlaid with marketing pretense, but makes sense to us to best respond to the opportunity.

Our agenda is simple, per the notes below. Thanks for asking your group for any questions they may have in advance.

Agenda
Real Estate Consultant Team Meeting
3:00 - 3:30 pm, Wednesday, Jan 20

1. Intros (focus on Alvarez & Marsal component)

2. Dealing with bankruptcies in development agreements



WMATA-INV 000291

3. Trends in restructuring development agreements

4. Questions

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



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WMATA-INV 000292

9/3/09

Land Value = $55 (versus $57.50 in 8/07 appraisal)

| | | | | |
|---|---|---|---|---|
| land sf | 28,892sf | | | |
| 4.5FAR sf | 130,174sf | | | |
| $57.50FARsf | Integra | | $7,500,000 | |
| $55FAR sf | Harps | ($349,175) | $7,150,825 | |
| limited sf | 113,441sf (now 124,000 sf.) | ($911,570) | $6,239,255 | ?? |
| IZ sf rqt. | 8,782sf | | $5,756,245 | |
| 50% bonus density | | ($483,010) | | |
| IZ rent coverage | | ($219,550) | not incl. | |
| Extra Constr cost $25/sf | | ($1,434,425) | $4,321,820 | |
| TOTAL w/o line 16 | | ($3,178,180) | $4,321,820 | |
| HARPS | total/w16 | ($3,397,730) | $4,102,270 | |
| 20% aff. | (Nat) | | | |
| .8x$6,239,255 | | | $4,991,425 | |

8/5/2009

132 du x .2 = 26 du
@ 1000 sf/du
= 26,000 sf x $55 =

$1,430,000
- 483,000
additional $947,000 off the price

## Doggett, Rosalyn

**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 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

## Doggett, Rosalyn

**From:** Maurice Perry [maurice.perry@bankofamerica.com]
**Sent:** Tuesday, October 20, 2009 10:22 AM
**To:** Omar A. Karim
**Cc:** thicks@bannekerventures.com; Neil.Albert@dc.gov; Yohance S. Fuller; Doggett, Rosalyn; JHagner@wcsr.com; Moneme, Emeka; Montague, Joshua W.; Bottigheimer, Nat; Goldin, Steven
**Subject:** RE: Jazz @ Florida -- Follow Up

Josh,

As a wholly owned subsidiary of a bank BACDC can not provide an open-ended indemnification. The language in the previously provided guarantee represents the fullest extent of an indemnification BACDC can offer.

Maurice

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Tuesday, October 20, 2009 9:49 AM
**To:** 'Montague, Joshua W.'; 'Yohance S. Fuller'; 'Moneme, Emeka'; 'Bottigheimer, Nat'; 'Goldin, Steven'
**Cc:** thicks@bannekerventures.com; Neil.Albert@dc.gov; JHagner@wcsr.com; 'Doggett, Rosalyn'; Perry, Maurice
**Subject:** RE: Jazz @ Florida -- Follow Up
**Importance:** High

Josh,

1. I am awaiting Maurice to get back into the office to answer this question. However, I cannot imagine that a bank would allow an open-ended indemnification to be put on its books. Further, I can speak for the partnership in stating that we will not be pushed into including additional liabilities that WMATA does not require developers of other projects, and as such, we (BOACDC or BV) would not agree to taking on this non-standard additional indemnification.

2. Yes, under the HUD guidelines, the indemnifications provided by the Jazz will be limited to surplus cash? The restrictions that HUD requires for this type of project are standard practice for HUD deals which WMATA has signed off on previously. Since WMATA will be getting its cash in full up front, we do not see any issues that WMATA should be concerned about.

Omar

---

**From:** Montague, Joshua W. [mailto:jwmontague@wmata.com]
**Sent:** Tuesday, October 20, 2009 8:45 AM
**To:** Omar A. Karim; Yohance S. Fuller; Moneme, Emeka; Bottigheimer, Nat; Goldin, Steven
**Cc:** thicks@bannekerventures.com; Neil.Albert@dc.gov; JHagner@wcsr.com; Doggett, Rosalyn
**Subject:** RE: Jazz @ Florida -- Follow Up

Omar,

Can we get some clarification on two of the issues relating to the indemnifications:

1. Does BOACDC's status as a wholly owned subsidiary of a bank legally prevent it from taking on the indemnification requested? Are there any other legal reasons why BOACDC would be prohibited from agreeing to this?

2. Will the indemnifications provided by the Jazz @ Florida Avenue, LLC (the Developer) under the Definitive Agreement be limited by its lender to "surplus cash"? Will the lender put any other restrictions on these indemnifications?

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**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Monday, October 19, 2009 5:33 PM
**To:** Yohance S. Fuller; Moneme, Emeka; Bottigheimer, Nat; Goldin, Steven
**Cc:** thicks@bannekerventures.com; Neil.Albert@dc.gov; Montague, Joshua W.; JHagner@wcsr.com
**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.

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
**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

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Monday, October 19, 2009 7:35 PM
**To:** Doggett, Rosalyn; Goldin, Steven
**Subject:** FW: Jazz @ Florida -- Follow Up

**Importance:** High

Hi Steve and Roz,

I don't know if Omar is being brief or is just incorrect, but here is what was discussed with John Hagner:

1. **Adjacent Construction Manual** – Per our discussions, I explained to Mr. Hagner that we would be willing to allow them to rely on the current version of the Adjacent Construction Manual as long as construction commences within three years. If construction begins after three years, then the developer must adhere to whatever version is then current and the developer must take on any additional costs/risks associated therewith. Mr. Hagner seemed to agree and said he would run it by his clients. Mr. Karim did not mention the three year cap in his response.
2. **Insurance** – Mr. Hagner agreed to our requirement that the Developer, the GC, and all "major" subs must have CGL policies that name WMATA as an additional insured.
3. **Guarantor** –
    a. **Payment** – We asked BOACDC to guarantee the payments due under the Definitive Agreement, including any additional density payments that may be due after the Closing. Mr. Hagner eventually agreed to ask BOACDC if this is acceptable.
    b. **Indemnification** – Mr. Hagner vigorously disagreed with this issue. He called them a bottomless pit of risk and that insurance should give us all the protection that we need. He also made a vague reference that their status as a bank subsidiary might prohibit them from taking this on, but he did not follow up on this point (this may require further exploration).

As to the guarantor/indemnification issue, please note the following:

1. *Layers are standard* – it is relatively standard to require layers of risk protection through insurance, bonds, and contractual indemnifications. These provisions work together to create the best risk management protection possible.
2. *Insurance* – insurance will still be the primary source of liability protection for the Developer/Guarantor. But, insurance has limits. Insurance lapses if they do not (i) make payments or (ii) adhere to the policy requirements. And, insurance companies will deny claims for any reason possible. Therefore, the Guarantor's indemnification means that BOACDC will ensure that the Developer maintains adequate insurance at all times. BOACDC will also stand in for insurance if the insurance fails (due to denial, lapse, or exceeding of limits) and the Developer is unable to provide indemnification.
3. *The Developer entity is not an adequate indemnifier by itself.* The Jazz @ Florida Avenue, LLC is a highly leveraged SPE that cannot provide the indemnification that WMATA needs. Also, as mentioned previously, the WMATA Board expressed that it wants Banneker's partners to have well-defined roles. The Guaranty would meet this end.
4. *Other transactions* – Mr. Karim and Mr. Hagner refer to other WMATA transactions. But, every transaction is <u>different</u>. Mr. Hagner kept bringing up Rhode Island Avenue as an example. First, that is a lease rather than a sale. If the parties don't carry insurance, then WMATA can just terminate the lease. Second, Rhode Island Ave is not an "ideal" transaction.
5. *Bank* –If BOACDC's status as a bank subsidiary does not allow it to provide this level of guarantee, then BOACDC cannot provide the type of guarantee that WMATA needs. In that case, WMATA should look for different or additional guarantors. This issue is unclear.



FOIA CONFIDENTIAL TREATMENT REQUESTED

6. *Adjacent Construction Manual* – Full indemnification is among the requirements of the adjacent construction manual (Section 6).

Please let me know if you have any questions.

Thanks,

Josh

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Monday, October 19, 2009 5:33 PM
**To:** Yohance S. Fuller; Moneme, Emeka; Bottigheimer, Nat; Goldin, Steven
**Cc:** thicks@bannekerventures.com; Neil.Albert@dc.gov; Montague, Joshua W.; JHagner@wcsr.com
**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:

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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.

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Josh, in the future, please call me should you have any questions about any outstanding issues.

Thank you in advance.

Omar

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**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.



FOIA CONFIDENTIAL TREATMENT REQUESTED

Omar

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**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
W 202.538.1278 | F 202.535.1224 | yohance.fuller@dc.gov



FOIA CONFIDENTIAL TREATMENT REQUESTED

Purchase Price and Terms Florida Avenue Parcels 9-25-09

| | | | |
|---|---|---|---|
| 100,311 | buildable sf at 5 stories | | source: Eric Colbert, AIA |
| -1,974 | sf adjustment for 516 sf less in Lot 31 | 85% potential FAR | source: Colbert buildable sf and record plat for lot 31 |
| 98,337 | buildable sf | | |
| $5,408,535 | price at $55/FAR sf | | source: Harps & Harps, MAI |
| -$2,300,000 | deduct for extraordinary cost of building over tunnel | | source: WMATA cost estimator |
| -$700,000 | deduct for Inclusionary Zoning affordable housing @ 80% AMI | | source: Harps & Harps, MAI |
| $2,408,535 | purchase price | | |

add $55/FAR sf for any city-approved density above 98,337 sf generated by WMATA parcels
deduct $80/FAR sf for any city IZ requirements above 8,782 sf generated by WMATA parcels
$100,000 Option Fee is not credited toward purchase price (per executed term sheet)

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FOIA CONFIDENTIAL TREATMENT REQUESTED

$375,000/6.8% = $5,514,706

$375,000/5.73% = $6,544,500

9/2/09

**1. Banneker (September 02, 2009) with 60 year ground lease** (based on WMATA appraised ground rent, spring 2009 proforma effective gross income projections; original 10% participation in capital events; assuming $5.0M appraised land value)

| | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Revenues** | | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $50,000 | $65,000 | $80,000 | $80,000 | $80,000 | | | | | | | | | | | | | |
| Base Rent (at 95% ocp) | prepaid | | | | | | | $0 | | | | | | | | | | | | |
| | annual | | | | | | | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | | $375,000 |
| Total WMATA Base Rent | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | | $375,000 |
| Effective Gross Income | | Banneker projected | | | | | | $2,631,000 | | | | | | | | | | | | |
| | 3.00% | EGI growth BSA adjusted | | | | | | $2,500,000 | $2,575,000 | $2,652,250 | $2,731,818 | $2,813,772 | $2,898,185 | $2,985,131 | $3,074,685 | $3,166,925 | $3,261,933 | $3,359,791 | | $12,335,312 |
| | 1.50% | WMATA payment | | | | | | | | | | | $43,473 | $44,777 | $46,120 | $47,504 | $48,929 | $50,397 | | $185,030 |
| Total WMATA Base Rent With Percentage of EGI | | | | | | | | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $418,473 | $419,777 | $421,120 | $422,504 | $423,929 | $425,397 | | $560,030 |
| WMATA Participation | 10.00% | of defined capital events | | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $5,000,000 | FY09 value *This affects residual* | | | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | | |
| Terminal Value | $28,600,015 | on land only | | | | | | | | | | | | | | | | | | $28,600,015 |
| **Cash Flow** | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $418,473 | $419,777 | $421,120 | $422,504 | $423,929 | $425,397 | | $560,030 |
| **Cash Flow w/ residual** | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $375,000 | $375,000 | $375,000 | $375,000 | $375,000 | $418,473 | $419,777 | $421,120 | $422,504 | $423,929 | $425,397 | | $29,160,045 |

| NPV | | | | | |
|---|---|---|---|---|---|
| Base Rent | 5.73% | discount rate | $5,407,313 | 6.80% discount rate | $4,533,190 |
| With Residual | 5.73% | discount rate | $6,417,664 | 6.80% discount rate | $5,085,384 |
| With EGI and Res | 5.73% | discount rate | $7,063,210 | 6.80% discount rate | $5,581,096 |
| With Participation | | | not considered | | |

$1M to 1.5M
↓ land value stands at
$5M If land
value is lower, residual
is lower

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** eric.smart@bolansmart.com
**Sent:** Wednesday, September 02, 2009 4:38 PM
**To:** Doggett, Rosalyn
**Subject:** fla 2
**Attachments:** FL Ave september 09.pdf

Roz

Attached is cash flow assuming $375K base rent and retaining 1.5% participation in AGI. Noted that instructions per the asssumed ground lease to the appraiser included below were a little different, but presume that would not impact appraiser's conclusions.

"The ground lease for the property is likely to be structured based on a 60-year term with the tenant paying a one-time base rent payment on lease commencement, annual participating rent equal to 1% of gross revenues, and a participation equal to 2% of the net proceeds of sale or refinancing."

--
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

COMPARISON OF TERMS - SHAW-HOWARD SITE

| | Original Terms (2008) | Revised Terms (2009) |
|---|---|---|
| Developer: | A LLC to be formed by Banneker Ventures, the District Group, LLC & Metropolis Development Co. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principals are expected to be Banneker Ventures LLC & Banc of America Community Development Corporation |
| Site Description: | The 28,376 SF site consists of 3 separate parcels on the south side of Florida Ave. between 7th & 9th Streets, NW in Washington, DC. The parcels are undeveloped & were used for construction of the Green Line tunnel, which lies partially beneath each parcel. The sites are no longer needed by WMATA. | Same, except that the WMATA parcels are expected to be combined with the developer's adjacent 7,720 SF parcels on 9th St. Developer intends to construct a building which will straddle the WMATA parcels and the adjacent parcels |
| Developer's Proposal: | 104 apartments with 11,750 SF of ground floor retail-arts uses totaling 130,000 SF of above-grade development | 100,711 SF attributed to WMATA site consisting of 10,000 SF of ground floor retail-arts with housing above. At least 8% of housing is expected to be affordable at maximum 80% AMI per District IZ regs. The total development for the combined sites is estimated at 157,000 SF following an alley closing & site consolidation. WMATA is estimated to receive 79% of the value of the combined project. |
| *Terms & Conditions of Proposed Ground Lease:* | | |
| Lease Term: | 60 years | 99 years |
| Lease Closing: | 20 months after development agreement execution | 600 days after development agreement execution |
| Const. Completion | 18 months after lease closing | Same |
| Performance Security: | $250,000 | $250,000 |

WMATA-INV 000304

FOIA CONFIDENTIAL TREATMENT REQUESTED

*Terms & Conditions of Proposed Ground Lease (Continued):*

| | | |
|---|---|---|
| Option Fee: | $100,000 upon Term Sheet approval | Same |
| Pre-Closing Rent: | $100,000/year upon development agreement rising to $130,000/year | $50,000 for 1st year after development agreement; $65,000 for 2nd year; $80,000/year thereafter |
| Additional Density: | $4.20/year rent for additional FAR prior to closing; To be determined by appraisal after closing. | $46.59/FAR with $74.55/FAR deduction for any added Inclusionary Zoning (IZ) affordable housing prior to closing; To be determined by appraisal after closing. |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date | $2,050,000 capitalized lease payment to be paid at closing less Additional Costs Credit TBD |
| Base Rent Escalation: | 1.5%/year for 1st 10 years, then 3%/year thereafter | None |
| Base Rent Revaluation: | Every 10 years | On 60th year, property is appraised to determine monthly rent; monthly rent escalates 3% every year; monthly rent is re-set every 10 years via appraisal. |
| Participating Rent: | None | 1.5% of effective gross income |
| Capital Event Participation: | 10% of net proceeds | 2% of gross for sale or assignment & 2% of adjusted gross on refinance |
| Market Valuation: | $14,000,000 NPV of Developer's offer<br>$7,500,000 Appraised Land Value<br>$525,000 Base 1st Year Rent<br>(Appraisal by Integra in 8/07) | $2,050,000 NPV of Developer's offer<br>$2,050,000 Capitalized Lease Value for first 60 years<br>(Appraised by Harps & Harps in 8/09<br>& Integra in 10/09) |

WMATA-INV 000305

FOIA CONFIDENTIAL TREATMENT REQUESTED

**CONFIDENTIAL STATEMENT - NAVY YARD CHILLER JOINT DEVELOPMENT SITE 2008**

| CATEGORY | Developer: LLC to be formed and controlled by Donatelli & Klein, Inc. |
|---|---|
| Site Description | The 14,100 sf site is located at the southwest corner of Half and L streets, SW, in the District of Columbia. It contains a chiller plant with units serving the Navy Yard and Waterfront-SEU Metro stations and field trailers used by the infrastructure repair team. Upgraded chillers will be relocated on-site. Field trailers will be replaced at other WMATA maintenance yards (Branch Avenue and West Falls Church). |
| Developer's Proposal | A minimum of 91,650 sf of development including 84 apartments approximately 5,300 sf ground floor convenience retail use. Possible substitution of use ok with no rent diminution or schedule extension and with WMATA approval. |
| Proposed Contract | Lease - 60 years, with possible to extensions to 99 years upon valuation of land as if vacant. |
| Construction Schedule | Lease Closing: 18 months after Development Agreement execution<br>Construction completion: 24 months after lease closing |
| Developer's Offer<br>Performance Security | $250,000 |
| Option Fee | $100,000 non-refundable upon Term Sheet approval |
| Pre-development Rent | $200,000 per year non-refundable upon Development Agreement execution |
| Additional Density | $5.95/year/additional gross FAR sf (plus escalation) |
| Base Rent | $470,000/year starting 18 months after Development Agreement execution |
| Base Rent Escalation | For first 10 years base rent escalates at 1.2%/year, thereafter at 3%/year |
| Base Rent Revaluation | Every 10 years |
| Capital Event Participation | 10% of net proceeds |
| Appraised Market Value of Land<br>$7.4 million after deduction of chiller plant relocation and upgrade costs of $1.59 million but without adjustment for relocating and replacing IRPG facilities estimated at $.73 million | NPV to WMATA over Term of Lease<br>$15.5 million |
| Appraisal by Integra Realty 4/08 | |

WMATA-INV 000306

FOIA CONFIDENTIAL TREATMENT REQUESTED

## CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2009

2:30pm 11/2

| CATEGORY | Developer: The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principals are Banneker Ventures LLC, and Banc of America Community Development Corporation. |
|---|---|
| Site Description | The 28,376 sf site consists of three separate parcels on the south side of Florida Avenue, NW between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA. WMATA site to be combined with Developer's adjacent 7,720 sf parcels on 9th St. |
| Developer's Proposal | 100,711 base sf on WMATA site with @ 10,000 sf ground floor retail and housing above. Approximately 8% of housing to be affordable at maximum 80% AMI. Total development on combined sites currently estimated @ 157,000 sf following proposed alley closing and site consolidation. WMATA to receive @ 79% of value of total project. |
| Proposed Contract | Lease - 60 years with option to renew for an additional 39 years at market rate by appraisal |
| Construction Schedule | Lease Closing: 600 days after development agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Performance Security | $150,000 |
| Option Fee | $100,000 upon Term Sheet approval (already paid) |
| Pre-Closing Rent | $50,000/year upon development agreement execution; $65,000 in second year and $80,000 thereafter |
| Additional Density | $74.55/FAR sf with $46.59/FAR sf deduction for Inclusionary Zoning affordable housing. After completion of current project, by appraisal. |
| Capitalized Lease Payment | $2,050,000 paid at Closing |
| Participating Rent | 1.5% of Effective Gross Income |
| Base Rent Revaluation | None until HUD insurance is no longer in force; thereafter by appraisal |
| Capital Event Participation | 10% of net proceeds |
| Appraised Market Value<br>$2,050,000 Capitalized Lease Value<br><br>Appraisal by Harps & Harps 8/09 and Integra Realty Resources 10/09 | NPV to WMATA over Term of Lease<br>$TBD - will be Pre-Closing Rent ( yr. 1 $50k, yr. 2 $65k) + Capitalized Lease Payment (600 days after development agreement execution) |



WMATA-INV 000307

FOIA CONFIDENTIAL TREATMENT REQUESTED

| CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2008 | |
|---|---|
| **CATEGORY** | **Developer: An LLC to be formed by Banneker Ventures LLC, the District Development Group, LLC and Metropolis Development Company LLC** |
| Site Description | The 28,892 sf site consists of three separate parcels on the south side of Florida Avenue, NW , between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA. |
| Developer's Proposal | 104 apartments with 11,750 sf ground floor retail/arts uses (total 130,000 sf of development) |
| Proposed Contract | Lease - 60 years |
| Construction Schedule | Lease Closing: 20 months after development agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Performance Security | $250,000 |
| Option Fee | $!00,000 upon Term Sheet approval |
| Pre-stabilization Rent | $100,000/year upon development agreement execution rising to $130,000 |
| Additional Density | Prior to closing, $4.20/year/additional gross FAR sf. Thereafter by appraisal. |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date |
| Base Rent Escalation | For first 10 years base rent escalates at 1.5%/year, thereafter at 3%/year |
| Base Rent Revaluation | Every 10 years |
| Capital Event Participation | 10% of net proceeds |
| Appraised Market Value<br>$7,500,000 land value<br>$525,000 rental value | NPV to WMATA over Term of Lease<br>$14 million. |
| Appraisal by Integra Realty 8/07 | |



WMATA-INV 000308

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Goldin, Steven
**Sent:** Friday, November 13, 2009 12:03 PM
**To:** Doggett, Rosalyn; Malasky, Gary; Burns, Bob; Wyner, Jonathan S.
**Cc:** Bottigheimer, Nat
**Subject:** FW: SAAM/COUN Retreat

Please send me any agenda items you would like to discuss

-----Original Message-----
From: O'Keeffe, Carol B.
Sent: Friday, November 13, 2009 11:43 AM
To: Goldin, Steven
Subject: RE: SAAM/COUN Retreat

No, but we are working on an agenda and gathering other materials.

-----Original Message-----
From: Goldin, Steven
Sent: Friday, November 13, 2009 9:49 AM
To: O'Keeffe, Carol B.
Subject: RE: SAAM/COUN Retreat

Carol

Did you find it?

Steve

-----Original Message-----
From: O'Keeffe, Carol B.
Sent: Monday, November 02, 2009 9:21 AM
To: Goldin, Steven; Johnson, Shariyka
Cc: Heppen, Bruce P.; Bottigheimer, Nat; Biondi, Marc E.; Chu, Mable; Dickerson, Tracie S.; Hamilton, Sherry; Montague, Joshua W.; Welch, Kermit A.
Subject: RE: SAAM/COUN Retreat

C OKeeffe, Bruce Heppen, Tracie Dickerson, Kermit Welch, Josh Montague, Marc Biondi, Mable Chu. I do have some ideas for an agenda that we can discuss. I'll look at my file from the one we did years ago. I hope I still have it.

in demonification



WMATA-INV 000309

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Mohsberg, Sid
**Sent:** Friday, November 13, 2009 4:22 PM
**To:** Goldin, Steven; Doggett, Rosalyn
**Cc:** Bottigheimer, Nat
**Subject:** 12/3/09 PDRE Cmte: Approve Joint Development Agreement and Lease for Shaw-Howard/Florida Avenue Joint Development
**Attachments:** 12-3-09 PDRE Approve JDA and LEASE.pptx

Steve and Roz,

As previously discussed, the subject item is scheduled to go to the Executive Session of the PDRE Cmte on 12/3/09.

Of course, depending on what happens on 11/19/09, it may not in fact go to the Board in December 2009.

Jack Requa's office wants us to continue to satisfy the planning milestones for the 12/3/09 meeting. If the item dies on 11/19/09, then we can delete the 12/3/09 item from the BAR, etc.

As earlier described, the near-term milestones for the 12/3/09 PDRE Cmte meeting are:

11/12/09 at 1400: Draft materials due to SECT for GM Briefing **(OVERDUE)** ~~[illegible]~~ MEAD

11/16/09 at 1400: SECT edits due to Committee Coordinator

11/18/09 at 1000: GM Committee & Admin Items Briefing for December 2009 Committees and Boards

Attached is what I understand is our presentation for the 12/3/09 PDRE Cmte meeting. Please either confirm it's OK or update and e-mail it back to me t afternoon so I can sent it to Julie who will then send it to Loyda.

We have two MEAD's/BAIS's related to this project:

100527 Amended Term Sheet Lease Shaw-Howard/FL Ave Site – being used for 11/19/09. Currently awaiting approval by CHOS.

100538 Approve Term Sheet To Lease Shaw Howard/FL Ave Site – is this the MEAD/BAIS for 12/3/09? It has not yet been routed. If it's a go, then it neec approved by at least COUN by 11/18/09 at 1000.

If 100538 is the correct MEAD/BAIS for 12/3/09, please either confirm it's OK or update and e-mail it back to me this afternoon so I can sent it to Julie wh then send it to Loyda.



WMATA-INV 000310

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** eric.smart@bolansmart.com
**Sent:** Monday, November 16, 2009 3:34 PM
**To:** Doggett, Rosalyn
**Subject:** FL Ave Cap events
**Attachments:** FL Ave Nov 09-rev.pdf

Roz

1) Attached is a four page illustrative model in letter page format comparing a 10% participation in net proceeds with a two definitions of 2% participation in gross proceeds, one reflecting participation in total gross, and a second reflecting participation in gross after deducting the original debt. Based on a review of the current term sheet we are not sure if the deduct of the initial debt, or initial project cost as accounted for in the attached spreadsheets, continues for the entire term, but if it expires after the first full pay down, then the NPV results will go up closer to scenarios of participation in gross without defined deducts.

2) The background assumptions include a combined 25% profit and other cost deducts associated with the initial development period and a 3.0% average annual appreciation in the property value, with cap events recurring every ten years. If gross proceeds are not subject to any major deducts, there is approximate equivalency between 10% of net and 2% of gross, but not so if debt deducts are allowed as suggested in the term sheet.

3) The only difference between submitted BSA Tables 1 to 3 is varied rates of property value appreciation, indicating that value appreciation averaging above 3.0% starts to favor participation in net proceeds while value appreciation averaging less than 3.0% will tend to favor participation in gross proceeds.

4) We would note that since value appreciation actually starts to go negative in the last years of the ground lease, participation in gross proceeds, if any, will be higher in outer years than with net participation.

5) Based on our brief review of the current term sheet we are little curious as to why the 1.5% participation in Effective Gross Income is different from the 2.0% participation in Gross Proceeds? In principal they should be equivalent, in part to ensure that there is no built in incentive for the tenant or future assignee to prefer to value or share income differently between an annual participation in gross and a periodic share in gross proceeds. Perhaps there are other constraining factors preventing parallel rates of participation in gross.

6) Other comments include the advantages of simplicity in calculating and collecting on gross rather than net. In practice, 10% of net compared with 2% of full gross equivalency for WMATA may not be equivalent for the lessee, since it may mean that there is some acceleration in the timing of income being shared with WMATA, but this would seem a moot point since this participation change appears to be layered on top of other term provisions already fixed within the term sheet. There is also the issue of how frequent capital events could unfairly compensate the lessor who is entitled to unlimited participation, which is why in concept we also understand the importance of some manner of deducts. We have taken the



WMATA-INV 000311

liberty in Table 4 of the attached to solve for NPV neutrality between 10% participation in the net and an induced 3.5% participation in gross after the deduct of the initial project cost.

7) As you know we have prepared this submission in very short order, and while we believe the basic comparisons are valid, there are no doubt other or more detailed approaches that we could pursue. Hope this outline of the relationships works for now, at least for order of magnitude consideration.

Eric

--

Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037 202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000312

- Florida Avenue
- PGP -
- Twinbrook -
- Dunloring - has Tang given 100% comments
- Chillers -
- Navy East -
- GA Ave - easements -
- Access Orders

PGG chiller MTECH

Chad
dinner, drinks ??

another invoice

Send me another invoice

Phil
Did we get rent for Dunloring ??

- Navy Chillers
- Navy East
- Gunbelt
- MN Ave
- GA Petworth
- ?? Dunloring

(B) Twinbrook
(C) Web Site PGP
(A)

USRC
Tunnel History

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

**BSA Table 4 (Nov 09)** **Florida Avenue / Shaw - Participation Scenarios Assuming Sale Every Ten Years**

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| building completion | | | | | | | 1 | 10 | 20 | 30 | 40 | 50 | 60 | 70 | |
| ground lease | | 1 | 2 | 3 | 4 | 5 | 6 | 15 | 25 | 35 | 45 | 55 | 65 | 75 | 99 |
| November | | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2023 | 2033 | 2043 | 2053 | 2063 | 2073 | 2083 | 2107 |
| **1. Net Proceeds Participation** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 3.00% annual increase to year 65 of ground lease | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 100.00% of acquisition cost | | | | | | | $37,500,000 | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | |
| Defined Cost Basis | 100.00% of acquisition cost | | | | | | | ($37,500,000) | ($40,317,491) | ($54,183,337) | ($72,817,874) | ($97,861,134) | ($131,517,181) | ($176,748,093) | |
| Capital Event Proceeds | | | | | | | | $2,817,491 | $13,865,846 | $18,634,537 | $25,043,260 | $33,656,047 | $45,230,913 | $0 | |
| WMATA Participation | 10.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $281,749 | $1,386,585 | $1,863,454 | $2,504,326 | $3,365,605 | $4,523,091 | $0 | $0 |
| WMATA NPV | 5.78% discount rate | $1,281,342 | | | | | | | | | | | | | |
| **2. Gross Proceeds Participation Net of Any Deducts** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 3.00% annual increase to year 65 of ground lease | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 0.00% of acquisition cost | | | | | | | $37,500,000 | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | |
| Defined Cost Basis | 0.00% of acquisition cost | | | | | | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | |
| Capital Event Proceeds | | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| WMATA Participation | 2.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $806,350 | $1,083,667 | $1,456,357 | $1,957,223 | $2,630,344 | $3,534,962 | $3,534,962 | $0 |
| WMATA NPV | 5.78% discount rate | $1,307,967 | | | | | | | | | | | | | |
| **3. Gross Proceeds Participation After Initial Debt Deduct** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 3.00% annual increase to year 65 of ground lease | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 100.00% of acquisition cost | | | | | | | $37,500,000 | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | |
| Defined Cost Basis | 80.00% of acquisition cost | | | | | | | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | |
| Capital Event Proceeds | | | | | | | | $10,317,491 | $24,183,337 | $42,817,874 | $67,861,134 | $101,517,181 | $146,748,093 | $146,748,093 | |
| WMATA Participation | 3.70% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $381,747 | $894,783 | $1,584,261 | $2,510,862 | $3,756,138 | $5,429,679 | $5,429,679 | $0 |
| WMATA NPV | 5.78% discount rate | $1,286,984 | | | | | | | | | | | | | |

WMATA-INV 000314

FOIA CONFIDENTIAL TREATMENT REQUESTED

**BSA Table 3 (Nov 09)** **Florida Avenue / Shaw - Participation Scenarios Assuming Sale Every Ten Years**

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| building completion | | | | | | | 1 | 10 | 20 | 30 | 40 | 50 | 60 | 70 | 99 |
| ground lease | | | | | | | 6 | 16 | 25 | 35 | 45 | 55 | 65 | 75 | 2107 |
| November | | 1 2009 | 2 2010 | 3 2011 | 4 2012 | 5 2013 | 2014 | 2023 | 2033 | 2043 | 2053 | 2063 | 2073 | 2083 | |
| **1. Net Proceeds Participation** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 1.50% annual increase to year 65 of ground lease<br>0.00% annual compounded increase year 65+ | | | | | | | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | $73,296,593 | |
| Cost Basis | 100.00% of acquisition cost | | | | | | | $37,500,000 | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | |
| Defined Cost Basis | 100.00% of acquisition cost | | | | | | | ($37,500,000) | ($34,816,225) | ($40,405,650) | ($46,892,407) | ($54,420,552) | ($63,157,273) | ($73,296,593) | |
| Capital Event Proceeds | | | | | | | | ($2,683,775) | $5,589,425 | $6,486,756 | $7,528,146 | $8,736,720 | $10,138,321 | $0 | |
| WMATA Participation | 10.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | ($268,378) | $558,943 | $648,676 | $752,815 | $873,672 | $1,013,832 | $0 | $0 |
| WMATA NPV | 5.78% discount rate $252,267 | | | | | | | | | | | | | | |
| **2. Gross Proceeds Participation Net of Any Deducts** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 1.50% annual increase to year 65 of ground lease<br>0.00% annual compounded increase year 65+ | | | | | | | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | $73,296,593 | |
| Cost Basis | 0.00% of acquisition cost | | | | | | | $37,500,000 | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | |
| Defined Cost Basis | 0.00% of acquisition cost | | | | | | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | |
| Capital Event Proceeds | | | | | | | | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | $73,296,593 | |
| WMATA Participation | 2.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $696,324 | $808,113 | $937,848 | $1,088,411 | $1,263,145 | $1,465,932 | $1,465,932 | $0 |
| WMATA NPV | 5.78% discount rate $881,407 | | | | | | | | | | | | | | |
| **3. Gross Proceeds Participation After Initial Debt Deduct** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 1.50% annual increase to year 65 of ground lease<br>0.00% annual compounded increase year 65+ | | | | | | | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | $73,296,593 | |
| Cost Basis | 100.00% of acquisition cost | | | | | | | $37,500,000 | $34,816,225 | $40,405,650 | $46,892,407 | $54,420,552 | $63,157,273 | $73,296,593 | |
| Defined Cost Basis | 80.00% of acquisition cost | | | | | | | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | |
| Capital Event Proceeds | | | | | | | | $4,816,225 | $10,405,650 | $16,892,407 | $24,420,552 | $33,157,273 | $43,296,593 | $43,296,593 | |
| WMATA Participation | 2.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $96,324 | $208,113 | $337,848 | $488,411 | $663,145 | $865,932 | $865,932 | $0 |
| WMATA NPV | 5.78% discount rate $258,297 | | | | | | | | | | | | | | |

WMATA-INV 000315

FOIA CONFIDENTIAL TREATMENT REQUESTED

**BSA Table 1 (Nov 09)** **Florida Avenue / Shaw - Participation Scenarios Assuming Sale Every Ten Years**

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | building completion | | | | | | 1 | 10 | 20 | 30 | 40 | 50 | 60 | 70 | |
| | ground lease | 1 | 2 | 3 | 4 | 5 | 6 | 15 | 25 | 35 | 45 | 55 | 65 | 75 | 99 |
| | November | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2023 | 2033 | 2043 | 2053 | 2063 | 2073 | 2083 | 2107 |
| **1. Net Proceeds Participation** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 3.00% annual increase to year 65 of ground lease | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 100.00% of acquisition cost | | | | | | | $37,500,000 | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | |
| Defined Cost Basis | 100.00% of acquisition cost | | | | | | | ($37,500,000) | ($40,317,491) | ($54,183,337) | ($72,817,874) | ($97,861,134) | ($131,517,181) | ($176,748,093) | |
| Capital Event Proceeds | | | | | | | | $2,817,491 | $13,865,846 | $18,634,537 | $25,043,260 | $33,656,047 | $45,230,913 | $0 | |
| WMATA Participation | 10.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $281,749 | $1,386,585 | $1,863,454 | $2,504,326 | $3,365,605 | $4,523,091 | $0 | $0 |
| WMATA NPV | 5.78% discount rate $1,261,342 | | | | | | | | | | | | | | |
| **2. Gross Proceeds Participation Net of Any Deducts** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 3.00% annual increase to year 65 of ground lease | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 0.00% of acquisition cost | | | | | | | $37,500,000 | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | |
| Defined Cost Basis | 0.00% of acquisition cost | | | | | | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | |
| Capital Event Proceeds | | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| WMATA Participation | 2.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $806,350 | $1,083,667 | $1,456,357 | $1,957,223 | $2,630,344 | $3,534,962 | $3,534,962 | $0 |
| WMATA NPV | 5.78% discount rate $1,307,967 | | | | | | | | | | | | | | |
| **3. Gross Proceeds Participation After Initial Debt Deduct** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 3.00% annual increase to year 65 of ground lease | | | | | | | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | $176,748,093 | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 100.00% of acquisition cost | | | | | | | $37,500,000 | $40,317,491 | $54,183,337 | $72,817,874 | $97,861,134 | $131,517,181 | $176,748,093 | |
| Defined Cost Basis | 80.00% of acquisition cost | | | | | | | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | |
| Capital Event Proceeds | | | | | | | | $10,317,491 | $24,183,337 | $42,817,874 | $67,861,134 | $101,517,181 | $146,748,093 | $146,748,093 | |
| WMATA Participation | 2.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $206,350 | $483,667 | $856,357 | $1,357,223 | $2,030,344 | $2,934,962 | $2,934,962 | $0 |
| WMATA NPV | 5.78% discount rate $684,856 | | | | | | | | | | | | | | |

WMATA-INV 000316

FOIA CONFIDENTIAL TREATMENT REQUESTED

**BSA Table 2 (Nov 09)** **Florida Avenue / Shaw - Participation Scenarios Assuming Sale Every Ten Years**

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| building completion | | | | | | | 1 | 10 | 20 | 30 | 40 | 50 | 60 | 70 | 99 |
| ground lease | | 1 | 2 | 3 | 4 | 5 | 6 | 15 | 25 | 35 | 45 | 55 | 65 | 75 | 2107 |
| November | | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2023 | 2033 | 2043 | 2053 | 2063 | 2073 | 2083 | |
| **1. Net Proceeds Participation** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 5.00% annual increase to year 65 of ground lease | | | | | | | $48,866,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,894 | $560,375,577 | $560,375,577 | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 100.00% of acquisition cost | | | | | | | $37,500,000 | $48,866,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,894 | $560,375,577 | |
| Defined Cost Basis | 100.00% of acquisition cost | | | | | | | ($37,500,000) | ($48,866,839) | ($79,598,931) | ($129,658,271) | ($211,199,661) | ($344,021,894) | ($560,375,577) | |
| Capital Event Proceeds | | | | | | | | $11,366,839 | $30,732,092 | $50,059,340 | $81,541,390 | $132,822,332 | $216,353,683 | $0 | |
| WMATA Participation | 10.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $1,136,684 | $3,073,209 | $5,005,934 | $8,154,139 | $13,282,233 | $21,635,358 | $0 | $0 |
| WMATA NPV | 5.78% discount rate | $3,979,729 | | | | | | | | | | | | | |
| **2. Gross Proceeds Participation Net of Any Deducts** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 5.00% annual increase to year 65 of ground lease | | | | | | | $48,866,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,894 | $560,375,577 | $560,375,577 | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 0.00% of acquisition cost | | | | | | | $37,500,000 | $48,866,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,894 | $560,375,577 | |
| Defined Cost Basis | 0.00% of acquisition cost | | | | | | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | |
| Capital Event Proceeds | | | | | | | | $48,866,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,894 | $560,375,577 | $560,375,577 | |
| WMATA Participation | 2.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $977,337 | $1,591,979 | $2,593,165 | $4,223,993 | $6,880,440 | $11,207,512 | $11,207,512 | $0 |
| WMATA NPV | 5.78% discount rate | $2,412,175 | | | | | | | | | | | | | |
| **3. Gross Proceeds Participation After Initial Debt Deduct** | | | | | | | | | | | | | | | |
| Initial Development Cost (including prepaid ground rent) | | | | | | | $30,000,000 | | | | | | | | |
| Initial Development Profit and Fee Costs | 25.00% | | | | | | $7,500,000 | | | | | | | | |
| Total Development Cost Basis | | | | | | | $37,500,000 | | | | | | | | |
| Sale Proceeds | 5.00% annual increase to year 65 of ground lease | | | | | | | $48,866,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,894 | $560,375,577 | $560,375,577 | |
| | 0.00% annual compounded increase year 65+ | | | | | | | | | | | | | | |
| Cost Basis | 100.00% of acquisition cost | | | | | | | $37,500,000 | $48,866,839 | $79,598,931 | $129,658,271 | $211,199,661 | $344,021,894 | $560,375,577 | |
| Defined Cost Basis | 80.00% of acquisition cost | | | | | | | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | ($30,000,000) | |
| Capital Event Proceeds | | | | | | | | $18,866,839 | $49,598,931 | $99,658,271 | $181,199,661 | $314,021,894 | $530,375,577 | $530,375,577 | |
| WMATA Participation | 2.00% of defined capital events | $0 | $0 | $0 | $0 | $0 | $0 | $377,337 | $991,979 | $1,993,165 | $3,623,993 | $6,280,440 | $10,607,512 | $10,607,512 | $0 |
| WMATA NPV | 5.78% discount rate | $1,789,065 | | | | | | | | | | | | | |

WMATA-INV 000317

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Doggett, Rosalyn
**Sent:** Monday, November 02, 2009 3:17 PM
**To:** Meister, Mark K.; Montague, Joshua W.
**Cc:** Marshall, Malcolm; Goldin, Steven
**Subject:** Confidential Statements for Shaw Howard FL Ave
**Attachments:** Shaw-Howard FL AVE Confidential 2008.rtf; Shaw-Howard FL AVE Confidential 2009.rtf

Here are the two Confidential summaries, with 2009 updated so far.
In the 2009 sheet, the yellow highlights changes from 2008. The red indicates items that are still open, to the best of my knowledge.

Two additional items:

1. Malcolm has done his best estimate of what the 1.5% of gross income is worth and it comes to @$200,000. That being the case (I haven't reviewed Malcolm's "methodology"), it is probably a lot cleaner to fold it into the capitalized lease payment. (Malcolm did assume that after 40 years of HUD insurance the project would go to market rates, but still have an affordable component.) Omar suggested folding the participation into the capitalized lease payment a week or two ago.
2. John Hagner's suggestion to substitute 2% of gross capital event proceeds for 10% of net proceeds is probably also cleaner. I would like to see the numbers analyzed but expect that they would equalize based on work I did years ago. If it is the same, we can probably change this when doing the jda/lease.

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



WMATA-INV 000318

FOIA CONFIDENTIAL TREATMENT REQUESTED

| CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2009 | |
|---|---|
| **CATEGORY** | **Developer: The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principals are Banneker Ventures LLC, and Banc of America Community Development Corporation.** |
| Site Description | The 28,376 sf site consists of three separate parcels on the south side of Florida Avenue, NW between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA. WMATA site to be combined with Developer's adjacent 7,720 sf parcels on 9th St. |
| Developer's Proposal | 100,711 base sf on WMATA site with @ 10,000 sf ground floor retail and housing above. Approximately 8% of housing to be affordable at maximum 80% AMI. Total development on combined sites currently estimated @ 157,000 sf following proposed alley closing and site consolidation. WMATA to receive @ 79% of value of total project. |
| Proposed Contract | Lease - 60 years with option to renew for an additional 39 years at market rate by appraisal |
| Construction Schedule | Lease Closing: 600 days after development agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Performance Security | $150,000 |
| Option Fee | $!00,000 upon Term Sheet approval (already paid) |
| Pre-Closing Rent | $50,000/year upon development agreement execution, $65,000 in second year and $80,000 thereafter |
| Additional Density | $74.55/FAR sf with $46.59/FAR sf deduction for Inclusionary Zoning affordable housing. After completion of current project, by appraisal. |
| Capitalized Lease Payment | $2,050,000 paid at Closing |
| Participating Rent | 1.5% of Effective Gross Income |
| Base Rent Revaluation | None until HUD insurance is no longer in force; thereafter by appraisal |
| Capital Event Participation | 10% of net proceeds |
| Appraised Market Value<br>$2,050,000 Capitalized Lease Value<br><br>Appraisal by Harps & Harps 8/09<br>and Integra Realty Resources 10/09 | NPV to WMATA over Term of Lease<br>$TBD - will be Pre-Closing Rent ( yr. 1 $50k, yr. 2 $65k) + Capitalized Lease Payment (600 days after development agreement execution) |



WMATA-INV 000319

# RE: Shaw-Howard/Florida Avenue Term Sheet - Recap

Bottigheimer, Nat

**Sent:** Wednesday, November 04, 2009 11:00 AM

**To:** Omar A. Karim [okarim@bannekerventures.com]; Goldin, Steven

**Cc:** aives@bannekerventures.com; mmckinney@bannekerventures.com; Tiwana Hicks [thicks@bannekerventures.com]; Neil.Albert@dc.gov; Yohance S. Fuller; jkass@dccouncil.us; John Hagner [JHagner@wcsr.com]; O'Keeffe, Carol B.; Montague, Joshua W.; Doggett, Rosalyn

---

Before I address your specific proposal, Omar, I need to be clear that marking the lease value to market at year 60 is a fundamental requirement for us. If the initial term is for greater than 60 years, we have a concern about our ability to ensure that the mark to market occurs at year 60 in a manner that is acceptable to us. How do you respond to that point?

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Wednesday, November 04, 2009 10:52 AM
**To:** Bottigheimer, Nat; Goldin, Steven
**Cc:** aives@bannekerventures.com; mmckinney@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; jkass@dccouncil.us; 'John Hagner'; O'Keeffe, Carol B.; Montague, Joshua W.; Doggett, Rosalyn
**Subject:** RE: Shaw-Howard/Florida Avenue Term Sheet - Recap
**Importance:** High

Nat,

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.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000320

| | |
|---|---|
| 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:

**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.

**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.
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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000321

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000322

# Fwd: Re: return on equity

eric.smart@bolansmart.com [eric.smart@bolansmart.com]

**Sent:** Wednesday, November 04, 2009 10:10 PM

**To:** Doggett, Rosalyn

---

Roz

Sorry to burden you with this stream of notes, but (a) Nat asked me this morning a return on equity question referencing Omar and (b) that I call Steve in SF today as follow-up, upon which (c) Steve then asked me by email if the matter was urgent or could wait to next week. My subsequent notes below, beginning with the last one in this email, explain what I first discussed with Nat, then the first email, which represents what I later put together for Steve based in his own follow-up voice mail to my first detailed note.

I started off all this copying you on an email note to Steve asking him to call if he wanted and when convenient, to which he made his now or next week response by email. Since it appeared Steve did not hit reply all on his first response to my inquiry, I figured this might well be something to pursue directly with Steve and Nat as something that may or may not be exclusively to do with Omar.

To you, Roz, at this point, I seldom say this, but frankly I have no idea if I am helping or hindering the overall discussion, nor how I am supposed to communicate under the immediate circumstances, so I hope you will be forgiving if I have made some misstep.

Eric

-- Forwarded message from eric.smart@bolansmart.com --

Steve and Nat

If I have it right, Steve□voicemail left for me this afternoon was suggesting that Banneker Ventures should be honored (as an example) for a 10% preferred return on equity, then equity / WMATA splits would occur thereafter based on respective interests. While I know better than to comment not knowing the associated specifics of the rest of the evolved proposed deal structure, I will presume the following:

If it is assumed that Omar has prepaid the ground lease or executed a fee simple purchase based on a 2009 valuation of the ground, including affordable housing and other discounts, totaling somewhere in the range of $2.0 to $2.5M, and there is no WMATA participation other than in capital events, and that WMATA capital event participation is somewhere between 10.0% and 12.5% of defined net proceeds, then recapturing some upside per the above proposed terms should be pursued. In other words, this would mean that after Omar□investors gets a preferred 10% of equity, his equity investors would get 87.5% to 90.0% of the next tranche of distributions, with WMATA getting the difference. Notwithstanding my notes from earlier today regarding more generic issues related to equity



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000323

yields, I see absolutely no reason not to insist on this arrangement with Omar based on the above assumed other terms.

Eric

-- Forwarded message from eric.smart@bolansmart.com
--
Steve

Nat asked that I call you today related to Florida Ave., but I do not know the particulars. Not sure how you or Nat want me to proceed at this point, so copying both.

The sum of my conversation with Nat was that a 20% return on equity is not abnormal in today's market with three qualifications:

1) Only applies to initial investment and not after paydown of risk based front end capital, after which any preferred return to equity needs to be pitched much lower conforming with standards for post stabilization income producing property.

2) Contract terms need to cap or tier the amount of equity that would qualify for the higher yield, especially given the prevailing unusually high equity requirements needed to finance a project in the immediate current market. Equity percentages above say 30% could be compensated at lesser levels more matched to debt equivalents with stepped preferred payouts.

3) Contract terms on base equity yields can also be tiered, allowing for an initial lower preferred return then splits leading up to 20%. Obviously there are other provision and nuances that interplay, including the distribution of payouts after the initial equity is paid down.

At various points I have discussed the above with Roz, noting that some aspects may not be feasible per the negotiations with Banneker and WMATA practice.

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

-- end forwarded message --

--
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202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000324

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Monday, November 09, 2009 2:17 PM
**To:** Doggett, Rosalyn
**Subject:** RE: FL Ave
**Attachments:** WMATA Term Sheet for Lease of Shaw-Howard Florida Ave Sites (110909).doc

Here is the updated language. Let me know if you would like to discuss.

Also, I have been pushing for a lease guaranty so that we are further protected during the operation phase of the project. I have gone over the reasons previously (SPE, will make sure have proper insurance in place, future payments, cover limitations of indemnification, etc.), so I will spare you the elongated argument. This seemed to be something that we were giving up on in the interest of time. Do you have an opinion on this?

Steve wants?

---

**From:** Doggett, Rosalyn
**Sent:** Monday, November 09, 2009 10:41 AM
**To:** Montague, Joshua W.
**Subject:** RE: FL Ave

Nothing else at the moment on capital events

---

**From:** Montague, Joshua W.
**Sent:** Monday, November 09, 2009 10:40 AM
**To:** Doggett, Rosalyn
**Subject:** RE: FL Ave

I agree. The change of the Capital Event was a last minute switch and was poorly done. We tried to just rely on the language of the Rhode Island transaction for Term Sheet purposes.

I would like to take this extra time to work on that definition.

Do you see anything else wrong with it? Let me know and I will take a shot at drafting corrected language.



WMATA-INV 000325

FOIA CONFIDENTIAL TREATMENT REQUESTED

**From:** Doggett, Rosalyn
**Sent:** Monday, November 09, 2009 10:36 AM
**To:** Montague, Joshua W.
**Subject:** RE: FL Ave

For the record, I think that the Capital events definitions could use improvement:

A non-capital event should not include the developer's ability to sell out to his equity partners and walk away with a profit without WMATA participation. I also do not understand why the developer has to give information about equity when equity does not appear to be a deduction from gross proceeds; I may be missing something, to be sure.

---

**From:** Montague, Joshua W.
**Sent:** Monday, November 09, 2009 10:18 AM
**To:** Doggett, Rosalyn
**Subject:** FL Ave

Attached is the clean and Redline versions of the final term sheet.



WMATA-INV 000326

(i) On the 60th anniversary of the Effective Date of the Lease, the DEVELOPER shall begin making monthly base rent payments to WMATA (the "Monthly Lease Payments"). The Monthly Lease Payments amount shall be at Fair Market Value as determined through the three-appraiser method described in the Lease.

(ii) Escalation Rate. The Monthly Lease Payments shall escalate annually at the rate of 3% per year.

(iii) Periodic Rent Revaluation. The Monthly Lease Payments shall be adjusted every ten years. The Monthly Lease Payments will be re-adjusted to then current Fair Market Value as established through the three-appraiser process described above. Monthly Lease Payments will never decrease from the then payable Monthly Lease Payments as a result of any Periodic Rent Revaluation.

d) 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.

e) Capital Event Rent. Capital Events (defined below) shall be permitted in accordance with this Section 7.2(~~d~~e). 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 (1) ~~transfers among existing members~~; (2) ~~transfers to wholly-owned entities,~~ intra-family transfers; and (3) transfers caused by death~~, transfers required for the~~

4) Stet



FOIA CONFIDENTIAL TREATMENT REQUESTED

but not to take money out

~~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~~ from 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. OK ??

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



FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Doggett, Rosalyn
**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



WMATA-INV 000329

FOIA CONFIDENTIAL TREATMENT REQUESTED

**From:** Omar Karim [mailto:okarim@bannekerventures.com]
**Sent:** Wednesday, November 04, 2009 10:42 PM
**To:** Anthony James Ives; Tiwana Hicks; Montague, Joshua W.; John Hagner; O'Keeffe, Carol B.; Bottigheimer, Nat
**Cc:** Yohance S. Fuller; jkass@dccouncil.us; Marshall, Malcolm; Meister, Mark K.; Doggett, Rosalyn; Goldin, Steven
**Subject:** Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites

Nat,

Thanks for your thoughts. We appreciate them. For purposes of tomorrow, we accept the Term Sheet as sent to us this evening.

Following approval of the Term Sheet, we will give more thought to this particular issue to help come up with a way to meet your goals. Should we be able to come up with an agreeable solution prior to finalizing the JDA and Lease, we could include the solution in these docs. Alternatively, there is probably even more time bt approval of these docs and execution of the Lease prior to Closing to come up with solutions. In either case, we promise to provide you and your team with some solutions to address the concerns of all parties.

Thanks for working so hard on this. Finalizing the JDA and Lease should now be a piece of cake.

Omar
Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

---

**From:** "Bottigheimer, Nat" <NBottigheimer@wmata.com>
**Date:** Wed, 4 Nov 2009 21:01:52 -0500
**To:** O'Keeffe, Carol B.<cokeeffe@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>; aives@bannekerventures.com<aives@bannekerventures.com>; okarim@bannekerventures.com<okarim@bannekerventures.com>; thicks@bannekerventures.com<thicks@bannekerventures.com>; jhagner@wcsr.com<jhagner@wcsr.com>
**Cc:** Goldin, Steven<sgoldin@wmata.com>; Doggett, Rosalyn<RDoggett@wmata.com>; Meister, Mark K.<MMeister@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>; jkass@dccouncil.us<jkass@dccouncil.us>; Yohance S. Fuller<Yohance.Fuller@dc.gov>
**Subject:** RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

John--



WMATA-INV 000330

FOIA CONFIDENTIAL TREATMENT REQUESTED

I heard a problem and I didn't hear a solution. Also, for the reasons laid out below, I don't understand at all your concept that we're making an above market imposition on the Developer.

Here are our premises:

It's our land.

Long-term real estate values in the DC region have grown faster than 3%. A location on U Street in between U Street and Shaw/Howard stations has growth potential and value stability unlike the vast majority of property in the region, and its long-term appreciation value is significant.

Agreeing to a lease that is based on an escalation rate less than the the property's probable long-term appreciation rate is selling ourselves short. Marking to market each decade and then holding constant for each 10-year period while property values and lease-rates available to building owners appreciate is leaving significant value on the table each year in a decade.

Without going to a spreadsheet, if we were simply to mark to market each decade, in year one of any given decade we'd get 4% less than the rental income available to a building owner on average. The next year we'd get 8% less than full value, the next year 12% less than full value, each year the same until the last year of the decade, when we'd be getting 42% below full value. That's a lot of value to leave on the table by marking to market each decade and holding constant for 10 years. Having a 3% escalation rate each year through the decade is intended to keep the rent to us, the land-owner, comparable but slightly below the long-term average increase in value until the next reset. The language we've provided is intended to keep us at rent levels close to market value for each year of the remaining 39 years of the lease without giving away the game, as your proposals would appear to have us do.

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
**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



WMATA-INV 000331

FOIA CONFIDENTIAL TREATMENT REQUESTED

(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 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



WMATA-INV 000332

FOIA CONFIDENTIAL TREATMENT REQUESTED

**Cc:** O'Keeffe, Carol B.
**Subject:** FW: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

Attached is the updated Term Sheet described below.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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**From:** O'Keeffe, Carol B.
**Sent:** Wednesday, November 04, 2009 5:43 PM
**To:** John Hagner
**Cc:** Montague, Joshua W.
**Subject:** RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

John, Josh is sending a revision that puts in a different reset that Nat will accept; he had not agreed to 99 years and is only willing to go forward with the reset provisions that Josh will send. We have spoken with Mr. Karim who seems to have accepted it, but this is an impossible way to do a deal. I know that you are not causing it.

---

**From:** John Hagner [mailto:JHagner@wcsr.com]
**Sent:** Wednesday, November 04, 2009 5:38 PM
**To:** O'Keeffe, Carol B.
**Cc:** Montague, Joshua W.
**Subject:** Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

Carol: I'm on a large conference call which I can't get out of. I'll listen to your voicemail and call you as soon as I'm off.
John



WMATA-INV 000333

FOIA CONFIDENTIAL TREATMENT REQUESTED

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,



WMATA-INV 000334

FOIA CONFIDENTIAL TREATMENT REQUESTED

In preparation of tomorrow's Board meeting, attached are the following:

1. Amended and Restated Term Sheet revised in accordance with the discussions since Monday, which finalizes our understanding; and
2. "Redline...#157; of the Amended and Restated Term Sheet against the version that we provided to WMATA on November 2, 2009 at 6:20p.

The revised language on Capital Events was taken from the term sheet for Rhode Island Ave., and the concept of adjusting the base rent for additional density stops after the first 60 years because the re-appraisal will be based on the Leased Property as if vacant, thereby assuming the maximum density has been constructed on the land.

Please contact me with any questions or comments.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

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WMATA-INV 000335

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Thursday, March 04, 2010 9:10 AM
**To:** Goldin, Steven; Doggett, Rosalyn
**Subject:** RE: Followup on Florida Avenue

Here is what I have from my notes:

1. Foundation – Torti Gallas to discuss with T. Bushnaq Tang out until Monday
2. Cap Event Rent – Developer was supposed to discuss with their counsel and get back to WMATA seeking a counterproposal
3. Cost credit – WMATA verified $30K. T. Hicks is supposed to provide additional information by yesterday—
4. Guaranty – Clark is supposed to give estimate of cost of requested protections (fill hole, preserve foundation, protect public) to T. Bushnaq for verification.
5. Project schedule – Developer promised to give by yesterday. Schedule is to be added to agreement as a "defaultable" item.
6. Pro Forma – Developer promised to give development/operating pro formas, including sources of funds, to R. Doggett by yesterday.– called Eric
7. Indemnification issue – I called T. Hicks yesterday to make sure we were on the same page about the surplus cash. She assured me that she understood what we were looking for and that she had already put in requests for HUD to provide the info as soon as possible. Mary Allen

I am drafting an updated Term Sheet this morning. Will send to Rosalyn as soon as it is ready.

Josh

---

**From:** Goldin, Steven
**Sent:** Thursday, March 04, 2010 7:46 AM
**To:** Doggett, Rosalyn; Montague, Joshua W.
**Subject:** Fw: Followup on Florida Avenue

Other than the BACDC issue, what remains open?

---

**From:** Yohance (EOM) Fuller
**To:** Goldin, Steven
**Sent:** Wed Mar 03 22:22:05 2010
**Subject:** RE: Followup on Florida Avenue
Steve,



WMATA-INV 000336

FOIA CONFIDENTIAL TREATMENT REQUESTED

Can we chat tomorrow to discuss status and next steps for this project?

Thanks,

Yohance

---

**From:** Goldin, Steven [mailto:sgoldin@wmata.com]
**Sent:** Thursday, February 25, 2010 6:20 PM
**To:** okarim@bannekerventures.com; Anthony James Ives; Tiwana Hicks; Doggett, Rosalyn
**Cc:** Eric Smart; Albert, Neil (EOM); Fuller, Yohance (EOM); Montague, Joshua W.; Bushnaq, Tariq
**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

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

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax



WMATA-INV 000337

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Tuesday, March 09, 2010 11:36 AM
**To:** Doggett, Rosalyn
**Subject:** FW: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites

Is this what you meant?

---

**From:** Goldin, Steven
**Sent:** Monday, November 16, 2009 8:59 AM
**To:** Doggett, Rosalyn; Montague, Joshua W.
**Subject:** Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites

Good, thanks. He will call; stand your ground

---

**From:** Doggett, Rosalyn
**To:** Omar A. Karim
**Sent:** Mon Nov 16 08:54:26 2009
**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

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**From:** Montague, Joshua W.
**To:** Goldin, Steven; Doggett, Rosalyn



WMATA-INV 000338

FOIA CONFIDENTIAL TREATMENT REQUESTED

**Sent**: Fri Nov 13 18:29:16 2009
**Subject**: FW: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites
Per our meeting today, this is a reminder that we should inform the developer of the following:

1. There will be no more negotiating of the terms after the board approves the Term Sheet; and

2. The Developer must work off of the Florida Ave Lease draft that was sent to them by WMATA on 7/24/09. We cannot work off of the Rhode Island Ave Lease for reasons previously provided to John Hagner and Omar Karim.

Have a good weekend,

Josh

---

**From:** Omar Karim [mailto:okarim@bannekerventures.com]
**Sent:** Wednesday, November 04, 2009 10:42 PM
**To:** Anthony James Ives; Tiwana Hicks; Montague, Joshua W.; John Hagner; O'Keeffe, Carol B.; Bottigheimer, Nat
**Cc:** Yohance S. Fuller; jkass@dccouncil.us; Marshall, Malcolm; Meister, Mark K.; Doggett, Rosalyn; Goldin, Steven
**Subject:** Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites

Nat,

Thanks for your thoughts. We appreciate them. For purposes of tomorrow, we accept the Term Sheet as sent to us this evening.

Following approval of the Term Sheet, we will give more thought to this particular issue to help come up with a way to meet your goals. Should we be able to come up with an agreeable solution prior to finalizing the JDA 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



WMATA-INV 000339

FOIA CONFIDENTIAL TREATMENT REQUESTED

(301) 523-1810 cell
okarim@bannekerventures.com

---

**From:** "Bottigheimer, Nat" <NBottigheimer@wmata.com>
**Date:** Wed, 4 Nov 2009 21:01:52 -0500
**To:** O'Keeffe, Carol B.<cokeeffe@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>; aives@bannekerventures.com<aives@bannekerventures.com>; okarim@bannekerventures.com<okarim@bannekerventures.com>; thicks@bannekerventures.com<thicks@bannekerventures.com>; jhagner@wcsr.com<jhagner@wcsr.com>
**Cc:** Goldin, Steven<sgoldin@wmata.com>; Doggett, Rosalyn<RDoggett@wmata.com>; Meister, Mark K.<MMeister@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>; jkass@dccouncil.us<jkass@dccouncil.us>; Yohance S. Fuller<Yohance.Fuller@dc.gov>
**Subject:** RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

John--

I heard a problem and I didn't hear a solution. Also, for the reasons laid out below, I don't understand at all your concept that we're making an above market imposition on the Developer.

Here are our premises:

It's our land.

Long-term real estate values in the DC region have grown faster than 3%. A location on U Street in between U Street and Shaw/Howard stations has growth potential and value stability unlike the vast majority of property in the region, and its long-term appreciation value is significant.

Agreeing to a lease that is based on an escalation rate less than the the property's probable long-term appreciation rate is selling ourselves short. Marking to market each decade and then holding constant for each 10-year period while property values and lease-rates available to building owners appreciate is leaving significant value on the table each year in a decade.

Without going to a spreadsheet, if we were simply to mark to market each decade, in year one of any given decade we'd get 4% less than the rental income available to a building owner on average. The next year we'd get 8% less than full value, the next year 12% less than full value, each year the same until the last year of the decade, when we'd be getting 42% below full value. That's a lot of value to leave on the table by marking to market each decade and holding constant for 10 years. Having a 3% escalation rate each year through the decade is intended to keep the rent to us, the land-owner, comparable but slightly below the long-term average increase in value until the next reset. The language we've provided is intended to keep us at rent levels close to market value for each year of the remaining 39 years of the lease without giving away the game, as your proposals would appear to have us do.

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.



WMATA-INV 000340

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If you have a concern about lender certainty and project finance-ability, as you suggest you do, we are open to proposals that do not systematically erode Metro's ability to realize the value of its land over the period 60-99. We're open to a capitalization of future rent at year 60 for the period 60-99, and we're open to rent levels re-set every decade to be constant for the decade, but if rent levels are reset to be constant for a decade for the purpose of certainty, then they should be set above market for the first five years of the decade with the expectation that they'd be below market the second half. Maybe you have other thoughts.

Until we hear a counter that protects our value in a market-rate setting from years 60-99, the proposal we've made is our final proposal.

Respectfully,

Nat

---

**From:** John Hagner [mailto:JHagner@wcsr.com]
**Sent:** Wednesday, November 04, 2009 6:24 PM
**To:** O'Keeffe, Carol B.; Montague, Joshua W.
**Cc:** Anthony (Tony) James Ives(aives@bannekerventures.com); Omar A. Karim Esquire (okarim@bannekerventures.com); Tiwana Z. HicksEsquire (thicks@bannekerventures.com)
**Subject:** RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

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 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



WMATA-INV 000341

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



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000342

FOIA CONFIDENTIAL TREATMENT REQUESTED

**To:** John Hagner
**Cc:** Montague, Joshua W.
**Subject:** RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

John, Josh is sending a revision that puts in a different reset that Nat will accept; he had not agreed to 99 years and is only willing to go forward with the reset provisions that Josh will send. We have spoken with Mr. Karim who seems to have accepted it, but this is an impossible way to do a deal. I know that you are not causing it.

---

**From:** John Hagner [mailto:JHagner@wcsr.com]
**Sent:** Wednesday, November 04, 2009 5:38 PM
**To:** O'Keeffe, Carol B.
**Cc:** Montague, Joshua W.
**Subject:** Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

Carol: I'm on a large conference call which I can't get out of. I'll listen to your voicemail and call you as soon as I'm off.
John
John D. Hagner
Womble Carlyle Sandridge & Rice, PLLC
202.857.4404 Direct
Sent from my Blackberry. Please excuse typos.

---

**From**: O'Keeffe, Carol B. <cokeeffe@wmata.com>
**To**: Yohance S. Fuller <Yohance.Fuller@dc.gov>; Omar A. Karim <okarim@bannekerventures.com>; Montague, Joshua W. <jwmontague@wmata.com>
**Cc**: aives@bannekerventures.com <aives@bannekerventures.com>; mmckinney@bannekerventures.com <mmckinney@bannekerventures.com>; Tiwana Hicks <thicks@bannekerventures.com>; Neil.Albert@dc.gov <Neil.Albert@dc.gov>; Hagner, John; Bottigheimer, Nat <NBottigheimer@wmata.com>; Doggett, Rosalyn <RDoggett@wmata.com>; Goldin, Steven <sgoldin@wmata.com>
**Sent**: Wed Nov 04 17:25:10 2009
**Subject**: RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites
Not yet; we are working on it and will call John Hagner.

---

**From:** Yohance (EOM) Fuller [mailto:yohance.fuller@dc.gov]
**Sent:** Wednesday, November 04, 2009 5:22 PM
**To:** Omar A. Karim; Montague, Joshua W.
**Cc:** aives@bannekerventures.com; mmckinney@bannekerventures.com; Tiwana Hicks; Neil.Albert@dc.gov; O'Keeffe, Carol B.; John Hagner; Bottigheimer, Nat; Doggett, Rosalyn; Goldin, Steven
**Subject:** RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

Josh/Nat –



WMATA-INV 000343

I'm writing to confirm whether both parties are in agreement and that WMATA staff is prepared to recommend approval of the term sheet during the committee meeting and special board meeting tomorrow. Please advise.

Thanks,

Yohance

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Wednesday, November 04, 2009 3:45 PM
**To:** 'Montague, Joshua W.'
**Cc:** 'Bottigheimer, Nat'; 'O'Keeffe, Carol B.'; 'Goldin, Steven'; 'Doggett, Rosalyn'; Fuller, Yohance (EOM); Albert, Neil (EOM); 'John Hagner'; 'Tiwana Hicks'; mmckinney@bannekerventures.com; aives@bannekerventures.com
**Subject:** FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites
**Importance:** High

Josh,

In preparation of tomorrow's Board meeting, attached are the following:

1. Amended and Restated Term Sheet revised in accordance with the discussions since Monday, which finalizes our understanding; and
2. "Redline...#157; of the Amended and Restated Term Sheet against the version that we provided to WMATA on November 2, 2009 at 6:20p.

The revised language on Capital Events was taken from the term sheet for Rhode Island Ave., and the concept of adjusting the base rent for additional density stops after the first 60 years because the re-appraisal will be based on the Leased Property as if vacant, thereby assuming the maximum density has been constructed on the land.

Please contact me with any questions or comments.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com



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WMATA-INV 000344

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WMATA-INV 000345

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Goldin, Steven
**Sent:** Saturday, March 06, 2010 3:44 PM
**To:** Doggett, Rosalyn; Montague, Joshua W.
**Subject:** Re: Jazz @ Florida Avenue - $100K credit

We will not allow the performance security to be reduced

---

**From**: Doggett, Rosalyn
**To**: Goldin, Steven; Montague, Joshua W.
**Sent**: Sat Mar 06 08:43:43 2010
**Subject**: FW: Jazz @ Florida Avenue - $100K credit
Josh, this may be what we looked over in November and reduced to $30,000 on the basis that the invoices covered costs not related to the sale or were outside the dates of the period in which we all were considering a sale. Please check. Also I do not think that we should allow him to reduce his performance security. None of our other projects go ahead on such a thin margin, and it is chump change for a decently capitalized developer.

I will be out of email range starting now.

---

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** 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



WMATA-INV 000346

FOIA CONFIDENTIAL TREATMENT REQUESTED

(301) 523-1810 cell
okarim@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
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



WMATA-INV 000347

C: (202) 486-1863
thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000348

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar Karim [okarim@bannekerventures.com]
**Sent:** Sunday, March 07, 2010 8:05 AM
**To:** Anthony James Ives; Tiwana Hicks; Doggett, Rosalyn
**Cc:** Eric Smart; Montague, Joshua W.; Goldin, Steven; Bushnaq, Tariq
**Subject:** Re: Followup on Florida Avenue

Roz,

In response to #3 below, based on our conversation on Friday, there must be some misunderstanding re WMATA's participation in Capital Events. During the last negotiations, we agreed to accept wmata's offer of 2% participation before our investors receive a 20% IRR. However, if wmata wants a larger participation as we previously agreed, we would have to go back to the equity receiving a 20% IRR before wmata participation. Please let us know which option wmata wants to go with.

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:** "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>
**Subject:** Followup on Florida Avenue

Good afternoon, Omar. Per our staff review this morning, we have the following comments/requests:



WMATA-INV 000349

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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



WMATA-INV 000350

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Monday, March 08, 2010 9:15 AM
**To:** Goldin, Steven; Doggett, Rosalyn
**Subject:** RE: Jazz @ Florida Avenue - $100K credit

This was the floating credit that the Developer was going to apply to the Security Deposit at the execution of the JDA and then transfer to the Cap Lease Payment at the execution of the Lease (while raising the Security Deposit to the agreed upon $250K). Although this is a strange scenario, I think we agreed to this previously.

Is that what the Developer is proposing below? Or does "ease of transaction" mean that it is no longer floating? If it wasn't floating, would you rather have the credit applied to the Security Deposit or the Cap Lease Payment?

I will review the Developer's invoices this morning and let you know.

Josh

---

**From:** Goldin, Steven
**Sent:** Saturday, March 06, 2010 3:44 PM
**To:** Doggett, Rosalyn; Montague, Joshua W.
**Subject:** Re: Jazz @ Florida Avenue - $100K credit

We will not allow the performance security to be reduced

---

**From:** Doggett, Rosalyn
**To:** Goldin, Steven; Montague, Joshua W.
**Sent:** Sat Mar 06 08:43:43 2010
**Subject:** FW: Jazz @ Florida Avenue - $100K credit
Josh, this may be what we looked over in November and reduced to $30,000 on the basis that the invoices covered costs not related to the sale or were outside the dates of the period in which we all were considering a sale. Please check. Also I do not think that we should allow him to reduce his performance security. None of our other projects go ahead on such a thin margin, and it is chump change for a decently capitalized developer.

I will be out of email range starting now.

---

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Friday, March 05, 2010 8:54 PM



WMATA-INV 000351

FOIA CONFIDENTIAL TREATMENT REQUESTED

**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
okarim@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:



WMATA-INV 000352

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
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 000353

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**To:** Montague, Joshua W.; Goldin, Steven
**Subject:** FW: FW: Jazz Schedule

-----Original Message-----
From: eric.smart@bolansmart.com [mailto:eric.smart@bolansmart.com]
Sent: Saturday, March 06, 2010 12:58 PM
To: Doggett, Rosalyn
Subject: Re: FW: Jazz Schedule

Roz

Basic comments on the updated cash flow is that while there are some new allocations of fees on the development side there is only on one new assumption that really jumps out as us after an initial review. Assuming 100% of the PILOT and Sales Tax TIF as being eligible for supporting new debt for a full 25 years seems aggressive, and we do not see info on issuances costs and other details for regarding getting the PILOT and TIF. Despite not having residential income and expense inputs stated, and the inability to check the formulas, the income and expense components seem reasonable and consistent with past submissions. In all, unless you want to request a full operating proforma, including percentage payouts to WMATA and equity paydown, and want us to dig into specifics, we would say the presented cash flow appears reasonable. *

We have no particular comments on the submitted schedule, other than to note that including PILOT and TIF financing, with attendant required DC Council approval, adds to the complexity and staging of approval steps. 21 months is OK

Sorry I missed your call on Friday. Drop me a note if needed per a possible question on square footage.

Eric

2% of net proceeds after senior debt

21 months is OK

On Fri, 05 Mar 2010 12:45:02 -0500 (EST), "Doggett, Rosalyn" <RDoggett@wmata.com> wrote:
> I'd like to talk with you early afternoon to see if you have any comments on
> schedule and pro formas. Possible?
>
> From: Omar A. Karim [mailto:okarim@bannekerventures.com]
> Sent: Thursday, March 04, 2010 5:13 PM

* ask in order to complete the file



WMATA-INV 000354

> To: Doggett, Rosalyn
> Cc: aives@bannekerventures.com; 'Tiwana Hicks';
eric.smart@bolansmart.com;
> Goldin, Steven
> Subject: Jazz Schedule
>
> Roz,
>
> 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
>
>
>
> 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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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

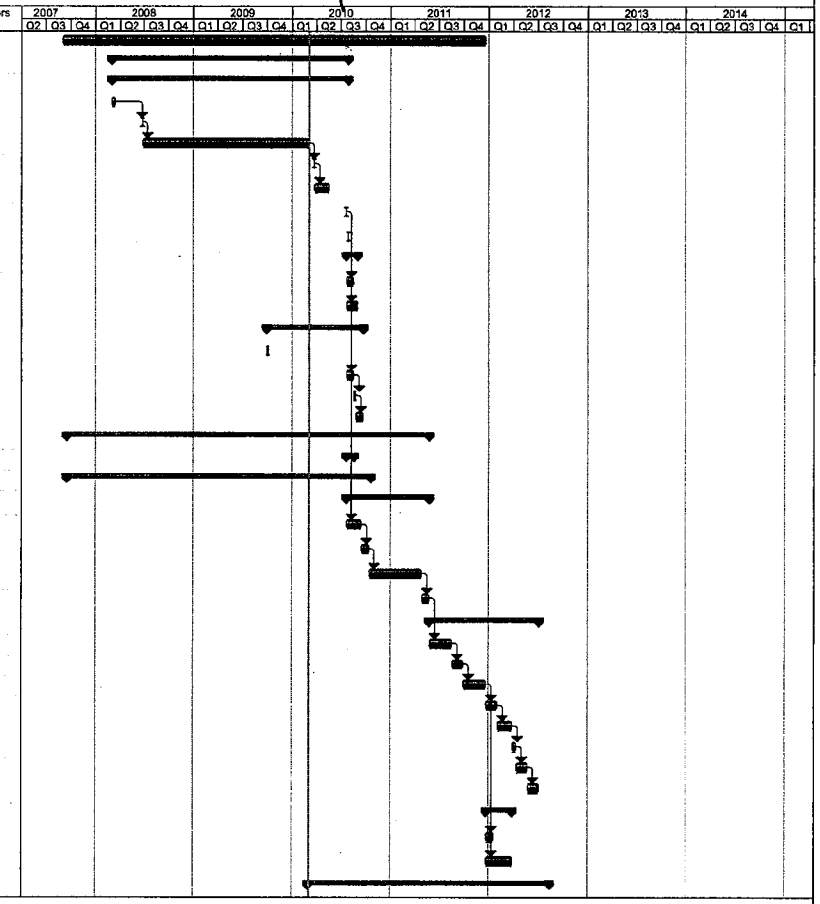
FOIA CONFIDENTIAL TREATMENT REQUESTED

Superseded by 3/8 Schedule

O Karim schedule sent 3/1?/10

## The Jazz @ Florida Avenue

| 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** | **630 days** | **Mon 3/3/08** | **Fri 7/30/10** | |
| 3 | **Term Sheet, JDA and Lease** | **630 days** | **Mon 3/3/08** | **Fri 7/30/10** | |
| 4 | Term Sheet Negotiations | 10 days | Mon 3/3/08 | Fri 3/14/08 | |
| 5 | Initial Approval of Term Sheet by WMATA Board of Directors | 1 day | Thu 6/26/08 | Thu 6/26/08 | 4 |
| 6 | Negotiation of Revised Term Sheet, JDA and Lease | 22 mons | Fri 6/27/08 | Thu 3/4/10 | 5 |
| 7 | WMATA Board Approval of Revised Term Sheet | 1 day | Thu 3/25/10 | Thu 3/25/10 | 6 |
| 8 | Continued Negotiation of JDA and Lease | 2 mons | Fri 3/26/10 | Thu 5/20/10 | 7 |
| 9 | WMATA Board Approval of JDA and Lease | 1 day | Thu 7/22/10 | Thu 7/22/10 | |
| 10 | Execute JDA | 1 day | Fri 7/30/10 | Fri 7/30/10 | |
| 11 | **Environmental** | **30 days** | **Fri 7/23/10** | **Thu 9/2/10** | |
| 12 | Update Phase I | 1 mon | Fri 7/23/10 | Thu 8/19/10 | 9 |
| 13 | Complete Phase II for Lot 0044, Square 393 | 1.5 mons | Fri 7/23/10 | Thu 9/2/10 | 9 |
| 14 | **Development Plan** | **256 days** | **Thu 10/1/09** | **Thu 9/23/10** | |
| 15 | WMATA to Provide Developer details on Reserved Areas and Interests | 1 wk | Thu 10/1/09 | Wed 10/7/09 | |
| 16 | Design team to prepare Conditionally Approved Development Plan | 1 mon | Fri 7/23/10 | Thu 8/19/10 | 9 |
| 17 | Submit Conditionally Approved Development Plan to WMATA | 1 wk | Fri 8/20/10 | Thu 8/26/10 | 16 |
| 18 | WMATA Approval of Conditionally Approved Development Plan | 1 mon | Fri 8/27/10 | Thu 9/23/10 | 17 |
| 19 | **Local Approvals/Informationals** | **963 days** | **Tue 9/18/07** | **Thu 5/26/11** | |
| 20 | **Community Organizations Outreach** | **21 days** | **Fri 7/23/10** | **Fri 8/20/10** | |
| 24 | **Meetings with Local ANC (1B)** | **809 days** | **Tue 9/18/07** | **Fri 10/22/10** | |
| 28 | **Zoning Approvals** | **220 days** | **Fri 7/23/10** | **Thu 5/26/11** | |
| 29 | Prepare Zoning Applications (Legal and Design) | 2 mons | Fri 7/23/10 | Thu 9/16/10 | 9 |
| 30 | WMATA Review of Zoning Applications | 1 mon | Fri 9/17/10 | Thu 10/14/10 | 29 |
| 31 | Zoning and HPRB Hearing | 7 mons | Fri 10/15/10 | Thu 4/28/11 | 30 |
| 32 | Receipt of Zoning Approvals | 1 mon | Fri 4/29/11 | Thu 5/26/11 | 31 |
| 33 | **Design (Pre-Construction Phase)** | **290 days** | **Fri 5/27/11** | **Thu 7/5/12** | |
| 34 | Design Development (35%) | 3 mons | Fri 5/27/11 | Thu 8/18/11 | 32 |
| 35 | Review by WMATA (30 business day review per JDAC Manual) | 30 days | Fri 8/19/11 | Thu 9/29/11 | 34 |
| 36 | Permit Set (80%) | 3 mons | Fri 9/30/11 | Thu 12/22/11 | 35 |
| 37 | Review by WMATA (30 business day review per JDAC Manual) | 30 days | Fri 12/23/11 | Thu 2/2/12 | 36 |
| 38 | Construction Drawings | 2 mons | Fri 2/3/12 | Thu 3/29/12 | 37 |
| 39 | Bid Set | 0.5 mons | Fri 3/30/12 | Thu 4/12/12 | 38 |
| 40 | Issued for Construction Drawings (100%) | 1.5 mons | Fri 4/13/12 | Thu 5/24/12 | 39 |
| 41 | Review by WMATA (30 business day review per JDAC Manual) | 30 days | Fri 5/25/12 | Thu 7/5/12 | 40 |
| 42 | **Permits** | **70 days** | **Fri 12/23/11** | **Thu 3/29/12** | |
| 43 | Excavation/Sheeting and Shoring Submission and Review | 1 mon | Fri 12/23/11 | Thu 1/19/12 | 36 |
| 44 | Building Permit Submission, Review and Receipt | 3.5 mons | Fri 12/23/11 | Thu 3/29/12 | 36 |
| 45 | **Financing** | **640 days** | **Thu 3/4/10** | **Wed 8/15/12** | |




Date: Thu 3/4/10

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

Page 1

Claims HPRB + HUD (must have final permits before they can issue final approval)

WMATA-INV 000356

FOIA CONFIDENTIAL TREATMENT REQUESTED

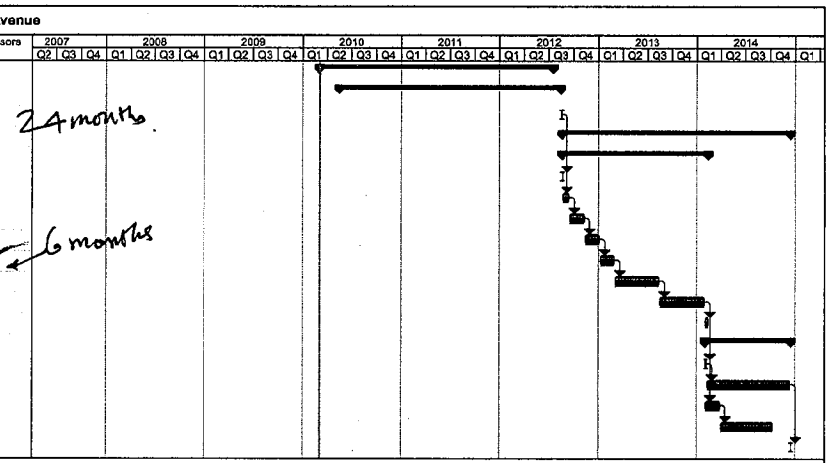
7/30/12 = 24 months

## The Jazz @ Florida Avenue

| ID | Task Name | Duration | Start | Finish | Predecessors |
|---|---|---|---|---|---|
| 46 | **TIF/PILOT Financing** | **620 days** | **Thu 3/4/10** | **Wed 7/18/12** | |
| 51 | **Senior Debt Financing** | **588 days** | **Mon 5/17/10** | **Wed 8/15/12** | |
| 65 | **EXECUTE LEASE AND CLOSE WITH WMATA** | **2 days** | **Thu 8/16/12** | **Fri 8/17/12** | **64** |
| 66 | **Construction** | **606 days** | **Mon 8/20/12** | **Mon 12/15/14** | |
| 67 | **Base Build** | **390 days** | **Mon 8/20/12** | **Fri 2/14/14** | |
| 68 | Groundbreaking | 1 day | Mon 8/20/12 | Mon 8/20/12 | 65 |
| 69 | Site Work | 1 mon | Mon 8/20/12 | Fri 9/14/12 | 65 |
| 70 | Excavation & Remediation | 2 mons | Mon 9/17/12 | Fri 11/9/12 | 69 |
| 71 | Sheeting and Shoring | 2 mons | Mon 11/12/12 | Fri 1/4/13 | 70 |
| 72 | Garage Construction/Grade Complete | 2 mons | Mon 1/7/13 | Fri 3/1/13 | 71 |
| 73 | Shell Building Construction | 6 mons | Mon 3/4/13 | Fri 8/16/13 | 72 |
| 74 | Building Fit Out | 6 mons | Mon 8/19/13 | Fri 1/31/14 | 73 |
| 75 | Landscaping | 2 wks | Mon 2/3/14 | Fri 2/14/14 | 74 |
| 76 | **Building Operations** | **226 days** | **Mon 2/3/14** | **Mon 12/15/14** | |
| 77 | **Certificate of Occupancy** | 1 wk | Mon 2/3/14 | Fri 2/7/14 | 74 |
| 78 | Initial Occupancy Residential/Stabilization | 11 mons | Mon 2/10/14 | Fri 12/12/14 | 77 |
| 79 | Retail TI | 2 mons | Mon 2/3/14 | Fri 3/28/14 | 74 |
| 80 | Retail Occupany/Stabilization | 7 mons | Mon 3/31/14 | Fri 10/10/14 | 79 |
| 81 | Project Stablization | 1 day | Mon 12/15/14 | Mon 12/15/14 | 78 |

24 months

6 months




Superseded

Date: Thu 3/4/10

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



640 days to lease execution
135 to sheeting + shoring finish
775

WMATA-INV 000357

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Tiwana Hicks [thicks@bannekerventures.com]
**Sent:** Monday, March 08, 2010 1:04 PM
**To:** eric.smart@bolansmart.com; Doggett, Rosalyn; Goldin, Steven
**Cc:** okarim@bannekerventures.com; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov
**Subject:** Updated Project Schedule
**Attachments:** Jazz @ Florida Avenue - Project Schedule (as of 3-8-2010) (WMATA).pdf

Ms. Doggett,

Attached please find the updated project schedule reflecting approximately 630 days from JDA Execution to Closing (see line 11). Based on the 2 year delay that the parties have incurred from the initial approval of the Term Sheet by WMATA, we feel this is a very reasonable yet aggressive schedule. Also below please find Clark Builder's Group cost assessment of the Site security scenarios we discussed at our meeting on March 2nd.

"For this exercise I have assumed that all 3 parcels are at the same point in construction, although in actuality there will be a slight stagger in construction sequencing between each building.

Scenario 1 assumes excavation and sheeting & shoring operations are 100% complete. Concrete work has not started. The cost to refill the excavated holes, clean up and regrade the site, and stabilize the site would be approximately $325,000.
Scenario 2 assumes excavation and sheeting & shoring operations are 100% complete. Concrete slab on grade and foundation walls are complete, but the columns and elevated slab have not started. The cost to clean up and regrade the site, install the elevated slab, stairs, temporary waterproofing over the slab, doors and electric would be approximately $956,000.
Scenario 3 assumes the garage levels are 100% complete, including being dried in and secured. Concrete work is completed to the slab over the retail level. The cost to clean up the site, install temporary skin at the ground level, temporary waterproofing over the slab, doors and electric would be approximately $422,000."

Please let us know if you have any further questions. Thanks in advance.

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

630 +210 = ~~840~~ 28 mo.
vs.600 vs 780 (26 mo)

4 more months

21 months + 7 months = 28 months

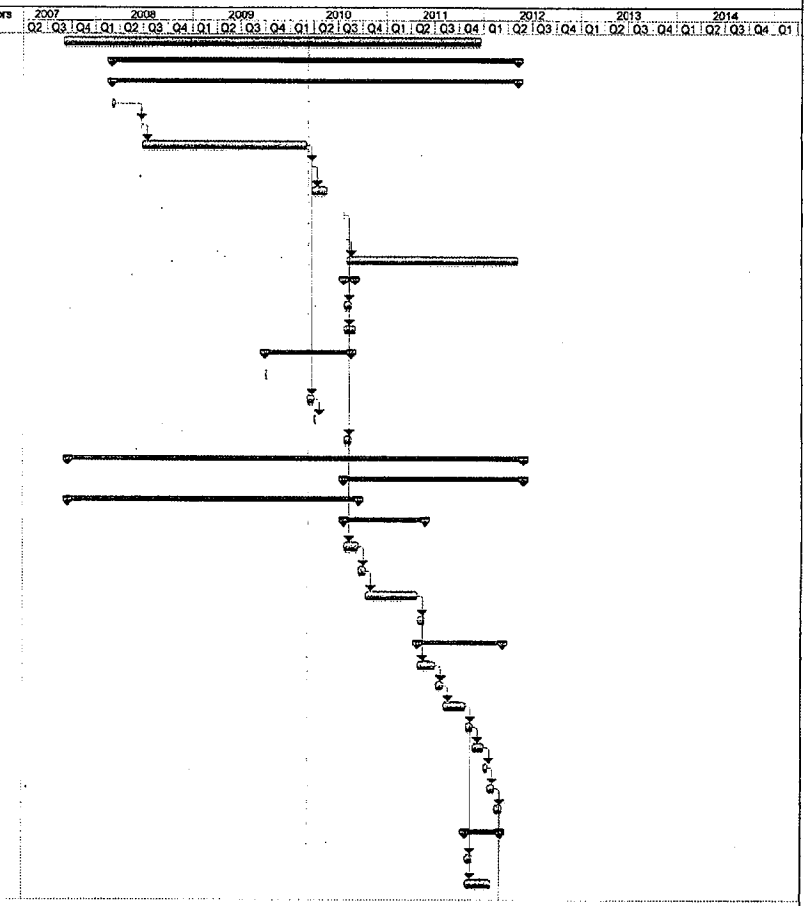


WMATA-INV 000358

FOIA CONFIDENTIAL TREATMENT REQUESTED

## The Jazz @ Florida Avenue

| 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** | **1094 days** | **Mon 3/3/08** | **Thu 5/10/12** | |
| 3 | **Term Sheet, JDA and Lease** | **1094 days** | **Mon 3/3/08** | **Thu 5/10/12** | |
| 4 | Term Sheet Negotiations | 10 days | Mon 3/3/08 | Fri 3/14/08 | |
| 5 | Initial Approval of Term Sheet by WMATA Board of Directors | 1 day | Thu 6/26/08 | Thu 6/26/08 | 4 |
| 6 | Negotiation of Revised Term Sheet, JDA and Lease | 22 mons | Fri 6/27/08 | Thu 3/4/10 | 5 |
| 7 | WMATA Board Approval of Revised Term Sheet | 1 day | Thu 3/25/10 | Thu 3/25/10 | 6 |
| 8 | Continued Negotiation of JDA and Lease | 2 mons | Fri 3/26/10 | Thu 5/20/10 | 7 |
| 9 | WMATA Board Approval of JDA and Lease | 1 day | Thu 7/22/10 | Thu 7/22/10 | |
| 10 | Execute JDA | 1 day | Fri 7/30/10 | Fri 7/30/10 | |
| 11 | JDA Execution to Lease Closing | ~~464 days~~ 630 | Mon 8/2/10 | Thu 5/10/12 | 10 |
| 12 | **Environmental** | **30 days** | **Fri 7/23/10** | **Thu 9/2/10** | |
| 13 | Update Phase I | 1 mon | Fri 7/23/10 | Thu 8/19/10 | 9 |
| 14 | Complete Phase II for Lot 0044, Square 393 | 1.5 mons | Fri 7/23/10 | Thu 9/2/10 | 9 |
| 15 | **Development Plan** | **231 days** | **Thu 10/1/09** | **Thu 8/19/10** | |
| 16 | WMATA to Provide Developer details on Reserved Areas and Interests | 1 wk | Thu 10/1/09 | Wed 10/7/09 | |
| 17 | Design team to prepare Conditionally Approved Development Plan | 1 mon | Fri 3/5/10 | Thu 4/1/10 | 6 |
| 18 | Submit Conditionally Approved Development Plan to WMATA | 1 wk | Fri 4/2/10 | Thu 4/8/10 | 17 |
| 19 | WMATA Approval of Conditionally Approved Development Plan | 1 mon | Fri 7/23/10 | Thu 8/19/10 | 9 |
| 20 | **Local Approvals/Informationals** | **1228 days** | **Tue 9/18/07** | **Thu 5/31/12** | |
| 21 | **Community Organizations Outreach** | **485 days** | **Fri 7/23/10** | **Thu 5/31/12** | |
| 25 | **Meetings with Local ANC (1B)** | **784 days** | **Tue 9/18/07** | **Fri 9/17/10** | |
| 29 | **Zoning Approvals** | **220 days** | **Fri 7/23/10** | **Thu 5/26/11** | |
| 30 | Prepare Zoning Applications (Legal and Design) | 2 mons | Fri 7/23/10 | Thu 9/16/10 | 9 |
| 31 | WMATA Review of Zoning Applications | 1 mon | Fri 9/17/10 | Thu 10/14/10 | 30 |
| 32 | Zoning and HPRB Hearing | 7 mons | Fri 10/15/10 | Thu 4/28/11 | 31 |
| 33 | Receipt of Zoning Approvals | 1 mon | Fri 4/29/11 | Thu 5/26/11 | 32 |
| 34 | **Design (Pre-Construction Phase)** | **230 days** | **Fri 4/29/11** | **Thu 3/15/12** | |
| 35 | Design Development (35%) | 2.5 mons | Fri 4/29/11 | Thu 7/7/11 | 32 |
| 36 | Review by WMATA (30 calendar day review; WMATA expedited review) | 1 mon | Fri 7/8/11 | Thu 8/4/11 | 35 |
| 37 | Permit Set (80%) | 3 mons | Fri 8/5/11 | Thu 10/27/11 | 36 |
| 38 | Review by WMATA (30 calendar day review; WMATA expedited review) | 1 mon | Fri 10/28/11 | Thu 11/24/11 | 37 |
| 39 | Construction Drawings | 1.5 mons | Fri 11/25/11 | Thu 1/5/12 | 38 |
| 40 | Bid Set | 0.5 mons | Fri 1/6/12 | Thu 1/19/12 | 39 |
| 41 | Issued for Construction Drawings (100%) | 1 mon | Fri 1/20/12 | Thu 2/16/12 | 40 |
| 42 | Review by WMATA (30 calendar day review; WMATA expedited review) | 1 mon | Fri 2/17/12 | Thu 3/15/12 | 41 |
| 43 | **Permits** | **95 days** | **Fri 10/28/11** | **Thu 3/8/12** | |
| 44 | Excavation/Sheeting and Shoring Submission and Review | 1 mon | Fri 10/28/11 | Thu 11/24/11 | 37 |
| 45 | Building Permit Submission and Review (80% drawings complete) | 3.5 mons | Fri 10/28/11 | Thu 2/2/12 | 37 |




Date: Mon 3/8/10

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

Page 1

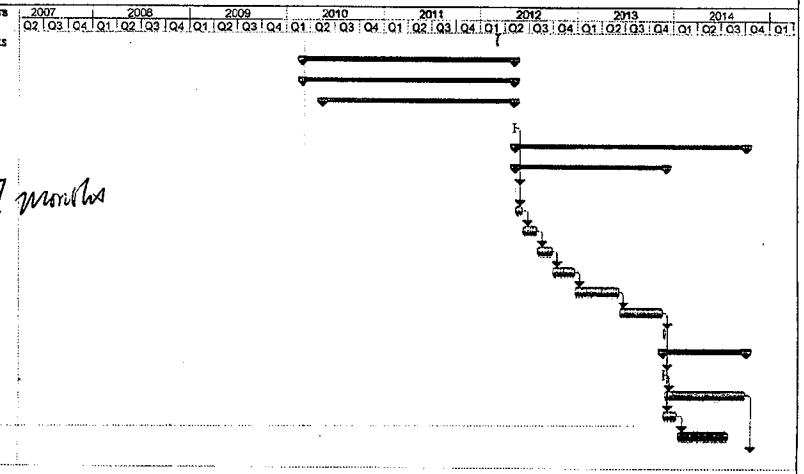
WMATA-INV 000359

FOIA CONFIDENTIAL TREATMENT REQUESTED

## The Jazz @ Florida Avenue

| ID | Task Name | Duration | Start | Finish | Predecessors |
|---|---|---|---|---|---|
| 46 | Receive Building Permit (100% drawings complete) | 1 wk | Fri 3/2/12 | Thu 3/8/12 | 41FS+2 wks |
| 47 | **Financing** | **570 days** | **Thu 3/4/10** | **Wed 5/9/12** | |
| 48 | **TIF/PILOT Financing** | **570 days** | **Thu 3/4/10** | **Wed 5/9/12** | |
| 53 | **Senior Debt Financing** | **518 days** | **Mon 5/17/10** | **Wed 5/9/12** | |
| 67 | **EXECUTE LEASE AND CLOSE WITH WMATA** | **2 days** | **Thu 5/10/12** | **Fri 5/11/12** | **66** |
| 68 | **Construction** | **626 days** | **Mon 5/14/12** | **Mon 10/6/14** | |
| 69 | **Base Build** | **410 days** | **Mon 5/14/12** | **Fri 12/6/13** | |
| 70 | Groundbreaking | 1 day | Mon 5/14/12 | Mon 5/14/12 | 67 |
| 71 | Site Work | 1 mon | Mon 5/14/12 | Fri 6/8/12 | 67 |
| 72 | Excavation & Remediation | 2 mons | Mon 6/11/12 | Fri 8/3/12 | 71 |
| 73 | Sheeting and Shoring | 2 mons | Mon 8/6/12 | Fri 9/28/12 | 72 |
| 74 | Garage Construction/Grade Complete | 3 mons | Mon 10/1/12 | Fri 12/21/12 | 73 |
| 75 | Shell Building Construction | 6 mons | Mon 12/24/12 | ~~Fri 6/7/13~~ | ~~74~~ |
| 76 | Building Fit Out | 6 mons | Mon 6/10/13 | Fri 11/22/13 | 75 |
| 77 | Landscaping | 2 wks | Mon 11/25/13 | Fri 12/6/13 | 76 |
| 78 | **Building Operations** | **226 days** | **Mon 11/25/13** | **Mon 10/6/14** | |
| 79 | **Certificate of Occupancy** | **1 wk** | **Mon 11/25/13** | **Fri 11/29/13** | **76** |
| 80 | Initial Occupancy Residential/Stabilization | 11 mons | Mon 12/2/13 | Fri 10/3/14 | 79 |
| 81 | Retail TI | 2 mons | Mon 11/25/13 | Fri 1/17/14 | 76 |
| 82 | Retail Occupany/Stabilization | 7 mons | Mon 1/20/14 | Fri 8/1/14 | 81 |
| 83 | Project Stablization | 1 day | Mon 10/6/14 | Mon 10/6/14 | 80 |

7 months




Date: Mon 3/8/10

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



WMATA-INV 000360

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Wednesday, March 03, 2010 12:05 PM
**To:** Doggett, Rosalyn; Goldin, Steven
**Subject:** FW: WMATA - blanket RRP Florida Ave. Project

Updated amounts for Railroad Protective policies for FL Ave:

*Premiums based on 85% of work within 55 ft of tunnels:*

$10mm = $366,860
$20mm = $516,426

---

**From:** Hamilton, Jim
**Sent:** Wednesday, March 03, 2010 12:04 PM
**To:** Montague, Joshua W.
**Subject:** FW: WMATA - blanket RRP Florida Ave. Project

Josh,

See quotes below for a $10M RRP and a $20M RRP for the subject project.

Jim Hamilton, CPCU, ARM, ARe
Manager, Insurance
Washington Metropolitan Area Transit Authority
Department of Risk Management
600 5th Street, NW, 8F-17
Washington, DC 20001
Office: 202-962-1223
Mobile: 202-573-3192
Fax: 202-962-1171
Email: jhamilton@wmata.com

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**From:** Rose Lang [mailto:Rose_Lang@ars.aon.com]
**Sent:** Wednesday, March 03, 2010 10:52 AM



WMATA-INV 000361

FOIA CONFIDENTIAL TREATMENT REQUESTED

**To:** Hamilton, Jim
**Cc:** Lisa Janney
**Subject:** Fw: WMATA - blanket RRP Florida Ave. Project

Hi

Here are costs.

thanks and take care

Rose Lang
Senior Vice President
Aon Risk Services, Inc. of Maryland
National Rail Transportation
500 East Pratt Street
Baltimore, MD 21202
phone 410-547-2802
fax 410-547-2914
Rose_Lang@ars.aon.com

----- Forwarded by Rose Lang/MD/ARS/US/AON on 03/03/2010 10:51 AM -----
**"Adamczyk, David (Baltimore-LIU)" <David.Adamczyk@LibertyIU.Com>**

03/03/2010 10:41 AM

To "Rose Lang" <Rose_Lang@ars.aon.com>, "Lawrence, Debbie (Baltimore-LIU)" <Debbie.Lawrence@LibertyIU.Com>
cc
Subject RE: WMATA - blanket RRP Florida Ave. Project

Premiums based on 85% of work within 55 ft of tunnels:

$10mm = $366,860
$20mm = $516,426



WMATA-INV 000362

FOIA CONFIDENTIAL TREATMENT REQUESTED

Dave Adamczyk
Vice President
Liberty International Underwriters, Inc.
Executive Plaza III, Suite 903
11350 McCormick Road
Hunt Valley, MD 21031
Phone: 888-689-4839
Direct:410-891-0141
Fax: 410-527-1831

---

**From:** Rose Lang [mailto:Rose_Lang@ars.aon.com]
**Sent:** Wednesday, March 03, 2010 10:14 AM
**To:** Lawrence, Debbie (Baltimore-LIU)
**Cc:** Adamczyk, David (Baltimore-LIU)
**Subject:** WMATA - blanket RRP Florida Ave. Project

Hi

Per the string of emails, WMATA need 2 quotes asap:

Limit - $10,000,000 and $20,000,000
total construction cost - $40,000,000
description - HUD to build a project over one of WMATA's tunnels. Jt. development project, Project financed through HUD, the project is construction of an underground parking garage over the tunnel which will be about 10' away from the tunnel. Also, built partially over metro tracks, ground lease transaction. Not much recourse against because of the hud agreement (limited to the amount of the insurance.) Subsidized housing with underneath parking. Insured contractor will be the developers general contractor.

thanks



WMATA-INV 000363

FOIA CONFIDENTIAL TREATMENT REQUESTED

Lisa and Rose,

I rec'd any inquiry from one of our attorneys re the subject HUD-financed project. It's a $40M project above one of our tunnels. HUD has a limited ability to indemnify, so we want to structure the indemnity to limit it to the CGL insurance required, which we are thinking of doubling from $10M to $20M. We were thinking we should also increase the RRP to $20M. Our attorney is asking for a premium indication (or range) for these two policies.

Please advise. Thanks.

Jim Hamilton, CPCU, ARM, ARe
Manager, Insurance
Washington Metropolitan Area Transit Authority
Department of Risk Management
600 5th Street, NW, 8F-17
Washington, DC 20001
Office: 202-962-1223
Mobile: 202-573-3192
Fax: 202-962-1171
Email: jhamilton@wmata.com

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WMATA-INV 000364

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Doggett, Rosalyn
**Sent:** Tuesday, March 02, 2010 11:41 AM
**To:** 'Omar A. Karim'
**Subject:** FW: Florida Avenue - Guaranty alternatives

---

**From:** Montague, Joshua W.
**Sent:** 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.

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.



WMATA-INV 000365

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 000366

FOIA CONFIDENTIAL TREATMENT REQUESTED

**Doggett, Rosalyn**

**From:** Montague, Joshua W.
**Sent:** Friday, February 26, 2010 4:10 PM
**To:** Doggett, Rosalyn
**Subject:** RE: Followup on Florida Avenue

Roz –

Below is the redline language from the last term sheet.

The redline language is from the developer.

The comment is from WMATA.

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

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



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## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** 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.

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.



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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.

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**From:** Doggett, Rosalyn
**Sent:** Friday, February 26, 2010 2:50 PM
**To:** Montague, Joshua W.
**Subject:** RE: Followup on Florida Avenue

Let's review where we are on this. I also think that we should give Omar the day off today.

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**From:** Montague, Joshua W.
**Sent:** Thursday, February 25, 2010 4:33 PM
**To:** Doggett, Rosalyn
**Subject:** FW: Followup on Florida Avenue

#7 – I think that he is confusing guaranty agreement with a performance bond here. I thought this was supposed to be in reference to a Guaranty Agreement from BOACDC or their replacement.

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**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

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.



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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 projects.

Omar

Omar A. Karim
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(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>
**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.



WMATA-INV 000370

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## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Tuesday, February 23, 2010 10:53 AM
**To:** Doggett, Rosalyn
**Subject:** Florida Avenue - Timing issues

While the Pre-brief group's consensus was that the Board won't get to the timing issue, it might be helpful to have a brief summary of this issue for the small possibility that the Board asks about timing.

Here are the main timing issues from the last version of the Term Sheet (of course, these terms are still open for negotiation until actually executed):

TIMING:

1. **Execution of the Joint Development Agreement:**
   a. *150 Days* - The JDA must be executed within 150 days of the Board's approval of the amended Term Sheet.
   b. The execution of the JDA will "lock in" the amount of rents, other payments, and deposits to be paid in this transaction. Some Board members may express concern that the delay between *lock in* (execution of the JDA) and *payment* (closing) could cause said amounts to be outdated by the time WMATA actually receives payment.

2. **Closing:**
   a. *20 Months* - The closing must occur within 20 months of the execution of the JDA.

3. **Final Completion of the Project:**
   a. *54 months after closing* - Though not in the Term Sheet, the parties have discussed a 54 month period for the Developer to complete construction of the project.

4. **Post-Closing Payments:**
   a. Additional Density – if Developer gets additional density at any time during the first 60 years of the Lease, the Cap Lease payment to WMATA is increased.
   b. Participation Rent payment – Annual payments begin when developer starts receiving EGI.
   c. Cap Event Rent payment – Upon the occurrence of any Cap Event.
   d. Monthly Rent payments – begin upon 60th anniversary of closing.

PAYMENTS:

1. **Payments made prior to Closing:**
   a. *Security Deposit* –



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i. In the amount of $250K (subject to the "Additional Cost Credit") is paid to WMATA upon execution of the JDA.
ii. The security deposit is to be refunded to developer upon final completion of the construction of the project.

b. *Pre-closing payments* –
i. From execution of the JDA until closing, Developer is to make quarterly non-refundable pre-closing rent payments to WMATA.
ii. The amount of the pre-closing rent increases annually (1st year: $50K; 2nd year: $65K; Thereafter: $80K).

2. **Payments at Closing:**
a. *Payments due at closing* - Cap lease payment and Additional Density payment (if any).
b. *Cap Lease* - The amount of the Cap lease payment is currently $2.8M.
c. *Additional Density* - If density is added to the project prior to closing, an Additional Density payment will be added to the Cap Lease payment. The amount of the Additional Density payment is based on the same economic formula used to determine the Cap Lease payment (and so might also be outdated by the time said payment is due).

3. **Post-Closing Payments:**
a. Additional Density:
i. *Prior to Final Completion* – Additional Density payment is based on same economic formula used to determine the Cap Lease payment.
ii. *After Final Completion* – Additional Density payment will be based on three-appraiser process.

b. Timing Penalties:
i. Cap Lease payment and Additional Density payments increase by 5.8% annually if Developer does not close by the 20 month deadline.
ii. Participation rent payments increase 5.8% annually if not paid on time.



WMATA-INV 000372

FOIA CONFIDENTIAL TREATMENT REQUESTED

**Doggett, Rosalyn**

**From:** Omar Karim [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

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.

Who did you meet with
What is the precedent

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.

needs work

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

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WMATA-INV 000373

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---

**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>
**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



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WMATA-INV 000374

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000375

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Tuesday, February 23, 2010 4:54 PM
**To:** Doggett, Rosalyn
**Cc:** 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
**Subject:** Follow-up re Jazz @ Florida Avenue

**Importance:** High

Roz,

Per our call this morning, Banneker, our develop partner and investors for The Jazz @ Florida Avenue project (collectively, the "Developer") are prepared to increase our offer to WMATA as follows:

1. Make a capitalized lease payment of **$5.2M** at Closing. This is a 130% increase in value over WMATA's appraised value of $2.2M, and a 70% increase in value over our previous base offer of $3.03M, which includes the NPV of the capitalized lease plus the NPV of the EGI payments. This base offer is inclusive of the projected **$2.8M loss in land value** (as calculated by WMATA's appraiser Richard Harps) due to the 8% IZ requirement and the additional hard and soft costs incurred by the Project as a result of building over the WMATA tunnel.

2. Because of some of the concerns raised by WMATA staff, we would are prepared to move forward with developing the Project solely on the WMATA parcels (28,347 SF). We will forgo our purchase of the adjacent 9th Street parcels, thereby relieving any potential complications that would arise with the necessity of a Co-Tenancy Agreement, also allowing us to free up capital that would have been used toward purchasing those parcels, and instead use these funds to pay WMATA more funds at Closing. We will also not pursue an alley closing.

3. We will build the project at 4.5 FAR (as of right if not for the mandatory IZ rules that went into effect after our selection) plus the 20% bonus (0.9 FAR) that we would get because of the IZ units, bringing the total FAR to 5.4 FAR. The Project will consist of 153,000 GSF, with 137 residential units (with 12 IZ units), 14,000 SF and 41 parking spaces. Developer would pay WMATA an agreed upon rate of $ per FAR for any SF that it builds above the 153,000 SF.

4. The initial term of the lease will be for 50 years, with a 49 year option and resets to market value every 10 years after the initial 50 year term.

5. All other terms will remain consistent (i.e., participation in Capital Events, etc.).

A $5.2M upfront, non-contingent payment to WMATA is significantly higher than the recent appraisal completed by WMATA and close to our initial offer to WMATA in 2007, excluding the imposition of the IZ units and market conditions. Based on our analysis of our initial offer, **the NPV of the offer, using reasonable interest rate assumptions, would have been about $11M,** which is no where close to the $14M that WMATA staff informed us that this is what they calculated our offer to be. If this is the case, assuming that the market conditions brought the value down by 20% (which is conservative), this would bring the offer from $11M to $8.8M. Because we have to build IZ units, which force us to go from a stick build construction type to a light gauge steel product, and at the same time



WMATA-INV 000376

loose money on all of the IZ units as they do not support themselves without a subsidy, which the District does not provide for IZ units, this causes the value of the offer to go from $8.8M to the $5.2M that we are now offering, excluding WMATA's other participation rights in the Project.

As we have discussed previously, to date, the Developer has incurred over $1M since being selected by WMATA. We continue to remain hopeful that the exhaustive amount of money and time spent by Developer and WMATA in bringing this Project will produce a TOD project that all parties can be proud of. We look forward to seeing you on Friday at 2:30 and finalizing this last term of the deal so that we can get the JDA and Lease complete and presented to the Board at the next possible Board meeting. Should you have any questions prior to Friday, please feel free to contact us.

Warmest regards, I remain

Sincerely,

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000377

$8,797,500 (153,000 sf. x $57.50/sf)
or includes affordable

(153,000 sf x $50/sf)

$7,650,000

less $3M for tunnel + affordable

Cancel tomorrow Omar mtg.

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842227

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Wednesday, February 24, 2010 10:26 AM
**To:** Doggett, Rosalyn
**Subject:** RE: Follow-up re Jazz @ Florida Avenue

Thanks for forwarding. Are we meeting anytime before Friday to discuss?

The exclusion of the adjacent parcels alleviates a major legal risk from WMATA's perspective.

Here are some outstanding issues that should be discussed before the meeting with the Developer:

1. Cap Event / Participation rent payments – WMATA should review/fix the formulas for these payments as they are described in the last term sheet.

2. Indemnification – WMATA should have a coherent strategy before discussing this issue with the Developer. Indemnification was a "non-negotiable" requirement of the JDS. The Developer has previously indicated that they are obtaining financing which would limit their indemnification to "surplus cash." While the Developer will likely argue that their insurance will provide WMATA all of the protection that we need, that may not be true. There are unique risks because the Developer is building over the tunnel. A $10M policy may not cover the repair of the damage.

   Additionally, the indemnification provisions offer protections that WMATA does not get from insurance. For example, environmental liability protection, payments due under the lease, payments that Developer fails to make related to the property (ex. mechanic's liens or government violations), or damages/lawsuits that might be outside of the scope of our insurance coverage.

3. Additional Costs Credit – Are we still providing this credit? Was this ever verified with either J. Graham or J. Catoe?

4. Guaranty – Are we accepting a guaranty from Banneker? What should it cover?

5. Project schedule – At the meeting without Omar, in response to J. Graham's concerns about the Developer just sitting on the property without building (i.e., the reversion issue), John Hagner came up with an alternative route to getting this project built on time. He suggested that we attach a project schedule to the lease. If the Developer does not meet any of the project schedule milestones then it is a default of the lease. J. Hagner said he had to verify this with his client before he could officially offer this to us. This should be included in the term sheet.



WMATA-INV 000379

FOIA CONFIDENTIAL TREATMENT REQUESTED

**From:** Doggett, Rosalyn
**Sent:** Wednesday, February 24, 2010 9:04 AM
**To:** Montague, Joshua W.
**Subject:** FW: Follow-up re Jazz @ Florida Avenue
**Importance:** High

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Tuesday, February 23, 2010 4:54 PM
**To:** Doggett, Rosalyn
**Cc:** 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
**Subject:** Follow-up re Jazz @ Florida Avenue
**Importance:** High

Roz,

Per our call this morning, Banneker, our develop partner and investors for The Jazz @ Florida Avenue project (collectively, the "Developer") are prepared to increase our offer to WMATA as follows:

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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.

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4. The initial term of the lease will be for 50 years, with a 49 year option and resets to market value every 10 years after the initial 50 year term.

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WMATA-INV 000380

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Warmest regards, I remain

Sincerely,

Omar

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000381

FOIA CONFIDENTIAL TREATMENT REQUESTED

**Doggett, Rosalyn**

**From:** Omar Karim [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

with 25% reduction MOR

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:

Roz to verify

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.

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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 projects.

Omar

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WMATA-INV 000382

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---

**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>
**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



WMATA-INV 000383

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 000384

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Tuesday, February 23, 2010 4:54 PM
**To:** Doggett, Rosalyn
**Cc:** 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
**Subject:** Follow-up re Jazz @ Florida Avenue

**Importance:** High

Roz,

Per our call this morning, Banneker, our develop partner and investors for The Jazz @ Florida Avenue project (collectively, the "Developer") are prepared to increase our offer to WMATA as follows:

1. Make a capitalized lease payment of **$5.2M** at Closing. This is a 130% increase in value over WMATA's appraised value of $2.2M, and a 70% increase in value over our previous base offer of $3.03M, which includes the NPV of the capitalized lease plus the NPV of the EGI payments. This base offer is inclusive of the projected **$2.8M loss in land value** (as calculated by WMATA's appraiser Richard Harps) due to the 8% IZ requirement and the additional hard and soft costs incurred by the Project as a result of building over the WMATA tunnel.

2. Because of some of the concerns raised by WMATA staff, we would are prepared to move forward with developing the Project solely on the WMATA parcels (28,347 SF). We will forgo our purchase of the adjacent 9th Street parcels, thereby relieving any potential complications that would arise with the necessity of a Co-Tenancy Agreement, also allowing us to free up capital that would have been used toward purchasing those parcels, and instead use these funds to pay WMATA more funds at Closing. We will also not pursue an alley closing.

3. We will build the project at 4.5 FAR (as of right if not for the mandatory IZ rules that went into effect after our selection) plus the 20% bonus (0.9 FAR) that we would get because of the IZ units, bringing the total FAR to 5.4 FAR. The Project will consist of 153,000 GSF, with 137 residential units (with 12 IZ units), 14,000 SF and 41 parking spaces. Developer would pay WMATA an agreed upon rate of $ per FAR for any SF that it builds above the 153,000 SF.

4. The initial term of the lease will be for 50 years, with a 49 year option and resets to market value every 10 years after the initial 50 year term.

5. All other terms will remain consistent (i.e., participation in Capital Events, etc.).

A $5.2M upfront, non-contingent payment to WMATA is significantly higher than the recent appraisal completed by WMATA and close to our initial offer to WMATA in 2007, excluding the imposition of the IZ units and market conditions. Based on our analysis of our initial offer, **the NPV of the offer, using reasonable interest rate assumptions, would have been about $11M,** which is no where close to the $14M that WMATA staff informed us that this is what they calculated our offer to be. If this is the case, assuming that the market conditions brought the value down by 20% (which is conservative), this would bring the offer from $11M to $8.8M. Because we have to build IZ units, which force us to go from a stick build construction type to a light gauge steel product, and at the same time



WMATA-INV 000385

loose money on all of the IZ units as they do not support themselves without a subsidy, which the District does not provide for IZ units, this causes the value of the offer to go from $8.8M to the $5.2M that we are now offering, excluding WMATA's other participation rights in the Project.

As we have discussed previously, to date, the Developer has incurred over $1M since being selected by WMATA. We continue to remain hopeful that the exhaustive amount of money and time spent by Developer and WMATA in bringing this Project will produce a TOD project that all parties can be proud of. We look forward to seeing you on Friday at 2:30 and finalizing this last term of the deal so that we can get the JDA and Lease complete and presented to the Board at the next possible Board meeting. Should you have any questions prior to Friday, please feel free to contact us.

Warmest regards, I remain

Sincerely,

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell



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Was valued at $7.5M
7.50 difference in 153,000 GSF = $1,147,500

7.5 or 7,650
- 1.2 2/25
$6.4M aim.

VOID

| | July | 1 2010 | 2 2011 | 3 2012 | 4 2013 | 5 2014 | 6 2015 | 7 2016 | 8 2017 | 9 2018 | 10 2019 | 11 2020 | 12 2021 | 13 2022 | 14 2023 | 15 2024 | 16 2025 | 50 2059 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Banneker (February 2010) with 50 year ground lease** | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | |
| Option Fee | | $100,000 | | | | | | | | | | | | | | | | |
| Predevelopment Rent | | $50,000 | $65,000 | $0 | | | | | | | | | | | | | | |
| Base Rent | prepaid | | | $5,200,000 | | | | | | | | | | | | | | |
| | annual | | | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 |
| Total WMATA Base Rent | | $150,000 | $65,000 | $5,200,000 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 |
| Effective Gross Income | Banneker projected ??? | | | | $0 | $0 | $2,831,000 | oct 2009 before 30% increase in project size | | | | | | | | | | |
| | 3.00% EGI growth BSA adjusted (130% of October 2009 per 30% morer sf) | | | | $0 | $0 | $3,250,000 | $3,347,500 | $3,447,925 | $3,551,363 | $3,657,904 | $3,767,641 | $3,880,670 | $3,997,090 | $4,117,003 | $4,240,513 | $4,367,729 | $11,932,220 |
| | 1.50% WMATA payment | | | | | | | | | | | $56,515 | $58,210 | $59,956 | $61,755 | $63,608 | $65,516 | $178,983 |
| Total WMATA Base Rent With Percentage of EGI | | | | | | | $0 | $0 | $0 | $0 | $0 | $56,515 | $58,210 | $59,956 | $61,755 | $63,608 | $65,516 | $178,983 |
| WMATA Participation | 2.00% of defined capital events | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $5,000,000 FY09 value | | | | | | | | | | | | | | | | | |
| | 3.00% annual compounded increase | | | | | | | | | | | | | | | | | |
| Terminal Value | $21,281,097 on land only | | | | | | | | | | | | | | | | | $21,281,097 |
| **Cash Flow** | | $150,000 | $65,000 | $5,200,000 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $56,515 | $58,210 | $59,956 | $61,755 | $63,608 | $65,516 | $178,983 |
| **Cash Flow w/ residual** | | $150,000 | $65,000 | $5,200,000 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $56,515 | $58,210 | $59,956 | $61,755 | $63,608 | $65,516 | $21,460,080 |
| NPV . Base Rent | 5.73% discount rate | $4,863,126 | | | 6.80% discount rate | | | $4,769,720 | | | | | | | | | | |
| With Residual | 5.73% discount rate | $5,175,575 | | | 6.80% discount rate | | | $5,563,058 | | | | | | | | | | |
| With EGI and Res | 5.73% discount rate | $5,944,924 | | | 6.80% discount rate | | | $6,152,523 | | | | | | | | | | |
| With Participation | | not considered | | | | | | | | | | | | | | | | |

WMA could get rents revised after year 42 like PGP

Today's discount rate is 6.2% would yield @ $6,022 npv

Off-Street Parking Requirements C-2-B

1 space/3 apartments = 138/3 = 46 parking spaces

1 space/750 retail gsf over 3,000 gsf = 15 parking spaces

46 + 15 = 61 x .75 = 46 space MOR requirement (near Metro you need only 75% of requirement)

Variance needed for 5 spaces if only 41 are provided

## Doggett, Rosalyn

**From:** Harry D. Sewell [hsewell@dchfa.org]
**Sent:** Friday, September 18, 2009 9:18 AM
**To:** Doggett, Rosalyn
**Subject:** Jazz 9% Tax Credits

Roz:

Good to see you the other day. In general, proceeds from 9% Low Income Housing Tax Credits should cover approximately 70% of the development costs, minus costs for land.

Let's catch up over lunch sometime soon.

H

District of Columbia
Housing Finance Agency
Harry D. Sewell | Executive Director |
815 Florida Avenue, NW | Washington, DC 20001 |
Phone: 202-777-1601 | Fax: 202-986-6736 | www.dchfa.org |

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Sum RPD
3/16 Holden

**Doggett, Rosalyn**

**From:** Margaret Allen [mallen@agmfinancial.com]
**Sent:** Tuesday, March 09, 2010 12:08 PM
**To:** Doggett, Rosalyn
**Subject:** re[4]: Definition of surplus cash

Ros, yes, all sub debt must be paid from surplus cash

Margaret Allen CHIEF EXECUTIVE OFFICER

AGM FINANCIAL SERVICES, INC.
*Financing Communities with FHA*

2 North Charles Street
Suite 300
Baltimore, MD 21201

DIRECT: 443.573.2045
CELL: 410.340.2572
FAX: 410.727.3233
MAIN: 410.727.2111

*www.agmfinancial.com*

---------- **Original Message** ----------

**From:** "Doggett, Rosalyn" <RDoggett@wmata.com>
**To:** Margaret Allen <mallen@agmfinancial.com>
**Cc:**
**Date:** Tue, 9 Mar 2010 12:02:44 -0500
**Subject:** **RE: re[2]: Definition of surplus cash**

Are principal and interest ONLY on the senior mortgage?

---

**From:** Margaret Allen [mailto:mallen@agmfinancial.com]
**Sent:** Saturday, March 06, 2010 12:09 PM
**To:** Doggett, Rosalyn
**Subject:** re[2]: Definition of surplus cash

Ros, ah, the obligations that must be paid are all operating costs of the property including management fee and annual contributions to reserves, MIP, ground lease fixed payments, taxes, insurance, principal, and interest. The rest is surplus cash.



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www.agmfinancial.com

---------- **Original Message** ----------

**From:** "Doggett, Rosalyn" <RDoggett@wmata.com>
**To:** Margaret Allen <mallen@agmfinancial.com>
**Cc:** "Montague, Joshua W." <jwmontague@wmata.com>
**Date:** Sat, 6 Mar 2010 08:26:04 -0500
**Subject:** **RE: Definition of surplus cash**

Congratulations, Margaret. The question is, however, what "obligations" are paid before surplus cash is reached, ie.g., payoff of bonds, PILOTS, TIF, loans from developer members, equity and return on equity.... I will be out of the office on Monday but call Josh Montague at 202 962 1275 if you can find the time or email back. Thanks, Roz

---

**From:** Margaret Allen [mallen@agmfinancial.com]
**Sent:** Friday, March 05, 2010 7:09 PM
**To:** Doggett, Rosalyn
**Subject:** Definition of surplus cash

Sorry this took a while. Its nuts around here. The good news is that Rhode Island locked it rate at an astoundingly low level yesterday. We are all very happy. I have attached the HUD regulatory agreement where the definition of surplus cash is included. Look at paragraph 13f on page 6. Have a nice week-end.

Margaret Allen CHIEF EXECUTIVE OFFICER

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## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Thursday, March 04, 2010 3:16 PM
**To:** Doggett, Rosalyn
**Cc:** Goldin, Steven
**Subject:** FW: Definition of Surplus Cash
**Attachments:** Closing Instructions (Surplus Cash Definition).pdf

Roz,

The attached includes the following definition for Surplus Cash:

"Surplus Cash" means any cash remaining after:
(1) the payment of:
(i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Secretary;
(ii) All amounts required to be deposited in the reserve fund for replacements;
(iii) All obligations of the project other than the insured mortgage unless funds for payment are set aside or deferment of payment has been approved by the Secretary; and
(2) the segregation of:
(i) An amount equal to the aggregate of all special funds required to be maintained by the project; and
(ii) All tenant security deposits held.

Does the phrase "all obligations of the project" include member loans? Member equity? Operating expenses? What will be left?

Can you tell from the economic info provided by the Developer how much "surplus cash" will be?

In the Rhode Island Ave and PG Plaza projects, a Defense Reserve fund was set up to help alleviate the restrictions on indemnity. Payments to the fund are made out of surplus cash. Though the risks here are much greater than those two projects because of the proximity of the tunnel and relative inexperience of the developer, we should discuss this option (among other options) internally.

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**From:** Tiwana Hicks [mailto:thicks@bannekerventures.com]
**Sent:** Thursday, March 04, 2010 1:15 PM



WMATA-INV 000392

FOIA CONFIDENTIAL TREATMENT REQUESTED

**To:** Montague, Joshua W.
**Cc:** 'Omar A. Karim'
**Subject:** Definition of Surplus Cash

Josh,

Per our lender, please find HUD's definition of surplus cash on page 6 of the first attachment. Let me know if you need anything else. 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



WMATA-INV 000393

# Regulatory Agreement
# Multifamily Housing Projects
Instructions to Closing Attorney

**U.S. Department of Housing and Urban Development**
Office of Housing
Federal Housing Commissioner

**Under Sections 207, 220, 221(d)(4), 231 and 232, Except Nonprofits**

1. Form of Mortgagor
   a. Corporate Mortgagor - any form of Corporate Charter may be used which:
      (1) contains nothing inconsistent with the Regulatory Agreement,
      (2) gives the corporation powers necessary to operate the project and execute the note and mortgage, and
      (3) specifically authorizes the execution of the regulatory Agreement.

      Suggested charter provisions to accomplish the above purposes are attached.
   b. Partnership Mortgagor - Unless all general partners execute the Regulatory Agreement, a copy of the partnership agreement should be furnished and should be furnished and should be examined to determine that it contains nothing inconsistent with the Regulatory Agreement. It should further contain a provision substantially as follows:

      "The partnership is authorized to execute a note and mortgage in order to secure a loan to be insured by the Secretary of Housing and Urban Development and to execute a Regulatory Agreement and other documents required by the Secretary in connection with such loan. Any incoming general partner shall as a condition of receiving an interest in the partnership agree to be bound by the note, mortgage, and Regulatory Agreement and other documents required in connection with the FHA insured loan to the same extent and on the same terms as the other general partners. Upon any dissolution, no title or right to possession and control of the project, and no right to collect the rents therefrom shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Secretary.
   c. Trust - any Trust Agreement before it is finally accepted generally should:
      (1) Give the trustee the powers necessary to execute the note and mortgage;
      (2) specifically authorize the execution of the Regulatory Agreement;
      (3) contain nothing inconsistent with the Regulatory Agreement;
      (4) prohibit the transfer of beneficial interest prior to completion of the project without the prior written consent of the Secretary and prohibit the transfer of such interest subsequent to completion of the project unless the new beneficiary assumes and agrees to be bound by the Regulatory Agreement; and
      (5) require that the Secretary be advised ten (10) days prior to any proposed transfers of beneficial interests.

2. The Section of the National Housing Act under which the mortgage was originally endorsed for insurance or the fact that the mortgage originally was a Secretary-held purchase money mortgage shall be set out in the heading of the Agreement under the item "mortgage."

3. The names of all mortgagors including all beneficiaries of any trust shall be set out in the first unnumbered paragraph of the Agreement in the place for listing the names of the parties. Where any such person is signing the Agreement as trustee or in some other representative capacity, this fact shall be clearly set out both in this first paragraph and in an identical manner at the end of the Agreement where such person signs. The name of the person signing in a representative capacity should also be set out in his individual capacity in Paragraph 17. For example: a party may be designated, "Mr. Jones, as trustee of Sara Jones Trust," be listed in paragraph 17 as "Mr. Jones, individually," and sign the Agreement as "Mr. Jones, trustee of the Sara Jones Trust." This would make the Sara Jones Trust responsible for carrying out the provisions of the Regulatory Agreement, but Mr. Jones would be responsible individually only for his own acts.

4. In all cases involving the issuance of a commitment to insure there shall be added to the mortgage a provision substantially as follows:

   "The Regulatory Agreement of even date herewith entered into between the Mortgagors (Grantors) herein and the Secretary of Housing and Urban Development which is being recorded simultaneously herewith, is incorporated in and made a part of this mortgage (deed of trust). Upon default under the Regulatory Agreement and upon request by the Secretary, the Mortgagee, at its option, may declare this mortgage (deed of trust) in default and may declare the whole of the indebtedness secured hereby to be due and payable."

   If the mortgage is already on record, it should be modified to incorporate the Regulatory Agreement. Ordinarily this may be done by a separate Modification Agreement executed by the mortgagor and mortgagee.

5. The Regulatory Agreement shall be executed by the Mortgagor and Secretary and recorded at the expense of the Mortgagor prior to endorsement for insurance, prior to consent to a conveyance in existing insured mortgage cases, or prior to the conveyance to a purchaser in sales cases.

6. Since the requirements for execution vary from state to state, space is left at the end of the printed form for proper execution. Generally, acknowledgment by each party will be required and the form of acknowledgment used in the mortgage or deed of trust would be acceptable.

7. If the mortgage is insured pursuant to Section 232, Par. 4 of the Regulatory Agreement shall be stricken and the deletion appropriately approved by the parties.

8. The Agreement is to be executed in the name of the Secretary by the Field Office Manager.

9. A **legal description** of the property shall be attached.

10. Whenever this Agreement is executed by a person not liable for the payment of the note and mortgage, such person shall be listed in Paragraph 17. If all persons executing this Agreement are so liable, the word "none" should be inserted in Paragraph 17 or Paragraph 17 should be stricken in its entirety.

11. In the event the project is to be insured under section 232, and the owner is to lease the project, the lessee shall execute FHA Form No. 2466-nhl.

12. The dollar amount to be inserted in the first paragraph of 2(a) is 1/12 the annual Reserve for Replacements recited in the commitment.



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WMATA-INV 000394

**Corporate Charter Provisions**

**Article Purposes**

The purpose for which the corporation is formed and the business to be carried on and the objectives to be effected by it are:

**Section 1.** (a) To create a private corporation to construct or to acquire a housing project or projects, and to operate the same; (b) to enable the financing of the construction of such rental housing with the assistance of mortgage insurance under the National Housing Act; (c) to enter into, perform, and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the corporation, including, expressly, any contract or contracts with the Secretary of Housing and Urban Development which may be desirable or necessary to comply with the requirements of the National Housing Act, as amended, and the Regulations of the Secretary thereunder, relating to the regulation or restriction of mortgagors as to rents, sales, charges, capital structure, rate of return and methods of operation; (d) to any acquire any property, real or personal, in fee or under lease, or any rights therein or appurtenant thereto, necessary for the construction and operation of such project; and (e) to borrow money, and to issue evidence of indebtedness, and to secure the same by mortgage, deed of trust, pledge, or other lien, in furtherance of any or all of the objects of its business in connection with said project.

**Article Powers**

**Section 1.** The corporation shall have the power to do and perform all things whatsoever set out in Section 1 of Article _____ Purposes above, and necessary or incidental to the accomplishments of said purposes.

**Section 2.** The corporation, specifically and particularly, shall have the power and authority to enter into a Regulatory Agreement setting out the requirements of the Secretary of Housing and Urban Development.



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000395

# Regulatory Agreement for Multifamily Housing Projects

**U.S. Department of Housing and Urban Development**
Office of Housing
Federal Housing Commissioner

**Under Sections 207, 220, 221(d)(4), 231 and 232, Except Nonprofits**

| Project Number | | | Mortgagee | |
|---|---|---|---|---|
| Amount of Mortgage Note | | | Date | |
| Mortgage Recorded State<br>Book | County<br>Page | | Date | Originally endorsed for insurance under Section |

This Agreement entered into this _____ day of _____, 20 _____ between _____ whose address is _____

their successors, heirs, and assigns (jointly and severally, hereinafter referred to as Owners) and the undersigned Secretary of Housing and Urban Development and his successors (hereinafter referred to as Secretary).

In consideration of the endorsement for insurance by the Secretary of the above described note or in consideration of the consent of the Secretary to the transfer of the mortgaged property or the sale and conveyance of the mortgaged property by the Secretary, and in order to comply with the requirements of the National Housing Act, as amended, and the Regulations adopted by the Secretary pursuant thereto, Owners agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the contract of mortgage insurance continues in effect, and during such further period of time as the Secretary shall be the owner, holder or reinsurer of the mortgage, or during any time the Secretary is obligated to insure a mortgage on the mortgage property:

1. Owners, except as limited by paragraph 17 hereof, assume and agree to make promptly all payments due under the note and mortgage.

2. (a) Owners shall establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the mortgagee, concurrently with the beginning of payments towards amortization of the principal of the mortgage insured or held by the Secretary of an amount equal to $ _____ per month unless a different date or amount is approved in writing by the Secretary.

   Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Secretary. In the event that the owner is unable to make a mortgage note payment on the due date and that payment cannot be made prior to the due day of the next such installment or when the mortgagee has agreed to forgo making an election to assign the mortgage to the Secretary based on a monetary default, or to withdraw an election already made, the Secretary is authorized to instruct the mortgagee to withdraw funds from the reserve fund for replacements to be applied to the mortgage payment in order to prevent or cure the default. In addition, in the event of a default in the terms of the mortgage, pursuant to which the loan has been accelerated, the Secretary may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated.

   (b) Where Owners are acquiring a project already subject to an insured mortgage, the reserve fund for replacements to be established will be equal to the amount due to be in such fund under existing agreements or charter provisions at the time Owners acquire such project, and payments hereunder shall begin with the first payment due on the mortgage after acquisition, unless some other method of establishing and maintaining the fund is approved in writing by the Secretary.

3. Real property covered by the mortgage and this agreement is described in Schedule A attached hereto.

   (This paragraph 4 is not applicable to cases insured under Section 232.)

4. (a) Owners shall make dwelling accommodation and services of the project available to occupants at charges not exceeding those established in accordance with a rental schedule approved in writing by the Secretary, for any project subject to regulation of rent by the Secretary. Accommodations shall not be rented for a period of less than thirty (30) days, or, unless the mortgage is insured under Section 231, for more than three years. Commercial facilities shall be rented for such use and upon such terms as approved by the Secretary. Subleasing of dwelling accommodations, except for subleases of single dwelling accommodations by the tenant thereof, shall be prohibited without prior written approval of Owners and the Secretary and any lease shall so provide. Upon discovery of any unapproved sublease, Owners shall immediately demand cancellation and notify the Secretary thereof.

   (b) Upon prior written approval by the Secretary, Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Owners for any facilities and/or services which may be furnished by the Owners or others to such tenant upon his request, in addition to the facilities and services included in the approved rental schedule. Approval of charges for facilities and services is not required for any project not subject to regulation of rent by the Secretary.

   (c) For any project subject to regulation of rent by the Secretary, the Secretary will at any time entertain a written request for a rent increase properly supported by substantiating evidence and within a reasonable time shall:



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000396

(i) Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance cost over which Owners have no effective control or;

(ii) Deny the increase stating the reasons therefor.

5. (a) If the mortgage is originally a Secretary-held purchase money mortgage, or is originally endorsed for insurance under any Section other than Sections 231 or 232 and is not designed primarily for occupancy by elderly persons, Owners shall not in selecting tenants discriminate against any person or persons by reason of the fact that there are children in the family.

(b) If the mortgage is originally endorsed for insurance under Section 221, Owners shall in selecting tenants give to displaced persons or families an absolute preference or priority of occupancy which shall be accomplished as follows:

(1) For a period of sixty (60) days from the date of original offering, unless a shorter period of time is approved in writing by the Secretary, all units shall be held for such preferred applicants, after which time any remaining unrented units may be rented to non-preferred applicants;

(2) Thereafter, and on a continuing basis, such preferred applicants shall be given preference over nonpreferred applicants in their placement on a waiting list to be maintained by the Owners; and

(3) Through such further provisions agreed to in writing by the parties.

(c) Without the prior written approval of the Secretary not more than 25% of the number of units in a project insured under Section 231 shall be occupied by persons other than elderly persons.

(d) All advertising or efforts to rent a project insured under Section 231 shall reflect a bona fide effort of the Owners to obtain occupancy by elderly persons.

6. Owners shall not without the prior written approval of the Secretary:

(a) Convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property.

(b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds except from surplus cash, except for reasonable operating expenses and necessary repairs.

(c) Convey, assign, or transfer any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property.

(d) Remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project.

(e) Make, or receive and retain, any distribution of assets or any income of any kind of the project except surplus cash and except on the following conditions:

(1) All distributions shall be made only as of and after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction;

(2) No distribution shall be made from borrowed funds, prior to the completion of the project or when there is any default under this Agreement or under the note or mortgage;

(3) Any distribution of any funds of the project, which the party receiving such funds is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds; and

(4) There shall have been compliance with all outstanding notices of requirements for proper maintenance of the project.

(f) Engage, except for natural persons, in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project.

(g) Require, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account.

(h) Permit the use of the dwelling accommodations or nursing facilities of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Secretary.

7. Owners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition. In the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the mortgage.

8. Owners shall not file any petition in bankruptcy or for a receiver or in insolvency or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors, or permit an adjudication in bankruptcy or the taking possession of the mortgaged property or any part thereof by a receiver or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale, and fail to have such adverse actions set aside within forty-five (45) days.

9. (a) Any management contract entered into by Owners or any of them involving the project shall contain a provision that, in the event of default hereunder, it shall be subject to termination without penalty upon written request by the Secretary. Upon such request Owners shall immediately arrange to terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Secretary for continuing proper management of the project.

(b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

(c) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the Secretary or his duly authorized agents. Owners shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Secretary or his duly authorized agents.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000397

(d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Secretary.

(e) Within sixty (60) days following the end of each fiscal year the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of mortgagor prepared in accordance with the requirements of the Secretary, prepared and certified to by an officer or responsible Owner and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.

(f) At request of the Secretary, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to income, assets, liabilities, contracts, operation, and condition of the property ad the status of the insured mortgage.

(g) All rents and other receipts of the project shall be deposited in the name of the project in a financial institution, whose deposits are insured by an agency of the Federal Government. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project or for distributions of surplus cash as permitted by paragraph 6(e) above. Any Owner receiving funds of the project other than by such distribution of surplus cash shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any Owner receiving property of the project in violation of this Agreement shall hold such funds in trust. At such time as the Owners shall have lost control and/or possession of the project, all funds held in trust shall be delivered to the mortgagee to the extent that the mortgage indebtedness has not been satisfied.

(h) If the mortgage is insured under Section 232:

(1) The Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as a nursing home and shall not lease all or part of the project except on terms approved by the Secretary.

(2) The Owners shall suitably equip the project for nursing home operations.

(3) The Owners shall execute a Security Agreement and Financing Statement (or other form of chattel lien) upon all items of equipment, except as the Secretary may exempt, which are not incorporated as security for the insured mortgage. The Security Agreement and Financing Statement shall constitute a first lien upon such equipment and shall run in favor of the mortgagee as additional security for the insured mortgage.

(i) If the mortgage is insured under Section 231, Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as housing for the elderly.

**10.** Owners will comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, religion or creed, sex, or national origin, including Title VIII of the Civil Rights Act of 1968 (Public Law 90-284; 82 Stat. 73), as amended, Executive Order 11063, and all requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development implementing these authorities (including 24 CFR Parts 100, 107 and 110, and Subparts I and M of Part 200).

**11.** Upon a violation of any of the above provisions of this Agreement by Owners, the Secretary may give written notice thereof, to Owners, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Secretary, be designated by the Owners as their legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) days after the date such notice is mailed or within such further time as the Secretary determines is necessary to correct the violation, without further notice the Secretary may declare a default under this Agreement effective on the date of such declaration of default and upon such default the Secretary may:

(a) (i) If the Secretary holds the note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage;

(ii) If said note is not held by the Secretary - notify the holder of the note of such default and request holder to declare a default under the not and mortgage, and holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the mortgage, or assign the note and mortgage to the Secretary as provided in the Regulations;

(b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the Owners' obligations under this Agreement and under the note and mortgage and the necessary expenses of preserving the property and operating the project.

(c) Take possession of the project, bring any action necessary to enforce any rights of the Owners growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Secretary in his discretion determines that the Owners are again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage.

(d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Secretary arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

**12.** As security for the payment due under this Agreement to the reserve fund for replacements, and to secure the Secretary because of his liability under the endorsement of the note for insurance, and as security for the other obligations under this Agreement, the Owners respectively assign, pledge and mortgage to the Secretary their rights to the rents, profits, income and charges of whatsoever sort which they may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents in the insured mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Owners to collect and retain under the provisions of this Agreement such rents, profits, income, and charges, but upon default this permission is terminated as to all rents due or collected thereafter.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000398

13. As used in this Agreement the term:

(a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", "Security Instrument", and any other security for the note identified herein, and endorsed for insurance or held by the Secretary;

(b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;

(c) "Owners" refers to the persons named in the first paragraph hereof and designated as Owners, their successors, heirs and assigns;

(d) "Mortgaged Property" includes all property, real, personal or mixed, covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Secretary;

(e) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said mortgaged property, which business is providing housing and other activities as are incidental thereto;

(f) "Surplus Cash" means any cash remaining after:

(1) the payment of:

(i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Secretary;

(ii) All amounts required to be deposited in the reserve fund for replacements;

(iii) All obligations of the project other than the insured mortgage unless funds for payment are set aside or deferment of payment has been approved by the Secretary; and

(2) the segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project; and

(ii) All tenant security deposits held.

(g) "Distribution" means any withdrawal or taking of cash or any assets of the project, including the segregation of cash or assets for subsequent withdrawal within the limitations of Paragraph 6(e) hereof, and excluding payment for reasonable expenses incident to the operation and maintenance of the project.

(h) "Default" means a default declared by the Secretary when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Secretary after written notice;

(i) "Section" refers to a Section of the National Housing Act, as amended.

(j) "Displaced persons or families" shall mean a family or families, or a person, displaced from an urban renewal area, or as the result of government action, or as a result of a major disaster as determined by the President pursuant to the Disaster Relief Act of 1970.

(k) "Elderly person" means any person, married or single, who is sixty-two years of age or over.

14. This instrument shall bind, and the benefits shall inure to, the respective Owners, their heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, and to the Secretary and his successors so long as the contract of mortgage insurance continues in effect, and during such further time as the Secretary shall be the owner, holder, or reinsurer of the mortgage, or obligated to reinsure the mortgage.

15. Owners warrant that they have not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

16. The invalidity of any clause, part or provisions of this Agreement shall not affect the validity or the remaining portions thereof.

17. The following Owners:

Do not assume personal liability for payments due under the note and mortgage, or for the payments to the reserve for replacements, or for matters not under their control, provided that said Owners shall remain liable under this Agreement only with respect to the matters hereinafter stated; namely:

(a) for funds or property of the project coming into their hands which, by the provisions hereof, they are not entitled to retain; and

(b) for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions hereof.

**(To be executed with formalities for recording a deed to real estate.)**



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000399

FLAVE 3/10

## Confidential - Summary (The Jazz @ Florida Avenue)

### SUMMARY DATA

| | | |
|---|---|---|
| Site Area - WMATA Parcels | SF | 28,357 |
| Total Actual Project GSF (above grade) | 5.40 FAR | 153,000 |
| Total Buildable Residential + Retail GSF | | 153,000 |
| Retail GSF | | 14,600 |
| Retail NSF | 95% efficiency | 13,870 |
| Residential Gross SF (including loading) | 100% | 138,400 |
| Less - Leasing, lobbies, ramps, etc. | | 9,050 |
| Residential Gross SF (residential flrs only) | | 131,100 |
| Residential Net SF (residential flrs only) | 83% efficiency | 108,813 |
| Residential Net SF - Market Rate | 92% | 100,108 |
| Residential Net SF - IZ Units | 8% | 8,705 |
| Total No. of Residential Units | | 138 |
| Market Rate Units | 92% | 126 |
| IZ Units | 8% | 12 |
| Below Grade Parking (Resid Parking) | | 36 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | 5 |
| Total Parking Spaces | | 41 |
| Parking GSF (below grade) | | 24,572 |
| WMATA Security Deposit | $ | 250,000 |
| WMATA Pre-Closing Payments | $ | 115,000 |

### Program % Breakdown

| | |
|---|---|
| Residential | 90.46% |
| Retail | 9.54% |

### Bad Debt and Vacancy

| | | |
|---|---|---|
| Residential | 7.0% | – the max. |
| Retail | 20.0% | – rather high |

### PERMANENT SOURCES AND USES OF FUNDS

| Sources | Residential | Retail | Total | |
|---|---|---|---|---|
| Senior Debt | $ 30,082,000 | $ - | $ 30,082,000 | 1.3 DSCR |
| PILOT Debt | | 4,205,000 | $ 4,205,000 | |
| Private Equity - Purchase of TIF Note | 1,061,363 | 1,147,090 | $ 2,208,453 | |
| Private Equity - Developer | 4,153,193 | | $ 4,153,193 | tax credit ?? |
| **Total Sources of Funds** | **$ 35,296,556** | **$ 5,352,090** | **$ 40,648,646** | $265/sf |

| Uses | Residential | Retail | Total | |
|---|---|---|---|---|
| Land | $ 5,110,850 | $ 539,150 | $ 5,650,000 | 37 |
| Hard Costs | 22,417,321 | 2,590,069 | 25,007,390 ← | $163.45/sf |
| Transaction/Leasing Fees | 355,543 | 37,507 | 393,049 | 2.56 |
| Architectural/MEP, Structural Services | 1,130,719 | 119,281 | 1,250,000 X | 8.17 |
| General and Administrative | 1,107,652 | 141,848 | 1,249,500 X | 8.16 |
| Financing Costs | 2,603,103 | 274,605 | 2,877,708 X | 18.81 |
| Real Estate Taxes | 67,843 | 7,157 | 75,000 | .49 |
| Permit, Utility and Municipal Fees | 497,583 | 52,491 | 550,074 | 3.60 |
| Legal and Accounting | 283,873 | 116,127 | 400,000 | 2.61 |
| Retail (TI?) + retail nsf | - | 1,102,741 | 1,102,741 | 80 |
| Insurance | 17,968 | 1,895 | 19,863 | |
| Reserves X | 1,604,101 | 169,219 | 1,773,320 | 11.59 |
| Miscellaneous Expenses | 100,000 | 200,000 | 300,000 | down |
| **Total Uses of Funds** | **$ 35,296,556** | **$ 5,352,090** | **$ 40,648,646** | |

+153,000 = $266/sf
− $34
+ $32

* $34/sf = increased land

3/09 hard cost 159.80/sf
3/10 hard cost 163.45/sf

$3.65 x $153,000 sf =
$558,450/sf

(1) To Tang
(2) Check Affordable definition

no

Increased Cost $46/FAR SF
34 = land cost
12 = reserves
5 = retail (TI?)
4 = hard cost
5 = financing costs
2 = Arch.

maybe I left $285k on the table 5%

3/4/2010

FOIA CONFIDENTIAL TREATMENT REQUESTED

FLAVE
3/10

| | PROJECT COSTS | | | | Residential | Retail |
|---|---|---|---|---|---|---|
| | | | | | | |
| 1 | **LAND COSTS** | | | | | |
| | WMATA Parcels | | | | | |
| | WMATA - Proposal Deposit | | 100,000.00 | | 90,457.52 | 9,542.48 |
| | WMATA - Option Fee | | 100,000.00 | | 90,457.52 | 9,542.48 |
| | WMATA - Security Deposit | | 250,000.00 | | 226,143.79 | 23,856.21 |
| | WMATA - Capitalized Lease Payment | | 5,200,000.00 | | 4,703,790.85 | 496,209.15 |
| | **TOTAL LAND COSTS** | | | **5,650,000.00** | **5,110,849.67** | **539,150.33** |
| | | | | | | |
| 2 | **HARD COSTS (from Clark Construction)** | | | | | |
| | Residential Structure (Parcel 1) | | 1,386,000.00 | | 1,386,000.00 | |
| | Residential Structure (Parcels 2 & 3) | | 13,329,750.00 | | 13,329,750.00 | |
| | Parking Structure | $50,000 per space | 2,050,000.00 | | 1,435,000.00 | 615,000.00 |
| | Retail Structure | $90 GSF | 1,314,000.00 | | | 1,314,000.00 |
| | Site Improvements | $40 GSF | 1,134,280.00 | | 1,026,041.52 | 108,238.48 |
| | General Conditions/Requirements | 5.0% | 960,701.50 | | 869,026.72 | 91,674.78 |
| | General Contractor Contingency | 5.0% | 960,701.50 | | 869,026.72 | 91,674.78 |
| | General Contractor Insurance | 2.5% | 480,350.75 | | 434,513.36 | 45,837.39 |
| | Payment and Performance Bond | 0.08% | 15,371.22 | | 13,904.43 | 1,466.80 |
| | Davis Bacon Wage Premium | 8.0% | 1,613,978.52 | | 1,459,964.88 | 154,013.64 |
| | GC Fee | 5.0% | 1,162,256.67 | | 1,051,348.52 | 110,908.15 |
| | Owner Hard Cost Contingency | | 600,000.00 | | 542,745.10 | 57,254.90 |
| | **TOTAL HARD COSTS** | | | **25,007,390.17** | **22,417,321.24** | **2,590,068.93** |
| | | | | | | |
| | **SOFT COSTS** | | | | | |
| | | | | | | |
| 3 | **Transaction/Leasing Fees** | | | | | |
| | Title Insurance - Lender's Policy | $0.60 per $1000 of loan | 18,049.20 | | 16,326.86 | 1,722.34 |
| | Legal - Term Sheet, JDA, Lease | | 225,000.00 | | 203,529.41 | 21,470.59 |
| | Legal - General, P&S Agreements | | 50,000.00 | | 45,228.76 | 4,771.24 |
| | WMATA Design Review Fees | | 75,000.00 | | 67,843.14 | 7,156.86 |
| | Appraisal Fee | | 25,000.00 | | 22,614.38 | 2,385.62 |
| | Total Transaction/Leasing Fees | | | **393,049.20** | **355,542.54** | **37,506.66** |
| | | | | | | |
| 4 | **Architectural/Engineering** | | | | | |
| | A/E Fees (includes structural, interior) | | 1,000,000.00 | | 904,575.16 | 95,424.84 |
| | Surveys, Civil, Geotechnical Fees | | 250,000.00 | | 226,143.79 | 23,856.21 |
| | Total Architectural/Engineering | | | **1,250,000.00** | **1,130,718.95** | **119,281.05** |
| | | | | | | |
| 5 | **Marketing (included in Working Capital)** | | | | | |
| | | | | | | |
| 6 | **General and Administrative** | | | | | |
| | Development Fee | | 250,000.00 | | 226,143.79 | 23,856.21 |
| | Project Management/Administration | | 450,000.00 | | 407,058.82 | 42,941.18 |
| | Construction Management | | 500,000.00 | | 452,287.58 | 47,712.42 |
| | Consulting Fees - Retail | | 25,000.00 | | 0.00 | 25,000.00 |
| | Market Study | | 17,500.00 | | 15,830.07 | 1,669.93 |
| | Traffic Study | | 7,000.00 | | 6,332.03 | 667.97 |
| | Total General and Administrative | | | **1,249,500.00** | **1,107,652.29** | **141,847.71** |
| | | | | | | |
| 7 | **Financing Costs** | | | | | |
| | Construction Period Interest | | 1,428,895.00 | | 1,292,542.93 | 136,352.07 |

increase from $30,000 in July for OK to accounts tunnel costs $820K

per sf.?

14,715,750 + 138,400 = $106/sf

x 41

if PILOT or TIF??

tunnel cost?

÷ 153,000 sf = $162/sf

FLAVE 3/10

| | | | | | | |
|---|---|---|---|---|---|---|
| | Pre-Development Loan Interest | | 50,000.00 | | 45,228.76 | 4,771.24 |
| | ~~HUD Inspection Fee (@0.50%)~~ & FHA Exam Fee (@0.30%) | 0.80% loan amount | 240,656.00 | | 217,691.44 | 22,964.56 |
| | HUD upfront MIP fees | 0.90% loan amount | 270,738.00 | | 244,902.87 | 25,835.13 |
| | Financing Fee | 1.00% loan amount | 300,820.00 | | 272,114.30 | 28,705.70 |
| | Permanent Placement Fee | 0.50% loan amount | 150,410.00 | | 136,057.15 | 14,352.85 |
| | Recordation Taxes (Construct Loan) | 1.45% loan amount | 436,189.00 | | 394,565.74 | 41,623.26 |
| | Total Financing Costs | | | **2,877,708.00** | **2,603,103.18** | **274,604.82** |
| 8 | **Real Estate Taxes** | | | | | |
| | Land ($1.85 per $100) | 18 months | 75,000.00 | | | |
| | Total Real Estate Taxes | | | **75,000.00** | **67,843.14** | **7,156.86** |
| 9 | **Permit, Utility and Municipal Fees** | | | | | |
| | DCRA, WASA, DDOE Permits | 1.00% hard costs | 250,073.90 | | 226,210.64 | 23,863.26 |
| | DDOT Permits | | 200,000.00 | | 180,915.03 | 19,084.97 |
| | 3rd Party Reviews | | 50,000.00 | | 45,228.76 | 4,771.24 |
| | 3rd Party Inspections | | 50,000.00 | | 45,228.76 | 4,771.24 |
| | Total Permit, Utility and Municipal Fees | | | **550,073.90** | **497,583.19** | **52,490.71** |
| 10 | **Legal and Accounting** | | | | | |
| | Legal - Financing (General) | | 100,000.00 | | 90,457.52 | 9,542.48 |
| | Legal - Zoning | | 100,000.00 | | 90,457.52 | 9,542.48 |
| | Legal - General | | 100,000.00 | | 90,457.52 | 9,542.48 |
| | Legal - Retail Leases | | 75,000.00 | | 0.00 | 75,000.00 |
| | Accounting | | 25,000.00 | | 12,500.00 | 12,500.00 |
| | Total Legal and Accounting: | | | **400,000.00** | **283,872.55** | **116,127.45** |
| 11 | **Retail** | | | | | |
| | Tenant Allowance | $60 per SF | 832,200.00 | | 0.00 | 832,200.00 |
| | Commissions | 6.00% | 270,541.35 | | 0.00 | 270,541.35 |
| | Total Retail | | | **1,102,741.35** | **0.00** | **1,102,741.35** |
| 12 | **Insurance** | | | | | |
| | Builder's Risk (Hard Costs) | $0.06 per $100 | 15,004.43 | | 13,572.64 | 1,431.80 |
| | Builder's Risk (Soft Costs) not enough | $0.06 per $100 | 4,858.84 | | 4,395.19 | 463.65 |
| | Total Insurance | | | **19,863.28** | **17,967.83** | **1,895.45** |
| 13 | **Reserves** | | | | | |
| | Operating Deficit Reserve | | 1,023,320.13 | | 925,669.98 | 97,650.16 |
| | Working Capital Escrow | | 750,000.00 | | 678,431.37 | 71,568.63 |
| | Total Reserves | | | **1,773,320.13** | **1,604,101.35** | **169,218.78** |
| | **Miscellaneous Expenses** | | | | | |
| | Testing Expenses | | 100,000.00 | | 0.00 | 100,000.00 |
| | Misc Soft Costs & Contingencies | | 200,000.00 | | 100,000.00 | 100,000.00 |
| | Total Miscellaneous Expenses | | | **300,000.00** | **100,000.00** | **200,000.00** |
| | **TOTAL SOFT COSTS** | | 40% of hard | **9,991,255.86** | **7,768,385.02** | **2,222,870.84** |
| 14 | **TOTAL PROJECT COSTS** | | **40,648,646.03** | | **35,296,555.94** | **5,352,090.10** |

÷ 153,000 = $266/SF.

$279/SF in Dec '07 pro forma

256.000 / du

FLAVE 3/10

The Jazz @ Florida Avenue
Residential Proforma

| Year | | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Income** | % of Income | | | | | | | | | | |
| Apartment Income | | $291,813 | $2,900,619 | $3,490,081 | $ 3,594,783 | $ 3,702,627 | $ 3,813,705 | $ 3,928,117 | $ 4,045,960 | $ 4,167,339 | $ 4,292,359 |
| Other Income | | $5,998 | $59,615 | $66,213 | $ 68,199 | $ 70,245 | $ 72,352 | $ 74,523 | $ 76,759 | $ 79,061 | $ 81,433 |
| Parking Income | | $8,552 | $85,005 | $94,412 | $ 97,244 | $ 100,161 | $ 103,166 | $ 106,261 | $ 109,449 | $ 112,732 | $ 116,114 |
| **Gross Rental Income** | | **$306,362** | **$3,045,239** | **$3,650,705** | **$3,760,226** | **$3,873,033** | **$3,989,224** | **$4,108,901** | **$4,232,168** | **$4,359,133** | **$4,489,907** |
| *Less Apartment and Other Income Vacancy* | 7% | (20,847) | (207,216) | (248,941) | (256,409) | (264,101) | (272,024) | (280,185) | (288,590) | (297,248) | (306,165) |
| *Less Parking Vacancy* | 5% | (428) | (4,250) | (4,721) | (4,862) | (5,008) | (5,158) | (5,313) | (5,472) | (5,637) | (5,806) |
| *Less All Income Credit and Collection Loss* | 1% | (3,064) | (30,452) | (36,507) | (37,602) | (38,730) | (39,892) | (41,089) | (42,322) | (43,591) | (44,899) |
| **Effective Gross Income** | | **282,024** | **2,803,320** | **3,360,537** | **3,461,353** | **3,565,193** | **3,672,149** | **3,782,314** | **3,895,783** | **4,012,657** | **4,133,036** |
| **Operating Expenses** | Escalation | | | | | | | | | | |
| Real Estate Taxes | 3% | 100,958 | 302,873 | 302,873 | 311,959 | 321,318 | 330,958 | 340,886 | 351,113 | 361,646 | 372,496 |
| Property Insurance | 3% | 18,400 | 55,200 | 55,200 | 56,856 | 58,562 | 60,319 | 62,128 | 63,992 | 65,912 | 67,889 |
| Utilities | 3% | 27,600 | 82,800 | 82,800 | 85,284 | 87,843 | 90,478 | 93,192 | 95,988 | 98,868 | 101,834 |
| Repairs and Maintenance | 3% | 50,600 | 151,800 | 151,800 | 156,354 | 161,045 | 165,876 | 170,852 | 175,978 | 181,257 | 186,695 |
| Management Fee | | 40,000 | 84,100 | 100,816 | 103,841 | 106,956 | 110,164 | 113,469 | 116,873 | 120,380 | 123,991 |
| Payroll | 3% | 101,200 | 303,600 | 303,600 | 312,708 | 322,089 | 331,752 | 341,704 | 351,956 | 362,514 | 373,390 |
| Advertising & Marketing | 2% | 27,600 | 82,800 | 82,800 | 84,456 | 86,145 | 87,868 | 89,625 | 91,418 | 93,246 | 95,111 |
| Administrative, Painting, Contract Services | 3% | 36,800 | 441,600 | 110,400 | 113,712 | 117,123 | 120,637 | 124,256 | 127,984 | 131,823 | 135,778 |
| **Total Expenses** | | **403,158** | **1,540,673** | **1,190,289** | **1,225,170** | **1,261,080** | **1,298,051** | **1,336,114** | **1,375,301** | **1,415,646** | **1,457,183** |
| **Net Operating Income** | | **$ (121,134)** | **$ 1,262,647** | **$ 2,170,248** | **$ 2,236,183** | **$ 2,304,113** | **$ 2,374,098** | **$ 2,446,200** | **$ 2,520,482** | **$ 2,597,010** | **$ 2,675,853** |
| **Reserves** | | (13,800) | (41,400) | (41,814) | (42,232) | (42,654) | (43,081) | (43,512) | (43,947) | (44,386) | (44,830) |
| **Cash Flow Before Debt Service** | | (134,934) | 1,221,247 | 2,128,434 | 2,193,951 | 2,261,459 | 2,331,017 | 2,402,688 | 2,476,535 | 2,552,624 | 2,631,023 |
| PILOT Payment from District | | 142,000 | 401,887 | 401,887 | 413,943 | 426,362 | 439,152 | 452,327 | 465,897 | 479,874 | 494,270 |
| **Total Cash Flow Before Debt Service** | | **7,066** | **1,623,134** | **2,530,320** | **2,607,894** | **2,687,820** | **2,770,169** | **2,855,015** | **2,942,432** | **3,032,498** | **3,125,293** |
| **Debt Service** | | | | | | | | | | | |
| Senior Loan | | 682,196 | 2,046,589 | 2,046,589 | 2,046,589 | 2,046,589 | 2,046,589 | 2,046,589 | 2,046,589 | 2,046,589 | 2,046,589 |
| PILOT | | 111,616 | 334,847 | 334,847 | 334,847 | 334,847 | 334,847 | 334,847 | 334,847 | 334,847 | 334,847 |
| **Total Debt Service** | | **793,812** | **2,381,435** | **2,381,435** | **2,381,435** | **2,381,435** | **2,381,435** | **2,381,435** | **2,381,435** | **2,381,435** | **2,381,435** |
| **Before Tax Cash Flow** | | (786,745) | (758,302) | 148,885 | 226,459 | 306,385 | 388,734 | 473,579 | 560,996 | 651,062 | 743,858 |

3.0% annual escalation in market rate unit income and parking
2.0% annual escalation in affordable rate unit income
3.0% annual escalation in other income
3.0% annual escalation in expenses
1.0% annual escalation in reserves

21,018 / year

1,752

1,75

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**The Jazz @ Florida Avenue**
**Retail Proforma**

| **Assumptions** | **Total** |
|---|---|
| Rentable S.F. | 13,870 |
| Market Space | 11,870 |
| Affordable/Non-Profit Space | 2,000 |

Triple Net Lease

| | Per S.F. | Escalation | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Operating Income** | | | | | | | | | | | | |
| Retail Tenants - Market | $38.00 | 3% | 86,453 | 411,592 | 451,060 | 464,592 | 478,530 | 492,885 | 507,672 | 522,902 | 538,589 | 554,747 |
| Retail Tenants - Affordable/Non-Profit | $10.00 | 2% | 6,667 | 20,000 | 20,000 | 20,400 | 20,808 | 21,224 | 21,649 | 22,082 | 22,523 | 22,974 |
| Parking | $200.00 | 2% | 2,300 | 10,950 | 12,000 | 12,240 | 12,485 | 12,734 | 12,989 | 13,249 | 13,514 | 13,784 |
| Less: General Vacancy | | 20.0% | (19,084) | (88,508) | (96,612) | (49,723) | (51,182) | (52,684) | (54,231) | (55,823) | (57,463) | (59,150) |
| Net Rental Income | | | 76,336 | 354,034 | 386,448 | 447,509 | 460,640 | 474,160 | 488,079 | 502,409 | 517,164 | 532,354 |
| **Recoverable Expenses** | | | | | | | | | | | | |
| Ownership Expenses (CAM, Ins, etc.) | $3.75 | 3.00% | 17,338 | 53,573 | 52,013 | 53,573 | 55,180 | 56,835 | 58,541 | 60,297 | 62,106 | 63,969 |
| Real Estate Taxes | 1.85 per $100 | | 33,005 | 99,014 | 99,014 | 101,984 | 105,044 | 108,195 | 111,441 | 114,784 | 118,227 | 121,774 |
| Total Operating Expenses | | | 50,342 | 152,587 | 151,026 | 155,557 | 160,224 | 165,030 | 169,981 | 175,081 | 180,333 | 185,743 |
| **Non-recoverable Expenses** | | | | | | | | | | | | |
| Non-recoverable Ownership Expenses | $1.30 | 3.00% | 6,010 | 18,572 | 18,031 | 18,572 | 19,129 | 19,703 | 20,294 | 20,903 | 21,530 | 22,176 |
| Total Expenses | | | 6,010 | 18,572 | 18,031 | 18,572 | 19,129 | 19,703 | 20,294 | 20,903 | 21,530 | 22,176 |
| **Net Operating Income** | | | **70,326** | **335,462** | **368,417** | **428,937** | **441,511** | **454,457** | **467,785** | **481,507** | **495,634** | **510,179** |
| Capital Reserves | | 2.00% | 20,000 | 61,200 | 62,424 | 64,297 | 66,226 | 68,212 | 70,259 | 72,367 | 74,538 | 76,774 |
| **Cash Flow Before Debt Service** | | | $ 50,326 | $ 274,262 | $ 305,993 | $ 364,640 | $ 375,285 | $ 386,244 | $ 397,526 | $ 409,140 | $ 421,096 | $ 433,405 |
| TIF Payment from District | | | $ 74,156 | $ 353,046 | $ 386,900 | $ 386,900 | $ 386,900 | $ 386,900 | $ 386,900 | | | |
| **Total Cash Flow Before Debt Service** | | | **124,481** | **627,308** | **692,893** | **751,540** | **762,185** | **773,144** | **784,426** | **409,140** | **421,096** | **433,405** |
| **Debt Service** | | | | | | | | | | | | |
| Sales Tax TIF | | | 68,962 | 206,885 | 206,885 | 206,885 | 206,885 | 206,885 | 206,885 | 206,885 | 206,885 | 206,885 |
| **CASH FLOW AFTER DEBT SERVICE** | | | 55,520 | 420,423 | 486,008 | 544,655 | 555,300 | 566,259 | 577,541 | 202,255 | 214,211 | 226,520 |

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**SUPPORTABLE DEBT CALCULATIONS**

| | FHA/GNMA Debt without TIF | FHA/GNMA Debt with TIF | | |
|---|---|---|---|---|
| | | Base Loan | PILOT | Sales Tax TIF |
| ***Base Residential NOI (net of reserves)*** | 2,149,975 | 2,149,975 | 0 | 0 |
| ***Base Retail NOI (net of reserves)*** | 305,993 | 305,993 | 0 | 0 |
| ***Property Taxes WMATA parcels (assuming 100% eligible for TIF)*** | 0 | 0 | 401,887 | 0 |
| ***Sales Taxes (assuming 100% eligible for TIF)*** | 0 | 0 | 0 | 365,000 |
| | 2,455,968 | 2,455,968 | 401,887 | 365,000 |
| | | | | |
| *DSCR* | 1.20 | 1.20 | 1.20 | 1.50 |
| **Amount Available for Debt Service** | 2,046,640 | 2,046,640 | 334,906 | 243,333 |
| | | | | |
| **Calculation of Loan Constant** | | | | |
| Amortization Term | 40 | 40 | 25 | 25 |
| Loan Constant with MIP | 6.80% | 6.80% | 7.96% | 9.37% |
| | | | | |
| Gross Possible Mortgage Bond Amount | 30,082,000 | 30,082,000 | 4,205,000 | 2,597,000 |
| Less: Debt Service Reserve Fund | | - | - | (272,312) |
| Net Max. Mortgage Bond Amount | | 30,082,000 | 4,205,000 | 2,324,688 |
| Less: Financing Fees | | | | 116,234 |
| Actual Mortgage Bond Amount | | 30,082,000 | 4,205,000 | 2,208,453 |
| Max. Debt Service Payment | | 2,046,589 | 334,847 | 206,885 |
| Actual Debt Service Payment | | 2,046,589 | 334,847 | 206,885 |
| | | | | |
| Rate | 5.45% | 5.45% | 5.45% | 8.00% |
| FHA/GNMA Servicing | 0.25% | 0.25% | 0.25% | 0.00% |
| Aggregate Rate (Construction Interest Rate) | 5.70% | 5.70% | 5.70% | 8.00% |
| | | | | |
| Initial Curtail Rate | 0.65% | 0.65% | 1.81% | 9.37% |
| Mortgage Insurance Premium | 0.45% | 0.45% | 0.45% | 0.00% |
| Loan Constant with MIP | 6.80% | 6.80% | 7.96% | 9.37% |

FLAE 3/09

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Monday, March 16, 2009 7:20 PM
**To:** Doggett, Rosalyn; Washington, Joel R.
**Cc:** Maurice' 'Perry; 'thicks'; eric.smart@bolansmart.com; Moneme, Emeka; Bottigheimer, Nat
**Subject:** Updated proforma and Terms - Jazz @ Florida Avenue
**Attachments:** Jazz - Afford Analysis (as of 3-15-09).xls

**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.



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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



WMATA-INV 000407

3/09 FLAVE

## Summary Data

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Possible Project GSF | 4.50 FAR | 135,414 |
| Actual Project GSF | 4.10 FAR | 118,457 |
| Retail GSF | | 14,000 |
| Retail NSF | 92% efficiency | 12,880 |
| Residential Gross SF (including loading) | 100% | 104,457 |
| Less - Leasing, lobbies, ramps, etc. | | 10,000 |
| Residential Gross SF (residential flrs only) | | 94,457 |
| Residential Net SF (residential flrs only) | 83% efficiency | 78,399 |
| Residential Net SF - Market | 70% | 54,880 |
| Residential Net SF - Affordable | 30% | 23,520 |
| Total No. of Residential Units | 850 SF avg | 92 |
| Market Rate Units | 70% | 65 |
| Affordable Units | 30% | 28 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail Parking) | | 15 |
| Total Parking Spaces | | 60 |

### Program % Breakdown

| | |
|---|---|
| Residential | 77.14% |
| Retail | 10.34% |

?? 87%

### Lease Payments

| | |
|---|---|
| WMATA - Year 1 of Stabilization | $ 300,000 |

### Vacancy and Bad Debt

| | |
|---|---|
| Residential | 9% |
| Retail | 5% |

### % of Project Revenue

| | |
|---|---|
| Residential | 89% |
| Retail | 11% |

### Residential Per SF revenues

| | |
|---|---|
| Market | $ 2.90 |
| Affordable Units (at 60% of AMI) | $ 1.30 |

| | |
|---|---|
| WMATA Annual Lease Payment - Year 1 | $ 300,000 |
| Security Deposit | 100,000 |
| Pre-Lease Payment | 200,000 |

| | |
|---|---|
| Additional gap per afford unit | $60,000 |

## Sources and Uses of Funds

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| Sources | Residential | Retail | Total |
|---|---|---|---|
| Debt | $ 17,671,000 | $ - | $ 17,671,000 |
| Gap Financing - Affordable Units | 1,660,224 | | $ 1,660,224 |
| Private Equity - LIHTC | 1,675,060 | - | $ 1,675,060 |
| Private Equity - Developer | 1,256,975 | 3,720,370 | $ 4,977,345 |
| **Total Sources of Funds** | **$ 22,263,260** | **$ 3,720,370** | **$ 25,983,629** |

$219/FAR SF

| Uses | Residential | Retail | Total | Per FAR SF |
|---|---|---|---|---|
| Land | $ 308,557 | $ 41,355 | $ 349,911 | 2.95 |
| Hard Costs | 16,825,775 | 2,104,159 | 18,929,935 | $159.84 |
| Transaction/Leasing Fees | 256,102 | 34,324 | 290,426 | 2.45 |
| Architectural/MEP, Structural Services | 615,854 | 82,541 | 698,394 | 5.90 |
| Marketing | 231,417 | 31,016 | 262,433 | 2.22 |
| General and Administrative | 1,153,230 | 254,563 | 1,407,793 | 11.88 |
| Financing Costs | 1,547,123 | 26,491 | 1,573,613 | 13.28 |
| Real Estate Taxes | 171,358 | 22,966 | 194,325 | 1.64 |
| Permit, Utility and Municipal Fees | 263,748 | 35,349 | 299,097 | 2.52 |
| Legal and Accounting | 424,265 | 56,863 | 481,128 | 4.06 |
| Retail TI? What is this? ÷ retail SF | - | 968,310 | 968,310 | 75. |
| Insurance | 12,011 | 1,610 | 13,621 | |
| Miscellaneous Expenses | 453,819 | 60,824 | 514,642 | |
| **Total Uses of Funds** | **$ 22,263,260** | **$ 3,720,370** | **$ 25,983,629** | |

÷ 118,457

$219/sf.

## Summary of Stabilized Returns at Sale

| 2015 | Residential | Retail | Total |
|---|---|---|---|
| Effective Gross Income | $ 2,444,017 | $ 304,380 | $ 2,748,398 |
| Expenses | $ 768,033 | $ 225,260 | $ 993,293 |
| **Net Operating Income** | **$ 1,675,984** | **$ 79,120** | **$ 1,755,105** |
| Less | | | |
| Reserves | $ 25,197 | $ 32,782 | $ 57,979 |
| Debt Service | $ 1,367,993 | - | $ 1,367,993 |
| Stabilized Net Cash Flow 2015 | **$ 282,795** | **$ 46,338** | **$ 329,133** |

| | | |
|---|---|---|
| **Avail Proceeds before WMATA & Returns** | | **7,205,563** |
| WMATA Share of Avail Profit | 12% **avail profit** | 864,668 |
| Net Proceeds after WMATA share paid | | 6,340,895 |
| **Equity Yield Target** | 17.00% **IRR** | 6,526,407 |
| **Actual Equity Yield** | **18.85% IRR** | |
| **Potential proceeds avail after IRR met** | | -185,512 |

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| | PROJECT COSTS | | | | Residential | Retail |
|---|---|---|---|---|---|---|
| 1 | **LAND COSTS** | | | | | |
| | WMATA Parcels | | | | | |
| | WMATA - Option Fee | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | WMATA - Security Deposit | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | Pre-Development Lease Payments | | 200,000.00 | | 154,278.29 | 20,677.33 |
| | **TOTAL LAND COSTS** | | | **400,000.00** | **308,556.57** | **41,354.66** |
| 2 | **HARD COSTS** | | | | | |
| | Residential Units | $130 SF 104,457SF | 13,579,436.00 | | 13,579,436.00 | 0.00 |
| | Retail Space | $100 SF | 1,400,000.00 | | 0.00 | 1,400,000.00 |
| | Below-grade parking (Residential) | $30,000 per space | 1,350,000.00 | | 1,350,000.00 | 0 |
| | Below-grade parking (Retail) | $30,000 per space | 450,000.00 | | 0.00 | 450,000.00 |
| | Infrastructure Costs | | 500,000.00 | | 385,695.72 | 51,693.33 |
| | Index to start Q3/2010 | 4% | 1,094,364.28 | | 844,183.23 | 113,142.66 |
| | Contingency | 5% | 863,971.80 | | 666,460.45 | 89,323.15 |
| | **TOTAL HARD COSTS** | | | **19,237,772.08** | **16,825,775.40** | **2,104,159.14** |
| | | | | ÷ 118,457 $163/sf | | |
| | **SOFT COSTS** | | | | | |
| 3 | **Transaction/Leasing Fees** | | | | | |
| | Title Insurance - Lender's Policy | $0.60 per $1000 of loan | 32,000.00 | | 24,684.53 | 3,308.37 |
| | Surveys | | 20,000.00 | | 15,427.83 | 2,067.73 |
| | Legal - Term Sheet and Joint Development Agreement | | 150,000.00 | | 115,708.72 | 15,508.00 |
| | Legal - Partnership Documents | | 25,000.00 | | 19,284.79 | 2,584.67 |
| | Appraisal Fee | | 30,000.00 | | 23,141.74 | 3,101.60 |
| | Geotechnical & Environmental | | 75,000.00 | | 57,854.36 | 7,754.00 |
| | Total Transaction/Leasing Fees | | | **332,000.00** | **256,101.96** | **34,324.37** |
| 4 | **Architectural/MEP, Structural Services** | | | | | |
| | A/E Fees | 3.00% hard costs | 577,133.16 | | 445,195.58 | 59,667.87 |
| | Structural Services | 1.00% hard costs | 192,377.72 | | 148,398.53 | 19,889.29 |
| | Reimburseables | 5.00% A/E fees | 28,856.66 | | 22,259.78 | 2,983.39 |
| | Total Architectural/MEP, Structural Services | | | **798,367.54** | **615,853.88** | **82,540.55** |
| 5 | **Marketing** | | | | | |
| | Marketing Center | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Marketing Materials | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Media (newspapers, etc.) | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Signage | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Special Events | | 40,000.00 | | 30,855.66 | 4,135.47 |
| | Model | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Website | | 10,000.00 | | 7,713.91 | 1,033.87 |
| | Total Marketing | | | **300,000.00** | **231,417.43** | **31,016.00** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 6 | **General and Administrative** | | | | | | |
| | Development Management | $30,000 mo. | 24 mos. | 720,000.00 | | 555,401.83 | 74,438.39 |
| | Project Management/Administration | $10,000 mo. | 30 mos. | 300,000.00 | | 231,417.43 | 31,016.00 |
| | Construction Management | $25,000 mo. | 18 mos. | 450,000.00 | | 347,126.15 | 46,523.99 |
| | Consulting Fees - Retail | | | 100,000.00 | | 0.00 | 100,000.00 |
| | Security | | | 25,000.00 | | 19,284.79 | 2,584.67 |
| | Total General and Administrative | | | | **1,595,000.00** | **1,153,230.20** | **254,563.04** |
| 7 | **Financing Costs** | | | | | | |
| | Construction Period Interest | | | 830,581.91 | | 830,581.91 | 0.00 |
| | DCHFA Application Fee | 0.10% | | 17,671.00 | | 17,671.00 | 0.00 |
| | DCHFA Construction Monitoring Fee | 0.40% | | 70,684.00 | | 70,684.00 | 0.00 |
| | DCHFA Financing Fee | 0.40% | | 70,684.00 | | 70,684.00 | 0.00 |
| | DCHFA Tax Credit Allocation Fee | 0.10% | | 17,671.00 | | 17,671.00 | 0.00 |
| | DCHFA Internal, External Legal & Consulting | | | 100,000.00 | | 100,000.00 | 0.00 |
| | Administrative Agent Fee | | | 150,000.00 | | 150,000.00 | 0.00 |
| | Credit Enhancement Fee | 0.25% | | 44,177.50 | | 44,177.50 | 0.00 |
| | Lender Inspection Fees | $2,000 mo. | 24 mos. | 48,000.00 | | 48,000.00 | 0.00 |
| | Transfer & Record Taxes (Construct Loan) | 1.45% | | 256,229.50 | | 197,653.24 | 26,490.71 |
| | Total Financing Costs | | | | **1,605,698.91** | **1,547,122.66** | **26,490.71** |
| 8 | **Real Estate Taxes** | | | | | | |
| | Land ($1.85 per $100) | 18 mos. | | 222,141.80 | | | |
| | Total Real Estate Taxes | | | | **222,141.80** | **171,358.28** | **22,966.50** |
| 9 | **Permit, Utility and Municipal Fees** | | | | | | |
| | DCRA and WASA Permits | 2% hard costs | | 241,912.10 | | 186,608.93 | 25,010.48 |
| | DDOT Permits | | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | Total Permit, Utility and Municipal Fees | | | | **341,912.10** | **263,748.07** | **35,349.15** |
| 10 | **Legal and Accounting** | | | | | | |
| | Legal - Financing | | | 250,000.00 | | 192,847.86 | 25,846.66 |
| | Legal - Zoning | | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Legal - General/Retail Leases, etc. | | | 150,000.00 | | 115,708.72 | 15,508.00 |
| | Accounting | | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | Total Legal and Accounting: | | | | **550,000.00** | **424,265.29** | **56,862.66** |
| 11 | **Retail** | | | | | | |
| | Tenant Allowance | $60 per SF | | 772,800.00 | | 0.00 | 772,800.00 |
| | Commissions | 6.00% | | 195,509.58 | | 0.00 | 195,509.58 |
| | Total Retail | | | | **968,309.58** | **0.00** | **968,309.58** |
| 12 | **Insurance** | | | | | | |
| | Builder's Risk (Hard Costs) | $0.06 per $100 | | 11,542.66 | | 8,903.91 | 1,193.36 |
| | Builder's Risk (Soft Costs) | $0.06 per $100 | | 4,028.06 | | 3,107.21 | 416.45 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | Total Insurance | | | 15,570.72 | 12,011.12 | 1,609.80 |
| 13 | **Miscellaneous Expenses** | | | | | |
| | Lease-up Reserves | | -212,763.60 | | -164,124.02 | -21,996.92 |
| | Testing Expenses | | 150,000.00 | | 115,708.72 | 15,508.00 |
| | Third Party Inspections | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | Misc Soft Costs & Contingencies | 5% soft costs | 338,311.85 | | 260,970.87 | 34,976.93 |
| | Total Miscellaneous Expenses | | | 375,548.25 | 453,818.73 | 60,823.59 |
| | **TOTAL SOFT COSTS** | | | 7,104,548.92 | 5,128,927.62 | 1,574,855.95 |
| | **TOTAL PROJECT COSTS** | | 26,742,321.00 | 37% Hard | 22,263,259.59 | 3,720,369.74 |

2/25
p.At

50 years?

| | | | | July | 1 2010 | 2 2011 | 3 2012 | 4 2013 | 5 2014 | 6 2015 | 7 2016 | 8 2017 | 9 2018 | 10 2019 | 11 2020 | 12 2021 | 13 2022 | 14 2023 | 15 2024 | 16 2025 | 50 2059 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Banneker (February 2010) with 50 year ground lease | | | | | | | | | | | | | | | | | | | | | |
| Revenues | | | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | | | $100,000 | | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | | | $50,000 | $65,000 | $0 | | | | | | | | | | | | | | |
| Base Rent | | prepaid | | | | | $5,200,000 | | | | | | | | | | | | | | |
| | | annual | | | | | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 |
| Total WMATA Base Rent | | | | | $150,000 | $65,000 | $5,200,000 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 |
| Effective Gross Income | | | Banneker projected ??? | | | | | $0 | $0 | $2,831,000 | oct 2009 before 30% increase in project size | | | | | | | | | | |
| | | 3.00% | EGI growth BSA adjusted (130% of October 2009 per 30% more sf) | | | | | $0 | $0 | $3,250,000 | $3,347,500 | $3,447,925 | $3,551,363 | $3,657,904 | $3,767,641 | $3,880,670 | $3,997,090 | $4,117,003 | $4,240,513 | $4,367,728 | $11,932,220 |
| | | 1.50% | WMATA payment | | | | | | | $48,750 | $50,213 | $51,719 | $53,270 | $54,869 | $56,515 | $58,210 | $59,956 | $61,755 | $63,608 | $65,516 | $178,983 |
| Total WMATA Base Rent With Percentage of EGI | | | | | | | | | | $48,750 | $50,213 | $51,719 | $53,270 | $54,869 | $56,515 | $58,210 | $59,956 | $61,755 | $63,608 | $65,516 | $178,983 |
| WMATA Participation | | 2.00% | of defined capital events | | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $5,000,000 | | FY09 value | | | | | | | | | | | | | | | | | | |
| | | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | | |
| Terminal Value | $21,281,097 | | on land only | | | | | | | | | | | | | | | | | | $21,281,097 |
| Cash Flow | | | | | $150,000 | $65,000 | $5,200,000 | $0 | $0 | $48,750 | $50,213 | $51,719 | $53,270 | $54,869 | $56,515 | $58,210 | $59,956 | $61,755 | $63,608 | $65,516 | $178,983 |
| Cash Flow w/ residual | | | | | $150,000 | $65,000 | $5,200,000 | $0 | $0 | $48,750 | $50,213 | $51,719 | $53,270 | $54,869 | $56,515 | $58,210 | $59,956 | $61,755 | $63,608 | $65,516 | $21,460,080 |
| NPV | Base Rent | 6.20% | discount rate | | $4,821,772 | | | | | | | | | | | | | | | | |
| | With Residual | 6.20% | discount rate | | $5,873,172 | | | | | | | | | | | | | | | | |
| | With EGI and Res | 6.20% | discount rate | | $6,716,269 | | | | | | | | | | | | | | | | |
| | With Participation | | | | not considered | | | | | | | | | | | | | | | | |

does not include additional costs credit

NPV of EGI is $843K

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Tuesday, February 23, 2010 4:54 PM
**To:** Doggett, Rosalyn
**Cc:** 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
**Subject:** Follow-up re Jazz @ Florida Avenue

**Importance:** High

Roz,

Per our call this morning, Banneker, our develop partner and investors for The Jazz @ Florida Avenue project (collectively, the "Developer") are prepared to increase our offer to WMATA as follows:

1. Make a capitalized lease payment of **$5.2M** at Closing. This is a 130% increase in value over WMATA's appraised value of $2.2M, and a 70% increase in value over our previous base offer of $3.03M, which includes the NPV of the capitalized lease plus the NPV of the EGI payments. This base offer is inclusive of the projected **$2.8M loss in land value** (as calculated by WMATA's appraiser Richard Harps) due to the 8% IZ requirement and the additional hard and soft costs incurred by the Project as a result of building over the WMATA tunnel.

2. Because of some of the concerns raised by WMATA staff, we would are prepared to move forward with developing the Project solely on the WMATA parcels (28,347 SF). We will forgo our purchase of the adjacent 9th Street parcels, thereby relieving any potential complications that would arise with the necessity of a Co-Tenancy Agreement, also allowing us to free up capital that would have been used toward purchasing those parcels, and instead use these funds to pay WMATA more funds at Closing. We will also not pursue an alley closing.

3. We will build the project at 4.5 FAR (as of right if not for the mandatory IZ rules that went into effect after our selection) plus the 20% bonus (0.9 FAR) that we would get because of the IZ units, bringing the total FAR to 5.4 FAR. The Project will consist of 153,000 GSF, with 137 residential units (with 12 IZ units), 14,000 SF and 41 parking spaces. Developer would pay WMATA an agreed upon rate of $ per FAR for any SF that it builds above the 153,000 SF.

4. The initial term of the lease will be for 50 years, with a 49 year option and resets to market value every 10 years after the initial 50 year term.

5. All other terms will remain consistent (i.e., participation in Capital Events, etc.).

A $5.2M upfront, non-contingent payment to WMATA is significantly higher than the recent appraisal completed by WMATA and close to our initial offer to WMATA in 2007, excluding the imposition of the IZ units and market conditions. Based on our analysis of our initial offer, **the NPV of the offer, using reasonable interest rate assumptions, would have been about $11M,** which is no where close to the $14M that WMATA staff informed us that this is what they calculated our offer to be. If this is the case, assuming that the market conditions brought the value down by 20% (which is conservative), this would bring the offer from $11M to $8.8M. Because we have to build IZ units, which force us to go from a stick build construction type to a light gauge steel product, and at the same time



WMATA-INV 000413

loose money on all of the IZ units as they do not support themselves without a subsidy, which the District does not provide for IZ units, this causes the value of the offer to go from $8.8M to the $5.2M that we are now offering, excluding WMATA's other participation rights in the Project.

As we have discussed previously, to date, the Developer has incurred over $1M since being selected by WMATA. We continue to remain hopeful that the exhaustive amount of money and time spent by Developer and WMATA in bringing this Project will produce a TOD project that all parties can be proud of. We look forward to seeing you on Friday at 2:30 and finalizing this last term of the deal so that we can get the JDA and Lease complete and presented to the Board at the next possible Board meeting. Should you have any questions prior to Friday, please feel free to contact us.

Warmest regards, I remain

Sincerely,

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000414

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Bottigheimer, Nat
**Sent:** Sunday, March 14, 2010 9:55 PM
**To:** Doggett, Rosalyn
**Cc:** Goldin, Steven; Montague, Joshua W.
**Subject:** RE: Followup on Florida Avenue

Thank you, Roz, that is helpful information.

---

**From:** Doggett, Rosalyn
**Sent:** Sunday, March 14, 2010 8:37 PM
**To:** Bottigheimer, Nat
**Cc:** Goldin, Steven; Montague, Joshua W.
**Subject:** FW: Followup on Florida Avenue

See item 5 below which is the source of the statement that BACDC is no longer in the deal.

Steve is correct that we subsequently discussed this with Omar and agreed to put language in the term sheet that a future development partner would be approved by WMATA.

---

**From:** Omar Karim [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

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.



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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 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>
**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>
**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.



WMATA-INV 000416

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 000417

~~Bank of America CDC Due Diligence~~
LOXIP A Ave Leyniskeet Negotiations
March April 2004

FOIA CONFIDENTIAL TREATMENT REQUESTED

**From:** Joel R. Washington
**To:** Doggett, Rosalyn
**Date:** 2/19/2009 10:33:41 AM
**Subject:** Fwd: Re: Jazz @ Florida Avenue

>>> Nat Bottigheimer 2/19/2009 10:25 AM >>>
fyi

>>> Emeka Moneme 2/18/2009 6:56 PM >>>
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 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

## Doggett, Rosalyn

**From:** eric.smart@bolansmart.com
**Sent:** Tuesday, March 24, 2009 3:06 PM
**To:** Doggett, Rosalyn
**Subject:** RE: Florida

Will call you at 9:00 Wed morning. Add $3.0M+ to the induced land value after the deducts for the affordables and you get back up closer to $8.0M. Eric

On Tue, 24 Mar 2009 1:55:14 -0500 (EST), "Doggett, Rosalyn" <RDoggett@wmata.com> wrote:
> I just read your message so it will have to be at 9 a.m. tomorrow. A land
> value of $4.5 Million is way below appraisal; first glance remark.
>
> -----Original Message-----
> From: eric.smart@bolansmart.com [mailto:eric.smart@bolansmart.com]
> Sent: Tuesday, March 24, 2009 10:53 AM
> To: Doggett, Rosalyn
> Subject: Florida
>
> Roz
>
> How about a call today later this morning or to be over before 2:00 this
> afternoon or before 10:00 am tomorrow? If neither, I can come early
> on Wednesday before the Florida Ave meeting.
>
> Here are notes, including some capture of Omar's latest proforma forwarded
> yesterday:
>
> 1. Prelease payment up from $200k to $300K.
>
> 2. Proposing WMATA rent to be 9.75% of Effective Gross Income. Not sure of
> source of rate, and note that in process Omar has lowered the initial rent to
> less than $300k per year. No net effect on WMATA NPV assuming market rent
> growth is real at 3.0% per year. (See attached updated BSA cash flow
> comparison, plus illustration of if rent went to 12% of EGI)

per HUD rules
not 3%/year
not guaranteed

>
> 3. Addition of capital event example at end of new proforma looks helpful, if
> only meaningful as expected to WMATA downstream.
>
> 4. Discussion - proposed $300K WMATA rent capped at 7.0% suggests capitalized
> land value of $4.3M ($59k per market unit not counting retail, or $56 per FAR
> foot for 76,720 GSF of retail and non-affordable space). At $4.3M land
> value

O.K.



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## Doggett, Rosalyn

**From:** thicks [thicks@bannekerventures.com]
**Sent:** Thursday, April 09, 2009 5:50 PM
**To:** eric.smart@bolansmart.com; Doggett, Rosalyn
**Cc:** Maurice' 'Perry; egraddy@bannekerventures.com; 'Omar A. Karim'
**Subject:** HUD Ground Lease Guidelines
**Attachments:** Sub Chapter 7.16 from HUD MAP Guide.pdf

Hello Eric,

Attached please find Sub Chapter 7.16 from the HUD Multifamily Accelerated Processing (MAP) Guide. The MAP Guide is the handbook of HUD statutes and regulations that govern their multifamily mortgage insurance programs. The overall MAP Guide is far more extensive than what we have provided, however, for our purposes the attached section is most relevant to our discussions regarding lease payments. Section 7.16.F.2.a describes the unacceptable methods of determining lease payments. This section is followed by Section 7.16.F.2.b, which describes the three forms of lease payments that are acceptable. Hopefully, this will provide you with the verification you were seeking.

Ms. Doggett, I don't believe our meeting tomorrow was ever confirmed. What times next week are you and your team available to meet to continue our discussions of the economic deal terms? Our schedule is pretty open, except we will be unavailable on Friday after 3 p.m.

I look forward to hearing from you. Thanks.
Tiwana

Tiwana Z. Hicks

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

Office: (202) 667-4110

Fax: (301) 565-4982

Cell: (202) 486-1863

thicks@bannekerventures.com



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**BSA Table 1 (March 09)**

**Florida Avenue / Shaw - Proposals (60 year Term)**

| | | | 1<br>2009 | 2<br>2010 | 3<br>2011 | 4<br>2012 | 5<br>2013 | 6<br>2014 | 7<br>2015 | 8<br>2016 | 9<br>2017 | 10<br>2018 | 11<br>2019 | 12<br>2020 | 13<br>2021 | 14<br>2022 | 15<br>2023 | 16<br>2024 | 60<br>2068 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Banneker (March 19, 2009) with 60 year ground lease** | | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | 90 | 81 | 98 | 80 | | | | | | | | | | | | |
| Predevelopment Rent | | | $40,000 | $40,000 | $40,000 | $40,000 | $40,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | | |
| Base Rent (at 95% ocp) | 1.500% | fixed annual escalations years 6 to 15 | | | | | | $300,000 | $304,500 | $309,068 | $313,704 | $318,409 | $323,185 | $328,033 | $332,953 | $337,948 | $343,017 | | |
| | 3.000% | fixed annual escalations years 16+ | | | | | | | | | | | | | | | | $353,308 | $1,297,152 |
| Total WMATA Base Rent | | | $140,000 | $40,000 | $40,000 | $40,000 | $40,000 | $300,000 | $304,500 | $309,068 | $313,704 | $318,409 | $323,185 | $328,033 | $332,953 | $337,948 | $343,017 | $353,308 | $1,297,152 |
| WMATA Participation | 12.00% | of defined capital events | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 | FY09 assessed values | | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow** | | | $140,000 | $40,000 | $40,000 | $40,000 | $40,000 | $300,000 | $304,500 | $309,068 | $313,704 | $318,409 | $323,185 | $328,033 | $332,953 | $337,948 | $343,017 | $353,308 | $1,297,152 |
| **Cash Flow w/ residual** | | | $140,000 | $40,000 | $40,000 | $40,000 | $40,000 | $300,000 | $304,500 | $309,068 | $313,704 | $318,409 | $323,185 | $328,033 | $332,953 | $337,948 | $343,017 | $353,308 | $46,755,617 |
| NPV Base Rent | 5.73% | discount rate | $5,951,205 | | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $7,649,132 | | | | | | | | | | | | | | | | |
| With Participation | 0.00% | not applicable | $7,649,132 | | | | | | | | | | | | | | | | |
| **Banneker (March 23, 2009) with 60 year ground lease** | | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $60,000 | $60,000 | $60,000 | $60,000 | $60,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | | |
| Base Rent (at 95% ocp) | 8.750% | of Effective Gross Income | | | | | | $266,000 | $273,980 | $282,199 | $290,665 | $299,385 | $308,367 | $317,618 | $327,146 | $336,961 | $347,070 | | |
| | 3.000% | asummed EGI growth | | | | | | | | | | | | | | | | $357,482 | $1,312,477 |
| Total WMATA Base Rent | | | $160,000 | $60,000 | $60,000 | $60,000 | $60,000 | $266,000 | $273,980 | $282,199 | $290,665 | $299,385 | $308,367 | $317,618 | $327,146 | $336,961 | $347,070 | $357,482 | $1,312,477 |
| WMATA Participation | 12.00% | of defined capital events | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 | FY09 assessed values | | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow** | | | $160,000 | $60,000 | $60,000 | $60,000 | $60,000 | $266,000 | $273,980 | $282,199 | $290,665 | $299,385 | $308,367 | $317,618 | $327,146 | $336,961 | $347,070 | $357,482 | $1,312,477 |
| **Cash Flow w/ residual** | | | $160,000 | $60,000 | $60,000 | $60,000 | $60,000 | $266,000 | $273,980 | $282,199 | $290,665 | $299,385 | $308,367 | $317,618 | $327,146 | $336,961 | $347,070 | $357,482 | $46,770,943 |
| NPV Base Rent | 5.73% | discount rate | $5,980,006 | | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $7,677,933 | | | | | | | | | | | | | | | | |
| With Participation | 0.00% | not applicable | $7,677,933 | | | | | | | | | | | | | | | | |
| **Banneker (March 23, 2009) with 60 year ground lease** | | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $60,000 | $60,000 | $60,000 | $60,000 | $60,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | | |
| Base Rent (at 95% ocp) | 12.000% | of Effective Gross Income | | | | | | $327,000 | $336,810 | $346,914 | $357,322 | $368,041 | $379,083 | $390,455 | $402,169 | $414,234 | $426,661 | | |
| | 3.000% | asummed EGI growth | | | | | | | | | | | | | | | | $439,461 | $1,613,459 |
| Total WMATA Base Rent | | | $160,000 | $60,000 | $60,000 | $60,000 | $60,000 | $327,000 | $336,810 | $346,914 | $357,322 | $368,041 | $379,083 | $390,455 | $402,169 | $414,234 | $426,661 | $439,461 | $1,613,459 |
| WMATA Participation | 12.00% | of defined capital events | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 | FY09 assessed values | | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow** | | | $160,000 | $60,000 | $60,000 | $60,000 | $60,000 | $327,000 | $336,810 | $346,914 | $357,322 | $368,041 | $379,083 | $390,455 | $402,169 | $414,234 | $426,661 | $439,461 | $1,613,459 |
| **Cash Flow w/ residual** | | | $160,000 | $60,000 | $60,000 | $60,000 | $60,000 | $327,000 | $336,810 | $346,914 | $357,322 | $368,041 | $379,083 | $390,455 | $402,169 | $414,234 | $426,661 | $439,461 | $47,071,924 |
| NPV Base Rent | 5.73% | discount rate | $7,269,970 | | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $8,967,897 | | | | | | | | | | | | | | | | |
| With Participation | 0.00% | not applicable | $8,967,897 | | | | | | | | | | | | | | | | |

WMATA-INV 000423

BANNEKER VENTURES, LLC

3/17 now void

**MEETING TO DISCUSS THE JAZZ @ FLORIDA AVENUE**

**TUESDAY, MARCH 17, 2008**

**4:00 PM**

**AGENDA**

1. Update on Partnership

2. Other Relevant Team Members

   - Project Architect – Torti Gallas and Partners, Inc.
   - Structural Engineering Consultant – Mueser Rutledge
   - Land Use Counsel – Holland + Knight LLP

3. Business Terms with WMATA

   - 20% of the units affordable at 50% AMI
   - $300,000 annual payment to WMATA beginning at stabilization;
   - $200,000 pre-stabilization payment;
   - $100,000 deposit at execution of JDA;
   - 12% share of net revenue associated with sale of refinance of project

4. Next Steps
   - Schedule for JDA and Lease Approval

## Doggett, Rosalyn

**From:** Omar A. Karim [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
**Attachments:** Jazz - Afford Analysis (as of 3-17-09).xls; Agenda for Meeting with WMATA (3-17-09).doc

**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.

Looking forward to seeing you at 4.

Omar

How are you closing the gap?

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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**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 knowledge. We can hopefully discuss the other items later today after we go through the development partnership structure/capabilities but the % affordable is basic to the pro forma/business deal.



FOIA CONFIDENTIAL TREATMENT REQUESTED 

FOIA CONFIDENTIAL TREATMENT REQUESTED

250K interest/year

3/25/09

18 mo predev (alley closing) HPRB
18 mo Constr.
18 mo leaseup
54
~~6 mo.~~ contingency

# Florida Avenue – Offer comparisons

| JDA | Term Sheet | WMATA Draft | Developer's Last Offer | Approved Proposal Terms |
|---|---|---|---|---|
| **Developer** | Banneker, District Development, Metropolis | Banneker, District Development, Metropolis | Banneker and BACDC | ~~TBD~~ JV composed of Banneker & |
| **Project** | Single phase, including minimum:<br>Gross FAR: 130,014 sf<br>Units: 104<br>Retail: 11,750 sf<br>Parking: 47 spaces | Single phase, including minimum:<br>Gross FAR: ~~130~~,014 sf<br>Units: 104 125,000<br>Retail: 11,750 sf<br>Parking: 47 spaces | Last JDA removed reference to building in a single phase.<br>Pro Forma:<br>Gross FAR: 118,457<br>Units: 92<br>Retail: 12,880<br>Parking: 60 spaces | Single Phase, no agreement as to Gross FAR, number of units, retail square footage, and number of parking spaces<br>4.5 FAR on WMATA parcel<br>& 4.1 FAR with demo process |
| **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 | Upon ending of Lease, WMATA must purchase improvements from Developer at FMV |
| **Pre-stabilization period** | Stabilization or 45 months | Stabilization or 45 months | Stabilization or 61 months | Stabilization or 60 months |
| **Lease closing** | On or before 20 months | On or before 20 months | On or before 29 months | 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 | For will renewal ~~at~~ lease or 57 months in context of stream of payments |
| **Pre-stabilization period payment amounts** | First 15 months: $100,000/year<br>Next 12 months: $115,000/year<br>Thereafter: $130,000 per year | First 15 months: $100,000/year<br>Next 12 months: $115,000/year<br>Thereafter: $130,000 per year | $200,000 total, to be paid over pre-stabilization period and lease up of project | First 18 months: $50,000/year<br>Next 12 months: $65,000/year<br>Thereafter: $80,000 per year after 30 months |
| **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 | Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer within 5 business days |
| **Completion** | Not mentioned (only have | 120% of replacement costs | 100% | May not be applicable – per WMATA |

*300K

# Florida Avenue – Offer comparisons

| | | | | |
|---|---|---|---|---|
| **Bond** | performance and payment) | | | |

| JDA | Bonto Street | WMATA Admin | Developer Counter JDA | Agreed Upon Terms and Status |
|---|---|---|---|---|
| **Insurance** | *WMATA policy:* According to Kim Brown, we will require insurance on everybody. | Everybody: Developer, contractor, subcontractor, etc. | Developer <u>or</u> contractor, as applicable | Insurance provision under review by Developer ~~pay~~ WMATA to provide alternative, e.g. Twombrook or Dunn Loring |
| **FTA Approval** | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; JDA will include appropriate termination provisions in the case FTA denies approval | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; Said agreement is automatically terminated if FTA denies approval and all appeals are exhausted. | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; WMATA has 60 days to secure FTA approval; If FTA denies approval, WMATA shall pay developer $300,000 as compensation for Developer's costs incurred with due diligence and negotiation of Agreement. | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; Said agreement ~~is~~ automatically terminated if FTA denies approval and all appeals are exhausted. |
| **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;<br>After Final Completion – only change of control upon WMATA approval. | Prior to Final Completion – no change of control;<br>After Final Completion – Developer can change control freely. | Prior to Final Completion – no change of control;<br>After Final Completion – Developer can change control freely among Developer members, include Tax Credit Syndicator.<br>BADC will exit ~~to~~ doesn't want to be restricted |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Offer comparisons

acceptable to HUD =
• cpi

| LEASE | Term Sheet | WMATA Draft | Developer Counter Lease | Agreed Upon Terms of Sale |
|---|---|---|---|---|
| **Developer** | See JDA | See JDA | See JDA | |
| **Guarantor** | Requires guarantor for "remediation of all hazardous materials as required by the Definitive Agreement or by applicable law…and the timely payment and performance of all Developer obligations under the Definitive Agreement." *Q – was guaranty contemplated to be for lease also?* | Required guarantor with net worth exceeding 3 times value of project | Removed guarantor requirement | BoA to provide revised guarantor criteria language, no guarantee over and above cost to complete Project per approved plans + specs |
| **Term** | 60 year lease | 60-year lease | 99-year lease | 75-year lease maybe – talk to HUD feel talked about 60+5 |
| **Stabilization** | TBD in JDA | 90% occupancy | 95% occupancy | 92.5% occupancy OK |
| **Base Rent** | $597,000 in quarterly payments | $597,000 in quarterly payments | $300,000 in monthly payments | $300,000 first year, then rent payments based on percentage of EGI |
| **Escalation (Years 1 to 10)** | 1.5% increase *(note: may have been typo on term sheet)* | 1.5% increase | 1.5% increase | 1.5% increase |
| **Escalation (Years 11 to end)** | 3% increase | 3% increase | 1.03% increase *(this is likely related to typo mentioned above)* | 3% increase PGP |
| **Periodic Rent Revaluation** | Upon Capital Event or every 10 years | Upon Capital Event or every 10 years | Removed entirely. | No Period Rent Revaluation because prohibited by HUD. Must be tied to percentage of EGI |
| **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 | 12% of gross income from Capital Event (after repayment of member loan and associated interest payments) |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Offer comparisons

| LEASE | Term Sheet | WMATA draft | Developer's counter LEASE | Agreed Approach in JDA Status |
|---|---|---|---|---|
| | | | (and related re-financing costs if a refi) are re-paid. | |
| **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. | Add to base rent based on formula in Section 7.11 of term sheet. |
| **Late Charge** | TBD in JDA | 20% of delinquent amount | 3% of delinquent amount | WMATA to check rate ~~[illegible]~~ Owner to come back |
| **Default interest rate** | Not mentioned. | 15% or 10% over prime (whichever is higher) | 3% | WMATA to check rate 4% over prime |
| **Affordable Housing** | No mention | No mention | 18 Units | ~~TBD~~ min. 20% of total. |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Offer comparisons

| LEASE | Term Sheet | WMATA draft | Developer's counter JDA | Agreed to Terms or Status |
|---|---|---|---|---|
| **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<br>After Substantial Completion: assignable w/o WMATA consent<br>Assignment restrictions do not apply to leasehold mortgage remedies. | 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 | Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS |
| **Insurance** | See JDA | See JDA | See JDA | |

FOIA CONFIDENTIAL TREATMENT REQUESTED

Eric Omar
Roz Maurice
Jon Tiwanna

4/16/09

1. Went over chart
2. Eric: to preserve value of fixed rent $350k
   - ~~present~~ $1.75 M up front

ERIC'S PROPOSITION TO MAURICE

Prepayment - to solve for 1.5% + 3% escalation
Base Rent -
After $6 M gross income, % of EGI, [illegible]
or some other threshold

Eric gave his low a discount rate so they will get to $7.5M

~~In addition to~~ Pettrade

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Office of Station Area Planning and Asset Management (SAAM)

**Meeting:** Banneker Ventures **Date:** 4/16/09

**Attendance:**

| | Organization | Telephone | E-Mail |
|---|---|---|---|
| Eric Smart | Bolan Smart | 202 776-7740 | eric.smart@bolansmart |
| Roslyn Doggett | Metro | 202 962 2208 | rdoggett@wmata.com |
| Josh Montague | Metro | 202 962 1275 | jwmontague@wmata.com |
| Maurice Perry | Bank of America CDC | 202 442-7526 | maurice.perry@bankofamerica.com |
| Omar Karim | Banneker Ventures | | |
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WMATA-INV 000432

## Doggett, Rosalyn

**From:** eric.smart@bolansmart.com
**Sent:** Tuesday, April 07, 2009 12:34 PM
**To:** Doggett, Rosalyn
**Subject:** Florida Ave Update

Roz

If you are looking at this you are back and catching up.

Talked with Omar last week, and he scheduled a conference call with Maurice any myself for yesterday, Monday April 6. I posed three questions:

1) Want to source HUD ground lease rules under Section 221(d). As background, BSA was able to get some detail directly from HUD, and had a chat with former Mid-City folks about Mosaic, none of which was conclusive. CapStar guy got on Omar's conference call and said would be sending along relevant language directly from HUD sources.

2) Illustrated to Omar et al that per our meeting, they could prepay the ground rent escalations in various amounts and adjust the fixed ground lease accordingly to preserve the same NPV as produced by the standing proposal for $300k escalated over the term. Omar and Maurice wished to focus instead on lowering the base rent in exchange for a prepayment, but not one explicitly tied to maintaining the NPV of the standing $300K offer. After much discussion my interpretation is that they are trying once again to reduce the obligated payments, despite my repeated refrains regarding a variety of WMATA obligations. We will see what they propose next.

3) Suggested that Roz might want BoA fees to be explained. More circular discussion led by Omar.

At end it was left open that Omar might call me back again or will see them at your next meeting.

Eric

--
Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037 202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general) www.bolansmart.com

(1) Go over chart
(2) Pro forma - from them ....



FOIA CONFIDENTIAL TREATMENT REQUESTED 

## Doggett, Rosalyn

**From:** eric.smart@bolansmart.com
**Sent:** Tuesday, March 24, 2009 3:06 PM
**To:** Doggett, Rosalyn
**Subject:** RE: Florida

Will call you at 9:00 Wed morning. Add $3.0M+ to the induced land value after the deducts for the affordables and you get back up closer to $8.0M. Eric

On Tue, 24 Mar 2009 1:55:14 -0500 (EST), "Doggett, Rosalyn" <RDoggett@wmata.com> wrote:
> I just read your message so it will have to be at 9 a.m. tomorrow. A land
> value of $4.5 Million is way below appraisal; first glance remark.
>
> -----Original Message-----
> From: eric.smart@bolansmart.com [mailto:eric.smart@bolansmart.com]
> Sent: Tuesday, March 24, 2009 10:53 AM
> To: Doggett, Rosalyn
> Subject: Florida
>
> Roz
>
> How about a call today later this morning or to be over before 2:00 this
> afternoon or before 10:00 am tomorrow? If neither, I can come early
> on Wednesday before the Florida Ave meeting.
>
> Here are notes, including some capture of Omar's latest proforma forwarded
> yesterday:
>
> 1. Prelease payment up from $200k to $300K.
>
> 2. Proposing WMATA rent to be 9.75% of Effective Gross Income. Not sure of
> source of rate, and note that in process Omar has lowered the initial rent to
> less than $300k per year. No net effect on WMATA NPV assuming market rent
> growth is real at 3.0% per year. (See attached updated BSA cash flow
> comparison, plus illustration of if rent went to 12% of EGI)
>
> 3. Addition of capital event example at end of new proforma looks helpful, if
> only meaningful as expected to WMATA downstream.
>
> 4. Discussion - proposed $300K WMATA rent capped at 7.0% suggests capitalized
> land value of $4.3M ($59k per market unit not counting retail, or $56 per FAR
> foot for 76,720 GSF of retail and non-affordable space). At $4.3M
> land value



FOIA CONFIDENTIAL TREATMENT REQUESTED

> represents 13.7% of total project cost of $31.4M. Not that far off proposed
> 12% capital event participation.
>
> 5. Development cost of affordables net of land at $250K cost, with
> rent supporting maybe $75K in value, leaves a net cost gap of $175K. Eighteen
> non-market units total $3.15M in cost, or $220K per year at 7.0% if
> translated directly into foregone WMATA ground rent. If land cost is added
> prorata with the rest of market units land cost is on the order of $45/FAR,
> or about $45k per unit, which added to affordables development cost would net
> a total cost gap of $220K per unit, inferring a total cost of $3.96M for 18
> units, or $277K per year in WMATA rent at 7.0%. This pretty much matches up
> with Omar's proposed rent drop form $597K into range of $300K.
>
> 6. In process of comparing the recent proformas.
>
> 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
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FOIA CONFIDENTIAL TREATMENT REQUESTED

The market has generally been stable over the last 4.50 years. The overall vacancy rate is estimated to be 4.3% as of the current time, which represents a modest increase from the low mark of 1.3% reported in 2000. However, it also represents a modest decrease from the high mark of 5.2% reported in 2004.

Absorption has been relatively weak since the beginning of 2004 as it has totaled a negative 446 units, or 31.9 units per quarter since that time.

The effective rental rate is $1,265 per unit, which represents a consistent increase from the 1998 mark of $786. Rental rates have increased an average of 5.8% per year since that time.

According to forecasts prepared by *REIS,* the vacancy rate will decrease to 3.4% by 2010. The weighted average effective rental rate is forecast to move upward to $1,385 per unit.

In the following table, there are 4,270 total multi-family (apartment, condominium, and low-income/subsidized) units under construction and 12,434 total multi-family units are planned/proposed in Washington, DC. Of those total multi-family units, 644 apartment units are under construction, and 3,544 apartment units are proposed/ planned. Based on increases in new apartment construction, it appears that the market demand in Washington, DC is being met by a substantial increase in supply. We will discuss projected supply and demand factors for the subject's submarket later in this section.

REIS

DISTRICT OF COLUMBIA - MULTIFAMILY CONSTRUCTION
2ND QUARTER 2007

| Property Name | Date As Of | Secondary Type | Street Address | Submarket | Est. Groundbreak Date | Est. Completion Date | Size SF/Units | Status |
|---|---|---|---|---|---|---|---|---|
| BELMONT VISTA | 06/30/2007 | Condominiums | 1306 BELMONT ST NW @ 14TH ST NW | Howard U/Mt. Pleasant/Brightwood | 08/2006 | 01/2008 | 28 | Under Constr. |
| THE V | 06/30/2007 | Apartment | 5TH ST NW @ K ST NW | Downtown/Logan Circle | 10/2005 | 01/2009 | 195 | Under Constr. |
| HENSON RIDGE PH III | 06/30/2007 | Subsidized/Low Income | 2001 STANTON RD SE @ FREDERICK PL SE | Anacostia/Northeast DC | | 02/2008 | 156 | Under Constr. |
| 22 WEST | 06/30/2007 | Condominiums | 1177 22ND ST NW @ M ST NW/NEW HAMPSHIRE | Foggy Bottom | | 03/2008 | 92 | Under Constr. |
| AMBER OVERLOOK | 06/30/2007 | Condominiums | 50TH ST SE @ C ST SE | Anacostia/Northeast DC | 11/2006 | 03/2009 | 106 | Under Constr. |
| BELMONT VISTA | 06/30/2007 | Condominiums | 1330 BELMONT ST NW | Howard U/Mt. Pleasant/Brightwood | 01/2006 | 05/2008 | 28 | Under Constr. |
| THE METROPOLE | 07/13/2007 | Condominiums | 15TH ST NW @ P ST NW | Downtown/Logan Circle | | 06/2008 | 100 | Under Constr. |
| PARK PLACE | 06/30/2007 | Condominiums | GEORGIA AVE NW @ NEW HAMPSHIRE AVE NW | Howard U/Mt. Pleasant/Brightwood | 07/2006 | 07/2008 | 148 | Under Constr. |
| UNION PLACE PH I | 06/30/2007 | Apartment | 3RD ST NE @ K ST NE | Anacostia/Northeast DC | 06/2007 | 07/2009 | 212 | Under Constr. |
| LANDMARK LOFTS AT SENATE SQUARE | 07/13/2007 | Condominiums | 400 3RD ST NE @ H ST NE | Anacostia/Northeast DC | 06/2005 | 08/2007 | 44 | Under Constr. |
| THE L | 06/30/2007 | Condominiums | 5TH ST NW @ K ST NW (CITY VISTA) | Downtown/Logan Circle | 10/2005 | 08/2008 | 149 | Under Constr. |
| THE DUMONT | 06/30/2007 | Condominiums | 425 MASSACHUSETTS AVE @ 4TH ST NW/5TH ST NW | Downtown/Logan Circle | 06/2005 | 09/2008 | 370 | Under Constr. |
| JEXONS ROW | 06/30/2007 | Condominiums | 1391 PENNSYLVANIA AVE @ 14TH ST SE | Capitol Hill/Southwest | 04/2005 | 10/2007 | 247 | Under Constr. |
| PENNSYLVANIA LOFTS | 06/30/2007 | Condominiums | 1209 13TH ST NW @ M ST NW | Downtown/Logan Circle | 05/2006 | 10/2007 | 38 | Under Constr. |
| KENYON SQUARE | 07/12/2007 | Condominiums | 1390 KENYON ST @ 14TH ST NW | Howard U/Mt. Pleasant/Brightwood | 01/2005 | 10/2007 | 153 | Under Constr. |
| ONYX ON FIRST | 06/30/2007 | Condominiums | 1100 1ST ST SE @ L ST SE | Capitol Hill/Southwest | | 10/2008 | 266 | Under Constr. |
| SENATE SQUARE TOWERS | 07/18/2007 | Condominiums | 225 1ST NE @ 2ND ST NE | Anacostia/Northeast DC | 09/2005 | 11/2007 | 432 | Under Constr. |
| ALLEGRO CONDOS | 06/30/2007 | Condominiums | 3460 14TH ST NW @ OAK ST NW | Howard U/Mt. Pleasant/Brightwood | 11/2006 | 11/2008 | 275 | Under Constr. |
| | 06/30/2007 | Apartment | 900 NEW JERSEY AVE SE @ I ST SE | Capitol Hill/Southwest | 07/2007 | 11/2009 | 237 | Under Constr. |
| SQUARE 516 | 06/30/2007 | Condominiums | 516 4TH ST NW @ I ST NW/5TH ST NW/MASS | Downtown/Logan Circle | | 12/2007 | 350 | Under Constr. |
| THE MADRIGAL LOFTS | 06/30/2007 | Condominiums | 340 I ST NW | Downtown/Logan Circle | 09/2005 | 12/2007 | 359 | Under Constr. |
| YALE LAUNDRY BUILDING I | 06/30/2007 | Condominiums | NEW YORK AVE NW @ 4TH ST NW/5TH ST NW | Downtown/Logan Circle | 08/2006 | 12/2007 | 170 | Under Constr. |
| HIGHLAND PARK | 08/07/2007 | Condominiums | 1400 IRVING ST NW @ 14TH ST NW | Howard U/Mt. Pleasant/Brightwood | 01/2005 | 12/2007 | 229 | Under Constr. |
| THE LACEY | 08/06/2007 | Condominiums | 1100 FLORIDA AVE NW @ 11TH ST NW | Howard U/Mt. Pleasant/Brightwood | | 12/2008 | 26 | Under Constr. |
| WASHINGTON GATEWAY | 06/30/2007 | Condominiums | NEW YORK AVE NE @ FLORIDA AVE NE | Anacostia/Northeast DC | 01/2008 | 01/2010 | 250 | Proposed |
| CAPPER/CARROLLSBURG CONDOS PH I | 06/30/2007 | Condominiums | M ST SE @ 2ND ST SE/7TH ST SE | Capitol Hill/Southwest | 01/2010 | 01/2012 | 400 | Proposed |
| CAPPER/CARROLLSBURG CONDOS PH II | 06/30/2007 | Condominiums | M ST SE @ 2ND ST SE/7TH ST SE | Capitol Hill/Southwest | 01/2012 | 01/2014 | 400 | Proposed |
| HOWARD TOWN CENTER | 06/30/2007 | Apartment | GEORGIA AVE NW @ V ST NW | Howard U/Mt. Pleasant/Brightwood | | 04/2009 | 322 | Proposed |
| UNITY SQUARE CONDOS | 06/30/2007 | Condominiums | 1770 EUCLID ST NW @ CHAMPLAIN ST NW | Dupont Circle/Adams Morgan | 01/2008 | 06/2009 | 62 | Proposed |
| GEORGIA COMMONS | 06/30/2007 | Apartment | 3910 GEORGIA AVE NW @ RANDOLPH ST NW | Howard U/Mt. Pleasant/Brightwood | 06/2008 | 06/2010 | 66 | Proposed |
| | 06/30/2007 | Condominiums | 1001 3RD ST NE @ K ST NE | Anacostia/Northeast DC | | 07/2008 | 100 | Proposed |
| FORT TROTTEN METRO PROJECT PH III | 06/30/2007 | Condominiums | SOUTH DAKOTA AVE NE @ RIGGS RD NE | Brookland/Ft. Totten | 07/2009 | 07/2010 | 190 | Proposed |
| SQUARE 54 | 06/30/2007 | Apartment | 23RD ST NW @ I ST NW | Foggy Bottom | 05/2007 | 08/2010 | 333 | Proposed |
| | 06/30/2007 | Condominiums | 917 M ST NW | Downtown/Logan Circle | 09/2007 | 09/2008 | 54 | Proposed |
| RANDALL SCHOOL PROJECT | 06/30/2007 | Apartment | HALF ST SW @ I ST SW | Capitol Hill/Southwest | 01/2009 | 09/2011 | 350 | Proposed |
| OLD CONVENTION CENTER CONDOS | 06/30/2007 | Condominiums | NEW YORK AVE NW @ 9TH ST NW | Downtown/Logan Circle | 10/2008 | 10/2008 | 228 | Proposed |
| THE WATERFRONT PH I-III | 06/30/2007 | N/A | 4TH ST SW @ M ST SW | Capitol Hill/Southwest | 10/2007 | 10/2009 | 1000 | Proposed |
| SOUTHEAST FEDERAL CENTER PH I | 06/30/2007 | Condominiums | NEW JERSEY AVE SE @ M ST SE | Capitol Hill/Southwest | 10/2007 | 10/2010 | 1350 | Proposed |
| OLD CONVENTION CENTER APARTMENTS | 06/30/2007 | Apartment | NEW YORK AVE NW @ 9TH ST NW | Downtown/Logan Circle | 10/2008 | 10/2011 | 457 | Proposed |
| SOUTHEAST FEDERAL CENTER PH II | 06/30/2007 | Condominiums | NEW JERSEY AVE SE @ M ST SE | Capitol Hill/Southwest | 10/2010 | 10/2012 | 1350 | Proposed |
| | 06/30/2007 | Condominiums | 3RD ST NE @ M ST NE | Anacostia/Northeast DC | 12/2008 | 12/2010 | 450 | Proposed |
| 3801 GEORGIA | 06/30/2007 | Condominiums | 3801 GEORGIA AVE NW | Howard U/Mt. Pleasant/Brightwood | | | 96 | Proposed |



recent appraisal

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000436

ABSORPTION ANALYSIS

| COMPLEX NAME | PROJECT TYPE | # OF UNITS | MARKETING START | CONSTRUCTION COMPLETION | # UNITS ABSORBED | MONTHLY ABSORPTION | CURRENT CONCESSION* |
|---|---|---|---|---|---|---|---|
| The Kennedy-Warren | High Rise | 114 | Aug-04 | Oct-04 | 114 | 6 | N/A |
| Sovereign Park | High Rise | 142 | Sep-04 | Nov-04 | 142 | 8 | N/A |
| The DeSoto | High Rise | 66 | Oct-04 | Dec-04 | 66 | 6 | N/A |
| Park Triangle | High Rise | 117 | Dec-05 | Dec-05 | 89 | 7.42 | 8% |
| 2400 M Street | High Rise | 359 | Mar-06 | Mar-06 | 217 | 21.7 | 1% |
| The Flats at Dupont Circle | High Rise | 306 | Mar-06 | Jun-06 | 224 | 22.4 | 7% |
| AVERAGES | | 184 | | | 142 | 11.9 | 5.3% |
| TOTALS | | 1,104 | | | 852 | N/A | N/A |

* Current concession as a percentage of Face Rent.

Source: *Delta Associates*

The table above demonstrates the healthy demand for new apartment units within the subject's Washington, DC market. It should be noted that none of these comparables are in pioneering locations similar to the subject. The reader should also note that many apartment communities that were in the construction or near construction completion phase were "switched" to condominiums.

Based on the preceding absorption comparables and the fact that we believe the subject will offer more affordably priced apartment units as compared to the majority of units recently completed or under construction, we project an average absorption pace of 5 to 10 units per month.

## RESIDENTIAL LAND MARKET OUTLOOK AND CONCLUSIONS

Considering that the average apartment unit size in Washington, DC is approximately 800 square feet, we have estimated average rental rate for a Class A apartment unit at the subject site would range from $1.50 to $1.75 per square foot, or $1,200 to $1,400 per unit, with an average absorption pace of 5 to 10 units per month.

In addition, since the subject is located in the Uptown Arts Overlay district. Developments with a below market housing use can be developed to maximum of 4.5 FAR. Moreover, any "building that includes 3.0 or more FAR devoted to residential use is entitled to a bonus of 0.5 FAR." Thus, the maximum FAR for a market rate residential building would be 3.5.

The subject's Howard U./Mt. Pleasant/Brightwood submarket has experienced and is slated to continue to experience increases in residential developments. During the past nine to twelve months, the condominium market has come to a standstill, while the apartment market has shown signs of improvement. Although condominium land and, therefore, condominium projects were in much higher demand until recently than apartment land and apartment projects, the condominium market quickly became overbuilt. Multi-family developers we spoke with are moving their projects back to apartments.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000437

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**Subject:** Flash Update: SW Waterfront Project
**Date:** Mon, 15 Dec 2008 20:00 EST
**From:** kbrown@dccouncil.us
**To:** Thedoggettgroup@cs.com

**Kwame R. Brown**
Councilmember At-Large
- FOR ONE DC -

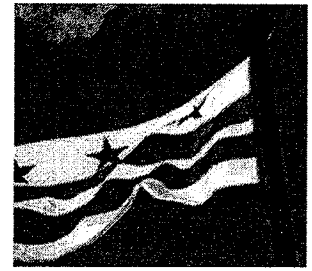
## Flash Update

For more information please contact Press Secretary Michael Price at mprice@dccouncil.us

### Visit Us At:

www.kwamebrownatlarge.com

# Kwame Thanks Mayor for Reintroducing SW Waterfront Disposition with Affordable Housing and Community Benefits



WASHINGTON – Today, At-Large Councilmember Kwame R. Brown, Chair of the Committee on Economic Development, thanked Mayor Adrian M. Fenty for transmitting a revised resolution approving the disposition of land for the Southwest Waterfront project. The revised resolution includes language that protects promises made to the community in the Anacostia Waterfront Initiative Framework and small area plans in addition to affordable housing and Council oversight requirements. The

Forest City
or Stronger?

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000438

resolution is expected to be taken up during the Council's legislative meeting tomorrow.

The agreement that the Mayor would transmit a revised emergency resolution was struck late Friday evening with input from the administration and the developer. Councilmember Brown thanked both Chairman Vincent C. Gray and Ward 6 Councilmember Tommy Wells for their integral role in the process.

"Residents want to know that when developers make promises to them that those promises are kept," said Councilmember Brown. "My priorities were to work cooperatively to move the project forward but to also preserve the community's vision for the waterfront. That included protecting affordable housing and providing responsible oversight of the project. This is a major win for District residents whose voices have been heard. Chairman Gray and Councilmember Wells played critical roles throughout this week's discussions and this would not have happened without them."

Councilmember Brown fought to have the following provisions included in the final resolution to protect the interests of the community and move the project forward in a timely, responsible manner:

- Affordable Housing: The developer is required to create affordable housing units in accordance with the NCRC and AWC Reorganization Act of 2008.

- Fulfilling the Community's Vision: The developer is required to abide by terms promised to the community in the Anacostia Waterfront Initiative Framework Plan and the Southwest Waterfront Plan Approval Resolution of 2003.

- Don't Flip the Property: The property cannot be transferred without prior consent of the District and approval of the Council. The city will have the right to repossess the property if the developer fails to meet the requirements of the agreement.

- Local Small Business Participation: Small businesses are required to receive 35% of the contracting dollars, 20% equity participation and 20% development participation.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000439

- Oversight and Transparency: To review the financial stability of the developer, the Mayor will submit an amended Initial Project Funding and Financing Plan by May 1, 2009 to the Council and will submit further reports upon written request by the Council.

"I have always been determined to move this project forward, while maximizing the benefit to District residents," said Councilmember Brown. "I am encouraged that we were able to come together and finalize the deal with these protections in place."

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www.kwamebrownatlarge.com

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**Visit our website at www.kwamebrownatlarge.com**

**1350 Pennsylvania Avenue, NW**
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**Washington, DC 20004**
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Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004



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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000440

## Doggett, Rosalyn

**From:** eric.smart@bolansmart.com
**Sent:** Wednesday, April 01, 2009 11:33 AM
**To:** Doggett, Rosalyn
**Subject:** Florida $$

I need a $7.5M + NPV

(B) I don't think HUD will allow EGI but am not sure — other than a base rent or from surplus cash

Roz

(1) We have experimented some with realizing a $6.0M+ NPV from fixed base rent, not counting residual. There are any number of permutations of splitting between prepayment and annual rent. For example, a $1.75M prepayment at stabilization coupled with a $350,000 annual rent produces the needed NPV.

(A) Still don't know how much of drop = affordable vs. changed assumptions

(2) We have also looked at grafting in a percentage of EGI in some manner that provides WMATA with upside rent adjustment while respecting that the tenant has prepaid for up to a 3.0% annual escalator. The following suggestion is partly formulaic and partly one of symmetry with the original proposal. WMATA gets a participating annual rent of 12% on any EGI over $5.0M. Were the 12% to be assessed against the $5M, WMATA's annual rent would be $600,000, per the original agreed Term Sheet. Based on PGP. This won't fly

I could illustrate this further showing the cash flows, but before perfecting wanted to: (a) see if you are interested in something like this, and (b) to gauge your reaction to us floating this kind of illustration by Omar before Friday's meeting?

With no commitment on your part we propose that I call Omar and lay out the above two part scenario. I can then talk with you before the meeting on Friday regarding the concept and his possible reaction.

Eric

--
Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037 202-776-7740 (direct), 202-841-2227 cell (cell), 202-371-1333 (BSA general) www.bolansmart.com



FOIA CONFIDENTIAL TREATMENT REQUESTED 

Marnie
Omar
Tomorrow
Adam
Chris

R or
both
Eric S.

5/26/09

both month

BSA Table 1 (May 09)

Florida Avenue / Shaw - Proposals (60 year Term)

| | | | 1 2009 | 2 2010 | 3 2011 | 4 2012 | 5 2013 | 6 2014 | 7 2015 | 8 2016 | 9 2017 | 10 2018 | 11 2019 | 12 2020 | 13 2021 | 14 2022 | 15 2023 | 16 2024 | 60 2068 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Banneker (May 25, 2009 illustrative) with 60 year ground lease** | | | | | | | | | | | | | | | | | | | |
| Revenues | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | | |
| Predevelopment Ren: | | | $50,000 | $65,000 | $80,000 | $80,000 | $80,000 | | | | | | | | | | | | |
| Base Rent (at 95% occ) | prepaid | | | | | | | $0 | | | | | | | | | | | |
| | annual | | | | | | | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 |
| Total WMATA Base Rent | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 |
| Effective Gross Income | | Banneker projected | | | | | | $2,831,000 | | | | | | | | | | | |
| | 3.00% | EGI growth BSA adjusted | | | | | | $2,500,000 | $2,575,000 | $2,652,250 | $2,731,818 | $2,813,772 | $2,898,185 | $2,985,131 | $3,074,685 | $3,166,925 | $3,261,933 | $3,359,791 | $12,335,312 |
| | 3.00% | WMATA payment | | | | | | | | | | | $86,946 | $89,554 | $92,241 | $95,008 | $97,858 | $100,794 | $370,059 |
| Total WMATA Base Rent With Percentage of EGI | | | | | | | | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $386,946 | $389,554 | $392,241 | $395,008 | $397,858 | $400,794 | $670,059 |
| WMATA Participation | 12.00% | of defined capital events | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $5,200,000 | FY09 appraised value | | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | |
| Terminal Value | $29,744,016 | on land only | | | | | | | | | | | | | | | | | $29,744,016 |
| **Cash Flow** | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $386,946 | $389,554 | $392,241 | $395,008 | $397,858 | $400,794 | $670,059 |
| **Cash Flow w/ residual** | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $300,000 | $300,000 | $300,000 | $300,000 | $300,000 | $386,946 | $389,554 | $392,241 | $395,008 | $397,858 | $400,794 | $30,414,075 |
| NPV Base Rent | 5.73% | discount rate | $4,169,368 | | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $5,220,631 | | | | | | | | | | | | | | | | |
| With EGI | 5.73% | discount rate | $8,551,724 | | | | | | | | | | | | | | | | |
| With Participation | | | not considered | | | | | | | | | | | | | | | | |

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

5/26/09

BSA Table 1 (May 09)

**Florida Avenue / Shaw - Proposals (75 year Term)**

| | | | 1<br>2009 | 2<br>2010 | 3<br>2011 | 4<br>2012 | 5<br>2013 | 6<br>2014 | 7<br>2015 | 8<br>2016 | 9<br>2017 | 10<br>2018 | 11<br>2019 | 12<br>2020 | 13<br>2021 | 14<br>2022 | 15<br>2023 | 16<br>2024 | 55<br>2063 | 56<br>2064 | 75<br>2083 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Banneker (May 26, 2009 illustrative) with 60 year ground lease | | | | | | | | | | | | | | | | | | | | | |
| Revenues | | | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $50,000 | $65,000 | $80,000 | $80,000 | $80,000 | | | | | | | | | | | | | | |
| Base Rent (at 95% ocp) | prepaid | | | | | | | $800,000 | | | | | | | | | | | | | |
| | annual | | | | | | $0 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $678,793 | $678,793 |
| Total WMATA Base Rent | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $1,050,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $678,793 | $678,793 |
| Effective Gross Income | | Banneker projected | | | | | | $2,831,000 | | | | | | | | | | | | | |
| | 3.00% | EGI growth BSA adjusted | | | | | | $2,500,000 | $2,575,000 | $2,652,250 | $2,731,818 | $2,813,772 | $2,898,185 | $2,985,131 | $3,074,685 | $3,166,925 | $3,261,933 | $3,359,791 | $10,640,549 | $0 | $0 |
| | 1.00% | WMATA payment w/ EGI | | | | | | | | | | | $28,982 | $29,851 | $30,747 | $31,669 | $32,619 | $33,598 | $106,405 | $0 | $0 |
| Total WMATA Base Rent With Percentage of EGI | | | | | | | | $1,050,000 | $250,000 | $250,000 | $250,000 | $250,000 | $278,982 | $279,851 | $280,747 | $281,669 | $282,619 | $283,598 | $356,405 | $678,793 | $678,793 |
| WMATA Participation | 12.00% | of defined capital events | | | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $8,655,000 | FY09 adjusted appraised value | | | | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | | | |
| Terminal Value | $59,306,554 | on land only | | | | | | | | | | | | | | | | | | | |
| | | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $59,306,554 |
| Cash Flow | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $1,050,000 | $250,000 | $250,000 | $250,000 | $250,000 | $278,982 | $279,851 | $280,747 | $281,669 | $282,619 | $283,598 | $356,405 | $678,793 | $678,793 |
| Cash Flow w/ residual | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $1,050,000 | $250,000 | $250,000 | $250,000 | $250,000 | $278,982 | $279,851 | $280,747 | $281,669 | $282,619 | $283,598 | $356,405 | $678,793 | $678,793 |
| NPV Base Rent | 5.73% | discount rate | $4,689,044 | | | | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $8,997,367 | | | | | | | | | | | | | | | | | | |
| With EGI at 1% only | 5.73% | discount rate | $4,018,050 | | | | | | | | | | | | | | | | | | |
| With Participation | | | not considered | | | | | | | | | | | | | | | | | | |

— can't value it, can't use it

WMATA-INV 000443

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

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

**Financial Model**

**as of 3/23/09**

**SUMMARY**

| | | | | |
|---|---|---|---|---|
| Market | | | | 80% |
| # of Units | | | | 74 |
| $ per SF | | | $ | 2.90 |
| | | | | |
| Affordable | | | | 20% |
| # of Units | | | | 18 |
| $ per SF | | | $ | 1.15 |
| | | | | |
| Parking | | | | |
| # of spaces | | | | 45 |
| $ per space | | | $ | 150.00 |
| | | | | |
| **Income** | | | | **Year 1** |
| Market Units | | | $ | 2,182,641 |
| Affordable Units | | | $ | 216,383 |
| Other Income | 2.00% | | $ | 47,980 |
| Parking | | | $ | 81,000 |
| Vacancy | 9.00% | | $ | (227,520) |
| **Total Income** | | | $ | 2,300,484 |
| | | | | |
| **Expenses** | | | | |
| WMATA Land Lease | | | $ | 264,544 |
| Real Estate Taxes (Market) | $2,000 | | $ | 147,575 |
| Real Estate Taxes (Affordable) | $1,000 | | $ | 18,447 |
| Property Insurance | $400 | per unit | $ | 36,894 |
| Utilities | $400 | | $ | 36,894 |
| Repairs and Maintenance | $500 | | $ | 46,117 |
| Property Management | 3.00% | gross revenue | $ | 69,015 |
| Payroll | $1,750 | per unit | $ | 161,411 |
| Advertising & Marketing | $600 | | $ | 55,341 |
| Administrative, Painting, Contract Services | $800 | | $ | 73,788 |
| **Total Expenses** | | | $ | 910,025 |
| per unit $ | 9,866 | | | |
| | | | | |
| **NOI** | | | $ | **1,390,459** |
| Reserves | $250 | | $ | 23,059 |
| Cash Flow before Debt Service | | | $ | 1,367,400 |

## SUPPORTABLE DEBT CALCULATIONS

| | Loan |
|---|---|
| ***Base Residential NOI (net of reserves)*** | 1,466,595 |
| ***Base Retail NOI (net of reserves)*** | 255,591 |
| | 1,722,186 |
| | |
| *DSCR* | 1.20 |
| **Amount Available for Debt Service** | 1,435,155 |
| | |
| **Calculation of Loan Constant** | |
| Amortization Term | 40 |
| Loan Constant | 7.74% |
| | |
| Max Supportable Mortgage | 18,539,000 |
| | |
| Bond Rate | 6.00% |
| DCHFA Fee | 0.40% |
| Trustee Fee | 0.05% |
| GNMA Fee | 0.25% |
| Aggregate Rate | 6.70% |
| | |
| Loan Constant | 7.24% |
| Mortgage Insurance Premium | 0.50% |
| Calculation of Loan Constant | 7.74% |

FOIA CONFIDENTIAL TREATMENT REQUESTED

**LIHTC Calculation**

| **Qualifying Costs** | | **LIHTC** |
|---|---|---|
| Total Development Cost (Residential Portion) | $ | 23,298,207 |
| Less: | | |
| FF&E | | 500,000 |
| Parking | | 1,350,000 |
| Marketing | | 264,544 |
| Financing Costs | | 1,636,566 |
| Legal and Accounting | | 484,998 |
| Reserves | | -352,726 |
| Total Non-Qualifying Costs | $ | 3,883,383 |
| **Total Eligible Costs** | $ | 19,414,824 |

| **Valuation** | | |
|---|---|---|
| Total Eligible Costs (see above) | $ | 19,414,824 |
| x Factor ( LIHTC - Difficult to Develop Area) | | 130% |
| Total Adjusted Basis | | 25,239,271 |
| x Applicable Fraction | | 20% |
| **Total Qualified Basis** | | **5,047,854** |
| x Annual Tax Rate | | 3.4% |
| Annual Credit | | 171,627 |
| Applicable Period (Years) | | 10 |
| Credit Amount | | 1,716,270 |
| x Equity Proceeds from Sale of Credits @ | | $0.70 |
| **Realized Value to Project** | **$** | **1,201,389** |

WMATA-INV 000447

FOIA CONFIDENTIAL TREATMENT REQUESTED

**The Jazz @ Florida Avenue**
**Retail Proforma**

| | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Assumptions** | | | | | | | | | | | | | | | | | |
| Rentable S.F. | 12,880 | | | | | | | | | | | | | | | | |
| Market Space | 7,480 | | | | | | | | | | | | | | | | |
| Affordable/Non-Profit Space | 5,400 | | | | | | | | | | | | | | | | |
| Triple Net Lease | | | | | | | | | | | | | | | | | |
| | Per S.F. | Escal | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 |
| **Operating Income** | | | | | | | | | | | | | | | | | |
| Retail Tenants - Market | $38.00 | 3% | 56,848 | 284,240 | 292,767 | 301,550 | 310,597 | 319,915 | 329,512 | 339,397 | 349,579 | 360,067 | 370,869 | 381,995 | 393,455 | 405,258 | 417,416 |
| Retail Tenants - Affordable/Non-Profit | $10.00 | 2% | 10,800 | 54,000 | 55,620 | 56,732 | 57,867 | 59,024 | 60,205 | 61,409 | 62,637 | 63,890 | 65,168 | 66,471 | 67,800 | 69,156 | 70,540 |
| Parking | $50.00 | 2% | 9,000 | 9,180 | 9,364 | 9,551 | 9,742 | 9,937 | 10,135 | 10,338 | 10,545 | 10,756 | 10,971 | 11,190 | 11,414 | 11,642 | 11,875 |
| Less: General Vacancy | | 5% | - | - | (17,888) | (18,392) | (18,910) | (19,444) | (19,993) | (20,557) | (21,138) | (21,736) | (22,350) | (22,983) | (23,633) | (24,303) | (24,992) |
| **Total Operating Income** | | | 76,648 | 347,420 | 339,863 | 349,442 | 359,295 | 369,432 | 379,860 | 390,587 | 401,623 | 412,977 | 424,657 | 436,673 | 449,036 | 461,754 | 474,839 |
| **Recoverable Expenses** | | Escal | | | | | | | | | | | | | | | |
| CAM, Insurance, Payroll, etc. | 3.75 SF | 3% | 10,500 | 52,500 | 54,075 | 55,697 | 57,368 | 59,089 | 60,862 | 62,688 | 64,568 | 66,505 | 68,501 | 70,556 | 72,672 | 74,852 | 77,098 |
| RE Taxes | 8.00 SF | 3% | 22,400 | 112,000 | 115,360 | 118,821 | 122,385 | 126,057 | 129,839 | 133,734 | 137,746 | 141,878 | 146,135 | 150,519 | 155,034 | 159,685 | 164,476 |
| **Total Recoverable Expenses** | | | 32,900 | 164,500 | 169,435 | 174,518 | 179,754 | 185,146 | 190,701 | 196,422 | 202,314 | 208,384 | 214,635 | 221,074 | 227,706 | 234,538 | 241,574 |
| **Non-Recoverable Expenses** | | | | | | | | | | | | | | | | | |
| WMATA Lease* | | | 8,864 | 8,864 | 33,137 | 34,071 | 35,031 | 36,020 | 37,036 | 38,082 | 39,158 | 40,265 | 41,404 | 42,576 | 43,781 | 45,021 | 46,297 |
| Non-recov Ownership Expenses | $1.30 SF | 3% | 18,200 | 18,746 | 19,308 | 19,888 | 20,484 | 21,099 | 21,732 | 22,384 | 23,055 | 23,747 | 24,459 | 25,193 | 25,949 | 26,727 | 27,529 |
| **Total Non-Recoverable Expenses** | | | 27,064 | 27,610 | 52,445 | 53,958 | 55,516 | 57,118 | 58,768 | 60,466 | 62,213 | 64,012 | 65,863 | 67,769 | 69,730 | 71,748 | 73,826 |
| **Net Operating Income** | | | 49,584 | 319,810 | 287,418 | 295,484 | 303,780 | 312,314 | 321,092 | 330,121 | 339,410 | 348,965 | 358,794 | 368,905 | 379,306 | 390,006 | 401,013 |
| Capital Reserves | | 3% | 30,000 | 30,900 | 31,827 | 32,782 | 33,765 | 34,778 | 35,822 | 36,896 | 38,003 | 39,143 | 40,317 | 41,527 | 42,773 | 44,056 | 45,378 |
| **Before Tax Cash Flow** | | | 19,584 | 288,910 | 255,591 | 262,702 | 270,015 | 277,535 | 285,270 | 293,225 | 301,407 | 309,822 | 318,476 | 327,378 | 336,533 | 345,950 | 355,636 |

9.75% of Total Operating Income*

WMATA-INV 000448

FOIA CONFIDENTIAL TREATMENT REQUESTED

**The Jazz @ Florida Avenue**
**Retail Proforma**

**Assumptions**

| | |
|---|---|
| Rentable S.F. | 12,880 |
| Market Space | 7,480 |
| Affordable/Non-Profit Space | 5,400 |
| Triple Net Lease | |

| | Per S.F. | Escal | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Operating Income** | | | | | | | | | | | | | | | | | |
| Retail Tenants - Market | $38.00 | 3% | 56,848 | 284,240 | 292,767 | 301,550 | 310,597 | 319,915 | 329,512 | 339,397 | 349,579 | 360,067 | 370,869 | 381,995 | 393,455 | 405,258 | 417,416 |
| Retail Tenants - Affordable/Non-Profit | $10.00 | 2% | 10,800 | 54,000 | 55,620 | 56,732 | 57,867 | 59,024 | 60,205 | 61,409 | 62,637 | 63,890 | 65,168 | 66,471 | 67,800 | 69,156 | 70,540 |
| Parking | $50.00 | 2% | 9,000 | 9,180 | 9,364 | 9,551 | 9,742 | 9,937 | 10,135 | 10,338 | 10,545 | 10,756 | 10,971 | 11,190 | 11,414 | 11,642 | 11,875 |
| Less: General Vacancy | | 5% | - | - | (17,888) | (18,392) | (18,910) | (19,444) | (19,993) | (20,557) | (21,138) | (21,736) | (22,350) | (22,983) | (23,633) | (24,303) | (24,992) |
| **Total Operating Income** | | | 76,648 | 347,420 | 339,863 | 349,442 | 359,295 | 369,432 | 379,860 | 390,587 | 401,623 | 412,977 | 424,657 | 436,673 | 449,036 | 461,754 | 474,839 |
| **Recoverable Expenses** | | Escal | | | | | | | | | | | | | | | |
| CAM, Insurance, Payroll, etc. | 3.75 SF | 3% | 10,500 | 52,500 | 54,075 | 55,697 | 57,368 | 59,089 | 60,862 | 62,688 | 64,568 | 66,505 | 68,501 | 70,556 | 72,672 | 74,852 | 77,098 |
| RE Taxes | 8.00 SF | 3% | 22,400 | 112,000 | 115,360 | 118,821 | 122,385 | 126,057 | 129,839 | 133,734 | 137,746 | 141,878 | 146,135 | 150,519 | 155,034 | 159,685 | 164,476 |
| **Total Recoverable Expenses** | | | 32,900 | 164,500 | 169,435 | 174,518 | 179,754 | 185,146 | 190,701 | 196,422 | 202,314 | 208,384 | 214,635 | 221,074 | 227,706 | 234,538 | 241,574 |
| **Non-Recoverable Expenses** | | | | | | | | | | | | | | | | | |
| WMATA Lease* | | | 8,864 | 8,864 | 33,137 | 34,071 | 35,031 | 36,020 | 37,036 | 38,082 | 39,158 | 40,265 | 41,404 | 42,576 | 43,781 | 45,021 | 46,297 |
| Non-recov Ownership Expenses | $1.30 SF | 3% | 18,200 | 18,746 | 19,308 | 19,888 | 20,484 | 21,099 | 21,732 | 22,384 | 23,055 | 23,747 | 24,459 | 25,193 | 25,949 | 26,727 | 27,529 |
| **Total Non-Recoverable Expenses** | | | 27,064 | 27,610 | 52,445 | 53,958 | 55,516 | 57,118 | 58,768 | 60,466 | 62,213 | 64,012 | 65,863 | 67,769 | 69,730 | 71,748 | 73,826 |
| **Net Operating Income** | | | 49,584 | 319,810 | 287,418 | 295,484 | 303,780 | 312,314 | 321,092 | 330,121 | 339,410 | 348,965 | 358,794 | 368,905 | 379,306 | 390,006 | 401,013 |
| Capital Reserves | | 3% | 30,000 | 30,900 | 31,827 | 32,782 | 33,765 | 34,778 | 35,822 | 36,896 | 38,003 | 39,143 | 40,317 | 41,527 | 42,773 | 44,056 | 45,378 |
| **Before Tax Cash Flow** | | | 19,584 | 288,910 | 255,591 | 262,702 | 270,015 | 277,535 | 285,270 | 293,225 | 301,407 | 309,822 | 318,476 | 327,378 | 336,533 | 345,950 | 355,636 |

9.75% of Total Operating Income*

WMATA-INV 000449

Combined Pro Forma

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|---|---|
| Residential NOI | $ 229,666 | $ 993,006 | $ 1,491,058 | $ 1,554,616 | $ 1,620,848 | $ 1,689,865 |
| Retail NOI | $ 49,584 | $ 319,810 | $ 287,418 | $ 295,484 | $ 303,780 | $ 312,314 |
| **TOTAL NOI** | $ 279,250 | $ 1,312,816 | $ 1,778,476 | $ 1,850,100 | $ 1,924,628 | $ 2,002,178 |
| **(Less)** | | | | | | |
| First Mortgage | (478,385) | (1,435,155) | (1,435,155) | (1,435,155) | (1,435,155) | (1,435,155) |
| Avail Cash Flow After Debt | $ (199,135) | $ (122,339) | $ 343,321 | $ 414,945 | $ 489,473 | $ 567,023 |
| **Banc of America Interest Payment*** | ($1,068,370) | ($1,068,370) | ($1,068,370) | ($1,068,370) | ($1,068,370) | ($1,068,370) |
| Cash Flow After Payment Interest on Member Loan | $ (1,267,505) | $ (1,190,710) | $ (725,049) | $ (653,426) | $ (578,897) | $ (501,347) |

17% interest payment*

FOIA CONFIDENTIAL TREATMENT REQUESTED

Combined Proforma

| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 |
|---|---|---|---|---|---|---|---|---|---|
| | $ 1,761,782 | $ 1,836,720 | $ 1,914,805 | $ 1,996,167 | $ 2,080,943 | $ 2,169,274 | $ 2,261,307 | $ 2,357,197 | $ 2,457,103 |
| | $ 321,092 | $ 330,121 | $ 339,410 | $ 348,965 | $ 358,794 | $ 368,905 | $ 379,306 | $ 390,006 | $ 401,013 |
| | $ 2,082,874 | $ 2,166,842 | $ 2,254,215 | $ 2,345,132 | $ 2,439,737 | $ 2,538,178 | $ 2,640,613 | $ 2,747,203 | $ 2,858,116 |
| st New Loan Begins in Jan 2017 | | | | | | | | | 2nd New Loan Begins in Jan 2025 |
| | (1,670,133) | (1,670,133) | (1,670,133) | (1,670,133) | (1,670,133) | (1,670,133) | (1,670,133) | (1,670,133) | (1,670,133) |
| | 412,740 | $ 496,708 | $ 584,082 | $ 674,999 | $ 769,603 | $ 868,045 | $ 970,480 | $ 1,077,069 | |
| | ($761,640) | ($761,640) | ($761,640) | ($761,640) | ($761,640) | ($761,640) | ($761,640) | ($761,640) | |

| | | |
|---|---|---|
| New Loan | | $ 25,431,914 |
| Annual Loan Payment | | 1,670,133 |
| Old Loan Balance | | $ 18,172,866 |
| HUD Pre-payment penalty 221d4? | 5% | 926,950 |
| Loan fee | 1% | 254,319 |
| BoA Principal | | 6,284,531 |
| BoA Accrued Interest | | 4,273,481 |
| WMATA Share of Refi | | |
| New Member Loan/Equity Investment | | (4,480,234) |
| at what ROE | | $ 25,431,914 |

predatory? Ponzi?
Way higher than 6-12%
BoA = 17% interest rate ??
Looks like $6M to me

We don'll get 30% year

| | | |
|---|---|---|
| New Loan | | $ 30,486,573 |
| Annual Loan Payment | | 1,971,920 |
| Old Loan Balance (estimate) | | $ 24,531,914 |
| HUD Pre-payment penalty | 1% | 254,319 |
| Loan fee | 1% | 304,866 |
| Return of Member Loan/Equity | | 4,480,234 |
| WMATA Share of Refi | 12% | 109,829 |

After 15, not affordable

FOIA CONFIDENTIAL TREATMENT REQUESTED

| | PROJECT COSTS | | | | | Residential | Retail |
|---|---|---|---|---|---|---|---|
| 1 | **LAND COSTS** | | | | | | |
| | WMATA Parcels | | | | | | |
| | WMATA - Option Fee | | | 100,000.00 | | 88,181.39 | 11,818.61 |
| | WMATA - Security Deposit | | | 100,000.00 | | 88,181.39 | 11,818.61 |
| | Pre-Development Lease Payments | | | 300,000.00 | | 264,544.16 | 35,455.84 |
| | **TOTAL LAND COSTS** | | | | **500,000.00** | **440,906.93** | **59,093.07** |
| 2 | **HARD COSTS** | | | | | | |
| | Residential Units | $130 | SF | 13,579,436.00 | | 13,579,436.00 | 0.00 |
| | Retail Space | $100 | SF | 1,400,000.00 | | 0.00 | 1,400,000.00 |
| | Below-grade parking (Residential) | $30,000 | per space | 1,350,000.00 | | 1,350,000.00 | 0 |
| | Below-grade parking (Retail) | $30,000 | per space | 450,000.00 | | 0.00 | 450,000.00 |
| | Infrastructure Costs | | | 500,000.00 | | 440,906.93 | 59,093.07 |
| | Index to start Q3/2010 | 4% | | 1,094,364.28 | | 965,025.58 | 129,338.70 |
| | Contingency | 5% | | 863,971.80 | | 761,862.30 | 102,109.50 |
| | **TOTAL HARD COSTS** | | | | **19,237,772.08** | **17,097,230.81** | **2,140,541.27** |
| | **SOFT COSTS** | | | | | | |
| 3 | **Transaction/Leasing Fees** | | | | | | |
| | Title Insurance - Lender's Policy | $0.60 | per $1000 of loan | 32,000.00 | | 28,218.04 | 3,781.96 |
| | Surveys | | | 20,000.00 | | 17,636.28 | 2,363.72 |
| | Legal - Term Sheet and Joint Development Agreement | | | 150,000.00 | | 132,272.08 | 17,727.92 |
| | Legal - Partnership Documents | | | 25,000.00 | | 22,045.35 | 2,954.65 |
| | Appraisal Fee | | | 30,000.00 | | 26,454.42 | 3,545.58 |
| | Geotechnical & Environmental | | | 75,000.00 | | 66,136.04 | 8,863.96 |
| | Total Transaction/Leasing Fees | | | | **332,000.00** | **292,762.20** | **39,237.80** |
| 4 | **Architectural/MEP, Structural Services** | | | | | | |
| | A/E Fees | 3.00% | hard costs | 577,133.16 | | 508,924.02 | 68,209.14 |
| | Structural Services | 1.00% | hard costs | 192,377.72 | | 169,641.34 | 22,736.38 |
| | Reimburseables | 5.00% | A/E fees | 28,856.66 | | 25,446.20 | 3,410.46 |
| | Total Architectural/MEP, Structural Services | | | | **798,367.54** | **704,011.56** | **94,355.98** |
| 5 | **Marketing** | | | | | | |
| | Marketing Center | | | 50,000.00 | | 44,090.69 | 5,909.31 |
| | Marketing Materials | | | 50,000.00 | | 44,090.69 | 5,909.31 |
| | Media (newspapers, etc.) | | | 50,000.00 | | 44,090.69 | 5,909.31 |
| | Signage | | | 50,000.00 | | 44,090.69 | 5,909.31 |
| | Special Events | | | 40,000.00 | | 35,272.55 | 4,727.45 |
| | Model | | | 50,000.00 | | 44,090.69 | 5,909.31 |
| | Website | | | 10,000.00 | | 8,818.14 | 1,181.86 |
| | Total Marketing | | | | **300,000.00** | **264,544.16** | **35,455.84** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 6 | **General and Administrative** | | | | | | |
| | Development Management | $30,000 mo. | 24 mos. | 720,000.00 | | 634,905.97 | 85,094.03 |
| | Project Management/Administration | $10,000 mo. | 30 mos. | 300,000.00 | | 264,544.16 | 35,455.84 |
| | Construction Management | $25,000 mo. | 18 mos. | 450,000.00 | | 396,816.23 | 53,183.77 |
| | Consulting Fees - Retail | | | 100,000.00 | | 0.00 | 100,000.00 |
| | Security | | | 25,000.00 | | 22,045.35 | 2,954.65 |
| | Total General and Administrative | | | | **1,595,000.00** | **1,318,311.71** | **276,688.29** |
| 7 | **Financing Costs** | | | | | | |
| | Construction Period Interest | | | 869,783.72 | | 869,783.72 | 0.00 |
| | DCHFA Application Fee | 0.10% | | 18,539.00 | | 18,539.00 | 0.00 |
| | DCHFA Construction Monitoring Fee | 0.40% | | 74,156.00 | | 74,156.00 | 0.00 |
| | DCHFA Financing Fee | 0.40% | | 74,156.00 | | 74,156.00 | 0.00 |
| | DCHFA Tax Credit Allocation Fee | 0.10% | | 18,539.00 | | 18,539.00 | 0.00 |
| | DCHFA Internal, External Legal & Consulting | | | 100,000.00 | | 100,000.00 | 0.00 |
| | Administrative Agent Fee | | | 150,000.00 | | 150,000.00 | 0.00 |
| | Credit Enhancement Fee | 0.25% | | 46,347.50 | | 46,347.50 | 0.00 |
| | Lender Inspection Fees | $2,000 mo. | 24 mos. | 48,000.00 | | 48,000.00 | 0.00 |
| | Transfer & Record Taxes (Construct Loan) | 1.45% | | 268,815.50 | | 237,045.23 | 31,770.27 |
| | Total Financing Costs | | | | **1,668,336.72** | **1,636,566.45** | **31,770.27** |
| 8 | **Real Estate Taxes** | | | | | | |
| | Land ($1.85 per $100) | 18 mos. | | 222,141.80 | | | |
| | Total Real Estate Taxes | | | | **222,141.80** | **195,887.72** | **26,254.08** |
| 9 | **Permit, Utility and Municipal Fees** | | | | | | |
| | DCRA and WASA Permits | 2% hard costs | | 241,912.10 | | 213,321.44 | 28,590.66 |
| | DDOT Permits | | | 100,000.00 | | 88,181.39 | 11,818.61 |
| | Total Permit, Utility and Municipal Fees | | | | **341,912.10** | **301,502.83** | **40,409.27** |
| 10 | **Legal and Accounting** | | | | | | |
| | Legal - Financing | | | 250,000.00 | | 220,453.46 | 29,546.54 |
| | Legal - Zoning | | | 50,000.00 | | 44,090.69 | 5,909.31 |
| | Legal - General/Retail Leases, etc. | | | 150,000.00 | | 132,272.08 | 17,727.92 |
| | Accounting | | | 100,000.00 | | 88,181.39 | 11,818.61 |
| | Total Legal and Accounting: | | | | **550,000.00** | **484,997.62** | **65,002.38** |
| 11 | **Retail** | | | | | | |
| | Tenant Allowance | $60 per SF | | 772,800.00 | | 0.00 | 772,800.00 |
| | Commissions | 6.00% | | 176,668.34 | | 0.00 | 176,668.34 |
| | Total Retail | | | | **949,468.34** | **0.00** | **949,468.34** |
| 12 | **Insurance** | | | | | | |
| | Builder's Risk (Hard Costs) | $0.06 per $100 | | 11,542.66 | | 10,178.48 | 1,364.18 |
| | Builder's Risk (Soft Costs) | $0.06 per $100 | | 4,054.34 | | 3,575.17 | 479.17 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | Total Insurance | | | **15,597.00** | **13,753.65** | **1,843.35** |
| **13** | **Miscellaneous Expenses** | | | | | |
| | Lease-up Reserves | | **400,000.00** | | 352,725.54 | 47,274.46 |
| | Testing Expenses | | 150,000.00 | | 132,272.08 | 17,727.92 |
| | Third Party Inspections | | 100,000.00 | | 88,181.39 | 11,818.61 |
| | Misc Soft Costs & Contingencies | 5% soft costs | 371,141.18 | | 327,277.43 | 43,863.75 |
| | Total Miscellaneous Expenses | | | **1,021,141.18** | **547,730.89** | **73,410.28** |
| | **TOTAL SOFT COSTS** | | | **7,793,964.68** | **5,760,068.79** | **1,633,895.89** |
| | **TOTAL PROJECT COSTS** | | **27,531,736.76** | | **23,298,206.53** | **3,833,530.24** |

FOIA CONFIDENTIAL TREATMENT REQUESTED

| Loan Balance | Month | Monthly Draw | Interest Earnings 2.50% | Interest Cost 7.74% | Net Interest |
|---|---|---|---|---|---|
| **18,539,000** | 0 | 200,000 | - | | |
| 18,339,000 | 1 | 350,000 | 38,623 | 119,593 | 80,970 |
| 17,989,000 | 2 | 500,000 | 38,206 | 119,593 | 81,386 |
| 17,489,000 | 3 | 750,000 | 37,477 | 119,593 | 82,115 |
| 16,739,000 | 4 | 1,000,000 | 36,435 | 119,593 | 83,157 |
| 15,739,000 | 5 | 1,124,214 | 34,873 | 119,593 | 84,720 |
| 14,614,786 | 6 | 1,124,214 | 32,790 | 119,593 | 86,803 |
| 13,490,571 | 7 | 1,124,214 | 30,447 | 119,593 | 89,145 |
| 12,366,357 | 8 | 1,124,214 | 28,105 | 119,593 | 91,487 |
| 11,242,143 | 9 | 1,124,214 | 25,763 | 119,593 | 93,829 |
| 10,117,929 | 10 | 1,124,214 | 23,421 | 119,593 | 96,171 |
| 8,993,714 | 11 | 1,124,214 | 21,079 | 119,593 | 98,513 |
| 7,869,500 | 12 | 1,124,214 | 18,737 | 119,593 | 100,856 |
| 6,745,286 | 13 | 1,124,214 | 16,395 | 119,593 | 103,198 |
| 5,621,071 | 14 | 1,124,214 | 14,053 | 119,593 | 105,540 |
| 4,496,857 | 15 | 1,124,214 | 11,711 | 119,593 | 107,882 |
| 3,372,643 | 16 | 1,124,214 | 9,368 | 119,593 | 110,224 |
| 2,248,429 | 17 | 1,124,214 | 7,026 | 119,593 | 112,566 |
| 1,124,214 | 18 | 1,124,214 | 4,684 | 119,593 | 114,908 |
| **TOTAL** | | **18,539,000** | **326,141** | **1,195,925** | **869,784** |

WMATA-INV 000455

Tax Rate 1.85%

| Address | Value | Assessment | Property Taxes (estimated 09) |
|---|---|---|---|
| 710 Florida Avenue, NW, Square 416, Lot 18 | | 142,970 | 2,645 |
| 716 Florida Avenue, NW, Square 416, Lot 31 | | 4,420,930 | 81,787 |
| Square 392, Lot 45 | | 2,388,620 | 44,189 |
| Square 392, Lot 44 | | 1,052,590 | 19,473 |
| **Total** | **$ -** | **$ 8,005,110** | **$ 148,095** |

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Summary Data

??

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Possible Project GSF | 4.50 FAR | 135,414 |
| Actual Project GSF | 4.10 FAR | 118,457 |
| Retail GSF | | 14,000 |
| Retail NSF | 92% efficiency | 12,880 |
| Residential Gross SF (including loading) | 100% | 104,457 |
| Less - Leasing, lobbies, ramps, etc. | | 10,000 |
| Residential Gross SF (residential flrs only) | | 94,457 |
| Residential Net SF (residential flrs only) | 83% efficiency | 78,399 |
| Residential Net SF - Market | 80% | 62,720 |
| Residential Net SF - Affordable | 20% | 15,680 |
| Total No. of Residential Units | 850 SF avg | 92 |
| Market Rate Units | 80% | 74 |
| Affordable Units | 20% | 18 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail Parking) | | 15 |
| Total Parking Spaces | | 60 |

### Program % Breakdown

| | |
|---|---|
| Residential | 77.14% |
| Retail | 10.34% |

### Lease Payments

| | |
|---|---|
| WMATA - Year 1 of Stabilization | $ 300,000 |

### Vacancy and Bad Debt

| | |
|---|---|
| Residential | 9% |
| Retail | 5% |

### % of Project Revenue

| | |
|---|---|
| Residential | 89% |
| Retail | 11% |

### Residential Per SF revenues

| | |
|---|---|
| Market | $ 2.90 |
| Affordable Units (@ 60% of AMI) | $ 1.15 |
| WMATA Annual Lease Payment - Year 1 | $ 300,000 |
| Security Deposit | 100,000 |
| Pre-Lease Payment | 200,000 |
| Gap financing per affordable unit ?? | $60,000 |

50% reduction yr 2070 of aff.

$1,080 ?

## Sources and Uses of Funds

3/19 a.m VOID

| Sources | Residential | Retail | Total |
|---|---|---|---|
| Debt | $ 18,714,000 | $ - | $ 18,714,000 |
| Gap Financing - Affordable Units | 1,106,816 | | $ 1,106,816 |
| Private Equity - LIHTC | 1,116,299 | - | $ 1,116,299 |
| Private Equity - Developer | 1,400,439 | 3,722,266 | $ 5,122,706 |
| **Total Sources of Funds** | **$ 22,337,554** | **$ 3,722,266** | **$ 26,059,821** |

| Uses | Residential | Retail | Total |
|---|---|---|---|
| Land | $ 308,557 | $ 41,355 | $ 349,911 |
| Hard Costs | 16,825,775 | 2,104,159 | 18,929,935 |
| Transaction/Leasing Fees | 256,102 | 34,324 | 290,426 |
| Architectural/MEP, Structural Services | 615,854 | 82,541 | 698,394 |
| Marketing | 231,417 | 31,016 | 262,433 |
| General and Administrative | 1,153,230 | 254,563 | 1,407,793 |
| Financing Costs | 1,618,932 | 28,054 | 1,646,986 |
| Real Estate Taxes | 171,358 | 22,966 | 194,325 |
| Permit, Utility and Municipal Fees | 263,748 | 35,349 | 299,097 |
| Legal and Accounting | 424,265 | 56,863 | 481,128 |
| Retail | - | 968,310 | 968,310 |
| Insurance | 12,046 | 1,614 | 13,660 |
| Miscellaneous Expenses | 456,269 | 61,152 | 517,422 |
| **Total Uses of Funds** | **$ 22,337,554** | **$ 3,722,266** | **$ 26,059,821** |

$220/gsf

## Summary of Stabilized Returns at Sale

| 2015 | Residential | Retail | Total |
|---|---|---|---|
| Effective Gross Income | $ 2,578,285 | $ 304,380 | $ 2,882,665 |
| Expenses | $ 781,833 | $ 225,260 | $ 1,007,093 |
| **Net Operating Income** | **$ 1,796,452** | **$ 79,120** | **$ 1,875,572** |
| Less | | | |
| Reserves | $ 25,197 | $ 32,782 | $ 57,979 |
| Debt Service | $ 1,448,707 | - | $ 1,448,707 |
| Stabilized Net Cash Flow 2015 | **$ 322,549** | **$ 46,338** | **$ 368,887** |

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| | | |
|---|---|---|
| **Avail Proceeds before WMATA & Returns** | | **7,865,339** |
| WMATA Share of Avail Profit | **12% avail profit** | 943,841 |
| Net Proceeds after WMATA share paid | | 6,921,499 |
| **Equity Yield Target** | **17.00% IRR** | 6,689,456 |
| **Actual Equity Yield** | **19.70% IRR** | |
| **Potential proceeds avail after IRR met** | | 232,043 |

WMATA-INV 000457

| | PROJECT COSTS | | | | Residential | Retail |
|---|---|---|---|---|---|---|
| 1 | **LAND COSTS** | | | | | |
| | WMATA Parcels | | | | | |
| | WMATA - Option Fee | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | WMATA - Security Deposit | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | Pre-Development Lease Payments | | 200,000.00 | | 154,278.29 | 20,677.33 |
| | **TOTAL LAND COSTS** | | | **400,000.00** | **308,556.57** | **41,354.66** |
| 2 | **HARD COSTS** | | | | | |
| | Residential Units | $130 SF | 13,579,436.00 | | 13,579,436.00 | 0.00 |
| | Retail Space | $100 SF | 1,400,000.00 | | 0.00 | 1,400,000.00 |
| | Below-grade parking (Residential) | $30,000 per space | 1,350,000.00 | | 1,350,000.00 | 0 |
| | Below-grade parking (Retail) | $30,000 per space | 450,000.00 | | 0.00 | 450,000.00 |
| | Infrastructure Costs | | 500,000.00 | | 385,695.72 | 51,693.33 |
| | Index to start Q3/2010 | 4% | 1,094,364.28 | | 844,183.23 | 113,142.66 |
| | Contingency | 5% | 863,971.80 | | 666,460.45 | 89,323.15 |
| | **TOTAL HARD COSTS** | | | **19,237,772.08** | **16,825,775.40** | **2,104,159.14** |
| | **SOFT COSTS** | | | | | |
| 3 | **Transaction/Leasing Fees** | | | | | |
| | Title Insurance - Lender's Policy | $0.60 per $1000 of loan | 32,000.00 | | 24,684.53 | 3,308.37 |
| | Surveys | | 20,000.00 | | 15,427.83 | 2,067.73 |
| | Legal - Term Sheet and Joint Development Agreement | | 150,000.00 | | 115,708.72 | 15,508.00 |
| | Legal - Partnership Documents | | 25,000.00 | | 19,284.79 | 2,584.67 |
| | Appraisal Fee | | 30,000.00 | | 23,141.74 | 3,101.60 |
| | Geotechnical & Environmental | | 75,000.00 | | 57,854.36 | 7,754.00 |
| | Total Transaction/Leasing Fees | | | **332,000.00** | **256,101.96** | **34,324.37** |
| 4 | **Architectural/MEP, Structural Services** | | | | | |
| | A/E Fees | 3.00% hard costs | 577,133.16 | | 445,195.58 | 59,667.87 |
| | Structural Services | 1.00% hard costs | 192,377.72 | | 148,398.53 | 19,889.29 |
| | Reimburseables | 5.00% A/E fees | 28,856.66 | | 22,259.78 | 2,983.39 |
| | Total Architectural/MEP, Structural Services | | | **798,367.54** | **615,853.88** | **82,540.55** |
| 5 | **Marketing** | | | | | |
| | Marketing Center | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Marketing Materials | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Media (newspapers, etc.) | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Signage | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Special Events | | 40,000.00 | | 30,855.66 | 4,135.47 |
| | Model | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Website | | 10,000.00 | | 7,713.91 | 1,033.87 |
| | Total Marketing | | | **300,000.00** | **231,417.43** | **31,016.00** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 6 | **General and Administrative** | | | | | | |
| | Development Management | $30,000 mo. | 24 mos. | 720,000.00 | | 555,401.83 | 74,438.39 |
| | Project Management/Administration | $10,000 mo. | 30 mos. | 300,000.00 | | 231,417.43 | 31,016.00 |
| | Construction Management | $25,000 mo. | 18 mos. | 450,000.00 | | 347,126.15 | 46,523.99 |
| | Consulting Fees - Retail | | | 100,000.00 | | 0.00 | 100,000.00 |
| | Security | | | 25,000.00 | | 19,284.79 | 2,584.67 |
| | Total General and Administrative | | | | **1,595,000.00** | **1,153,230.20** | **254,563.04** |
| 7 | **Financing Costs** | | | | | | |
| | Construction Period Interest | | | 877,687.31 | | 877,687.31 | 0.00 |
| | DCHFA Application Fee | 0.10% | | 18,714.00 | | 18,714.00 | 0.00 |
| | DCHFA Construction Monitoring Fee | 0.40% | | 74,856.00 | | 74,856.00 | 0.00 |
| | DCHFA Financing Fee | 0.40% | | 74,856.00 | | 74,856.00 | 0.00 |
| | DCHFA Tax Credit Allocation Fee | 0.10% | | 18,714.00 | | 18,714.00 | 0.00 |
| | DCHFA Internal, External Legal & Consulting | | | 100,000.00 | | 100,000.00 | 0.00 |
| | Administrative Agent Fee | | | 150,000.00 | | 150,000.00 | 0.00 |
| | Credit Enhancement Fee | 0.25% | | 46,785.00 | | 46,785.00 | 0.00 |
| | Lender Inspection Fees | $2,000 mo. | 24 mos. | 48,000.00 | | 48,000.00 | 0.00 |
| | Transfer & Record Taxes (Construct Loan) | 1.45% | | 271,353.00 | | 209,319.38 | 28,054.28 |
| | Total Financing Costs | | | | **1,680,965.31** | **1,618,931.69** | **28,054.28** |
| 8 | **Real Estate Taxes** | | | | | | |
| | Land ($1.85 per $100) | 18 mos. | | 222,141.80 | | | |
| | Total Real Estate Taxes | | | | **222,141.80** | **171,358.28** | **22,966.50** |
| 9 | **Permit, Utility and Municipal Fees** | | | | | | |
| | DCRA and WASA Permits | 2% hard costs | | 241,912.10 | | 186,608.93 | 25,010.48 |
| | DDOT Permits | | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | Total Permit, Utility and Municipal Fees | | | | **341,912.10** | **263,748.07** | **35,349.15** |
| 10 | **Legal and Accounting** | | | | | | |
| | Legal - Financing | | | 250,000.00 | | 192,847.86 | 25,846.66 |
| | Legal - Zoning | | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Legal - General/Retail Leases, etc. | | | 150,000.00 | | 115,708.72 | 15,508.00 |
| | Accounting | | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | Total Legal and Accounting: | | | | **550,000.00** | **424,265.29** | **56,862.66** |
| 11 | **Retail** | | | | | | |
| | Tenant Allowance | $60 per SF | | 772,800.00 | | 0.00 | 772,800.00 |
| | Commissions | 6.00% | | 195,509.58 | | 0.00 | 195,509.58 |
| | Total Retail | | | | **968,309.58** | **0.00** | **968,309.58** |
| 12 | **Insurance** | | | | | | |
| | Builder's Risk (Hard Costs) | $0.06 per $100 | | 11,542.66 | | 8,903.91 | 1,193.36 |
| | Builder's Risk (Soft Costs) | $0.06 per $100 | | 4,073.22 | | 3,142.05 | 421.12 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | Total Insurance | | | **15,615.88** | **12,045.96** | **1,614.47** |
| 13 | **Miscellaneous Expenses** | | | | | |
| | Lease-up Reserves | | -224,534.42 | | -173,203.93 | -23,213.86 |
| | Testing Expenses | | 150,000.00 | | 115,708.72 | 15,508.00 |
| | Third Party Inspections | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | Misc Soft Costs & Contingencies | 5% soft costs | 341,488.89 | | 263,421.61 | 35,305.39 |
| | Total Miscellaneous Expenses | | | **366,954.47** | **456,269.46** | **61,152.06** |
| | **TOTAL SOFT COSTS** | | | **7,171,266.70** | **5,203,222.23** | **1,576,752.65** |
| | **TOTAL PROJECT COSTS** | | **26,809,038.78** | | **22,337,554.20** | **3,722,266.44** |

**SUMMARY**

| | | | | |
|---|---|---|---|---|
| Market | | | | 80% |
| # of Units | | | | 74 |
| $ per SF | | | $ | 2.90 |
| | | | | |
| Affordable | | | | 20% |
| # of Units | | | | 18 |
| $ per SF | | | $ | 1.15 |
| | | | | |
| Parking | | | | |
| # of spaces | | | | 45 |
| $ per space | | | $ | 150.00 |
| | | | | |
| **Income** | | | | **Year 1** |
| Market Units | | | $ | 2,182,641 |
| Affordable Units | | | $ | 216,383 |
| Other Income | 2.00% | | $ | 47,980 |
| Parking | | | $ | 81,000 |
| Vacancy | 9.00% | | $ | (227,520) |
| **Total Income** | | | $ | 2,300,484 |
| | | | | |
| **Expenses** | | | | |
| WMATA Land Lease | | | $ | 231,417 |
| Real Estate Taxes (Market) | $2,000 | | $ | 147,575 |
| Real Estate Taxes (Affordable) | $1,000 | | $ | 18,447 |
| Property Insurance | $400 | per unit | $ | 36,894 |
| Utilities | $400 | | $ | 36,894 |
| Repairs and Maintenance | $500 | | $ | 46,117 |
| Property Management | 3.00% | gross revenue | $ | 69,015 |
| Payroll | $1,750 | per unit | $ | 161,411 |
| Advertising & Marketing | $600 | | $ | 55,341 |
| Administrative, Painting, Contract Services | $800 | | $ | 73,788 |
| **Total Expenses** | | | $ | 876,899 |
| per unit $ | 9,507 | | | |
| | | | | |
| **NOI** | | | $ | **1,423,585** |
| | | | | |
| Reserves | $250 | | $ | 23,059 |
| | | | | |
| Cash Flow before Debt Service | | | $ | 1,400,527 |
| | | | | |
| Debt Service | | | $ | 1,448,707 |
| | | | | |
| **Net Cash Flow Before Taxes** | | | $ | **(48,180)** |

## SUPPORTABLE DEBT CALCULATIONS

| | Loan |
|---|---|
| ***Base Residential NOI (net of reserves)*** | 1,561,937 |
| ***Base Retail NOI (net of reserves)*** | 248,946 |
| | 1,810,884 |
| | |
| *DSCR* | 1.25 |
| **Amount Available for Debt Service** | 1,448,707 |
| | |
| **Calculation of Loan Constant** | |
| Amortization Term | 40 |
| Loan Constant | 7.74% |
| | |
| Max Supportable Mortgage | 18,714,000 |
| | |
| Bond Rate | 6.00% |
| DCHFA Fee | 0.40% |
| Trustee Fee | 0.05% |
| GNMA Fee | 0.25% |
| Aggregate Rate | 6.70% |
| | |
| Loan Constant | 7.24% |
| Mortgage Insurance Premium | 0.50% |
| Calculation of Loan Constant | 7.74% |

| NOI Projection | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|---|---|---|---|---|---|---|---|
| Net Operating Income | | | | $ 465,986 | $ 1,357,844 | $ 2,018,699 | $ 2,100,832 | $ 2,186,309 |
| Debt Service | | | | $ 241,451 | $ 1,448,707 | $ 1,448,707 | $ 1,448,707 | $ 1,448,707 |
| Net Cash Flow | | | | $ 224,534 | $ (90,863) | $ 569,992 | $ 652,126 | $ 737,602 |

| IRR Calculation | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|---|---|---|---|---|---|---|---|
| Equity (Cash) | $ (500,000) | $ (1,000,000) | $ (3,622,706) | $ - | $ - | $ - | $ - | $ - |
| Net Cash Flow | - | | | 224,534 | (90,863) | 569,992 | 652,126 | 737,602 |
| Return of Security Deposit to WMATA | | | | | 100,000 | | | |
| Return of Equity (Sale) | | | | | | | | 2,929,315 |
| Net Sales Proceeds | | | | | | | | 7,865,339 |
| Total Paid to All Equity | $ (500,000) | $ (1,000,000) | $ (3,622,706) | $ 224,534 | $ 9,137 | $ 569,992 | $ 652,126 | $ 11,532,256 |

**ACTUAL PROJECT IRR** **19.70%**

| Assumed Sale in 2015 | | Amount |
|---|---|---|
| NOI in 2015 | | 2,186,309 |
| Cap Value | **7.25%** | 30,156,000 |
| Cost of Sale | **3.00%** | (904,680) |
| Gross Sale Proceeds | | 29,251,320 |
| Balance of Loan | | (18,456,666) |
| Net Sales Proceeds | | 10,794,654 |
| Return of Outstanding Equity Plus Cash Flow | | (2,929,315) |
| **Net Sales Proceeds Before Pref and Splits** | | **7,865,339** |

| | | |
|---|---|---|
| WMATA Share | 12% sales proceeds | 943,841 |
| Net Proceeds after WMATA share paid | | **6,921,499** |
| **Targeted IRR** 17% | 2008 equity | 1,000,621 |
| | 2009 equity | 1,565,164 |
| | 2010 equity | 4,319,888 |
| | 2011 equity | -196,218 |
| **Equity Yield Target** | | **6,689,456** |
| **Potential proceeds avail after IRR met** | | **232,043** |

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**LIHTC Calculation**

| **Qualifying Costs** | | **LIHTC** |
|---|---|---|
| Total Development Cost (Residential Portion) | $ | 22,337,554 |
| Less: | | |
| FF&E | | 500,000 |
| Parking | | 1,350,000 |
| Marketing | | 231,417 |
| Financing Costs | | 1,618,932 |
| Legal and Accounting | | 424,265 |
| Reserves | | 173,204 |
| Total Non-Qualifying Costs | $ | 4,297,818 |
| **Total Eligible Costs** | $ | 18,039,736 |

| **Valuation** | | |
|---|---|---|
| Total Eligible Costs (see above) | $ | 18,039,736 |
| x Factor ( LIHTC - Difficult to Develop Area) | | 130% |
| Total Adjusted Basis | | 23,451,657 |
| x Applicable Fraction | | 20% |
| **Total Qualified Basis** | | **4,690,331** |
| x Annual Tax Rate | | 3.4% |
| Annual Credit | | 159,471 |
| Applicable Period (Years) | | 10 |
| Credit Amount | | 1,594,713 |
| x Equity Proceeds from Sale of Credits @ | | $0.70 |
| **Realized Value to Project** | $ | **1,116,299** |

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Tax Rate 1.85%

| Address | Value | Assessment | Property Taxes (estimated 09) |
|---|---|---|---|
| 710 Florida Avenue, NW, Square 416, Lot 18 | | 142,970 | 2,645 |
| 716 Florida Avenue, NW, Square 416, Lot 31 | | 4,420,930 | 81,787 |
| Square 392, Lot 45 | | 2,388,620 | 44,189 |
| Square 392, Lot 44 | | 1,052,590 | 19,473 |
| **Total** | $ - | $ **8,005,110** | $ **148,095** |

The Jazz @ Florida Avenue
Residential Proforma

| Year | | | 1<br>2012 | 2<br>2013 | 3<br>2014 | 4<br>2015 | 5<br>2016 | 6<br>2017 | 7<br>2018 | 8<br>2019 | 9<br>2020 | 10<br>2021 | 11<br>2022 | 12<br>2023 | 13<br>2024 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Income** | % of Income | | | | | | | | | | | | | | |
| Market Units | | | $ 2,182,641 | $ 2,269,947 | $ 2,360,745 | $ 2,455,175 | $ 2,553,382 | $ 2,655,517 | $ 2,761,738 | $ 2,872,207 | $ 2,987,095 | $ 3,106,579 | $ 3,230,842 | $ 3,360,076 | $ 3,494,479 |
| Affordable Units | | | $ 216,383 | 221,792 | 227,337 | 233,020 | 238,846 | 244,817 | 250,937 | 257,211 | 263,641 | 270,232 | 276,988 | 283,913 | 291,010 |
| Other Income | 3.00% | | $ 47,980 | 49,900 | 51,896 | 53,972 | 56,130 | 58,376 | 60,711 | 63,139 | 65,665 | 68,291 | 71,023 | 73,864 | 76,818 |
| Parking | | | $ 81,000 | 84,240 | 87,610 | 91,114 | 94,759 | 98,549 | 102,491 | 106,590 | 110,854 | 115,288 | 119,900 | 124,696 | 129,684 |
| Vacancy | 9.00% | | (227,520) | (236,329) | (245,483) | (254,995) | (264,880) | (275,153) | (285,829) | (296,923) | (308,453) | (320,435) | (332,888) | (345,829) | (359,279) |
| Effective Gross Income | | | $ 2,300,484 | $ 2,389,550 | $ 2,482,104 | $ 2,578,285 | $ 2,678,236 | $ 2,782,105 | $ 2,890,048 | $ 3,002,224 | $ 3,118,802 | $ 3,239,956 | $ 3,365,865 | $ 3,496,719 | $ 3,632,712 |
| **Operating Expenses** | Escalation | | | | | | | | | | | | | | |
| WMATA Land Lease | 1.50% * | | $ 231,417 | 234,889 | 238,412 | 241,988 | 245,618 | 249,302 | 253,042 | 256,837 | 260,690 | 264,600 | 272,538 | 280,715 | 289,136 |
| Real Estate Taxes (Market) | 3.00% | | $ 147,575 | 152,003 | 156,563 | 161,260 | 166,098 | 171,080 | 176,213 | 181,499 | 186,944 | 192,553 | 198,329 | 204,279 | 210,407 |
| Real Esate Taxes (Afford) | 3.00% | | $ 18,447 | 19,000 | 19,570 | 20,157 | 20,762 | 21,385 | 22,027 | 22,687 | 23,368 | 24,069 | 24,791 | 25,535 | 26,301 |
| Property Insurance | 3.00% | | $ 36,894 | 38,001 | 39,141 | 40,315 | 41,524 | 42,770 | 44,053 | 45,375 | 46,736 | 48,138 | 49,582 | 51,070 | 52,602 |
| Utilities | 3.00% | | $ 36,894 | 38,001 | 39,141 | 40,315 | 41,524 | 42,770 | 44,053 | 45,375 | 46,736 | 48,138 | 49,582 | 51,070 | 52,602 |
| Repairs and Maintenance | 3.00% | | $ 46,117 | 47,501 | 48,926 | 50,394 | 51,905 | 53,463 | 55,067 | 56,719 | 58,420 | 60,173 | 61,978 | 63,837 | 65,752 |
| Property Management | 3.00% | | $ 69,015 | 71,085 | 73,218 | 75,414 | 77,676 | 80,007 | 82,407 | 84,879 | 87,426 | 90,048 | 92,750 | 95,532 | 98,398 |
| Advertising & Marketing | 3.00% | | $ 55,341 | 57,001 | 58,711 | 60,472 | 62,287 | 64,155 | 66,080 | 68,062 | 70,104 | 72,207 | 74,373 | 76,605 | 78,903 |
| Admin, Painting, Contract Services | 3.00% | | $ 73,788 | 76,001 | 78,281 | 80,630 | 83,049 | 85,540 | 88,106 | 90,750 | 93,472 | 96,276 | 99,165 | 102,139 | 105,204 |
| | | | 715,488 | 736,953 | 759,061 | 781,833 | 805,288 | 829,447 | 854,330 | 879,960 | 906,359 | 933,550 | 961,556 | 990,403 | 1,020,115 |
| **Net Operating Income** | | | $ 1,584,996 | $ 1,652,597 | $ 1,723,043 | $ 1,796,452 | $ 1,872,948 | $ 1,952,659 | $ 2,035,718 | $ 2,122,264 | $ 2,212,444 | $ 2,306,406 | $ 2,404,309 | $ 2,506,316 | $ 2,612,598 |
| **Reserves** | | | 23,059 | 23,750 | 24,463 | 25,197 | 25,953 | 26,731 | 27,533 | 28,359 | 29,210 | 30,086 | 30,989 | 31,919 | 32,876 |
| **Cash Flow Before Debt Service** | | | 1,561,937 | 1,628,847 | 1,698,580 | 1,771,255 | 1,846,995 | 1,925,927 | 2,008,184 | 2,093,905 | 2,183,234 | 2,276,320 | 2,373,320 | 2,474,398 | 2,579,721 |
| **Total Annual Debt Service** | | | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 |
| **Before Tax Cash Flow** | | | $ 113,231 | $ 180,140 | $ 249,873 | $ 322,549 | $ 398,288 | $ 477,220 | $ 559,477 | $ 645,198 | $ 734,527 | $ 827,613 | $ 924,613 | $ 1,025,691 | $ 1,131,015 |
| 1st Mortgage Principal Balance | | $ 18,714,000 | $ 18,636,678 | $ 18,553,370 | $ 18,546,922 | $ 18,456,666 | $ 18,442,731 | $ 18,344,410 | $ 18,321,786 | $ 18,214,102 | $ 18,181,390 | $ 18,062,839 | $ 18,018,418 | $ 17,887,251 | $ 17,829,237 |

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

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The Jazz @ Florida Avenue
Residential Proforma

| 14<br>2025 | 15<br>2026 |
|---|---|
| $ 3,634,258 | $ 3,779,629 |
| 298,286 | 305,743 |
| 79,891 | 83,087 |
| 134,871 | 140,266 |
| (373,258) | (387,785) |
| $ 3,774,049 | $ 3,920,939 |
| | |
| 297,810 | 306,744 |
| 216,720 | 223,221 |
| 27,090 | 27,903 |
| 54,180 | 55,805 |
| 54,180 | 55,805 |
| 67,725 | 69,757 |
| 101,350 | 104,391 |
| 81,270 | 83,708 |
| 108,360 | 111,611 |
| 1,050,718 | 1,082,240 |
| | |
| $ 2,723,330 | $ 2,838,699 |
| | |
| 33,862 | 34,878 |
| | |
| 2,689,468 | 2,803,821 |
| | |
| 1,448,707 | 1,448,707 |
| | |
| $ 1,240,761 | $ 1,355,114 |
| | |
| $ 17,683,425 | $ 17,609,634 |

FOIA CONFIDENTIAL TREATMENT REQUESTED

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**The Jazz @ Florida Avenue**
**Retail Proforma**

**Assumptions**

| | |
|---|---|
| Rentable S.F. | 12,880 |
| Market Space | 7,480 |
| Affordable/Non-Profit Space | 5,400 |
| Triple Net Lease | |

| | Per S.F. | Escalation | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Operating Income** | | | | | | | | | | | | |
| Retail Tenants - Market | $38.00 | 3% | 284,240 | 292,767 | 301,550 | 310,597 | 319,915 | 329,512 | 339,397 | 349,579 | 360,067 | 370,869 |
| Retail Tenants - Affordable/Non-Profit | $10.00 | 2% | 54,000 | 55,080 | 56,182 | 57,305 | 58,451 | 59,620 | 60,813 | 62,029 | 63,270 | 64,535 |
| Parking | $50.00 | 2% | 9,000 | 9,180 | 9,364 | 9,551 | 9,742 | 9,937 | 10,135 | 10,338 | 10,545 | 10,756 |
| Less: General Vacancy | | 5% | (16,535) | (17,001) | (17,481) | (17,974) | (18,481) | (19,003) | (19,540) | (20,093) | (20,661) | (21,246) |
| Expense Recovery | | | | | | | | | | | | |
| CAM | 3.00 SF | | 38,640 | 39,799 | 40,993 | 42,223 | 43,490 | 44,794 | 46,138 | 47,522 | 48,948 | 50,416 |
| RE Taxes | 8.00 SF | | 103,040 | 106,131 | 109,315 | 112,595 | 115,972 | 119,452 | 123,035 | 126,726 | 130,528 | 134,444 |
| Insurance | 0.40 SF | | 5,152 | 5,307 | 5,466 | 5,630 | 5,799 | 5,973 | 6,152 | 6,336 | 6,526 | 6,722 |
| Administrative | 30.00% | | 8,890 | 9,156 | 9,431 | 9,714 | 10,005 | 10,306 | 10,615 | 10,933 | 11,261 | 11,599 |
| Total Operating Revenue | | | 486,426 | 500,419 | 514,820 | 529,640 | 544,893 | 560,590 | 576,745 | 593,372 | 610,484 | 628,095 |
| **Operating Expenses** | | **Escalation** | | | | | | | | | | |
| CAM | 3.00 SF | 3% | 38,640 | 39,799 | 40,993 | 42,223 | 43,490 | 44,794 | 46,138 | 47,522 | 48,948 | 50,416 |
| RE Taxes | 8.00 SF | 3% | 103,040 | 106,131 | 109,315 | 112,595 | 115,972 | 119,452 | 123,035 | 126,726 | 130,528 | 134,444 |
| Insurance | 0.40 SF | 3% | 5,152 | 5,307 | 5,466 | 5,630 | 5,799 | 5,973 | 6,152 | 6,336 | 6,526 | 6,722 |
| Payroll | 0.25 | 3% | 3,220 | 3,317 | 3,416 | 3,519 | 3,624 | 3,733 | 3,845 | 3,960 | 4,079 | 4,201 |
| Payroll Taxes | 0.04 | 3% | 515 | 531 | 547 | 563 | 580 | 597 | 615 | 634 | 653 | 672 |
| Management Fee (% Total Op Rev) | 4.00% | 3% | 19,457 | 20,041 | 20,642 | 21,261 | 21,899 | 22,556 | 23,233 | 23,930 | 24,648 | 25,387 |
| Leasing Agent Fee | 0.20 | 3% | 2,576 | 2,653 | 2,733 | 2,815 | 2,899 | 2,986 | 3,076 | 3,168 | 3,263 | 3,361 |
| Accounting & Legal Fees | 0.20 | 3% | 2,576 | 2,653 | 2,733 | 2,815 | 2,899 | 2,986 | 3,076 | 3,168 | 3,263 | 3,361 |
| Misc Administrative (Retail) | 0.10 | 3% | 1,288 | 1,327 | 1,366 | 1,407 | 1,450 | 1,493 | 1,538 | 1,584 | 1,632 | 1,681 |
| WMATA Lease | | 1.5% | 31,016 | 31,481 | 31,953 | 32,433 | 32,919 | 33,413 | 33,914 | 34,423 | 34,939 | 35,463 |
| **Total Operating Expenses** | | | 207,480 | 213,239 | 219,164 | 225,260 | 231,531 | 237,983 | 244,622 | 251,452 | 258,479 | 265,709 |
| **Net Operating Income** | | | 278,946 | 287,180 | 295,655 | 304,380 | 313,361 | 322,606 | 332,123 | 341,920 | 352,005 | 362,386 |
| Capital Reserves | | 3.00% | 30,000 | 30,900 | 31,827 | 32,782 | 33,765 | 34,778 | 35,822 | 36,896 | 38,003 | 39,143 |
| **Before Tax Cash Flow** | | | $ 248,946 | $ 256,280 | $ 263,828 | $ 271,598 | $ 279,596 | $ 287,828 | $ 296,302 | $ 305,024 | $ 314,002 | $ 323,243 |

WMATA-INV 000468

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Summary Data

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Possible Project GSF | 4.50 FAR | 135,414 |
| Actual Project GSF | 4.10 FAR | 118,457 |
| Retail GSF | | 14,000 |
| Retail NSF | 92% efficiency | 12,880 |
| Residential Gross SF (including loading) | 100% | 104,457 |
| Less - Leasing, lobbies, ramps, etc. | | 10,000 |
| Residential Gross SF (residential flrs only) | | 94,457 |
| Residential Net SF (residential flrs only) | 83% efficiency ≈ 1000 sf | 78,399 |
| Residential Net SF - Market | 80% | 62,720 |
| Residential Net SF - Affordable | 20% | 15,680 |
| Total No. of Residential Units | 850 SF avg | 92 total |
| Market Rate Units | 80% | 74 |
| Affordable Units | 20% | 18 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail Parking) | | 15 |
| Total Parking Spaces | | 60 |

### Program % Breakdown

| | |
|---|---|
| Residential | 88.18% |
| Retail | 11.82% |

### Lease Payments

| | | |
|---|---|---|
| WMATA - Year 1 of Stabilization | $ | 300,000 |

### Vacancy and Bad Debt

| | |
|---|---|
| Residential | 9% can make 8% |
| Retail | 5% |

### Residential Per SF revenues

| | | |
|---|---|---|
| Market | $ | 2.90 |
| Affordable Units (at 50% of AMI) | $ | 1.15 is actually higher with a smaller unit |

| | | |
|---|---|---|
| WMATA Annual Lease Payment - Year 1 | $ | 300,000 |
| Security Deposit | | 100,000 |
| Pre-Lease Payment* | | **300,000** |

| | |
|---|---|
| Gap financing per affordable unit | $60,000 |

raw AMI = 102,700
works out to $1.25

## Sources and Uses of Funds

is this an LIHTC p

| Sources | Residential | Retail | Total | |
|---|---|---|---|---|
| Debt | $ 18,539,000 | $ - | $ 18,539,000 | 65% |
| Gap Financing - Affordable Units | 1,106,816 | | $ 1,106,816 | |
| Private Equity - LIHTC | 1,201,389 | - | $ 1,201,389 | free vs. 17% |
| Private Equity - Developer | 2,451,001 | 3,833,530 | $ 6,284,531 | |
| **Total Sources of Funds** | **$ 23,298,207** | **$ 3,833,530** | **$ 27,131,737** | |

| Uses | Residential | Retail | Total | |
|---|---|---|---|---|
| Land | $ 440,907 | $ 59,093 | $ 500,000 | |
| Hard Costs | 17,097,231 | 2,140,541 | 19,237,772 | |
| Transaction/Leasing Fees | 292,762 | 39,238 | 332,000 | |
| Architectural/MEP, Structural Services | 704,012 | 94,356 | 798,368 | |
| Marketing | 264,544 | 35,456 | 300,000 | |
| General and Administrative includes CM | 1,318,312 | 276,688 | 1,595,000 | 6% of TDC |
| Financing Costs | 1,636,566 | 31,770 | 1,668,337 | + ROE |
| Real Estate Taxes | 195,888 | 26,254 | 222,142 | (sum of equity needs?) |
| Permit, Utility and Municipal Fees | 301,503 | 40,409 | 341,912 | |
| Legal and Accounting | 484,998 | 65,002 | 550,000 | |
| Retail | - | 949,468 | 949,468 | |
| Insurance | 13,754 | 1,843 | 15,597 | |
| Miscellaneous Expenses | 547,731 | 73,410 | 621,141 | |
| **Total Uses of Funds** | **$ 23,298,207** | **$ 3,833,530** | **$ 27,131,737** | |

WMATA-INV 000469

3/19/09 Omar
Maurice
Twaunna

Lawrence Cooper for Omar
$3M 2 wks ago
240 777 3620

Thayer references Mont Co DI Head of MoCo DHCA

Mr. Perry references C HVS + local projects on Monday

is this pro forma

ERIC:

1. Wants pro forma for whole project
2. WMATA piece = ~~[illegible]~~ 70% of whole project
3. $60K/unit = how much he thought he could get from OC for the pro forma to work
   BUT PRO FORMA can work ~~with~~ if necessary to reduce the funding gap
4. Pro Forma = $250/du ~~contr.~~ direct cost in front land
5. G & A looks too high
6. There are 30 units on adjoining property -
7. Eric wants to insure that overhead is not being absorbed by WMATA piece of the property

NEXT WED

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Office of Station Area Planning and Asset Management (SAAM)

**Meeting:** JAZZ @ Florida Avenue **Date:** 3/19/09 Time: 3:15PM

**Attendance:**

| | Organization | Telephone | E-Mail |
|---|---|---|---|
| Joel R. Washington | WMATA / SAAM | 202-962-2616 | jrwashing@wmata.com |
| Rosalyn Baggett | " " | 2208 | |
| OMAR KARIM | BANNEKER | 202-667.4110 | okarim@bannekerventures.com |
| MAURICE PERRY | BANK of AMERICA CDC | (202) 442-7526 | maurice.perry@bankofamerica.com |
| Tiwana Hicks | Banneker | 202.667-4110 | thicks@bannekerventures.com |
| Eric Smart | Bolan Smart | 202 776-7740 | eric.smart@bolansmart.com |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

FOIA CONFIDENTIAL TREATMENT REQUESTED

**BSA Table 1 (March 09)**

**Florida Avenue / Shaw - Proposals (60 year Term)**

| | | | 1<br>2009 | 2<br>2010 | 3<br>2011 | 4<br>2012 | 5<br>2013 | 6<br>2014 | 7<br>2015 | 8<br>2016 | 9<br>2017 | 10<br>2018 | 11<br>2019 | 12<br>2020 | 13<br>2021 | 14<br>2022 | 15<br>2023 | 60<br>2068 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Banneker (March 2009) with 60 year ground lease** | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $40,000 | $40,000 | $40,000 | $40,000 | $40,000 | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | |
| Base Rent (at 95% ocp) | 1.500% | fixed annual escalations years 6 to 14 | | | | | | $300,000 | $304,500 | $309,068 | $313,704 | $318,409 | $323,185 | $328,033 | $332,953 | $337,948 | | |
| | 3.000% | fixed annual escalations years 15+ | | | | | | | | | | | | | | | $348,086 | $1,316,321 |
| Total WMATA Base Rent | | | $140,000 | $40,000 | $40,000 | $40,000 | $40,000 | $300,000 | $304,500 | $309,068 | $313,704 | $318,409 | $323,185 | $328,033 | $332,953 | $337,948 | $348,086 | $1,316,321 |
| WMATA Participation | 12.00% | of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 | FY09 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow** | | | $140,000 | $40,000 | $40,000 | $40,000 | $40,000 | $300,000 | $304,500 | $309,068 | $313,704 | $318,409 | $323,185 | $328,033 | $332,953 | $337,948 | $348,086 | $1,316,321 |
| **Cash Flow w/ residual** | | | $140,000 | $40,000 | $40,000 | $40,000 | $40,000 | $300,000 | $304,500 | $309,068 | $313,704 | $318,409 | $323,185 | $328,033 | $332,953 | $337,948 | $348,086 | $46,774,787 |
| NPV Base Rent | 5.73% | discount rate | $6,010,769 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $7,708,696 | | | | | | | | | | | | | | | |
| With Participation | 0.00% | not applicable | $7,708,696 | | | | | | | | | | | | | | | |
| **Lakritz Adler - sale** | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | | | | | | | | | | | | | | | | |
| Purchase Price | | | | | $4,890,000 | | | | | | | | | | | | | |
| Base Rent | | | | | | | | | | | | | | | | | | |
| Total Gross Revenue | | | | | | | | | | | | | | | | | | |
| WMATA Participation | | | | | | | | | | | | | | | | | | |
| Terminal Value | | | | | | | | | | | | | | | | | | |
| **Cash Flow** | | | $100,000 | $0 | $4,890,000 | | | | | | | | | | | | | |
| NPV | 5.73% | discount rate | $4,574,339 | | | | | | | | | | | | | | | |
| **Lakritz Adler - lease** | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | | | | | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | $4,890,000 | | | | | | | | | | | | | |
| Base Rent | 1.80% | fixed annual escalations | | | | | $223,253 | $227,272 | $231,362 | $235,527 | $239,766 | $244,082 | $248,476 | $252,948 | $257,501 | $262,136 | $266,855 | $595,559 |
| Other Base Rent Adjustment | | not applicable | | | | | | | | | | | | | | | | |
| Total Gross Revenue | | | $100,000 | $0 | $0 | $0 | $223,253 | $227,272 | $231,362 | $235,527 | $239,766 | $244,082 | $248,476 | $252,948 | $257,501 | $262,136 | $266,855 | $595,559 |
| WMATA Participation | 0.00% | not offered | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $7,947,280 | FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow** | | | $100,000 | $0 | $0 | $0 | $223,253 | $227,272 | $231,362 | $235,527 | $239,766 | $244,082 | $248,476 | $252,948 | $257,501 | $262,136 | $266,855 | $595,559 |
| **Cash Flow w/ residual** | | | $100,000 | $0 | $0 | $0 | $223,253 | $227,272 | $231,362 | $235,527 | $239,766 | $244,082 | $248,476 | $252,948 | $257,501 | $262,136 | $266,855 | $46,054,025 |
| NPV | | | | | | | | | | | | | | | | | | |
| Base Rent | 5.73% | discount rate | $4,330,076 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $6,028,003 | | | | | | | | | | | | | | | |
| With Participation | 0.00% | not applicable | $6,028,003 | | | | | | | | | | | | | | | |

WMATA-INV 000472

Date: 3/17/09

# SIGN –IN SHEET

MEETING:

JAZZ AT Florida Avenue

| Name | Contact Information |
|---|---|
| 1. Joel Washington / WMATA | ~~15.~~ jrwashington@WMATA.com |
| 2. OMAR KARIM | ~~12.~~ okarim@bannekerventures.com |
| 3. Maurice Perry | ~~13.~~ maurice.perry@bankofamerica.com |
| 4. Duane Oates | ~~14.~~ ~~Duane~~ doates@bannekerventures.com |
| 5. Tiwana Hicks | ~~15.~~ thicks@bannekerventures.com |
| 6. Josh Montague | ~~16.~~ jwmontague@wmata.com |
| 7. Rosalyn Doggett | ~~17.~~ rdoggett@WMATA.com |
| 8. | ~~18.~~ |
| 9. | ~~19.~~ |
| 10. | ~~20.~~ |

Date: 3/17/09

FOIA CONFIDENTIAL TREATMENT REQUESTED

3/19
3pm
discussion

# Florida Avenue – Offer comparisons

| JDA | Term Sheet | WMATA draft | Developer's Latest Offer |
|---|---|---|---|
| **Developer** | Banneker, District Development, Metropolis | Banneker, District Development, Metropolis | Banneker and BADC |
| **Project** | Single phase, including minimum:<br>Gross FAR: 130,014 sf<br>Units: 104<br>Retail: 11,750 sf<br>Parking: 47 spaces | Single phase, including minimum:<br>Gross FAR: 130,014 sf<br>Units: 104<br>Retail: 11,750 sf<br>Parking: 47 spaces | Last JDA removed reference to building in a single phase.<br>Pro Forma:<br>Gross FAR: 118,457<br>Units: 92<br>Retail: 12,880<br>Parking: 60 spaces<br>single phase for money, yet |
| **Improvements** | No mention of ownership or purchase of improvements. | Developer owns all improvements but ownership rights automatically transfer to WMATA at end of Lease. Deed | Upon ending of Lease, WMATA must purchase improvements from Developer at FMV<br>NO – Maurice wants a week to release until his counsel |
| **Pre-stabilization period** | Stabilization or 45 months<br>18<br>24<br>+2 - 54<br>18 permits<br>18 build<br>36 + 12 / 48 | Stabilization or 45 months alley closing 9-12 months<br>12 mo permitting<br>24 mo | Stabilization or 61 months<br>from JDA |
| **Lease closing** | On or before 20 months | On or before 20 months alley closing | ~~On or before 29 months~~ OK on 20 months |
| **Pre-stabilization period payments** | *Note: paragraph 7.8 appears to have a typo in reference to payments during extensions of pre-stabilization period due to WMATA delay.* | Payments are due from effective date of JDA to Stabilization (at which time rent payments begin) | Pre-stabilization period shall be extended on a day-for-day basis for WMATA caused delays (including FTA approval), however no pre-stabilization payments or rent shall be due during said delay extension |
| **Pre-stabilization period payment amounts** | First 15 months: $100,000/year<br>Next 12 months: $115,000/year<br>Thereafter: $130,000 per year | First 15 months: $100,000/year<br>Next 12 months: $115,000/year<br>Thereafter: $130,000 per year | $200,000 total, to be paid over pre-stabilization period and lease up of project<br>relook at timing |
| **Deposit** performance security | Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer | Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer | Upon receipt of ~~$100,000~~ 250 deposit, WMATA returns $100,000 proposal security to developer 250 is standard<br>They will come back |
| **Completion Bond** WMATA | Not mentioned (only have performance and payment) | 120% of replacement costs | 100% N/A |

dual obligor for developer improvements

WMATA-INV 000474

# Florida Avenue – Offer comparisons

| JDA | Term Sheet | WMATA draft | Developer's counter JDA |
|---|---|---|---|
| **Insurance** Josh<br>WMATA to provide - bifurcation | *WMATA policy:* According to Kim Brown, we will require insurance on everybody. | Everybody: Developer, contractor, subcontractor, etc. | Developer or contractor, as applicable during construction |
| **FTA Approval** | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; JDA will include appropriate termination provisions in the case FTA denies approval | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; Said agreement is automatically terminated if FTA denies approval and all appeals are exhausted. | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; WMATA has 60 days to secure FTA approval; ~~If FTA denies approval, WMATA shall pay developer $300,000 as compensation for Developer's costs incurred with due diligence and negotiation of Agreement.~~ |
| **Change of control** | Section 1.2 states that WMATA consent is needed to: 1) include other parties in the Developer (except for equity finance partners) and 2) assign or sell Developer's interest in the Project or the Improvements. | Prior to Final Completion – no change of control;<br>After Final Completion – only change of control upon WMATA approval. | Prior to Final Completion – no change ~~of control;~~<br>After Final Completion – Developer can change control freely.<br>acc to criteria<br>BADC would stay in for X years 3-5 |

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Offer comparisons

| LEASE | Term Sheet | WMATA draft | Developer's counter Lease |
|---|---|---|---|
| **Developer** | See JDA | See JDA | See JDA |
| **Guarantor** | Requires guarantor for "remediation of all hazardous materials as required by the Definitive Agreement or by applicable law…and the timely payment and performance of all Developer obligations under the Definitive Agreement." *Q – was guaranty contemplated to be for lease also?* NO | Required guarantor with net worth exceeding 3 times value of project | Removed guarantor requirement Maurice will get back on this - he typically provides a completion guarantee |
| **Term** | 60 year lease | 60-year lease | 99-year lease TBD |
| **Stabilization** | TBD in JDA | 90% occupancy vacancy + bad debt + concessions | 95% occupancy Maurice will look at economics |
| **Base Rent** | $597,000 in quarterly payments | $597,000 in quarterly payments | $300,000 in monthly payments. – gym paid the lakeside hurdle |
| **Escalation (Years 1 to 10)** | 1.5% increase *(note: may have been typo on term sheet)* | 1.5% increase | 1.5% increase |
| **Escalation (Years 11 to end)** | 3% increase | 3% increase | 1.03% increase *(this is likely related to typo mentioned above)* 3% / year |
| **Periodic Rent Revaluation** | Upon Capital Event or every 10 years | Upon Capital Event or every 10 years | Removed entirely. Maurice wants to discuss more |
| **Capital Event Participation** | 10% of gross income from Capital Event | 10% of ~~gross~~ income from Capital Event a/k/a debt | In the event of a refinance or sale of the project, WMATA would receive 12% of the net ***revenue associated with WMATA's parcels*** (versus 10% that WMATA proposed) after all debt (and related re-financing costs if a refi) are re-paid. Omar will provide an exhibit for a 1st and a 2d Capital event |
| | | | |

Maurice

X Maurice

Omar ~~needs to update~~

# Florida Avenue – Offer comparisons

| | | | |
|---|---|---|---|
| **Density Adjustment Rent** | Add to base rent based on formula in Section 7.11 of term sheet. | Add to base rent based on formula in Section 7.11 of term sheet. | ~~Removed entirely.~~ Restore |
| **Late Charge** | TBD in JDA > Turnbrook PGP | 20% of delinquent amount | 3% of delinquent amount > both to double check |
| **Default interest rate** | Not mentioned. | 15% or 10% over prime (whichever is higher) | 3% |
| **Affordable Housing** | No mention | No mention | 30% of the Units will be affordable at 60% AMI |

O'Mar agrees: if he does less affordable housing ~~there is~~ more rent will be paid

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Offer comparisons

| LEASE | Term Sheet | WMATA draft | Developer's counter JDA |
|---|---|---|---|
| **Right to assign Lease** | Section 1.2 states that Developer's interest in the Project or the Improvements may not be assigned or sold without the written consent of WMATA. | Not assignable prior to Final Completion; only assignable upon WMATA consent after Final Completion so long as not unreasonably withheld | Prior to Substantial Completion: assignable without WMATA consent if to a "Qualified Assignee"; otherwise is assignable only upon WMATA consent ~~so long as not~~ After Substantial Completion: assignable w/o WMATA consent Assignment restrictions do not apply to leasehold mortgage remedies. |
| **Right of First Offer** | N/A; *Q – was this mentioned in negotiations? What is normal consideration to WMATA for this right?* | N/A | ~~Must first offer to Developer if wish~~ to ~~sell/transfer property.~~ NO |
| **Environ Condition** | Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS | Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS | If during construction, Developer discovers "catastrophic environ conditions", then Developer may terminate Lease NO |
| **Insurance** | See JDA | See JDA | See JDA |

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

3/19 pre-3pm discussion

# Florida Avenue – Offer comparisons

| JDA | Term Sheet | WMATA draft | Developer's "final" Offer |
|---|---|---|---|
| **Developer** | Banneker, District Development, Metropolis | Banneker, District Development, Metropolis | Banneker and BADC<br>~~Still reconciling~~ |
| **Project** | Single phase, including minimum:<br>Gross FAR: 130,014 sf<br>Units: 104<br>Retail: 11,750 sf<br>Parking: 47 spaces | Single phase, including minimum:<br>Gross FAR: 130,014 sf<br>Units: 104<br>Retail: 11,750 sf<br>Parking: 47 spaces | Last JDA removed ~~reference to~~ building in ~~a~~ single phase ~~only~~ O.K.<br>Pro Forma:<br>Gross FAR: 118,457<br>Units: 92<br>Retail: 12,880<br>Parking: 60 spaces<br>Rent language back<br>money will not be phased |
| **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 NO |
| **Pre-stabilization period** | Stabilization or 45 months | Stabilization or 45 months | Stabilization or 61 months ~~NO~~<br>~~too long a free ride~~<br>earlier of 45 months or stabilization |
| **Lease closing** | On or before 20 months | On or before 20 months 271 | On or before 29 months ~~NO~~ |
| **Pre-stabilization period payments** | *Note: paragraph 7.8 appears to have a typo in reference to payments during extensions of pre-stabilization period due to WMATA delay.* | Payments are due from effective date of JDA to Stabilization (at which time rent payments begin) | Pre-stabilization period shall be extended on a day-for-day basis for WMATA caused delays (including FTA approval), ~~however no pre-stabilization payments or rent shall be due during said delay extension~~ |
| **Pre-stabilization period payment amounts** | First 15 months: $100,000/year<br>Next 12 months: $115,000/year<br>Thereafter: $130,000 per year | First 15 months: $100,000/year<br>Next 12 months: $115,000/year<br>Thereafter: $130,000 per year 475 | $200,000 total, to be paid over pre-stabilization period and lease up of project ~~$90~~ 10%/year increase 75K/yr rise 10K/yr perhaps if applicable in reason |
| **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 Yes |
| **Completion Bond** | Not mentioned (only have performance and payment) | 120% of replacement costs | 100% |

WMATA-INV 000479

# Florida Avenue – Offer comparisons

| JDA | Term Sheet | WMATA draft | Developer's counter JDA |
|---|---|---|---|
| **Insurance** | *WMATA policy:* According to Kim Brown, we will require insurance on everybody. | Everybody: Developer, contractor, subcontractor, etc. | Developer or contractor, as applicable<br>depends – |
| **FTA Approval** | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; JDA will include appropriate termination provisions in the case FTA denies approval | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; Said agreement is automatically terminated if FTA denies approval and all appeals are exhausted. | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; WMATA has 60 days to secure FTA approval; ~~If FTA denies approval, WMATA shall pay developer $300,000 as compensation for Developer's costs incurred with due diligence and negotiation of Agreement.~~ No<br>Your deposit back |
| **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;<br>After Final Completion – only change of control upon WMATA approval. | Prior to Final Completion – no change of control;<br>After Final Completion – Developer can change control freely. criteria<br>maybe with criteria<br>See other contracts<br>net worth<br>experience |

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Offer comparisons

50% reduction for 20% a/b

| LEASE | Term Sheet | WMATA draft | Developer's counter lease |
|---|---|---|---|
| **Developer** | See JDA | See JDA | See JDA |
| **Guarantor** | Requires guarantor for "remediation of all hazardous materials as required by the Definitive Agreement or by applicable law…and the timely payment and performance of all Developer obligations under the Definitive Agreement." *Q – was guaranty contemplated to be for lease also?* | Required guarantor with net worth exceeding 3 times value of project | Removed guarantor requirement need guarantor BADC ~~restore~~ |
| **Term** | 60 year lease | 60-year lease | 99-year lease ~~60 or 4 year 4.5~~ |
| **Stabilization** | TBD in JDA | 90% occupancy | 95% occupancy NO 92% |
| **Base Rent** | $597,000 in quarterly payments | $597,000 in quarterly payments | $300,000 ~~in monthly payments~~ quarterly |
| **Escalation (Years 1 to 10)** | 1.5% increase *(note: may have been typo on term sheet)* | 1.5% increase | 1.5% increase |
| **Escalation (Years 11 to end)** | 3% increase | 3% increase | ~~100%~~ increase *(this is likely related to typo mentioned above)* 3%/year |
| **Periodic Rent Revaluation** | Upon Capital Event or every 10 years | Upon Capital Event or every 10 years whichever is earlier | ~~Removed entirely.~~ Restore ~~Yes put back~~ |
| **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. Stick with Term Sheet — to be discussed |
| | | | |

What's the Change?

explain

WMATA-INV 000481

# Florida Avenue – Offer comparisons

| | | | |
|---|---|---|---|
| **Density Adjustment Rent** | Add to base rent based on formula in Section 7.11 of term sheet. | Add to base rent based on formula in Section 7.11 of term sheet. | Removed entirely. Restore |
| **Late Charge** | TBD in JDA | 20% of delinquent amount | ~~3% of delinquent~~ amount restore |
| **Default interest rate** | Not mentioned. | 15% or 10% over prime (whichever is higher) | ~~3%~~ 20 restore |
| **Affordable Housing** | No mention | No mention | ~~30%~~ of the Units will be affordable at ~~60%~~ AMI 150 |

If no affordable or less affordable
$60K/unit more
8%/dev./year $4,800

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Offer comparisons

| LEASE | Term Sheet | WMATA draft | Developer's counter JDA |
|---|---|---|---|
| **Right to assign Lease** | Section 1.2 states that Developer's interest in the Project or the Improvements may not be assigned or sold without the written consent of WMATA. | Not assignable ~~prior~~ to Final Completion, only assignable upon ~~WMATA consent~~ ~~after~~ Final Completion | ~~Prior to~~ Substantial Completion: assignable without WMATA consent if to a "Qualified Assignee"; otherwise is assignable only upon WMATA consent ~~After Substantial Completion:~~ assignable ~~w/o WMATA consent~~ Assignment restrictions do not apply to leasehold mortgage remedies. |
| **Right of First Offer** | N/A; *Q – was this mentioned in negotiations? What is normal consideration to WMATA for this right?* | N/A | Must first offer ~~to Developer~~ if wish to sell/~~transfer~~ property. |
| **Environ Condition** | Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS | Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS | If during construction, Developer discovers "catastrophic environ conditions", then Developer may terminate Lease |
| **Insurance** | See JDA | See JDA | See JDA |

FOIA CONFIDENTIAL TREATMENT REQUESTED

3/24/09

1. Is this an LIHTC pro forma or not? They can & will do both 221(d)(4) + 4% LIHTC - See question 8 could go + 9% Who picks up the $1.2M? 40 yr. amortization
2. What are 221(d)(4) ground rules can be used for market rate
3. 2011 pro forma start is out of whack with proposed terms of 48-50 mo. from execution in 9/09
4. ~~9% EGI = you need floors~~ = 11/13 say 1/14
5. 9.7% EGI = you need a floor & periodic jumps
6. 4% annual ~~rent~~ res. rent escalation is optimistic # market rate
7. How can we have a lease on a ground lease on a joint lot? - Omar will research. Omar will research
8. Sources + Uses
   Where coming from? gap = city
   See
9. If you only did affordable on Large Site (& did not get LIHTC) would the rest balance
10. Higher #
11. Marnie - does BADC always get a 17% return?
12. G & A is very high.
13. On pre-development, I need $80K/yr

HUD allows fixed base rent going in ....
Ericsays to Omar make it higher

Qualifies (with things it seems ....)
a. Valuing affordables = 40% total cost of old rent
b. So

We need ~~17%~~ to preserve hpv on fixed rent
$80k/year pre-dev.
$300 base, increase by fixed amts at fixed intervals
Go to

~~221 d ft = 90% flow~~

next meeting
Friday April 3 2:30

48 to 60 mo = $200K rent loss
per st tack

Maybe ~~for~~ trade for later stabilization =
~~$300K earlier~~ higher earlier pre dev rent
~~$300~~ ramp up pre dev rent earlier

They will need to prepay % of excalator

if affordables go away, how does rent adjust??

~~What about~~
how do I show evidence

prepayment of excalator or higher fixed rent

FOIA CONFIDENTIAL TREATMENT REQUESTED

The Jazz @ Florida Avenue
Residential Proforma

| Year | | 1<br>2011 | 2<br>2012 | 3<br>2013 | 4<br>2014 | 5<br>2015 | 6<br>2016 | 7<br>2017 | 8<br>2018 | 9<br>2019 | 10<br>2020 | 11<br>2021 | 12<br>2022 | 13<br>2023 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Income** | % of Income | | | | | | | | | | | | | |
| Market Units | | $ 436,528 | $ 1,527,849 | $ 2,269,947 | $ 2,360,745 | $ 2,455,175 | $ 2,553,382 | $ 2,655,517 | $ 2,761,738 | $ 2,872,207 | $ 2,987,095 | $ 3,106,579 | $ 3,230,842 | $ 3,360,076 |
| Affordable Units | | $ 43,277 | $ 216,383 | $ 221,792 | 227,337 | 233,020 | 238,846 | 244,817 | 250,937 | 257,211 | 263,641 | 270,232 | 276,988 | 283,913 |
| Other Income | 3.00% | $ 47,980 | $ 47,980 | $ 49,900 | 51,896 | 53,972 | 56,130 | 58,376 | 60,711 | 63,139 | 65,665 | 68,291 | 71,023 | 73,864 |
| Parking | | $ 81,000 | $ 81,000 | $ 83,430 | 86,767 | 90,238 | 93,847 | 97,601 | 101,505 | 105,566 | 109,788 | 114,180 | 118,747 | 123,497 |
| Vacancy | 9.00% | (54,791) | (168,589) | (236,256) | (245,407) | (254,916) | (264,798) | (275,068) | (285,740) | (296,831) | (308,357) | (320,335) | (332,784) | (345,721) |
| Effective Gross Income | | $ 553,995 | $ 1,704,623 | $ 2,388,813 | $ 2,481,338 | $ 2,577,488 | $ 2,677,407 | $ 2,781,243 | $ 2,889,151 | $ 3,001,292 | $ 3,117,832 | $ 3,238,947 | $ 3,364,816 | $ 3,495,628 |
| **Operating Expenses** | Escalation | | | | | | | | | | | | | |
| WMATA Land Lease | | $ 66,136 | 66,136 | 232,909 | 241,930 | 251,305 | 261,047 | 271,171 | 281,692 | 292,626 | 303,989 | 315,797 | 328,070 | 340,824 |
| Real Estate Taxes (Market) | 3.00% | $ 59,030 | 147,575 | 152,003 | 156,563 | 161,260 | 166,098 | 171,080 | 176,213 | 181,499 | 186,944 | 192,553 | 198,329 | 204,279 |
| Real Esate Taxes (Afford) | 3.00% | $ 7,379 | 18,447 | 19,000 | 19,570 | 20,157 | 20,762 | 21,385 | 22,027 | 22,687 | 23,368 | 24,069 | 24,791 | 25,535 |
| Property Insurance | 3.00% | $ 14,758 | 36,894 | 38,001 | 39,141 | 40,315 | 41,524 | 42,770 | 44,053 | 45,375 | 46,736 | 48,138 | 49,582 | 51,070 |
| Utilities | 3.00% | $ 14,758 | 36,894 | 38,001 | 39,141 | 40,315 | 41,524 | 42,770 | 44,053 | 45,375 | 46,736 | 48,138 | 49,582 | 51,070 |
| Repairs and Maintenance | 3.00% | $ 18,447 | 46,117 | 47,501 | 48,926 | 50,394 | 51,905 | 53,463 | 55,067 | 56,719 | 58,420 | 60,173 | 61,978 | 63,837 |
| Property Management | 3.00% | $ 27,606 | 69,015 | 71,085 | 73,218 | 75,414 | 77,676 | 80,007 | 82,407 | 84,879 | 87,426 | 90,048 | 92,750 | 95,532 |
| Payroll | 3.00% | $ 64,564 | 161,411 | 166,253 | 171,241 | 176,378 | 181,669 | 187,119 | 192,733 | 198,515 | 204,470 | 210,604 | 216,922 | 223,430 |
| Advertising & Marketing | 3.00% | $ 22,136 | 55,341 | 57,001 | 58,711 | 60,472 | 62,287 | 64,155 | 66,080 | 68,062 | 70,104 | 72,207 | 74,373 | 76,605 |
| Admin, Painting, Contract Services | 3.00% | $ 29,515 | 73,788 | 76,001 | 78,281 | 80,630 | 83,049 | 85,540 | 88,106 | 90,750 | 93,472 | 96,276 | 99,165 | 102,139 |
| | | 324,329 | 711,617 | 897,755 | 926,721 | 956,640 | 987,542 | 1,019,461 | 1,052,431 | 1,086,486 | 1,121,665 | 1,158,004 | 1,195,542 | 1,234,321 |
| **Net Operating Income** | | $ 229,666 | $ 993,006 | $ 1,491,058 | $ 1,554,616 | $ 1,620,848 | $ 1,689,865 | $ 1,761,782 | $ 1,836,720 | $ 1,914,805 | $ 1,996,167 | $ 2,080,943 | $ 2,169,274 | $ 2,261,307 |
| **Reserves** | | 23,059 | 23,750 | 24,463 | 25,197 | 25,953 | 26,731 | 27,533 | 28,359 | 29,210 | 30,086 | 30,989 | 31,919 | 32,876 |
| **Cash Flow Before Debt Service** | | 206,607 | 969,255 | 1,466,595 | 1,529,419 | 1,594,895 | 1,663,134 | 1,734,249 | 1,808,361 | 1,885,595 | 1,966,081 | 2,049,954 | 2,137,355 | 2,228,431 |
| **Total Annual Debt Service** | | 478,385 | 1,435,155 | 1,435,155 | 1,435,155 | 1,435,155 | 1,435,155 | 1,435,155 | 1,435,155 | 1,435,155 | 1,435,155 | 1,435,155 | 1,435,155 | 1,435,155 |
| **Before Tax Cash Flow** | | $ (271,778) | $ (465,900) | $ 31,440 | $ 94,264 | $ 159,740 | $ 227,979 | $ 299,094 | $ 373,206 | $ 450,440 | $ 530,926 | $ 614,799 | $ 702,200 | $ 793,276 |
| 1st Mortgage Principal Balance | $ 18,539,000 | $ 18,462,401 | $ 18,379,873 | $ 18,373,484 | $ 18,284,072 | $ 18,270,268 | $ 18,172,866 | $ 18,150,453 | $ 18,043,777 | $ 18,011,371 | $ 17,893,928 | $ 17,849,922 | $ 17,719,982 | $ 17,662,511 |

9.75% of Effective Gross Income
4.0% annual escalation in market rate unit income and parking
2.5% annual escalation in affordable rate unit income
3.0% annual escalation in expenses (except land lease where first 10 years, increase is at 1.5% and next 3% thereafter)*
3.0% annual escalation in reserves

WMATA-INV 000486

The Jazz @ Florida Avenue
Residential Proforma

| 14<br>2024 | 15<br>2025 |
|---|---|
| $ 3,494,479 | $ 3,634,258 |
| 291,010 | 298,286 |
| 76,818 | 79,891 |
| 128,437 | 133,574 |
| (359,167) | (373,141) |
| $ 3,631,578 | $ 3,772,868 |
| | |
| 354,079 | 367,855 |
| 210,407 | 216,720 |
| 26,301 | 27,090 |
| 52,602 | 54,180 |
| 52,602 | 54,180 |
| 65,752 | 67,725 |
| 98,398 | 101,350 |
| 230,133 | 237,037 |
| 78,903 | 81,270 |
| 105,204 | 108,360 |
| 1,274,381 | 1,315,766 |
| $ 2,357,197 | $ 2,457,103 |
| 33,862 | 34,878 |
| 2,323,334 | 2,422,224 |
| 1,435,155 | 1,435,155 |
| $ 888,179 | $ 987,069 |
| $ 17,518,063 | $ 17,444,961 |

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

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

**Financial Model**

**9/15/2009**

| SUMMARY DATA | | | |
|---|---|---|---|
| Site Area - WMATA Parcels | SF | | 28,892 |
| Site Area - Adjacent parcel 1 (9th Street) | 1933, 1935 | | 3,051 |
| Site Area - Adjacent parcel 2 (9th Street) | 1931 | | 4,669 |
| Site Area - Total | SF | | 36,612 |
| Total Actual Project GSF (above grade | 4.30 FAR | | 157,432 |
| Total Buildable Residential + Retail GSF | | | 157,432 |
| Retail GSF | | | 20,200 |
| Retail NSF | 90% efficiency | | 18,180 |
| Residential Gross SF (including loading | 100% | | 138,232 |
| Less - Leasing, lobbies, ramps, etc. | | | 12,780 |
| Residential Gross SF (residential flrs only) | | | 125,452 |
| Residential Net SF (residential flrs only) | | | 96,240 |
| Residential Net SF - Market Rate | 80% | | 77,840 |
| Residential Net SF - Affordable | 20% | | 18,400 |
| Total No. of Residential Units | | | 132 |
| Market Rate Units | 80% | | 106 |
| Affordable Units | 20% | | 26 |
| Below Grade Parking (Resid Parking) | 450.0 SF | | 49 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | | 22 |
| Total Parking Spaces | | | 71 |
| | | | |
| WMATA Security Deposit | | $ | 250,000 |
| WMATA Pre-Stabilization Payments | | $ | 115,000 |
| | | | |
| Program % Breakdown | | | |
| Residential | | | 87.80% |
| Retail | | | 12.83% |
| | | | |
| Bad Debt and Vacancy | | | |
| Residential | | | 7.0% |
| Retail | | | 20.0% |
| | | | |
| WMATA SF as % of total | | | 78.9% |

| PERMANENT SOURCE |
|---|
| Sources |
| FHA/GNMA Debt |
| Gap Financing - PILOT |
| Gap Financing - Sales T |
| Gap Financing - 9% Tax |
| Private Equity - Deferrec |
| Private Equity - Develop |
| Total Sources of Funds |
| |
| Uses |
| Land |
| Hard Costs |
| Transaction/Leasing Fee |
| Architectural/MEP, Struc |
| Marketing |
| General and Administrat |
| Financing Costs |
| Real Estate Taxes |
| Permit, Utility and Munic |
| Legal and Accounting |
| Retail |
| Insurance |
| Reserves |
| Miscellaneous Expenses |
| Total Uses of Funds |

Source: O. Karim
9/15/09

PROJECT COSTS

| | | | | |
|---|---|---|---|---|
| 1 LAND COSTS | | | | |
| WMATA Parcels | | | | |
| WMATA - Proposal Deposit | | | 100,000.00 | |
| WMATA - Option Fee | | | 100,000.00 | |
| WMATA - Security Deposit | | | 250,000.00 | |
| WMATA - Capitalized Lease Payment | | | 2,100,000.00 | |
| Pre-Stabilization Lease Payments | | | 115,000.00 | |
| 1933-1935 9th Street Parcel | | | | |
| Purchase Price Less Lease-Option Fees and Deposit | | | 1,240,000.00 | 3,05 sf X 4.5 FAR = 13,730 FAR sf |
| Deposit | | | 10,000.00 | |
| Lease-Option Payments (18 months) | $2,000 | per mo | 36,000.00 | 1,250,000 ÷ 13,730 = $91/FAR sf |
| 1931 9th Street Parcel | | | | |
| Purchase Price Less Deposit | | | 1,800,000.00 | 4,669 sf. X 4.5 FAR = 21,011 FAR sf |
| Deposit | | | 100,000.00 | 1,900,000 ÷ 21,011 = $90.43/ FAR sf |
| TOTAL LAND COSTS | | | | 5,851,000.00 |
| 2 HARD COSTS | | | | |
| Residential Structure | | | 10,800,000.00 | |
| Parking Structure | | | 2,100,000.00 | |
| Retail Structure | | | 2,000,000.00 | |
| Site Improvements | | | 1,800,000.00 | |
| General Requirements | | | 1,100,000.00 | |
| Contractor Contingency | 5.0% | | 890,000.00 | |
| Payment and Performance Bond | | | 160,000.00 | |
| Overhead | | | 200,000.00 | |
| Fee | | | 800,000.00 | |
| Furniture, Fixtures and Equipment | | | 500,000.00 | |
| Hard Cost Contingency | 5.0% | | 934,500.00 | |
| TOTAL HARD COSTS | | | | 21,284,500.00 |
| SOFT COSTS | | | | |
| 3 Transaction/Leasing Fees | | | | |
| Title Insurance - Lender's Policy | $0.60 | per $1000 of loar | 32,000.00 | |
| Legal - Term Sheet, JDA, Lease | | | 225,000.00 | |
| Legal - General, P&S Agreements | | | 50,000.00 | |
| Appraisal Fee | | | 25,000.00 | |
| Total Transaction/Leasing Fees | | | | 332,000.00 |
| 4 Architectural/Engineering | | | | |
| A/E Fees (includes structural, interior de | 6.00% | hard cost | 1,002,000.00 | |
| Surveys, Civil, Geotechnical Fees | | | 300,000.00 | |
| Total Architectural/Engineering | | | | 1,302,000.00 |
| 5 Marketing | | | | |
| Marketing Center | | | 40,000.00 | |
| Marketing Materials (Residential) | | | 30,000.00 | |
| Marketing Materials (Retail) | | | 20,000.00 | |
| Retail Conferences (ICSC, ULI, etc.) | | | 15,000.00 | |
| Media (newspapers, etc.) | | | 30,000.00 | |
| Signage | | | 30,000.00 | |
| Special Events | | | 40,000.00 | |
| Model | | | 20,000.00 | |

Source: O. Karim
9/15/09

ADJACENT 9th St Parcels - Shaw-Howard
FL Ave

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Tuesday, September 22, 2009 12:29 PM
**To:** Doggett, Rosalyn
**Subject:** FW: FL Ave - Adjacent Parcels
**Attachments:** Real Estate Purchase Agreement by and between Teles Professional Services, LLC and Banneker Ventures, LLC.pdf

---

**From:** Tiwana Hicks [mailto:thicks@bannekerventures.com]
**Sent:** Tuesday, September 22, 2009 12:22 PM
**To:** Montague, Joshua W.
**Subject:** RE: FL Ave - Adjacent Parcels

Second of 2.

---

**From:** Montague, Joshua W. [mailto:jwmontague@wmata.com]
**Sent:** Tuesday, September 22, 2009 12:10 PM
**To:** Tiwana Hicks
**Subject:** FL Ave - Adjacent Parcels

Hi Tiwana,

I got an email message saying that you were trying to send me a message that was too big for our system. Unfortunately our computer system blocks messages that are larger than 10MB. That seems really small in today's world, but it is what it is.

Can you re-send the docs in multiple messages so that it will fit under our systems' requirements?

Thanks!

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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1250
1900
3,150

Lalchrey =
Lot 46
Sq 393

MODDIE TURAY COMPANY
REAL ESTATE SERVICES

November 14, 2007

***VIA HAND DELIVERY***

M. Ghebretinsae
T. Ghebretinsae
1933 9th Street. NW. Suite 338
Washington, D.C. 20007

1933 \ 9th
1935 /

**Re: Extension of Study Period/ Extension Payment**

Dear Sir and Madam,

As we have previously agreed, this letter confirms the "Inspection Period" under that certain Real Estate Purchase Agreement dated as of January 25, 2007, as amended by that certain First Amendment to Real Estate Purchase Agreement and that certain Second Amendment to Real Estate Purchase Agreement (as amended, the "Purchase Agreement) by and between M. Ghebretinsae and T. Ghebretinsae (collectively, the "Seller") and Moddie Turay Company, LLC ("Purchaser") has been extended to allow for three additional one month extensions to January 31, 2008. Purchaser shall pay Seller an extension fee of for each one month extension, which extension fees shall be applied to the purchase price at closing.

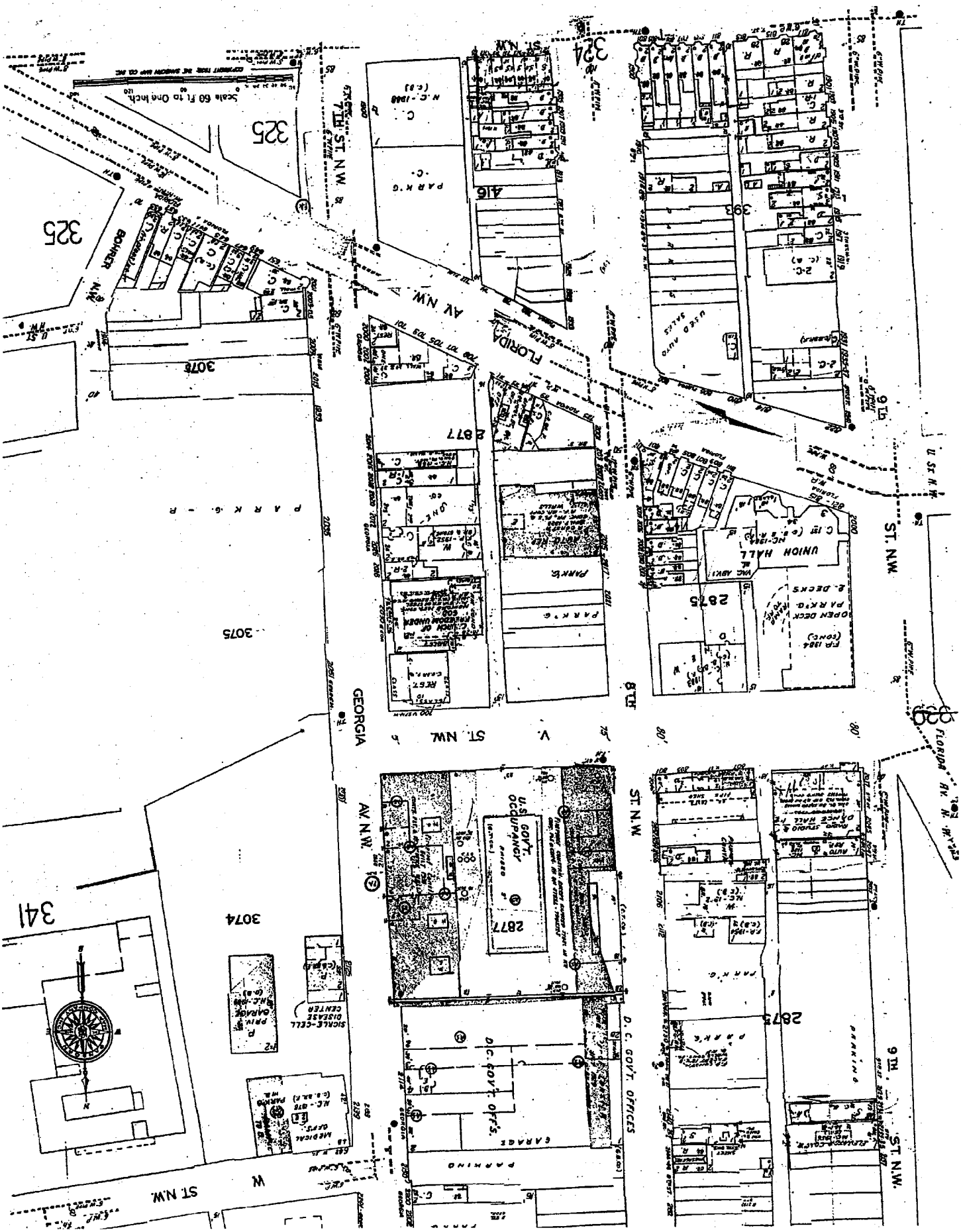
Purchaser has sent Answer Title Company the extension fee of to extend the study period to November 30, 2007 (as evidenced by the statement from Answer Title). In the event of a default by Seller under the Purchase Agreement, the extension fees shall be paid to back Purchaser.

Please sign below to acknowledge our agreement set forth above. Thank you.

30003 sf

3,051 sf =
216 ts

Moddie by phone 11/2/08


Scale 60 Ft to One Inch.
324
325
325
7TH ST. N.W.
416
PARK'G
C.C.
N.C.-1940
(C.B.)
393
2-C
USED AUTO SALES
FLORIDA AV. N.W.
BOHNER N.W.
3076
2877
PARK'G
GEORGIA AV. N.W.
3075
PARK'G - R
2875
UNION HALL
OPEN DECK PARK'G
8-DECKS
9TH ST. N.W.
U ST. N.W.
FLORIDA AV. N.W.
V ST. NW.
8TH ST. N.W.
2877
U.S. GOVT. OCCUPANCY
D.C. GOVT. OFF'S.
D.C. GOVT. OFFICES
GARAGE
PARKING
2875
PARK'G
PARKING
3074
SICKLE-CELL DISEASE CENTER
MEDICAL OFF'S.
341
W ST. N.W.

6 - 8' alley

| | APN | Owners | Situs Address | ParkType | Lot Area | Acres | Sale Date | Assmnt Yr | Sale Price | Zoning | Bldg/Liv |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 0393-0000-0825 | MINNE B SLEEPER | | | 377 | 0.01 | | 2007 | | R4 | |
| 2 | 0393-0000-0044 | WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY WMA | 9TH ST | | 3,799 | 0.09 | | 2007 | | CM1 | |
| 3 | 0393-0000-0045 | WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY WMA | FLORIDA AVE | | 8,621 | 0.20 | | 2007 | | CM1 | |
| 4 | 0393-0000-0017 | VASQUEZ VICTOR H & IRMA A | 803 T ST NW | BASEMENT | 1,485 | 0.03 | 12/07/2001 | 2007 | $137,255 | R4 | 1,914 |
| 5 | 0393-0000-0018 | LEGHESSE HIWET | 805 T ST NW | BASEMENT | 1,485 | 0.03 | 02/03/2005 | 2007 | $463,500 | R4 | 1,914 |
| 6 | 0393-0000-0019 | TEKLE ISALAS | 807 T ST NW | GARAGE | 1,485 | 0.03 | 06/21/2001 | 2007 | $35,280 | R4 | 1,568 |
| 7 | 0393-0000-0020 | BLUSH WENDY A | 809 T ST NW | GARAGE | 1,485 | 0.03 | 06/11/2007 | 2007 | $700,000 | R4 | 1,974 |
| 8 | 0393-0000-0021 | AHDUT PEYMAN | 811 T ST NW | GARAGE | 1,485 | 0.03 | | 2007 | $35,500 | R4 | 4,089 |
| 9 | 0393-0000-2002 | DAUM MARGARET | 813 T ST NW 2 | | | | 08/25/2005 | 2007 | $565,000 | | 1,448 |
| 10 | 0393-0000-2001 | MACSATA ROBYN ANN | 813 T ST NW | | | | 06/08/2005 | 2007 | $595,000 | | 1,407 |
| 11 | 0393-0000-0023 | ANDONI ISSAM | 815 T ST NW | | 1,253 | 0.03 | 04/20/2007 | 2007 | $630,000 | R4 | |
| 12 | 0393-0000-0024 | RENMAN HOWARD A TRUST | 817 T ST NW | BASEMENT | 1,260 | 0.03 | 12/04/2003 | 2007 | $580,000 | R4 | 1,940 |
| 13 | 0393-0000-0016 | TERRY DON B | 1900 8TH ST NW | BASEMENT | 1,065 | 0.02 | | 2007 | | R4 | 1,520 |
| 14 | 0393-0000-0800 | PADABLA LTD TRUST | 1901 9TH ST NW | | 1,887 | 0.04 | 01/03/1989 | 2007 | $77,000 | R4 | 1,704 |
| 15 | 0393-0000-0801 | FAUNTROY RENEE T | 1903 9TH ST NW | | 1,887 | 0.04 | | 2007 | $53,500 | CM1 | 1,928 |
| 16 | 0393-0000-0802 | LEWIS WILLIAM & MICHELE | 1905 9TH ST NW | | 1,698 | 0.04 | | 2007 | $95,000 | CM1 | 2,144 |
| 17 | 0393-0000-0033 | YOHANNES GEBREMICHAEL | 1907 9TH ST NW | | 1,698 | 0.04 | | 2007 | | R4 | 1,940 |
| 18 | 0393-0000-0824 | GEBEYEHU MEZGEBU | 1909 9TH ST NW | BASEMENT | 1,887 | 0.04 | | 2007 | $75,000 | R4 | 2,036 |
| 19 | 0393-0000-0823 | BLUE SKY HOUSING 8TH STREET LLC | 1910 8TH ST NW | | 1,887 | 0.04 | 03/31/2006 | 2007 | $350,000 | CM1 | |
| 20 | 0393-0000-0804 | HOSSEINKHANI BEHZAD | 1911 9TH ST NW | | 1,887 | 0.04 | 07/31/2002 | 2007 | $265,000 | CM1 | 2,710 |
| 21 | 0393-0000-0822 | LUXOR PROPERTIES INC lot | 1912 8TH ST NW | | 1,887 | 0.04 | 07/31/2002 | 2007 | $88,000 | CM1 | |
| 22 | 0393-0000-0805 | HOSSEINKHANI BEHZAD | 1913 9TH ST NW | | 1,887 | 0.04 | 12/18/1987 | 2007 | $55,000 | CM1 | 2,768 |
| 23 | 0393-0000-0821 | FRY MICHAEL C & TERRIELL R 2 story house | 1914 8TH ST NW | | 1,887 | 0.04 | 03/22/2002 | 2007 | $100,000 | C2B | 1,902 |
| 24 | 0393-0000-0806 | ZEMENFES TAMERU & MARTHA | 1915 9TH ST NW | | 1,887 | 0.04 | 02/03/1997 | 2007 | $70,000 | CM1 | 1,553 |
| 25 | 0393-0000-0046 | MEDAL INC lot | 1916-1930 8TH ST NW | | 11,320 | 0.26 | 11/13/1990 | 2007 | $490,000 | | |
| 26 | 0393-0000-0807 | ZEMENFES TAMERU Queen Makeda | 1917 9TH ST NW | | 1,887 | 0.04 | | 2007 | | CM1 | 1,770 |
| 27 | 0393-0000-0043 | AZIKEN SMART E Habesha Market | 1919 9TH ST NW | | 3,145 | 0.07 | 10/15/2002 | 2007 | $505,000 | CM1 | 4,950 |
| 28 | 0393-0000-0042 | 1923 9TH ST NW Queen Restr & Sports Bar | 1923 9TH ST NW Shed + lot | | 3,144 | 0.07 | | 2007 | | CM1 | 240 |
| 29 | 0393-0000-0041 | TELES PROFESSIONAL SERVICES LLC Pkg Lot | 1931 9TH ST NW | | 4,669 | 0.11 | 11/01/2004 | 2007 | $1,350,000 | CM1 | |
| 30 | 0393-0000-0826 | GHEBRETINSAE M & T Zula Rest. + Sup Wagon | 1935-1937 9TH ST NW | | 3,051 | 0.07 | 06/04/1991 | 2007 | $210,000 | CM1 | 1,421 |

Jim Shay
1935



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000495

# REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (this "**Agreement**") is made and entered into as of the ___ day of January 2007, by and between M Ghebretinsae and T Ghebretinsae (collectively, the "**Seller**"), and Moddie Turay Company, LLC, a Delaware limited liability company duly qualified to transact business in the District of Columbia, or its nominee (the "**Purchaser**").

## RECITALS:

WHEREAS, Seller is the owner of certain real property located in the District of Columbia known as 1933 - 1935 9th Street, N.W., together with all improvements thereon and appurtenances thereto (collectively, the "**Property**"); and

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to buy from Seller, the Property, subject to and in accordance with the terms hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and conditions hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

## ARTICLE I

### Definitions

1.1 **Defined Terms.** In addition to the other terms defined in this Agreement, as used herein the following terms shall have the meanings indicated:

"**Escrow Agent**" shall mean Answer Title Company.

"**Title Insurer**" shall mean a title insurance company selected by Purchaser which is duly licensed to transact business in the District of Columbia

## ARTICLE II

### Agreement to Convey; Purchase Price: Earnest Money

2.1 **Purchase and Sale.** Subject to the terms of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to buy from Seller, the Property.

2.2 **Purchase Price.** The purchase price for the Property (the "**Purchase Price**") shall be
subject to adjustment and payable by Purchaser to Seller as hereinafter provided.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000496

2.3 **Earnest Money**. In order to secure the obligations of Purchaser hereunder, Purchaser shall deposit with Escrow Agent, within five (5) business days after the date hereof, ( ), as earnest money (the **"Earnest Money"**). At Closing, the Earnest Money shall be applied against the Purchase Price.

2.4 **Payment**. At Closing, Purchaser shall pay to Seller the Purchase Price, plus or minus prorations and adjustments provided for herein, in immediately available funds.

## ARTICLE III

## Representations, Warranties, and Covenants

3.1 **Seller's Representations, etc.** Seller hereby represents and warrants to, and covenants with, Purchaser as follows (which shall survive Closing):

(a) Seller has good and marketable fee simple title to the Property, and there are no unrecorded easements or agreements which affect the Property. There are no leases in effect with respect to the Property except those described on Exhibit A attached hereto, true and complete copies of which are simultaneously herewith being provided by Seller to Purchaser.

(b) Seller is not a foreign person within the meaning of Sections 1445 and 7701 of the Internal Revenue Code.

(c) The information to be furnished by Seller on which the prorations at Closing will be based shall be true and complete in all material respects.

(d) Between the date, hereof and the Closing Date, Seller will: (1) continue to operate and maintain the Property in good condition and repair; and (2) permit Purchaser, its agents and representatives to inspect the Property at all reasonable times.

## ARTICLE IV

## Contingencies; Closing

4.1 Inspection Contingency.

(a) Purchaser and its agents and representatives shall have an initial period of up to ninety (90) days from the date hereof (the **"Inspection Period"**), at any time and from time to time, to enter upon the Property and to inspect, examine, survey, and conduct soil tests, borings, engineering and architectural tests and studies and any other examinations or studies on and of the Property which Purchaser may desire, and otherwise to do that which, in Purchaser's sole opinion, is necessary to determine the suitability of the Property for Purchaser's intended use.

(b) Purchaser at its sole option may extend the Inspection Period for an additional period of up to ninety (90) days, by giving written notice to Seller prior to the then



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000497

extant end of the Inspection Period. During such additional period or portion thereof, Purchaser shall reimburse Seller for an amount equal to Seller's net expenses for holding the property during such extended period (such amount being ~~the excess~~ of Purchaser's mortgage costs, taxes and insurance ~~over any income generated by the Property, but excluding any balloon payments or other non-recurring charges~~); provided however, that, in the event that the Parties proceed to Closing, all such payments shall be credited toward the Purchase Price.

MG TG

(c) If Purchaser, in Purchaser's sole discretion, deems the Property suitable for Purchaser's intended use, Purchaser shall so notify Seller prior to the expiration of the Inspection Period (as the same may be extended from time to time pursuant to this Agreement, and this Section 4.1(e) shall thereafter be of no further force or effect. If Purchaser fails to so notify Seller prior to the expiration of the Inspection Period (as may be extended) or earlier gives Seller notice that the Property is not suitable for any reason, or for no reason, this Agreement shall terminate, ~~The Earnest Money shall be returned to Purchaser~~, Purchaser shall repair any damage done to the Property by Purchaser in conducting its studies and tests during the Inspection Period, and neither party shall thereafter have any further rights, obligations, or liabilities hereunder, except any which by their express terms survive termination hereof.

MG TG

(d) Purchaser agrees to indemnify, defend, and hold harmless Seller from and against any and all losses, costs, claims, demands, suits, causes of actions, proceedings, and liabilities incurred by or asserted against Seller as a result of Purchaser's entry on the Property pursuant to Section 4.1(a) and with respect to which Seller was not contributorily negligent. The provisions of this Section shall survive termination hereof or Closing.

4.2 **Closing**. The closing of this transaction (the **"Closing"**) shall occur at the offices of Purchaser's counsel at 10:00 a.m. on a date which Purchaser, at its sole option, may designate by at least five (5) days written notice to Seller, but which shall in no event be more than fifteen (15) days after the expiration of the Inspection Period, as extended from time to time pursuant to this Agreement (the **"Closing Date"**).

4.3 **Intentionally Deleted**.

4.4 **Items to be Delivered to Purchaser at Closing**. At Closing, Seller shall deliver or cause to be delivered to Purchaser, through a joint Seller/Purchaser escrow with the Escrow Agent (the **"Escrow"**) or otherwise, the following:

(a) a special warranty deed, conveying good and marketable fee simple title to the Property to Purchaser;

(b) the originals of all Permits held by Seller, together with an assignment thereof to Purchaser in form and substance reasonably acceptable to Purchaser;

(c) an affidavit stating Seller's U.S. taxpayer identification number and that Seller is a "United States person", as defined by Sections 1445(f)(3) and 7701(b) of the Internal Revenue Code;

(d) Seller's certificate to Title Insurer and Purchaser that there are no unpaid bills for improvements made prior to the Closing Date;



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(e) such other seller's affidavits or undertakings acceptable to Title Insurer as it may require to issue the Owner's Policy;

(f) fully executed counterparts of an agreed upon closing and proration statement (the **"Closing Statement"**);

(g) fully executed counterparts of any applicable state, county and local transfer tax declarations (the **"Tax Declarations"**);

(h) possession of the Premises, free and clear of all possessory interests and free of any Hazardous Materials, debris and trash; and

(i) such other documents and instruments as may be required by any other provision of this Agreement or as may be reasonably necessary to consummate the transactions contemplated hereby.

4.5 **Items to be Delivered to Seller at Closing**. At Closing, Purchaser shall deliver or cause to be delivered to Seller, through the Escrow or otherwise, the following:

(a) the Purchase Price, plus or minus prorations and adjustments as provided in this Agreement;

(b) fully executed counterparts of the Closing Statement;

(c) fully executed counterparts of the Tax Declarations; and

(d) such other documents and instruments as may be required by any other provision of this Agreement or as may be reasonably necessary to consummate the transactions contemplated hereby.

4.6 **Prorations**. At Closing, Seller and Purchaser shall prorate general real estate taxes for the year of Closing and any special assessments in effect with respect to the Property. The provisions of this Section shall survive Closing.

4.7 **Expenses**. All fees for obtaining and recording releases of liens and encumbrances shall be paid by Seller. All recordation and transfer taxes and fees, and fees for recording the deed, and any Escrow or similar closing fees shall be split equally between Seller and Purchaser. Each party shall pay its own legal fees. All other costs and expenses shall be paid as provided in this Agreement or, in the absence of such provision, in accordance with local customary practice. The provisions of this Section shall survive Closing.

## ARTICLE V

## Defaults

5.1 **Default by Seller**. In the event of a default by Seller, Purchaser may, at its sole option, (i) terminate this Agreement by written notice to Seller, in which event the Earnest Money and all other sums then paid shall be returned to Purchaser, and neither party



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000499

shall have any further rights, obligations or liabilities hereunder, except any which by their express terms survive termination hereof, or (ii) pursue the remedy of specific performance or any other remedy available at law or in equity.

5.2 **Default by Purchaser**. In the event of a Default by Purchaser hereunder, Seller shall be entitled, as Seller's sole and exclusive remedy, to terminate this Agreement by written notice to Purchaser, in which event the Earnest Money shall be paid to Seller as liquidated damages; thereafter, neither party shall have any further rights, obligations, or liabilities hereunder. The parties agree that the actual damages in such event are uncertain in amount and difficult to ascertain, and that said amount of liquidated damages was reasonably determined.

## ARTICLE VI

## Condemnation/Risk of Loss

6.1 **Risk of Loss**. Risk of loss prior to Closing remains with Seller.

## ARTICLE VII

## General Provisions

7.1 **Brokers**. Seller represents and warrants to Purchaser, and Purchaser represents and warrants to Seller, that, except as contemplated by Section 4.3 for which Seller shall bear sole liability, there is no broker or other intermediary of any kind with whom such party has dealt in connection with this, and each party agrees to indemnify, defend, and hold harmless the other with respect to such representation and warranty.

7.2 **Notices**. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed received (a) upon receipt, however sent, or (b) upon refusal, if sent by prepaid nationally recognized overnight courier service or locally recognized messenger service, or by postage paid U.S. Mail, overnight service or registered or certified, return receipt requested, addressed as follows:

If to Seller:

M Ghebretinsae and T Ghebretinsae
1933 9th Street, N.W.
Washington, D.C. 20001

If to Purchaser:

Moddie Turay Company, LLC
2500 Q Street, N.W., Suite 338
Washington, D.C. 20007
Attention: Moddie Turay, President



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000500

with a copy to:

Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W., Suite 500
Washington, D.C. 20004
Attention: Michael S. Kosmas, Esq.

Either party may change its addresses for purposes of notice hereunder by giving written notice thereof as aforesaid.

7.3 **Entire Agreement**. This Agreement, including all exhibits attached hereto, constitutes the entire agreement of the parties with respect to the subject matter hereof, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants with respect thereto not contained herein.

7.4 **Amendment**. This Agreement may be amended only by a written instrument executed by all of the parties hereto.

7.5 **Waivers**. No waiver of any condition or provision of this Agreement by any party shall be valid unless in writing signed by such party. No such waiver shall be deemed or construed as a waiver of any other or similar provision or of any future event, act, or default.

7.6 **Time Periods**. In the computation of any period of time provided for in this Agreement, the day of the act or event from which such period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall run until the end of the next business day.

7.7 **Severability**. If any provision of this Agreement is deemed unenforceable in whole or part, such provision shall be limited to the extent necessary to render the same valid or shall be deemed excised from this Agreement and replaced by a valid provision as close in intent as the excised provision, and this Agreement shall be construed as if said provision had been incorporated herein as so limited or as so replaced, as the case may be.

7.8 **Assignment; Binding Effect**. Purchaser may assign this Agreement without the consent of Seller, provided that any such assignee shall assume in writing the obligations of Purchaser hereunder. Upon the written assignment by Purchaser and assumption by the assignee, Purchaser shall be relieved of all further obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

7.9 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to conflicts of laws.

7.10 **Construction of Agreement**. In no event shall this Agreement be construed more strongly against any one person solely because such person or its representative acted as draftsman hereof.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000501

FOIA CONFIDENTIAL TREATMENT REQUESTED

7.11 **Survival**. The provisions of this Article VII shall survive termination hereof or Closing.

7.12 **UST Disclosure**. Pursuant to Section 8-113.02(g) of the District of Columbia Official Code, to Seller's Knowledge, there are no underground storage tanks (as defined in the District of Columbia Code) that (i) are located at the Property, or (ii) have been removed from the Property during the period of Seller's ownership of the Property.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Real Estate Purchase Agreement to be executed as of the date first written above.

**SELLER:**

**M Ghebretinsae**

01/25/2007

**T Ghebretinsae**

01/25/2007

**PURCHASER:**

**Moddie Turay Company, LLC**

By:
Name: Moddie Turay
Title: President

WMATA-INV 000502

# REAL ESTATE PURCHASE AND SALE AGREEMENT

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

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

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

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

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

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

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

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



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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000503

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

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

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

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

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

(i) rents, as and when collected;

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

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

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

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



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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000504

9. **Closing Documents and Deliveries.**

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

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

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

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

(iv) A closing statement, executed by Seller;

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

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

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

(iii) A closing statement, executed by Purchaser.

10. **Representations and Warranties.**

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

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



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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000505

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

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

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

If to Seller: _____

_____

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

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

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



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

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

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

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

**17.** **Reserved.**

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

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

**"SELLER"**

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

**"PURCHASER"**

BANNEKER VENTURES, LLC

By: _____
Name: Omar Karim
Title: Principal
Date: _____



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FOIA CONFIDENTIAL TREATMENT REQUESTED

**EXHIBIT A**

**DESCRIPTION OF THE PROPERTY**

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# REAL ESTATE PURCHASE AND SALE AGREEMENT

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

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

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

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

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

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000509

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

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

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

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

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

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

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

(i) rents, as and when collected;



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000510

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

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

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

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

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

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

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

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

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000511

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

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

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

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

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

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

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

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

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000512

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

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

**9. Purchaser's Representations, Warranties and Covenants.**

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

**10. Closing Documents and Deliveries.**

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

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

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

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

(iv) A closing statement, executed by Seller;

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

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

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

(iii) A closing statement, executed by Purchaser.

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000513

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

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

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

If to Seller:

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

If to Purchaser:

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

And to:

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

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000514

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

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

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

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

**17.** **Reserved.**

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000515

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

**"SELLER"**

TELES PROFESSIONAL SERVICES LLC

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

**"PURCHASER"**

BANNEKER VENTURES, LLC

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



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000516

OfficeMax®

BACOC Guaranty

7/09

As of this date BofACDC has shareholders equity liquid assets of $ wholly under my control.

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**UNCONDITIONAL CONSTRUCTION COMPLETION**

**GUARANTY AGREEMENT**

THIS UNCONDITIONAL CONSTRUCTION COMPLETION GUARANTY ("Guaranty"), made as of the _____ day of September, 2009 ("Effective Date"), by BANC OF AMERICA COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation ("Guarantor"), to and for the benefit of WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324, Maryland Acts of General Assembly, Chapter 869-1965, Virginia Acts of Assembly, Chapter 2-1966, and Resolution of D.C. Board of Commissioners adopted November 15, 1966 ("WMATA").

?

WHEREAS, The Jazz @ Florida Avenue, ~~LLC~~, a District of Columbia limited liability company ("Developer"), which is an affiliate of Guarantor, has entered into a certain Lease Agreement of even date herewith ("Lease") with WMATA, pursuant to which Developer has agreed, among other things, to develop the Project upon the conditions and terms set forth therein; and

WHEREAS, as a condition precedent to the execution of the Lease, Guarantor executes and delivers this Guaranty of completion of the development and construction of the Project pursuant to the terms of the Lease; and

WHEREAS, Guarantor is an ~~affiliate~~ managing member of the Developer and, having a financial interest in the Developer and the Project, has agreed to execute, acknowledge, and deliver this Guaranty; and

NOW THEREFORE, in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Guarantor hereby undertakes, guarantees, covenants and agrees as follows:

~~FOR VALUE RECEIVED, and to induce XXXXXX, a XXXXX limited liability limited partnership (the "*Limited Partner*") to become XXXXXXXX a limited partnership formed under the laws of the District of Columbia (the "*Partnership*"), by entering into a First Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement") and to induce the Partnership to obtain financing for the construction of a one hundred and thirty four (134) unit residential project in twelve (12) buildings located on one site in Washington, D.C. (the "*Project*"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and BANC OF AMERICA COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation, (the "*Guarantor*"), as of XXXXX, hereby undertake, guarantee, and agree as follows:~~



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000518

1. ~~1.~~ **Completion of ~~Construction~~Project.** The Guarantor hereby absolutely and unconditionally guarantees to WMATA the following:

a. The due and punctual Final Completion of the Project in accordance with the Approved Design and Construction Drawings upon the terms and conditions set forth in the Lease, the Project Schedule, and all of the Transaction Documents; and

b. The full and prompt payment and performance of all liabilities, obligations, covenants, agreements, and responsibilities of the Developer under the Joint Development Agreement, the Lease, and all of the Transaction Documents during the Term of this Guaranty.

~~a. the due and punctual construction (the "*Work*") of the Project in accordance with the terms and requirements of the Partnership Agreement (including the payment of Development Advances by the General Partner under Section 5.13 of the Partnership Agreement), the Loan Documents and the Project Documents, free and clear of any liens or claims of liens (except for the liens specifically permitted by the Partnership Agreement, the Loan Documents and the Project Documents), in the manner and within the time necessary to comply with all of the terms, covenants and conditions of the Partnership Agreement, the Loan Documents and the Project Documents, including all future amendments thereto; and~~

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~~**2. Should the cost of completion of the Work exceed the amounts available therefor in loan proceeds and Partnership funds, or should any liens be filed against the Partnership Property or the Project (except for liens specifically permitted by the Partnership Agreement, the Loan Documents and the Project Documents) prior to completion of or in connection with the Work, Guarantor hereby absolutely and unconditionally guarantees the prompt, absolute, and unconditional payment of such sums necessary to complete the Work and discharge such liens. All sums due and payable hereunder by Guarantor shall be payable on demand of the Partnership. Any amounts paid by Guarantor shall not be refundable to Guarantor, but shall be treated as a payment to the Partnership in consideration for the Guarantor's receipt of the Development Fee.**~~

2. ~~2.~~ **Acknowledge and Consent.**

a. The Guarantor hereby unconditionally acknowledges and consents to the terms, covenants, and conditions of the Lease, the Joint Development Agreement, the Approved Design and Construction Drawings, the Project Schedule, and the Transaction Documents; and



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000519

b. Guarantor's obligations hereunder shall not be affected by any errors or omissions of any contractor, architect, subcontractor, material supplier, consultant, attorney, government agency, or any agent or employee of them in the supervision or performance of work on the Project, it being understood that such risk is assumed by the Guarantor.

3. **Continuing Guaranty.** It is expressly understood and agreed that this is a current and continuing guaranty and that the obligations of Guarantor hereunder ~~are joint and several and~~ shall be absolute under any and all circumstances, without regard to the validity, regularity, modification, or enforceability of the ~~Partnership Agreement, the Loan Documents, the Project Documents~~Lease, the Joint Development Agreement, the Transaction Documents, any Project finance documents, any partnership agreements, or any other instruments executed in connection therewith.

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4. ~~3.~~ **Certain Waivers.**

a. To the extent permitted by law, Guarantor hereby waives notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, and any and all notices of nonpayment, non-performance, and non-observance, and other proof, and notice of demand; and

b. Guarantor hereby waives any right to require WMATA to proceed against or exhaust its recourse against Developer or to pursue any other remedy in its power before being entitled to performance from Guarantor or before proceeding against Guarantor. Guarantor hereby waives any defense based upon an election of remedies by WMATA which destroys or otherwise impairs the subrogation rights of Guarantor or the right of Guarantor to proceed against Developer or others for reimbursement, or both; and

c. Guarantor hereby waives all suretyship defenses and defenses in the nature thereof~~.~~; and

d. Guarantor hereby waives any defense that may arise by reason of (i) the incapacity, lack of authority, death or disability of Developer or Guarantor; (ii) the revocation or repudiation hereof by Guarantor, or the revocation or repudiation hereof by Developer, of Developer's obligations under the Lease; or (iii) the failure of WMATA to file or enforce a claim against the estate (either in administration, bankruptcy, or any other proceeding) of Developer or Guarantor; and

e. Guarantor hereby waives any defense based upon any taking, modification, or release of any collateral or guaranties, or any failure to perfect any security interest in, or the taking of, or failure to take



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000520

any other action with respect to any collateral securing payment or performance hereunder; and

~~a.~~f. Guarantor hereby waives any rights or defenses based upon an offset by Guarantor against any obligation now or hereafter owed to Guarantor by Developer, it being the intention hereof that Guarantor shall remain liable, to the extent set forth herein, until the full performance of the obligations hereunder.

~~3.~~5. **Defenses Not Valid.** Guarantor further agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected, or impaired by any of the following:

a. By reason of the assertion by the ~~Partnership or any Partner thereof~~ Developer of any rights or remedies under or with respect to the ~~Partnership Agreement~~Lease, or any other instruments executed in connection therewith, against any Person obligated thereunder~~,~~; or

b. By reason of any failure to exercise, or delay in exercising, any such right or remedy or any right or remedy hereunder or in respect to this Guaranty and Guarantor hereby waives the defense of statute of limitations in any action hereunder; or

~~a.~~c. By reason of the adjudication in bankruptcy of this Guaranty or any guarantor hereunder, any Person obligated under the ~~Partnership Agreement~~Lease or any other instruments executed in connection therewith, or the filing of a petition for any relief under any federal, state, or local bankruptcy law by any such Person.

~~4. **Effect of Certain Assignments, Etc.** Guarantor further covenants that this Guaranty shall remain and continue in full force and effect as to any assignment, modification, extension, or renewal of the Loan Documents, the Project Documents or the release or exchange of any property covered by the Loan Documents or other collateral for any of the Loans, and notwithstanding any amendment of the Partnership Agreement or transfer of the Interest of any Partner thereunder, and that indulgences or forbearance may be granted under any or all of such documents, all of which may be made, done, or suffered without notice to or further consent of the Guarantor.~~

~~5. **Enforcement.** Guarantor hereby agrees that this is a guaranty of payment, not collection, and that this Guaranty may be enforced by the Partnership or any Partner thereof against Guarantor without first resorting to or exhausting any other right or remedy; *provided, however,* that nothing herein contained shall prevent the Partnership or any Partner from suing to enforce the provisions of the Partnership Agreement or from exercising any rights thereunder.~~

6. **Reimbursement of Expenses.** Guarantor agrees that, in the event this Guaranty is placed in the hands of ~~an~~ one or more attorneys for enforcement, collection, collection through legal proceedings affecting creditors' rights, or any other proceedings



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000521

whatsoever in connection with this Guaranty, or any collateral subject hereto, then Guarantor ~~will~~ shall reimburse WMATA, or other party ~~the Partnership and the Partners~~ seeking such enforcement, on demand for all expenses incurred in enforcing this Guaranty, including reasonable attorneys' fees, costs, and expenses, (whether or not suit is brought hereon) and all such expenses incurred in connection with any trial, appeal, arbitration, or bankruptcy proceedings.

7. **Default.** If Guarantor shall fail or refuse to perform or continue performance of all of Guarantor's obligations under this Guaranty, then WMATA ~~the Partnership and/or the Partners thereof~~ shall, at ~~their~~ its sole option, have the right to take, or cause, all necessary action to complete the work described in Section 1 above~~Work in accordance with the terms of the Partnership Agreement, the Loan Documents,~~ and ~~the Project Documents~~ to discharge any liens filed against the Project or the ~~land underlying the Project~~ Lease Premises and to take any other actions necessary or advisable to cure the Guarantor's default hereunder, either before or after the exercise of any other remedy. The amounts of any and all expenditures and advances so made by ~~the Partnership or any Partner~~ WMATA shall be due and payable by Guarantor immediately upon the incurring or advancement thereof and, if not then paid, shall bear interest at ~~two~~ four percent (~~2~~4%) above the prime rate then in effect in *The Wall Street Journal.*

8. **Term.** Except as provided herein, this Guaranty shall terminate three (3) months after the last to occur of the following:

a. A final certificate of occupancy is issued for the Project following the completion of construction of the Project in accordance with the ~~Loan Documents and Project Documents~~Approved Design and Construction Documents;

b. Final payment is made under the construction contracts, and the contractor acknowledges in writing that the contractor and all subcontractors have been paid in full and have no further claims under the construction contracts; and

c. The statutory period within which the contractor and any subcontractors under the construction contracts may file liens against the ~~Partnership Property or the~~ Project has expired; and

d. ~~Loan Conversion~~Final Completion of the Project.

Notwithstanding the foregoing, at any time within three (3) months after the termination of this Guaranty as provided in this Paragraph ~~9~~8, ~~the Partnership or any Partner thereof~~ WMATA may give written notice (the "***Guaranty Notice***") to Guarantor of any outstanding or disputed amount due to WMATA or any third party that relates to the Joint Development Agreement, the Lease, the Transaction Documents, or construction of the Project and may reserve its rights hereunder with respect to such outstanding amount. In the event ~~the Partnership or any Partner thereof~~ WMATA gives such Guaranty Notice to the Guarantor, this Guaranty shall survive to the extent of the matters described in such



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000522

Guaranty Notice and until such matters have been fully paid or resolved to the satisfaction of ~~the Partnership and the Partners that gave such notice~~WMATA. In the event this Guaranty is extended beyond the term by such Guaranty Notice, this Guaranty shall not terminate until such time that WMATA provides Notice of satisfaction of the matters described in the Guaranty Notice.

9. **Assignment.** This Guaranty shall not be assignable by Guarantor without WMATA's prior written approval.

10. **Notices.** ~~A~~All notices, demands, requests and other communications required pursuant to or in connection with the provisions of this Guaranty ("Notice") shall be in writing and shall be deemed to have been properly given or served for all purposes (i) if sent by Federal Express or other nationally recognized overnight carrier for next business day delivery, on the actual date of delivery by such carrier, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified mail, return receipt requested postage prepaid, on the Fifth (5th) Business Day following the date of mailing addressed as follows~~ll notices to the parties hereto shall be given in the manner and (where applicable) to the addresses specified on Exhibit A-6 to the Partnership Agreement, as the same may be amended from time to time by Notice to the parties hereto. Notices to the Partnership shall be sent in care of the General Partner of the Partnership with a copy to the Limited Partner~~.

~~c.~~a. *Notices to Guarantor shall be sent to*:

Banc of America Community Development Corporation
730 Fifteenth Street, N.W.
Washington, DC 20005-1099
Attn: Maryann Dillon, Senior Vice President
Tel: (202) 624-5160;
Fax: (202) 624-5166

b. *Notices to WMATA shall be sent to*:

Washington Metropolitan Avenue Transit Authority
Attn: Director of Station Area Planning and Asset Management
600 Fifth Street, NW
Washington, D.C. 20001
Phone: 202-962-2616
Fax:

~~9.~~11. **Intended Beneficiary.** ~~The parties intend that the Limited Partner of the Partnership be a third party beneficiary of this Agreement and that the Limited Partner, in such capacity, may enforce the Guarantor's obligations hereunder.~~ No ~~person~~ person other than ~~the Limited Partner and the Partnership~~ WMATA may directly or indirectly rely upon or enforce the provisions of the Agreement, whether as a third party beneficiary or otherwise.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000523

~~10. **Binding Agreement; Partnership Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Partnership Agreement.~~

~~11.~~12. **Burden and Benefit.** This Guaranty and each covenant and agreement contained herein shall be binding upon Guarantor, its permitted successors and assigns, and shall inure to the benefit of WMATA, ~~the Partnership, the Partners thereof,~~ and ~~their respective~~ its successors and assigns.

13. **Authority.** Guarantor represents and warrants to WMATA the following:

a. The Person executing and delivering this Guaranty on Guarantor's behalf is duly authorized to so act; and

b. The Guarantor has the power and authority to enter into this Guaranty; and

c. All action required to authorize Guarantor to enter into this Guaranty has been duly taken.

14. **Entire Agreement.** This Guaranty constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior such agreements and understandings, both written and oral. This Guaranty may not be modified or amended except by a written instrument signed by WMATA and Guarantor.

~~12.~~15. **Severability of Provisions.** ~~Each provision of this Guaranty shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of this Guaranty is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Guaranty that are valid.~~The Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Guaranty and the remaining provisions of this Guaranty shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Guaranty.

~~13.~~16. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Guaranty shall not operate or be construed to be a waiver of any subsequent breach.

~~14.~~17. **Defined Terms.** Except as expressly provided herein, terms used in this Guaranty ~~Agreement~~ with initial capital letters shall have the meanings set forth in the ~~Partnership Agreement~~Lease.

~~15.~~18. **Governing Law.** This Guaranty shall be governed, construed, and interpreted as to validity and enforcement and in all other respects in accordance with the laws of the District of Columbia and cannot be modified, amended, or terminated orally.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000524

~~16. **Binding Agreement.** This Agreement shall be binding on the parties hereto, and their heirs, executors, personal representatives, successors and assigns.~~

~~17.~~19. **Headings.** All headings in this Guaranty are for convenience of reference only and are not intended to qualify the meaning of any provision of this Guaranty.

~~18.~~20. **Terminology.** All personal pronouns used in this Guaranty, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

~~19.~~21. **Counterparts.** This Guaranty may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

~~20.~~22. **Guaranty of Payment.** Notwithstanding any other provision of this Guaranty~~Agreement~~:

~~a.~~

a. ~~(i) t~~This ~~Agreement~~ Guaranty constitutes a guaranty of payment, not solely a guaranty of collection; and

b. ~~the~~ This Guaranty ~~guaranty in this A~~agreement is primary and not conditional.

**[SIGNATURES BEGIN ON THE FOLLOWING PAGE ]**



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000525

IN WITNESS WHEREOF, Guarantor has duly executed this Unconditional Construction Completion Guaranty Agreement as of the date first above written.

BANC OF AMERICA COMMUNITY
DEVELOPMENT CORPORATION,
Guarantor

_____ By:_____
Name:_____
Title:_____



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000526

I spoke with Maurice Perry today and told him that the 6/25 BACDC supplementary information relative to a guarantee was short of an independent financial audit. He agreed but said he could do no more. He will send me a form of the BACDA guarantee, however. I told him that would be good but I still withheld satisfaction relative to the assets behind the guarantee.

RPD

7/1/09

## Doggett, Rosalyn

I have

**From:** Maurice Perry [maurice.perry@bankofamerica.com]
**Sent:** Thursday, June 25, 2009 2:16 PM
**To:** Doggett, Rosalyn
**Cc:** thicks@bannekerventures.com; eric.smart@bolansmart.com
**Subject:** BACDC Financials
**Attachments:** BACDC 2008 Financial Cert.pdf

7/1/09
Maurice: What I have given you has been sufficient for other municipalities

Ms. Doggett,

As requested, please find attached supplementary financial data on Banc of America CDC.

Should you require additional information please give me a call to discuss.

Thanks.
Maurice Perry
Banc of America CDC

---

**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.



FOIA CONFIDENTIAL TREATMENT REQUESTED

7. STABILIZATION – Please explain how the results of the outside appraisal will affect Stabilization? Has the new appraisal been ordered? Does the appraisal company have experience doing appraisals that include affordable housing? When do you expect to have the results of the new appraisal? Pursuant to WMATA, issue remains contingent upon results of Appraisal.

8. AFFORDABLE HOUSING – We are in agreement to delete "minimum". 20% is fine. We are in the process of reviewing the IZ regulations. Based on our preliminary review of the IZ regulations, the regulations will apply to our development. Moreover, we will be required to set aside 8% of the residential gross floor area for eligible moderate-income (between 51% and 80% of Metropolitan Statistical Area Median). We will satisfy this requirement with the Project's 20% affordable component.

9. TERM – We will agree to a 99 year lease term with the land being revalued as if vacant after 60 years. After 60 years, the base lease rate will be 5% of the land value. Also, after the first 60 years, we could agree to pay an annual escalation of 1.5%. Following the first 99 years, we would like an option to extend for an additional 99 years under the same terms of the final 39 terms of the initial lease.

10. BASE RENT – See response to #9 above. Developer agrees to WMATA's offer of 99 year lease with the land being revalued after 60 years and Developer paying 5% of the land value in lease payments.

11. CAPITAL EVENTS – We agree that WMATA participates in 10% of capital event proceeds following: (a) repayment of all debt (including any subordinated debt provided by a government agency), (b) repayment of principal of member loans/non-tax credit equity, (c) payment of 20% return on member loans/non-tax credit equity; and (d) payment of transaction costs. Parties in agreement with (a), (b) and (d). WMATA to provide any comments to (c) by July 2, 2009.

Please confirm receipt of this email. We look forward to speaking with you soon. Thanks.
Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
Office: (202) 393-5460
Fax: (202) 347-9047
Cell: (202) 486-1863
thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED

Bank of America

**Ownership Structure:**

Banc of America Community Development Corporation (BACDC) is 100% owned by of Bank of America N.A. (BANA). BANA is 100% owned by Bank of America Corporation (BAC).

**Financial Information Availability:**

BACDC does not produce separate audited financial statements for distribution.

BANA is monitored by the Federal Financial Institution Examination Council, and a "Call Report" is filed on a quarterly basis. This report is accepted by bank regulators, and there are no substantial differences from this Call Report and GAAP financial statements per BANA's Accounting Policy Group. Also, the Call Report does provide much more detail with related schedules than a GAAP financial statement would require. The Form 10K's for BAC are publicly available. Financial Statements for BANA can be obtained on the FDIC website. No information provided herein is meant to imply BANA is or will be liable for the obligations of BACDC.

A compilation of activity from the general ledger shows BACDC's annual Net Income in excess of $75 million for 2008 and Shareholder's Equity as greater than $896 million at the end of 2008. This information is not audited and does not include any footnote disclosures.

BANK OF AMERICA COMMUNITY DEVELOPMENT CORPORATION

Joni B. Pesta
Treasurer of BACDC

**Bank of America**

Unaudited

**Bank of America Community Development Corporation**
**Change in Annual Net Income**
**As of December 31, 2008**

| | Annual Net Income | % Change |
|---|---|---|
| **Year 2005** | $83MM | 12.2% |
| **Year 2006** | $109MM | 31.3% |
| **Year 2007** | $78MM | (28%) |
| **Year 2008** | $75MM | (3.8%) |

**Bank of America Community Development Corporation**
**Change in Shareholders' Equity**
**As of December 31, 2008**

| | Shareholders' Equity | % Change |
|---|---|---|
| **Year 2005** | $709MM | 28.9% |
| **Year 2006** | $821MM | 15.8% |
| **Year 2007** | $822MM | .128% |
| **Year 2008** | $896MM | 9% |

## Doggett, Rosalyn

**From:** Doggett, Rosalyn
**Sent:** Friday, June 26, 2009 5:01 PM
**To:** 'okarim@bannekerventures.com'
**Cc:** Maurice' 'Perry; Montague, Joshua W.
**Subject:** RE: items from meeting the other day

Josh was not able to get to our insurance super this week given the accident earlier this week

I said I would get back to you on capital events but there is one item I need to check first. I can say, however, that, in principle, we would agree to subordinate city loans being paid back first before our participation; however, it would depend on the structure of the loan. We would not agree, for example, to be behind a 30-year balloon or indefinite preferred returns on equity.

Though we do not share appraisals we can inform you of basic results.

The financial information on BACDC, as guarantor, needs more work; I can speak with Maurice next week about it.

---

**From:** Omar Karim [mailto:okarim@bannekerventures.com]
**Sent:** Friday, June 26, 2009 3:55 PM
**To:** Doggett, Rosalyn
**Subject:** Re: New Appraisal for Florida Avenue parcels

Thank you.

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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**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



FOIA CONFIDENTIAL TREATMENT REQUESTED

# Jazz @ Florida Avenue - Method and Schedule for Moving Forward

Omar Karim [okarim@bannekerventures.com]

**Sent:** Wednesday, July 08, 2009 11:39 AM

**To:** Doggett, Rosalyn

**Cc:** Maurice Perry [maurice.perry@bankofamerica.com]; Adam Rashid [arashid@bannekerventures.com]; Tiwana Hicks [thicks@bannekerventures.com]; Eric Smart [eric.smart@bolansmart.com]; Moneme, Emeka; Montague, Joshua W.; Meister, Mark K.; Bottigheimer, Nat

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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 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.

updated doc by 24th

As for a timeline, if we can push to ~~have~~ give you all 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.

(1) our comments by 24th
(2) all comments by the 5th

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 000533

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**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

---

**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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000534

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.

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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.

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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 000535

# Jazz: BACDC Construction Guaranty

Maurice Perry [maurice.perry@bankofamerica.com]

**Sent:** Wednesday, July 08, 2009 12:07 PM

**To:** Doggett, Rosalyn

**Cc:** okarim@bannekerventures.com; thicks [thicks@bannekerventures.com]

**Attachments:** BACDC Guaranty.pdf (28 KB)

---

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

Not a guarantee to WMATA
appears to be a guar. to partner



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000536

**Exhibit G**

**UNCONDITIONAL CONSTRUCTION COMPLETION GUARANTY AGREEMENT**

FOR VALUE RECEIVED, and to induce XXXXXXXXXXXXXX, a Delaware limited liability limited partnership (the "***Limited Partner***") to become a limited partner of XXXXXXXXX, a limited partnership formed under the laws of the District of Columbia (the "***Partnership***"), by entering into a First Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement") and to induce the Partnership to obtain financing for the construction of a one hundred and thirty four (134) unit residential project in twelve (12) buildings located on one site in Washington, D.C. (the "***Project***"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ~~and~~ BANC OF AMERICA COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation, (the "***Guarantor***") and XXXXXXXXXXXX, a District of Columbia limited liability company (the "***General Partner***"), as of the ____ day of December, 2005, hereby undertake, guarantee, and agree as follows:

1st It does not read to make Sense

1. **Completion of Construction.** The Guarantor hereby absolutely and unconditionally guarantees the due and punctual construction (the "***Work***") of the Project in accordance with the terms and requirements of the Partnership Agreement (including the payment of Development Advances by the General Partner under Section 5.13 of the Partnership Agreement), the Loan Documents and the Project Documents, free and clear of any liens or claims of liens (except for the liens specifically permitted by the Partnership Agreement, the Loan Documents and the Project Documents), in the manner and within the time necessary to comply with all of the terms, covenants and conditions of the Partnership Agreement, the Loan Documents and the Project Documents, including all future amendments thereto. Should the cost of completion of the Work exceed the amounts available therefor in loan proceeds and Partnership funds, or should any liens be filed against the Partnership Property or the Project (except for liens specifically permitted by the Partnership Agreement, the Loan Documents and the Project Documents) prior to completion of or in connection with the Work, Guarantor hereby absolutely and unconditionally guarantees the prompt, absolute, and unconditional payment of such sums necessary to complete the Work and discharge such liens. All sums due and payable hereunder by Guarantor shall be payable on demand of the Partnership. Any amounts paid by Guarantor shall not be refundable to Guarantor, but shall be treated as a ~~payment to the Partnership in consideration for the Guarantor's~~ receipt of the Development Fee.

2. **Continuing Guaranty.** It is expressly understood and agreed that this is a continuing guaranty and that the obligations of Guarantor hereunder are joint and several and shall be absolute under any and all circumstances, without regard to the validity, regularity, or enforceability of the Partnership Agreement, the Loan Documents, the Project Documents, or any other instruments executed in connection therewith.

3. **Certain Waivers.** To the extent permitted by law, Guarantor hereby waives notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, and any and all notices of nonpayment, non-performance, and non-observance, and other proof, and notice of demand, and Guarantor hereby waives all suretyship defenses and defenses in the nature thereof.

4. **Defenses Not Valid.** Guarantor further agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected, or impaired (a) by reason of the assertion by the Partnership or any Partner thereof of any rights or remedies under or with respect to the Partnership Agreement, or any other instruments executed in connection therewith, against any Person obligated thereunder, (b) by reason of any failure to exercise, or delay in exercising, any such right or remedy or any right or remedy hereunder or in respect to this Guaranty, or (c) by reason of the adjudication in bankruptcy of this Guaranty or any guarantor hereunder, any Person obligated under the Partnership Agreement, or the filing of a petition for any relief under any federal, state, or local bankruptcy law by any such Person.

5. **Effect of Certain Assignments, Etc.** Guarantor further covenants that this Guaranty shall remain and continue in full force and effect as to any assignment, modification, extension, or renewal of the Loan Documents, the Project Documents or the release or exchange of any property covered by the Loan Documents or other collateral for any of the Loans, and notwithstanding any amendment of the Partnership Agreement or transfer of the Interest of any Partner thereunder, and that indulgences or forbearance may be granted under any or all of such documents, all of which may be made, done, or suffered without notice to or further consent of the Guarantor.

6. **Enforcement.** Guarantor hereby agrees that this is a guaranty of payment, not collection, and that this Guaranty may be enforced by the Partnership or any Partner thereof against Guarantor without first resorting to or exhausting any other right or remedy; *provided, however,* that nothing herein contained shall prevent the Partnership or any Partner from suing to enforce the provisions of the Partnership Agreement or from exercising any rights thereunder.

7. **Reimbursement of Expenses.** Guarantor agrees that, in the event this Guaranty is placed in the hands of an attorney for enforcement, Guarantor will reimburse the Partnership and the Partners seeking such enforcement for all expenses incurred in enforcing this Guaranty, including reasonable attorneys' fees (whether or not suit is brought hereon) and all such expenses incurred in connection with any trial, appeal, arbitration, or bankruptcy proceedings.

this is a guarantee to the Partnership

8. **Default.** If Guarantor shall fail or refuse to perform or continue performance of all of Guarantor's obligations under this Guaranty, then the Partnership and/or the Partners thereof shall, at their option, have the right to take all necessary action to complete the Work in accordance with the terms of the Partnership Agreement, the Loan Documents, and the Project Documents to discharge any liens filed against the Project or the land underlying the Project and to take any other actions necessary or advisable to cure the Guarantor's default hereunder, either before or after the exercise of

any other remedy. The amounts of any and all expenditures and advances so made by the Partnership or any Partner shall be due and payable by Guarantor immediately upon the incurring or advancement thereof and, if not then paid, shall bear interest at two percent (2%) above the prime rate then in effect in *The Wall Street Journal*.

9. **Term.** Except as provided herein, this Guaranty shall terminate three (3) months after the last to occur of the following:

(a) A final certificate of occupancy is issued for the Project following the completion of construction of the Project in accordance with the Loan Documents and Project Documents;

(b) Final payment is made under the construction contracts, and the contractor acknowledges in writing that the contractor and all subcontractors have been paid in full and have no further claims under the construction contracts;

(c) The statutory period within which the contractor and any subcontractors under the construction contracts may file liens against the Partnership Property or the Project has expired; and

(d) Loan Conversion.

Notwithstanding the foregoing, at any time within three (3) months after the termination of this Guaranty as provided in this Paragraph 9, the Partnership or any Partner thereof may give written notice (the "***Guaranty Notice***") to Guarantor of any outstanding or disputed amount due to any third party that relates to the construction of the Project and may reserve its rights hereunder with respect to such outstanding amount. In the event the Partnership or any Partner thereof gives such Guaranty Notice to the Guarantor, this Guaranty shall survive to the extent of the matters described in such Guaranty Notice and until such matters have been fully paid or resolved to the satisfaction of the Partnership and the Partners that gave such notice.

10. **Notices.** All notices to the parties hereto shall be given in the manner and (where applicable) to the addresses specified on Exhibit A-6 to the Partnership Agreement, as the same may be amended from time to time by Notice to the parties hereto. Notices to the Partnership shall be sent in care of the General Partner of the Partnership with a copy to the Limited Partner. Notices to Guarantor shall be sent to:

Banc of America Community Development Corporation
730 Fifteenth Street, N.W.
Washington, DC 20005-1099
Attn: Maurice Perry, Vice President
Tel: (202) 442-7526; Fax: (202) 442-7542

11. **Intended Beneficiary.** The parties intend that the Limited Partner of the Partnership be a third party beneficiary of this Agreement and that the Limited Partner, in such capacity, may enforce the Guarantor's obligations hereunder. No person other than

the Limited Partner and the Partnership may directly or indirectly rely upon or enforce the provisions of the Agreement, whether as a third party beneficiary or otherwise.

12. **Partnership Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Partnership Agreement.

13. **Burden and Benefit.** This Guaranty and each covenant and agreement contained herein shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of the Partnership, the Partners thereof, and their respective successors and assigns.

14. **Severability of Provisions.** Each provision of this Guaranty shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of this Guaranty is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Guaranty that are valid.

15. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Guaranty shall not operate or be construed to be a waiver of any subsequent breach.

16. **Defined Terms.** Except as expressly provided herein, terms used in this Agreement with initial capital letters shall have the meanings set forth in the Partnership Agreement.

17. **Governing Law.** This Guaranty shall be governed, construed, and interpreted as to validity and enforcement and in all other respects in accordance with the laws of the District of Columbia and cannot be modified, amended, or terminated orally.

18. **Binding Agreement.** This Agreement shall be binding on the parties hereto, and their heirs, executors, personal representatives, successors and assigns.

19. **Headings.** All headings in this Guaranty are for convenience of reference only and are not intended to qualify the meaning of any provision of this Guaranty.

20. **Terminology.** All personal pronouns used in this Guaranty, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

21. **Counterparts.** This Guaranty may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

22. **Guaranty of Payment.** Notwithstanding any other provision of this Agreement:

(i) this Agreement constitutes a guaranty of payment, not solely a guaranty of collection; and

(ii) the guaranty in this Agreement is primary and not conditional.

**[SIGNATURES BEGIN ON THE FOLLOWING PAGE ]**

IN WITNESS WHEREOF, Guarantor has duly executed this Unconditional Construction Completion Guaranty Agreement as of the date first above written.

WITNESS/ATTEST:

General Partner

_____ By:_____

Name:_____

Title:_____

BANC OF AMERICA COMMUNITY DEVELOPMENT CORPORATION, Guarantor

_____ By:_____

Name:_____

Title:_____

**DRAFT**

March 30, 2009

MEMORANDUM FOR: WMATA Board of Directors

SUBJECT: Development Capacity of Banneker Ventures Team
Shaw-Howard/Florida Avenue Joint Development Project

WMATA's Board of Directors requested that staff conduct due diligence on the development management capability of the Florida Avenue lead developer, Banneker Ventures, LLC, and its proposed development partner, Bank of America Community Development Corporation (BACDC). Results to date are:

- Banneker's development management capability is being developed, but has not been achieved yet.

- Banneker and Maurice Perry, BACDC's local Vice President, agree that BACDC will be an equity partner and managing member of the project during the construction and lease-up phase; after that approximately 5-year period, BACDC will exit, and Banneker will take over.

- BACDC is a wholly owned subsidiary of Bank of America (BoA). BACDC helps BoA fulfill requirements of the Community Reinvestment Act by investing in and developing affordable housing, often low income housing tax credit projects.

- BACDC has operated in the Washington, DC-Baltimore area over the past decade and has developed hundreds of new and rehabilitated units.

- Until recently, BACDC had a number of staff members. Now Mr. Perry is the only one. He currently plans to have no more than one project under construction and one project in pre-development at any one time, which he feels he can handle. However, if his pipeline increases, he will hire additional staff.

- References for Mr. Perry are favorable on both development management and construction oversight expertise for projects of the type being proposed (new, stick built housing on a podium) for Florida Avenue. Mr. Perry has stated that he will hire a construction manager for construction phase involving excavation near/over the Metro tunnel and erection of a concrete podium for housing over ground floor retail and, also, a firm to review the architectural plans. BACDC and Banneker are currently interviewing such firms, as well as a potential builder.

- Senior management at BoA, in Boston and Dallas, is very supportive of this project. Mr. Perry has received preliminary approval to engage in negotiations.

- Mr. Perry has also ordered another appraisal as part of his due own diligence to see if the proposed rents are supportable. He expects to bring a recommendation package to his senior management in the next 45 days.

- A current financing statement for the project indicates the need for approximately $1 million of city subsidy, the availability of which needs to be confirmed.

- Metropolis Development Company dropped out of the project because it "could not manage its risk," i.e. gain control of the development process.

The District of Columbia has requested a 120-day extension for negotiating a development agreement for this project; however, as noted earlier, the Board requested an evaluation of the team's development management capacity first. Staff will be prepared to present its conclusion on BACDC/Banneker development capability at the Planning, Development and Real Estate Committee meeting of April 9.

John B. Catoe, Jr.
General Manager

Gene Clerkin
Bof A Boston 3/27/09

1. Rolling approval process - by conf. call + memo
Maurice = point guard
Nancy Cloud, James Feild, Gene Clerkin +
credit person in St Louis

BACDC focus is debt + equity
Usually partner in new construction with a local non profit
permitting, community relations, etc etc
one person in New England + one in DC

25 people behind each staff person

BACDC has never walked away from a deal
or made a capital call

Deal will always be successful because BACDC
won't walk, important for it to succeed
They will even write down to assure success
25-year firm, worked in RTC era
& will do now
They right-size deals, then follow through

They've thinned doors; so appetite for CRA is less now
12 = 15% ROE
7½ - 12½% ~~ROE investment~~ return
12-15 = cushion
LIHTC is defaulted

They do their own due diligence

2. If Maurice were in an accident Texas + N.C. procedures are

scan + send

Tony in CA

Bob A can put resources

Questions for B of A and BV as of 3/13/09

What projects did you directly supervise and were final decision maker on?

Size, scope, status of those projects, especially, construction budget for each project

What staff or consultants such as a hired CM did you use?

Are those people still on your staff-- if not, who substitutes?

Who will have final decision making on a) overall development and b) construction on this FL Ave project?

.....

As directed by the Board, I will call Metropolis to confirm my belief (which I did not state to the Board) that Metropolis dropped out because it could not get control over construction/development decision making. O. Karim has told me that Metropolis dropped out because Scott Pannick, its president, is ill (brain tumor).

With regard to the documents that Omar Karim sent on his firm's experience, I spoke yesterday with Tom Regan, of Regan Associates, a builder whom I have known for 25 years and who is working with Banneker on two projects: 1) Walker Jones Ed. Center, 70% complete, fast tracked, with Regan Associates as decision maker. 2) Deanwood Rec. Center, with Banneker in control and Regan as fee builder, so far only demolition of existing facilities underway. He confirmed the facts as presented in writing and stated on the phone by Omar. He indicated that Banneker staff has been in a trailer at Walker Jones with his staff for 18 months and has been "learning" the CM business, some Banneker staff are more experienced than others." He did not have an opinion on their ability to build the FL Ave properties because, he said, he did not know enough about them even though I gave a brief description. He did not volunteer anything else about Banneker's competence as a builder.

I will call other firms mentioned in his experience documents, even though references have not been given.

BACDC DUE DILGENCE RESULTS TO DATE

Banneker references confirm that Banneker does not NOW have enough experience to manage a new construction project; it is apprenticing on some projects, but not capable yet

Banneker and Maurice Perry, a Bank of America CDC VP, agree that BACDC will be an equity partner and managing member of the project during the construction phase; after completion BADC will exit as it has done on other projects and Banneker will take over

Bank of America CDC (BACDC) is a wholly owned subsidiary of BoA

BACDC helps fulfill requirements of Community Reinvestment Act, invests in and develops affordable housing, usually LIHTC projects. Standard of construction is "affordable."

It has operated in DC area + Baltimore over the past decade, has built/rehabbed hundreds of units

It had a staff of several people a few years ago, Now Maurice is the only person.

References for Maurice say he is solid, a straight shooter, detail-oriented. He has done rehab locally and has an excellent reference from Wm. C. Smith, BADC's contractor on many rehabs.

I keep missing his California new construction reference.

I also have a call into both Maurice and his supervisor in Boston about personnel backup and evidence of BoA approvals to date.

Current sources of funds statement for the projects indicates a need for injection of @ $1M city subsidy which Mr. Albert would have to confirm would be forthcoming

Metropolis dropped out of the project because it "could not manage its risk," i.e. gain enough control of the development process.

# M E M O R A N D U M

**SUBJECT:** **DATE:**

**FROM:** **IN REPLY**

**TO:** **REFER TO:**

The WMATA Board of Directors requested that staff conduct due diligence on the development management capability of the Shaw-Howard University-Florida Avenue lead developer, Banneker Ventures, LLC and its proposed partner, Bank of America Community Development Corporation (BACDC). Results to date are:

- Banneker's development management capability is being developed, but has not been not achieved yet.

- Banneker and Maurice Perry, BACDC's local Vice President, agree that BACDC will be an equity partner and managing member of the project during the construction and lease-up phase; after that approximately 5-year period, BACDC will exit, and Banneker will take over.

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- BACDC has operated in the Washington, DC-Baltimore area over the past decade and has developed hundreds of new and rehabilitated units.

- Until recently, BACDC had a number of staff members. Now Mr. Perry is the only one. He currently plans to have no more than one project under construction and one project in pre-development at any one time, which he feels he can handle. However, if his pipeline increases, he will hire additional staff.

- References for Mr. Perry are favorable on both development management and construction management (rehabilitation) expertise for projects of the type being proposed (stick built housing) for Florida Avenue. Mr. Perry has stated that he would hire a construction manager for the phase of construction involving excavation near/over the Metro tunnel and construction of a concrete podium for housing over ground floor retail and, also, a firm to review the architectural plans. BACDC and Banneker are currently interviewing such firms, as well as a potential builder.

- Senior management at BoA, in Boston and Dallas, is very supportive of this project. He has received preliminary approval to engage in

**Washington Metropolitan Area Transit Authority**

*T:\DOGGETT\SHAWHOWARD\BADC MEMO.WPD*

negotiations. He has also ordered another appraisal as part of his due own diligence to see if the proposed rents are supportable. He would expect to bring a recommendation package to his senior management in the next 45 days.

- A current financing statement for the project indicates the need for approximately $1 million of city subsidy, the availability of which would need to be confirmed.

- Metropolis Development dropped out of the project because it "could not manage its risk," i.e. gain control of the development process.

The District of Columbia has requested a 120-day extension for negotiating a development agreement for this project; however the Board requested an evaluation of the team's development management capacity first. Staff will be prepared to make a recommendation on BACDC/Banneker development capability at the Planning, Development and Real Estate Committee meeting of April 9.

*T:\DOGGETT\SHAWHOWARD\BADC MEMO.WPD*

# M E M O R A N D U M

SUBJECT: Florida Avenue Development Team Capacity

DATE: March 30, 2009

FROM: John B. Catoe, Jr.

TO: WMATA Board of Directors

The WMATA Board of Directors requested that staff conduct due diligence on the development management capability of the Shaw-Howard University-Florida Avenue lead developer, Banneker Ventures, LLC and its proposed partner, Bank of America Community Development Corporation (BACDC). Results to date are:

- Banneker's development management capability is being developed, but has not been not achieved yet.

- Banneker and Maurice Perry, BACDC's local Vice President, agree that BACDC will be an equity partner and managing member of the project during the construction and lease-up phase; after that approximately 5-year period, BACDC will exit, and Banneker will take over.

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- Until recently, BACDC had a number of staff members. Now Mr. Perry is the only one. He currently plans to have no more than one project under construction and one project in pre-development at any one time, which he feels he can handle. However, if his pipeline increases, he will hire additional staff.

- References for Mr. Perry are favorable on both development management and construction management (rehabilitation) expertise for projects of the type being proposed (stick built housing) for Florida Avenue. Mr. Perry has stated that he would hire a construction manager for the phase of construction involving excavation near/over the Metro tunnel and construction of a concrete podium for housing over ground floor retail and, also, a firm to review the architectural plans. BACDC and Banneker are currently interviewing such firms, as well as a potential builder.

Washington
Metropolitan Area
Transit Authority

- Senior management at BoA, in Boston and Dallas, is very supportive of this project. He has received preliminary approval to engage in negotiations. He has also ordered another appraisal as part of his due own diligence to see if the proposed rents are supportable. He would expect to bring a recommendation package to his senior management in the next 45 days.

- A current financing statement for the project indicates the need for approximately $1 million of city subsidy, the availability of which would need to be confirmed.

- Metropolis Development dropped out of the project because it "could not manage its risk," i.e. gain control of the development process.

The District of Columbia has requested a 120-day extension for negotiating a development agreement for this project; however the Board requested an evaluation of the team's development management capacity first. Staff will be prepared to make a recommendation on BACDC/Banneker development capability at the Planning, Development and Real Estate Committee meeting of April 9.

**DRAFT**

March 30, 2009

MEMORANDUM FOR: WMATA Board of Directors

SUBJECT: Development Capacity of Banneker Ventures Team
Shaw-Howard/Florida Avenue Joint Development Project

WMATA's Board of Directors requested that staff conduct due diligence on the development management capability of the Florida Avenue lead developer, Banneker Ventures, LLC, and its proposed development partner, Bank of America Community Development Corporation (BACDC). Results to date are:

- Banneker's development management capability is being developed, but has not been achieved yet.

- Banneker and Maurice Perry, BACDC's local Vice President, agree that BACDC will be an equity partner and managing member of the project during the construction and lease-up phase; after that approximately 5-year period, BACDC will exit, and Banneker will take over.

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- References for Mr. Perry are favorable on both development management and construction oversight expertise for projects of the type being proposed (new, stick built housing on a podium) for Florida Avenue. Mr. Perry has stated that he will hire a construction manager for construction phase involving excavation near/over the Metro tunnel and erection of a concrete podium for housing over ground floor retail and, also, a firm to review the architectural plans. BACDC and Banneker are currently interviewing such firms, as well as a potential builder.

- Senior management at BoA, in Boston and Dallas, is very supportive of this project. Mr. Perry has received preliminary approval to engage in negotiations.

- Mr. Perry has also ordered another appraisal as part of his due own diligence to see if the proposed rents are supportable. He expects to bring a recommendation package to his senior management in the next 45 days.

- A current financing statement for the project indicates the need for approximately $1 million of city subsidy, the availability of which needs to be confirmed.

- Metropolis Development Company dropped out of the project because it "could not manage its risk," i.e. gain control of the development process.

The District of Columbia has requested a 120-day extension for negotiating a development agreement for this project; however, as noted earlier, the Board requested an evaluation of the team's development management capacity first. Staff will be prepared to present its conclusion on BACDC/Banneker development capability at the Planning, Development and Real Estate Committee meeting of April 9.

John B. Catoe, Jr.
General Manager

April 4, 2009

MEMORANDUM FOR: Chair and Members of the Board

SUBJECT: Capability of the Banneker Ventures Team to Manage the Shaw-Howard/Florida Avenue Joint Development Project

Last month, Metro staff presented members of the Planning, Development, and Real Estate (PDRE) committee a proposal for ~~The District of Columbia has requested~~ a 120-day extension for Metro and Banneker Ventures to negotiate a ~~new term~~ joint development agreement ~~sheet~~ for the Shaw-Howard/Florida Avenue Joint Development Project.

Prior to ~~considering whether to approve~~ acting on this ~~request~~proposal, ~~the Board~~ committee members requested that staff conduct due diligence on the capability of Banneker Ventures, LLC, and its proposed development partner, the Bank of America Community Development Corporation (BACDC), to manage ~~the~~ this project.

This memorandum transmits staff's findings for your review prior to the next meeting of the ~~Planning, Development, and Real Estate~~ PDRE Committee ~~meeting~~ on April 9, 2009.

~~Staff will give you our recommendation at the meeting.~~

Specifically, Metro staff finds that: ~~Staff's findings are:~~

- Banneker's capability to manage development projects is increasing, but is not yet fully realized.
- Banneker and Maurice Perry, BACDC's local Vice President, agree that BACDC will be an equity partner and managing member of the project during the construction and lease-up phase; after that approximately five-year period, BACDC will exit, and Banneker will take over.

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- BACDC has operated in the Washington, DC-Baltimore area over the past decade and has developed hundreds of new and rehabilitated units.

- Until recently, BACDC had a number of staff members. Currently, Mr. Perry is the only employee. He ~~currently~~ plans to have no more than one project under construction and one project in the pre-development phase at any one time, which he feels he can handle; however, he states that if his of pipeline of projects increases, he will hire additional staff.

- References for Mr. Perry are favorable on both development management and construction oversight expertise for projects of the type being proposed ~~(new, stick built housing on a podium)~~ for Florida Avenue. Mr. Perry has stated that he will hire (1) a construction manager for the construction phase, which involves excavation near/over the Metro tunnel and erection of a concrete podium for housing over ground floor retail ~~and, also,~~ and (2) a firm to review the architectural plans. BACDC and Banneker are currently interviewing such firms, as well as a potential builder.

- Senior management at BoA in Boston and Dallas is very supportive of this project. Mr. Perry has received preliminary approval to engage in negotiations.

- Mr. Perry has also ordered another appraisal as part of his own due diligence to see if the proposed rents are supportable. He expects to

bring a recommendation package to his senior management in the next forty-five days.



- A current financing statement for the project indicates the need for approximately $1 million of city subsidy, the availability of which needs to be confirmed.

- ~~Metropolis Development Company dropped out of the project because it "could not manage its risk"; i.e., gain control of the development process.~~

John B. Catoe, Jr.
General Manager

April 2, 2009

MEMORANDUM FOR: Chair and Members of the Board

SUBJECT: Capability of the Banneker Ventures Team to Manage the Shaw-Howard/Florida Avenue Joint Development Project

Last month, Metro staff presented members of the Planning, Development, and Real Estate (PDRE) committee a proposal for a 120-day extension for Metro and Banneker Ventures to negotiate a joint development agreement for the Shaw-Howard/Florida Avenue Joint Development Project.

Prior to acting on this proposal, committee members requested that staff conduct due diligence on the capability of Banneker Ventures, LLC, and its proposed development partner, the Bank of America Community Development Corporation (BACDC), to manage this project.

This memorandum transmits staff's findings for your review prior to the next meeting of the PDRE Committee on April 9, 2009.

Specifically, Metro staff finds that:

- Banneker's capability to manage development projects is increasing, but is not yet fully realized.
- Banneker and Maurice Perry, BACDC's local Vice President, agree that BACDC will be an equity partner and managing member of the project during the construction and lease-up phase; after that approximately five-year period, BACDC will exit, and Banneker will take over.

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- Mr. Perry has also ordered another appraisal as part of his own due diligence to see if the proposed rents are supportable. He expects to bring a recommendation package to his senior management in the next forty-five days.

- A current financing statement for the project indicates the need for approximately $1 million of city subsidy, the availability of which needs to be confirmed.

John B. Catoe, Jr.
General Manager

# MAURICE L. PERRY
# PROJECT LIST

| *PROJECT* | *LOCATION* | *NUMBER OF UNITS* | *HOUSING TYPE* | *CONSTRUCTION TYPE* | *FINANCING* | *YEAR COMPLETED* |
|---|---|---|---|---|---|---|
| San Vicente Townhomes | 101 San Vicente Ave.<br>Soledad, CA | 50 | Rental<br>Multi-Family | New | 9% Tax Credits w/<br>Conventional Debt | 1998 |
| Pine Ridge Apts. | Osawatomie, KS | 35 | Rental<br>Multi- Family | New | 9% Tax Credits w/<br>Conventional Debt | 1999 |
| Florence Park Apts. | 401 E. Stewart St.<br>Florence, AZ | 88 | Rental<br>Multi-Family | New<br>Garden Style | 9% Tax Credits w/<br>Conventional Debt | 2000 |
| Mesa Park Apts. | 604 W. 8th Ave.<br>Mesa, AZ | 140 | Rental<br>Multi-Family | New<br>Garden Style | 9% Tax Credits w/<br>Conventional Debt | 2000 |
| Sycamore Walk Apartments | 380 Pacheco Rd.<br>Bakersfield, CA | 112 | Rental<br>Multi-Family | New<br>Garden Style | 9% Tax Credits w/<br>Conventional Debt | 2001 |
| Center Pointe Villas | 11856 Orange St.<br>Norwalk, CA | 240 | Rental<br>Senior | New<br>4 Story Bldg. &<br>Garden Style Apts. | 4% Tax Credits w/<br>Tax-Exempt Bonds | 2002 |
| Mountain View Senior Apts. | 511 N. Palmetto Ave.<br>Ontario, CA | 86 | Rental<br>Senior | New<br>Garden Style | 9% Tax Credits w/<br>HOME Funds & Conventional Debt | 2002 |
| Sterling Market Lofts | Bridgeport, CT | 61 | Rental<br>Artist | Rehab | 4% Tax Credits w/<br>Local Funds & Tax-Exempt Bonds | 2004 |
| Highland Condominiums | 1800 28th Place, SE<br>Washington, DC | 18 | Condos<br>Family | Rehab | Conventional Construction Loan w/<br>HOME Funds and Private Mortgages | 2006 |
| Cedar Heights Apartments | 1560 Butler Street, SE<br>Washington, DC | 134 | Rental<br>Multi-Family | Rehab | 9% Tax Credits w/<br>Conventional Debt & Public Soft Loan | 2007 |
| Courts of Camp Springs | 6200 Carswell Ave<br>Suitland, MD | 414 | Rental<br>Multi-Family | Rehab | 4 % Tax Credits w/<br>Tax-Exempt Bonds | 2008 |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Maurice Perry
# Professional References

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# Maurice Perry
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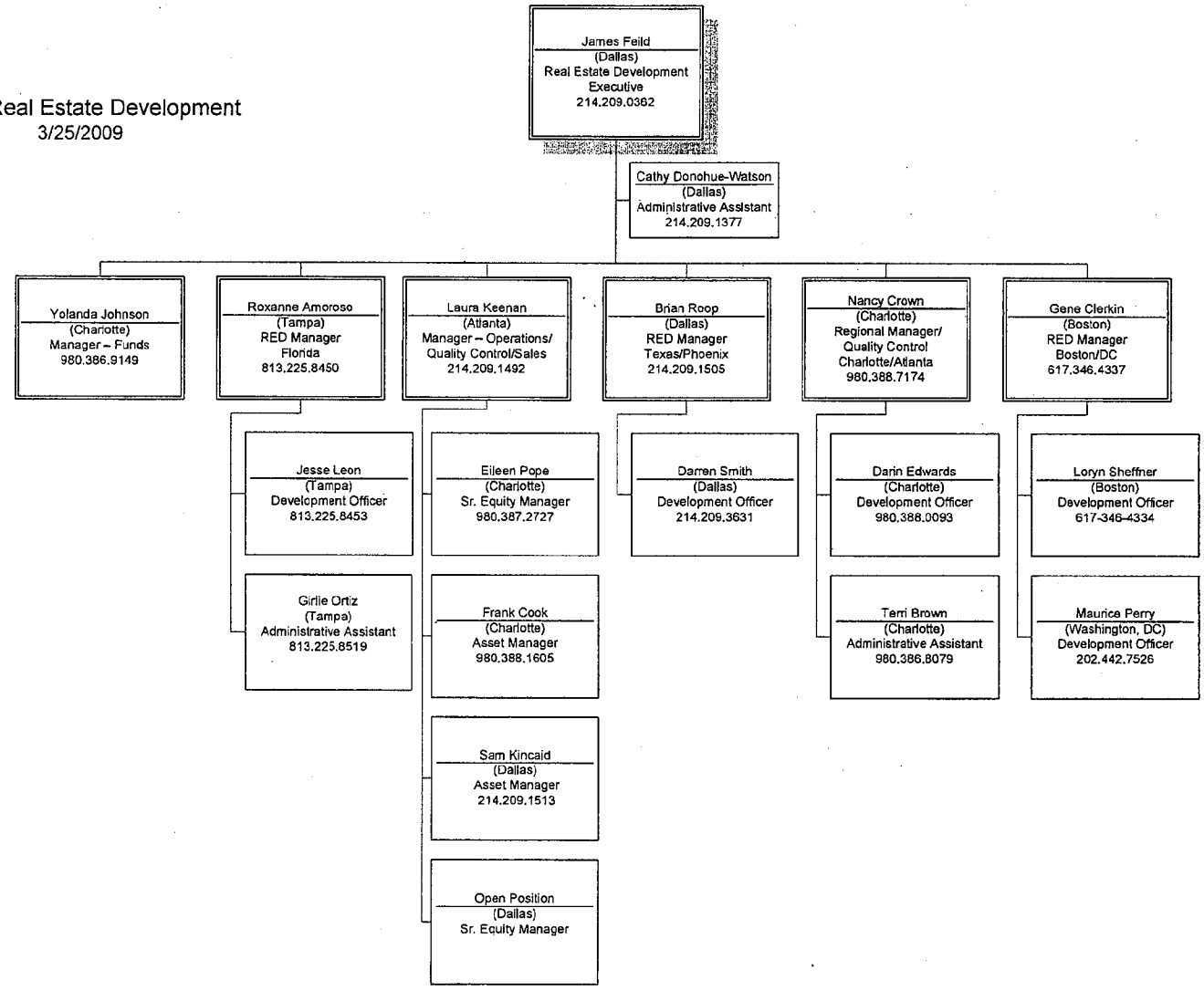
FOIA CONFIDENTIAL TREATMENT REQUESTED

# CREB Real Estate Development
3/25/2009




*July 31, 2008*

WMATA-INV 000564

Florida Avenue 4/30/09

The proposal made this week by Banneker will not exceed our $7.5M appraisal dated August 2007. The proposal this week from Banneker is worth $5.8 million npv. (At the time we asked the Board for an extension, Banneker's proposal was worth just over $7.5 million but they have since lowered it in consultation with BACDC.)

- It can be argued that we need a new appraisal anyway as the one we have is out of date.
- BolanSmart (BSA) contends that the offer nearly equals the appraisal and does reflect today's values if the developer's offered annual participation (3% of Effective Gross Income - EGI ) is counted. BUT we have not historically counted variables, and 3% of EGI is a variable.
- In part, Banneker has changed the deal because it is contemplating FHA insurance, which will not accept rent escalations unless taken after all operating expenses are deducted. Based on our negotiations at Prince George's Plaza, I can confirm this. I believe, also, that Urban Atlantic, which is part of the same group of companies that built the housing at Pr. G. Plaza, is using similar FHA insurance for RI Avenue.

I propose that we do the following in order:

- Ask BSA to craft a proposal that meets the appraisal and present it to Banneker as a take it or leave it
- If Banneker cannot accept that deal, rebid the project at a later date

I do not think that COUN would let us reappraise the project to allow Banneker's offer, which is now lower than either LaKritz Adler or Moddie Turay, to be retained.

The other alternative, allowing variables to be counted as part of assured income, is probably not acceptable to our Board or to FTA.

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

## Summary Data

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Total Possible Project GSF | **6.00 FAR** | 178,752 |
| Total Buildable Residential + Retail GSF | | 178,752 |
| Retail GSF | | 14,000 |
| Retail NSF | 90% efficiency | 12,600 |
| Residential Gross SF | 100% | 164,752 |
| Residential Net SF | 83% efficiency | 136,744 |
| **Residential Net SF - Market** | **80%** | 109,395 |
| **Residential Net SF - Affordable** | **20%** | 27,349 |
| Total No. of Residential Units | 950 SF avg | 144 |
| Market Rate Units | 80% | 115 |
| Affordable Units | 20% | 29 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | 15 |
| Total Parking Spaces | | 60 |

### Program % Breakdown

| | |
|---|---|
| Residential | 92.17% |
| Retail | 7.83% |

### Lease Payments

| | |
|---|---|
| WMATA - Year 1 of Stabilization | $ 150,000 |

### Project Vacancy

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

### % of Project Revenue

| | |
|---|---|
| Residential | 91% |
| Retail | 9% |

### Residential Per SF revenues

| | |
|---|---|
| Market | $ 2.70 |
| Affordable Units (at 50% of AMI) | $ 1.10 |
| Loan Rate | 7.40% |
| WMATA Annual Lease Payment - Year 1 | $ 150,000 |
| Security Deposit | 50,000 |
| Pre-Lease Payment | 100,000 |

## Sources and Uses of Funds

| Sources | | Residential | Retail | Total |
|---|---|---|---|---|
| FHA Bonds | 79% LTC | $ 37,688,000 | $ - | $ 37,688,000 |
| LIHTC | | 2,426,863 | $ - | $ 2,426,863 |
| Private Equity | | 4,063,245 | 3,690,971 | 7,754,216 |
| **Total Sources of Funds** | | **$ 44,178,109** | **$ 3,690,971** | **$ 47,869,080** |

| Uses | Residential | Retail | Total |
|---|---|---|---|
| Land | $ 230,420 | $ 19,580 | $ 250,000 |
| Hard Costs | 35,860,207 | 2,192,546 | 38,052,754 |
| Transaction/Leasing Fees | 305,997 | 26,003 | 332,000 |
| Architectural/MEP, Structural Services | 1,455,506 | 123,683 | 1,579,189 |
| Marketing | 442,406 | 37,594 | 480,000 |
| General and Administrative | 1,377,910 | 217,090 | 1,595,000 |
| Financing Costs | 2,671,951 | 42,800 | 2,714,752 |
| Real Estate Taxes | 341,021 | 28,979 | 370,000 |
| Permit, Utility and Municipal Fees | 376,444 | 31,989 | 408,433 |
| Legal and Accounting | 460,840 | 39,160 | 500,000 |
| Retail | - | 875,853 | 875,853 |
| Insurance | 25,940 | 2,204 | 28,145 |
| Miscellaneous Expenses | 629,465 | 53,490 | 682,955 |
| **Total Uses of Funds** | **$ 44,178,109** | **$ 3,690,971** | **$ 47,869,080** |

### Summary of Stabilized Returns at Sale

| 2016 | Residential | Retail | Total |
|---|---|---|---|
| Effective Gross Income | $ 4,165,754 | $ 412,065 | $ 4,577,819 |
| Expenses | $ 1,036,012 | $ 20,244 | $ 1,056,256 |
| **Net Operating Income** | **$ 3,129,742** | **$ 391,821** | **$ 3,521,563** |
| Less | | | |
| Reserves | $ 36,709 | $ 21,224 | $ 57,933 |
| Debt Service | $ 2,788,584 | - | $ 2,788,584 |
| Stabilized Net Cash Flow 2016 | **$ 304,450** | **$ 370,597** | **$ 675,047** |

| | | |
|---|---|---|
| **Avail Proceeds before LEED, WMATA & Return to Equity Investor** | | **12,030,227** |
| **Impact of LEED Certification** | **0.0% hard costs** | **-** |
| Avail pre WMATA share | | 12,030,227 |
| WMATA Share of Avail Profit | **0% avail profit** | - |
| Net Proceeds after WMATA share paid | | 12,030,227 |
| **Preferred Return to Equity Investors** | **17% per year** | 9,969,031 |
| **Potential proceeds avail to Developers after pref paid** | | 2,061,196 |

WMATA-INV 000566

FLORIDA AVENUE JOINT DEVELOPMENT PROJECT
AFFORDABLE HOUSING ISSUES

- The Metro Board approved the Florida Avenue joint development in June 2008. The project did not include affordable housing. As part of its approval the Board asked that the project include "an affordable housing component."

- The Developer met with Board Member, CM Graham, and reported that Mr. Graham requested that the project include at lease 20% affordable housing for low income rather than moderate income (work force) households.

- The Developer revised its proposal to Metro to accommodate this request with greatly reduced proposed rents, resulting in values to Metro that are below appraised value and below the offers in the other two proposals for the site.

Writing down land value to accommodate affordable housing presents policy issues for the WMATA Board and for FTA which would have to approve the project:

- Should the Board accept a lower value than that which it initially approved?
- Should it simply re-bid the project?
- If it were to re-bid, what should the policy guidance be on land write downs for affordable housing?*

WMATA staff consulted with FTA's local office for guidance and received this response:

1. Metro would have to be satisfied that changing the terms from the Joint Development Solicitation would not require re-bidding. (COUN has indicated that since the Board made the request for affordable housing, re-bidding is not required).

2. In no instance could the finally approved project result in a net present value to Metro that is less than that of the next highest bidder irrespective of whether the next highest bidder had any affordable housing at all.

3. If the net present value were to go still lower to include desired affordable housing the project would have to be re-bid.

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*In past projects, Metro appraisers and staff have fully or partially discounted the value for the land for the affordable units only. The write down was for units that were required by local jurisdiction regulation or law and consequently had to be accommodated in an appraisal. For Twinbrook there was a negotiated requirement with the City of Rockville that did not dilute the original value approved by the Board since part of the negotiation was extra density for the project.

Duke Plan on Affordable Housing-- 12/11/08

Duke Plan calls for 20%-30% (25-38) affordable housing units on combined Howard (20,646 sf)/WMATA (8,621 sf) site (total 29,627 sf) at Florida and 7th. WMATA % of 25-38 units = 29%, 7- 11 units, 7 units at 20% affordability.

It does not address affordability on the other two parcels about which it says, merely, go with the Howard proposal (now defunct) for ground floor retail with residential above.

It asks that federal and local zoning and funding incentives be targeted to the site (pledging availability as part of an RFP).

1. Firm agreement with capable, experienced development partner
2. Renewal of equity financing commitment
3. Written documentation of
   a. Affordable housing AMI and % required by city (basis for)
   b. Inability to obtain any financing or other financial assistance from the city for affordable housing, e.g., grants, loans from DCHCD, tax abatement or other assistance

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Tuesday, October 27, 2009 8:46 AM
**To:** Doggett, Rosalyn; Goldin, Steven
**Subject:** Term Sheet - Florida Avenue
**Attachments:** Draft FL Ave Lease Term Sheet 102709.doc; Draft FL Ave Lease Term Sheet 102709 Redline.doc

Attached are the initial drafts of the Lease Term Sheet for Florida Avenue.

Rosalyn – please use these instead of the one provided yesterday.

Thanks,

Josh



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar Karim [okarim@bannekerventures.com]
**Sent:** Thursday, October 22, 2009 3:38 PM
**To:** Maurice Perry; Yohance S. Fuller; jkass@dccouncil.us; Doggett, Rosalyn; Montague, Joshua W.; Marshall, Malcolm; Goldin, Steven
**Cc:** Tiwana Hicks; John Hagner; O'Keeffe, Carol B.; Moneme, Emeka; Catoe, John B.; Sequeira, Loyda; Wallace, Maria A; Meister, Mark K.; Bottigheimer, Nat; Mohsberg, Sid; Pant, Shiva K.
**Subject:** Re: Florida Avenue

Steve,

We are in agreement with your email with a few caveats, delineated below:

- Based on the initial format of the lease portion of the old appraisal which capitalized the EGI payments, to reduce wmata's financial exposure, we may go that route depending on where the appraisal comes in at.

- If Malcolm can get at least a verbal of the appraisal with the lease version by tomorrow or Monday, this would allow us to stay on schedule as the term sheet and lease are greatly dependent on the financial terms of the deal.

- In agreeing to go the lease route, Mr. Graham and I agreed that we may replace BOACDC with another partner. We will let you know who the new partner will be by the end of next week, if we replace BOACDC.

- The provision dealing with the reversion should be removed from all documents. Carol and I discussed this today as no financier will finance the project with this provision in it.

- Since there are no WMATA facilities to replace (parking lot, chillers, garage, etc), the language requiring a completion guarantee from a guarantor with a financial statement of the value of the cost of the project is no moment and thus should be removed. Instead, we could agree to have comply with the insurance requirements in the indemnification section. Since our design calls for us building about 10 feet above the tunnel, Carol's concerns about the tunnel is greatly mitigated as we are not going close to the tunnel in comparison to the Ellington and other projects where the underground garage is inches from the top of the tunnel. We could also require the Developer or General Contractor to post a completion or payment and performance bond naming WMATA as an insured.

Can we meet early next week to discuss where things stand?

Steve, thanks for moving this along.

Omar

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FOIA CONFIDENTIAL TREATMENT REQUESTED 

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Wednesday, September 09, 2009 5:21 PM
**To:** Meister, Mark K.
**Cc:** Maurice' 'Perry; aives@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Doggett, Rosalyn; John' 'Hagner; Moneme, Emeka; Marshall, Malcolm; Bottigheimer, Nat
**Subject:** RE: Shaw-Howard/Florida Avenue Appraisal

**Importance:** High

**Follow Up Flag:** Follow up
**Flag Status:** Flagged

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 your 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.

Capital Event Participation
Any equity or member loans to receive a 20% return prior to WMATA receiving its 10% of net proceeds. Member loans or equity are indistinguishable. We could agree that equity or member loans not to exceed 40% of the development costs.



FOIA CONFIDENTIAL TREATMENT REQUESTED 

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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**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
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Fax: 202-962-2396
Email: mmeister@wmata.com

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**From:** Omar Karim [mailto:okarim@bannekerventures.com]
**Sent:** Wednesday, September 09, 2009 2:38 PM
**To:** Meister, Mark K.



FOIA CONFIDENTIAL TREATMENT REQUESTED

**Cc:** Tiwana Hicks
**Subject:** Re: Shaw-Howard/Florida Avenue Appraisal?

Thanks.

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**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,

I will 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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FOIA CONFIDENTIAL TREATMENT REQUESTED 

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Thursday, October 29, 2009 8:55 AM
**To:** Doggett, Rosalyn; Goldin, Steven
**Cc:** O'Keeffe, Carol B.; Heppen, Bruce P.
**Subject:** FW: Short answers to Fl Ave questions
**Attachments:** Draft FL Ave Lease Term Sheet 102709 Redline.doc

Attached is the Term Sheet, updated with Roz's comments. Unless anybody has any other changes/comments, I think we are just waiting to plug in the appraisal numbers.

Please let me know if you have any questions.

Thanks,

Josh

-----Original Message-----
From: Montague, Joshua W.
Sent: Wednesday, October 28, 2009 6:53 PM
To: Goldin, Steven; Doggett, Rosalyn
Cc: O'Keeffe, Carol B.; Heppen, Bruce P.
Subject: FW: Short answers to Fl Ave questions
Importance: High

Steve and Rosalyn,

Comments to the below email:

JDA - the developer did provide comments to this agreement. But, most of the terms/comments depend on the other documents and so we cannot make a comprehensive response without the other documents. They made this same request when we provided the JDA/Lease and we promptly turned around the CCRs and Guaranty.

Lease - I asked John Hagner to add the HUD financing terms to the lease that we provided and we will negotiate from there. He disagreed. The Rhode Island Ave deal is a completely different deal, with different concerns, terms, and parties. Plus, those agreed upon terms were negotiated and so it will actually take LONGER to go back and find out why we agreed to all of those terms. Last, the whole argument that WMATA accepted something in the past should be a non-starter. I don't know too much about the Rhode Island Ave deal, but it may not have been an ideal transaction for us.

CCRS - agreed

ROE - I provided John Hagner with our last version of the ROE on 10/16. This draft includes WMATA's last comments/changes from September 2008.

Co-Tenancy - Even if WMATA has agreed to go forward with this arrangement, the arrangement must be negotiated. This is a troublesome area that we should tread carefully.

Title/Survey - agreed



FOIA CONFIDENTIAL TREATMENT REQUESTED

Term Sheet - I will have a new draft, to include Roz's comments, early tomorrow morning.

Please let me know if you want to discuss any of this,

Josh

-----Original Message-----
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; Montague, Joshua W.; O'Keeffe, Carol B.; Bottigheimer, Nat
Subject: RE: Short answers to Fl Ave questions
Importance: High

Roz and Steve,

We believe that some schedule would be appropriate to get all of the items mentioned in your email complete. Can you work with us to commit to some dates on the following open items?

- Joint Development Agreement. We have provided comprehensive (not provisional) comments to the JDA almost 2 months ago when we were initially going down the lease route and await WMATA's comments. Please advise when we will receive these comments.

- Lease. To save time AND even more money, we requested almost 2 months ago that we use the lease for the RI Avenue deal since WMATA Staff and the Board has signed off on it and the counsel for the Developer for that deal and this deal is the same (John Hagner). Mr. Graham agreed that if we changed from a sale to a lease, WMATA staff would get this thing done in 2 weeks. If we don't use some type of form that WMATA and the Developer has already worked with (RI deal), then this would clearly kill any timing to get the deal finalized in the time promised by Mr. Graham. Steve and Carol, please confirm that we are going to use the RI form. If so, as soon as the Term Sheet is finalized b/t the staff and the Developer, John is willing to update it to reflect the terms of this deal and get it to you asap.

- CCRs. As soon as the Term Sheet is complete, we will turn around comments to the CCRs within a few days.

- Right of Entry Agreement. Josh has our comments from August 2008.

- Guaranty. Our counsel has a call in to Carol O'Keeffe today about the guaranty and is awaiting her call which based on an email that I read, she was going to make this afternoon. Carol, any word on the call?

- Co-tenancy agreement. Mr. Graham and Mr. Catoe agreed that the co-tenancy would no longer be an issue. To save time and more money, can our counsel and Carol have a quick call to discuss this to ensure that everyone is on the same page with what needs to be the agreement before we spend a ton of money on having John draft something. Carol, are you available this afternoon or tomorrow to discuss this with John?

- Metes and Bounds Survey and full ALTA Title Report. As Roz indicated, this does not have to be provided prior to the Term Sheet or JDA being approved. An ALTA survey costs additional money and until the Term Sheet and JDA are approved, we cannot authorize the surveyor to spend even more money to do this. However, we commit to getting it done in plenty of time prior to the closing on the lease.



FOIA CONFIDENTIAL TREATMENT REQUESTED 

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

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-----Original Message-----
From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Wednesday, October 28, 2009 4:52 PM
To: Bottigheimer, Nat; Fuller, Yohance (EOM)
Cc: Goldin, Steven; Montague, Joshua W.
Subject: RE: Short answers to Fl Ave questions

A Joint Development Agreement with the following exhibits needs to be taken to the Board:
1. Lease
2. Covenants, Conditions and Restrictions (CCR's)
3. Right of Entry Agreement
4. Guaranty
5. Co-tenancy agreement
6. Metes and Bounds Survey and full ALTA Title Report from developer (we can delay this until the Closing on the lease and continue to use the property outline and lot descriptions for purposes of the JDA; the metes and bounds survey would be the basis for descriptions of WMATA reserved areas: tunnels, etc. in the lease)

Status: The developer has the JDA plus items 1-4 drafted by WMATA. The developer is in the process of drafting a co-tenancy agreement, which would not have been necessary under a sale. The other items, with a sales agreement instead of a lease, would be needed under either type of disposition.

Our counsel and Banneker's have agreed that once we have agreed to a Term Sheet, they will mark up the JDA and items 1-4 (note: Banneker has previously provided provisional comments to the JDA, but not the other documents). We are uncertain of the timing by Banneker's counsel to send us the initial draft of item 5.

Banneker's counsel would like to draft a new lease based on the Rhode Island Ave lease, instead of working with the lease draft we sent to Banneker. However, our counsel does not agree because that is a different situation. So that is an impasse currently.

-----Original Message-----
From: Bottigheimer, Nat



FOIA CONFIDENTIAL TREATMENT REQUESTED 

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

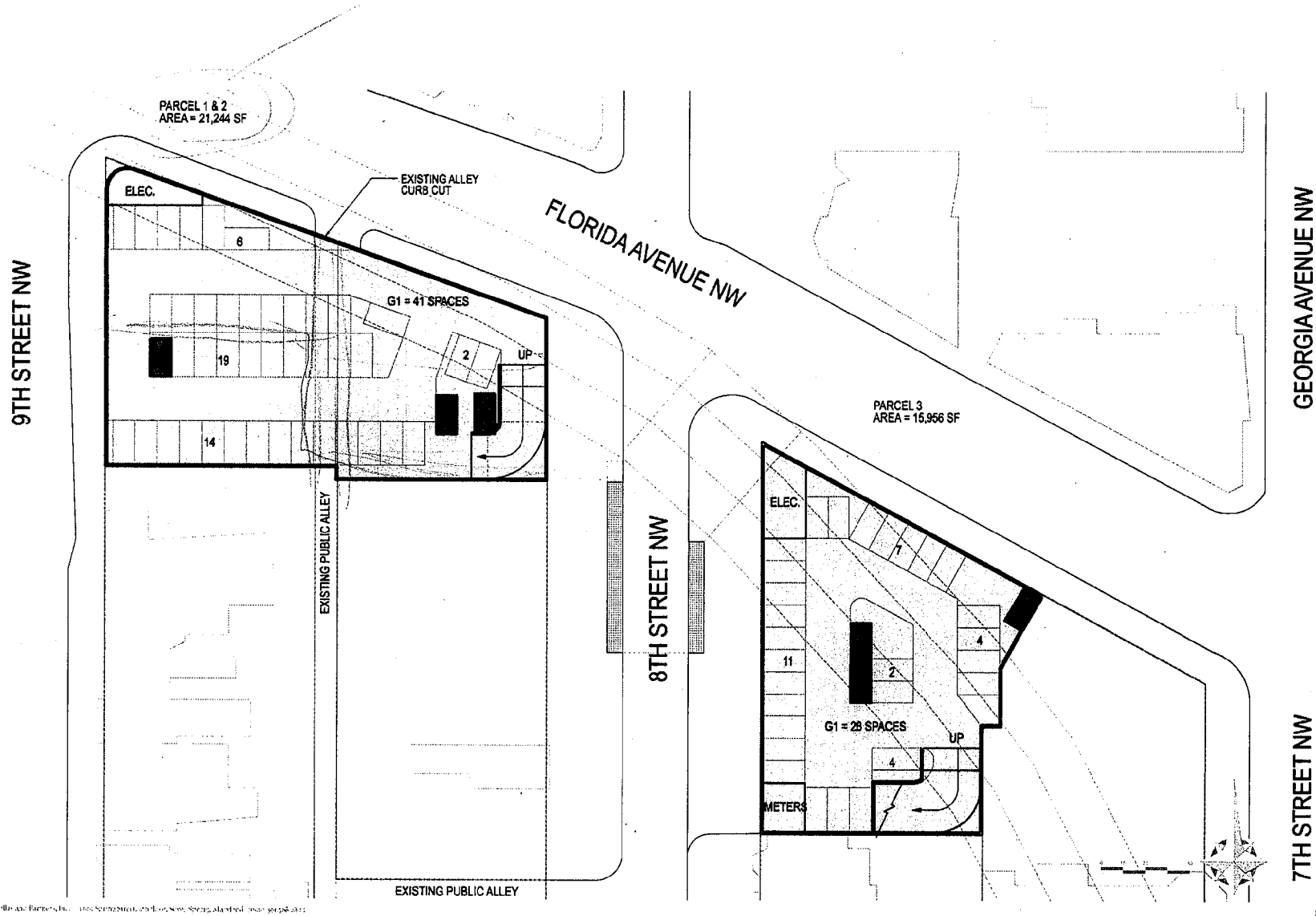
CCRs - I think Omar has these from us, we but don't have a response

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




Garage Level Plan

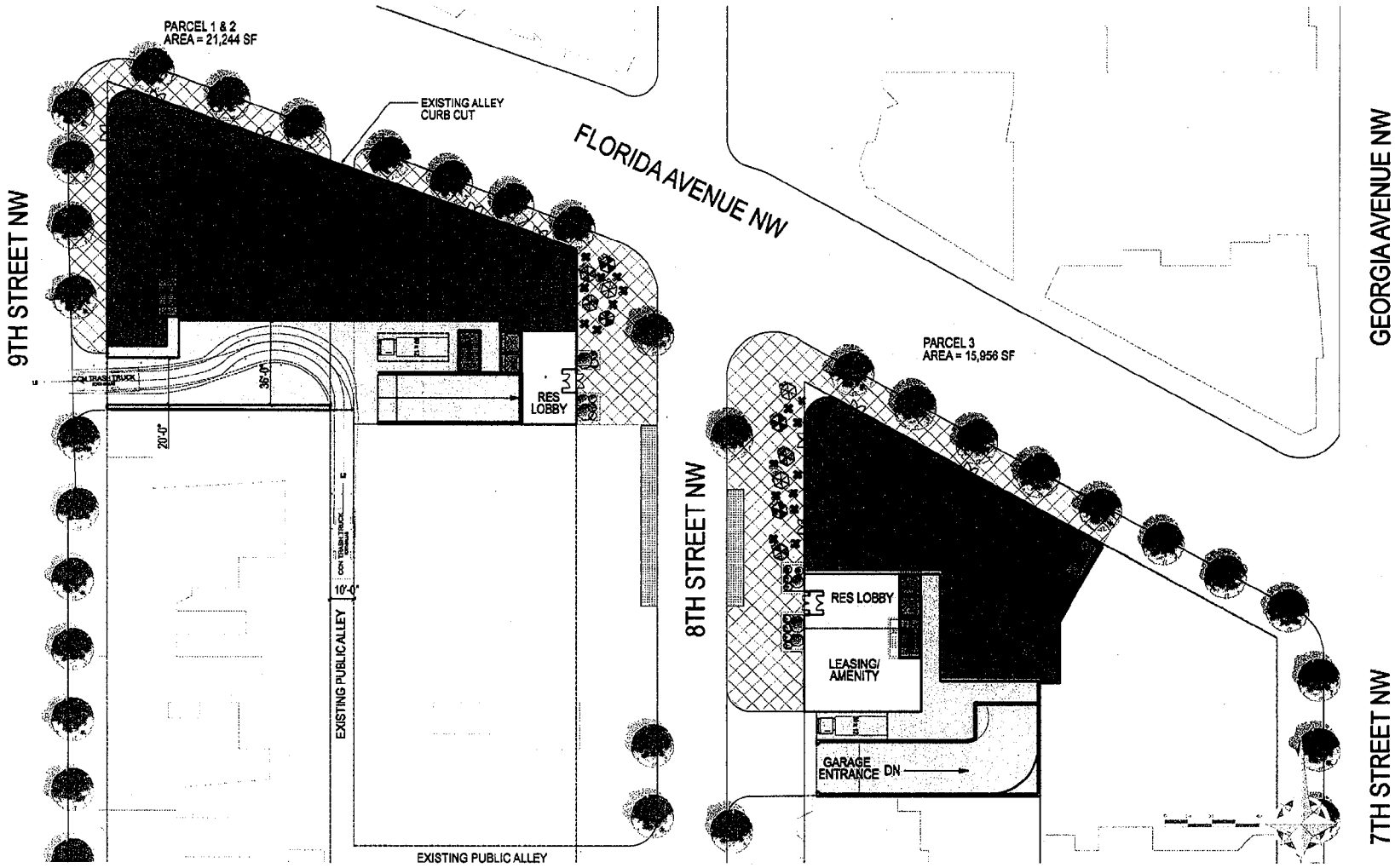
June 2009

BANNEKER VENTURES / BANC OF AMERICA CDC
TORTI GALLAS AND PARTNERS



THE JAZZ @ FLORIDA AVENUE

WMATA-INV 000579
FOIA CONFIDENTIAL TREATMENT REQUESTED




June 2009

First Floor Plan

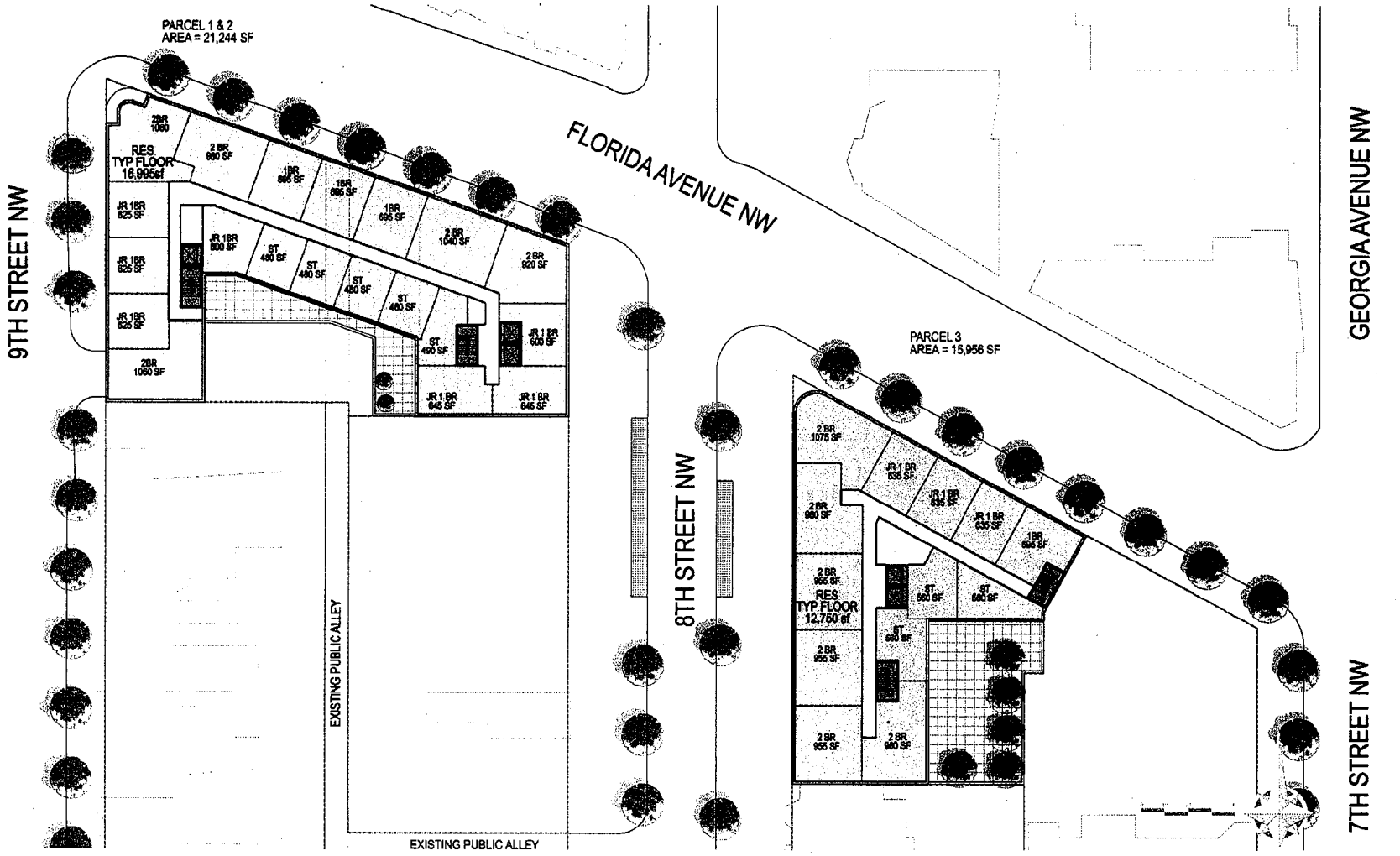
BANNEKER VENTURES / BANC OF AMERICA CDC
TORTI GALLAS AND PARTNERS



THE JAZZ @ FLORIDA AVENUE

WMATA-INV 000580
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000581




June 2009

Typical Residential Floor Plan

BANNEKER VENTURES / BANC OF AMERICA CDC
TORTI GALLAS AND PARTNERS



THE JAZZ @ FLORIDA AVENUE

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

GENERAL NOTES:

1. Horizontal Datum: Metro Project Datum
2. Vertical Datum: Metro Project Datum
3. Property Zoned: "ARTS/C-2-B" Community Business Center-Medium Density
   Zoning information shown is subject to interpretation by a qualified zoning attorney or persons practicing in the District of Columbia. Aulisi, Inc. offers no opinion to zoning record issues affecting the subject property. To verify to zoning compliance please contact the Office of Zoning on 441 4th Street N.W., Suite 200 South, Washington, DC 20001 (Tel. 202-727-6311)
4. Property shown herein lies within Flood Zone "C" - Areas of minimal flooding as established by the U.S. Federal Emergency Management Agency, National Flood Insurance Program, Flood Insurance Rate Map, Community Panel No. 110001 0020 B, map effective date November 18,1985.
5. This survey was prepared without the benefit of a Title Report and may not reflect easements, property lines and other restrictions of record.
6. Underground utilities designated by Integral, LLC.

NOTE: Pipe sizes, inverts and types should be verified with existing utility records.

**TRAVERSE INFORMATION**

| NO. | NORTHING | EASTING | ELEVATION (DC DPWA) | DESCRIPTION |
|---|---|---|---|---|
| 101 | 394548.2535 | 793171.5605 | 90.65 | PK NAIL IN CONCRETE |
| 102 | 394575.6973 | 793213.1867 | 90.85 | PK NAIL IN CONCRETE |
| 103 | 394522.0197 | 793371.1844 | 89.81 | PK NAIL IN CONCRETE |
| 104 | 394369.0743 | 793612.0835 | 91.00 | PK NAIL IN CONCRETE |
| 105 | 394327.5389 | 793543.5268 | 90.78 | HUB & TACK |
| 106 | 394456.2958 | 793406.7019 | 89.14 | PK NAIL IN CONCRETE |
| 107 | 394420.9232 | 793281.9178 | 89.58 | PK NAIL IN CONCRETE |
| 108 | 394523.8569 | 793263.9751 | 90.25 | PK NAIL IN CONCRETE |

**BENCH MARK INFORMATION**

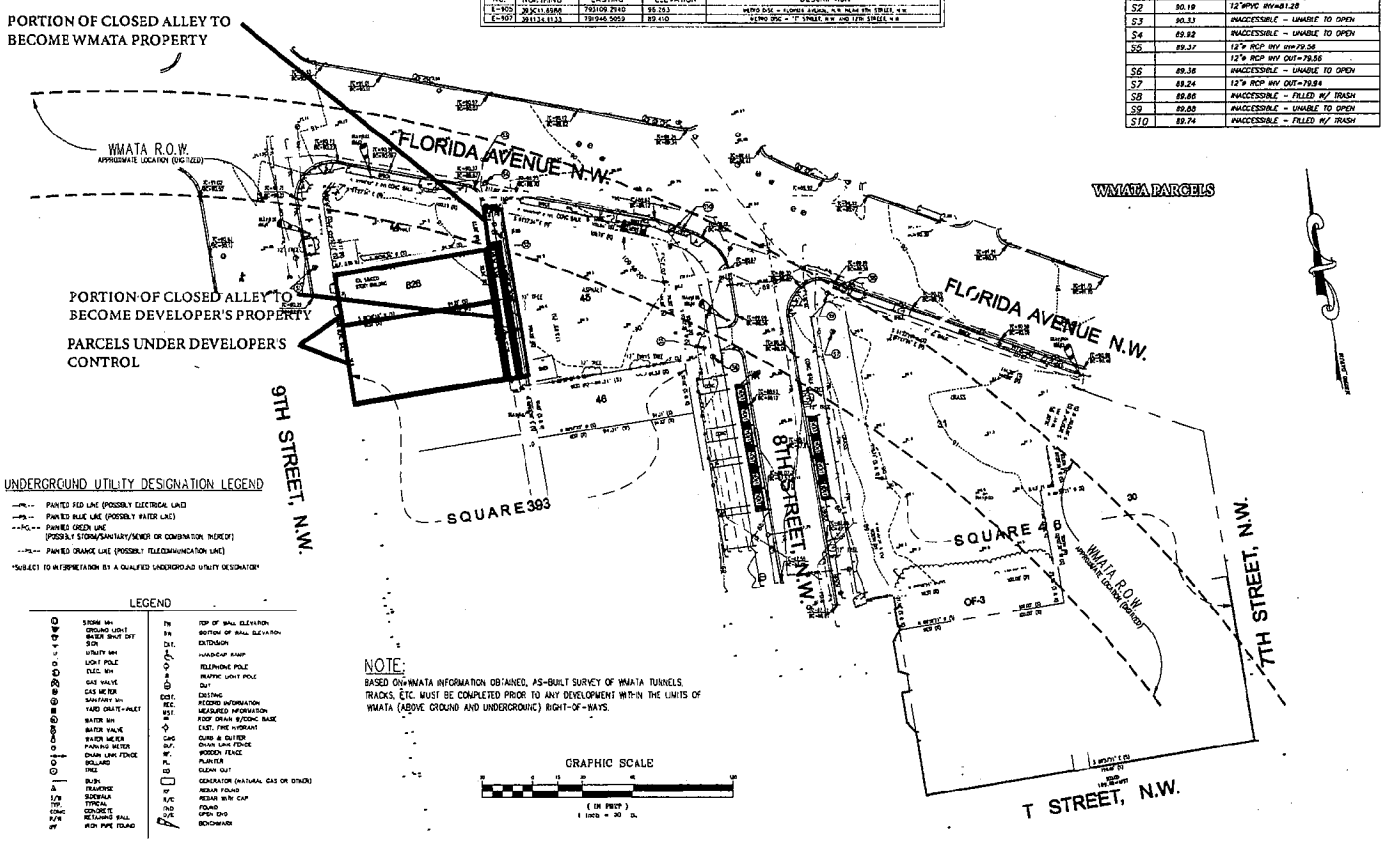
| No. | ELEVATION | DESCRIPTION |
|---|---|---|
| BM#1 | 90.65 | PK Nail (Trav#101 as Shown on Plan) |
| BM#2 | 90.85 | PK Nail (Trav#102 as Shown on Plan) |
| BM#3 | 91.00 | PK Nail (Trav#104 as Shown on Plan) |
| BM#4 | 89.14 | PK Nail (Trav#106 as Shown on Plan) |

**METRO CONTROL STATIONS**
METRO PROJECT DATUM

| NO. | NORTHING | EASTING | ELEVATION | DESCRIPTION |
|---|---|---|---|---|
| E-905 | 393311.6596 | 793109.2910 | 95.253 | METRO BASE - FLORIDA AVENUE, N.W. NEAR 9TH STREET, N.W. |
| E-907 | 391134.0133 | 793945.5053 | 89.410 | METRO BASE - "T" STREET, N.W. AND 7TH STREET, N.W. |

**STRUCTURE TABLE**

| NO. | TOP ELEVATION | PIPE |
|---|---|---|
| S1 | 90.52 | 12"PVC INV=80.53 |
| S2 | 90.19 | 12"PVC INV=81.28 |
| S3 | 90.33 | INACCESSIBLE - UNABLE TO OPEN |
| S4 | 89.92 | INACCESSIBLE - UNABLE TO OPEN |
| S5 | 89.37 | 12"ø RCP INV IN=79.58 |
| | | 12"ø RCP INV OUT=79.56 |
| S6 | 89.36 | INACCESSIBLE - UNABLE TO OPEN |
| S7 | 88.24 | 12"ø RCP INV OUT=79.84 |
| S8 | 88.86 | INACCESSIBLE - FILLED W/ TRASH |
| S9 | 89.88 | INACCESSIBLE - UNABLE TO OPEN |
| S10 | 89.74 | INACCESSIBLE - FILLED W/ TRASH |




UNDERGROUND UTILITY DESIGNATION LEGEND

- PAINTED RED LINE (POSSIBLY ELECTRICAL LINE)
- PAINTED BLUE LINE (POSSIBLY WATER LINE)
- PAINTED GREEN LINE (POSSIBLY STORM/SANITARY/SEWER OR COMBINATION THEREOF)
- PAINTED ORANGE LINE (POSSIBLY TELECOMMUNICATION LINE)

"SUBJECT TO INTERPRETATION BY A QUALIFIED UNDERGROUND UTILITY DESIGNATOR"

LEGEND

| | | | |
|---|---|---|---|
| | STORM MH | TW | TOP OF WALL ELEVATION |
| | GROUND LIGHT | BW | BOTTOM OF WALL ELEVATION |
| | WATER SHUT OFF | EXT. | EXTENSION |
| | SIGN | | HANDICAP RAMP |
| | UTILITY MH | | TELEPHONE POLE |
| | LIGHT POLE | | ELECTRIC LIGHT POLE |
| | ELEC. MH | | CUT |
| | GAS VALVE | | EXISTING |
| | GAS METER | RECORD | RECORD INFORMATION |
| | SANITARY MH | MEASURED | MEASURED INFORMATION |
| | YARD DRAIN-INLET | | ROOF DRAIN BY/CONC. BASE |
| | WATER MH | | EXIST. FIRE HYDRANT |
| | WATER VALVE | CURB | CURB & GUTTER |
| | WATER METER | DWY. | DRIVE LINK FENCE |
| | PARKING METER | WF. | WOODEN FENCE |
| | CHAIN LINK FENCE | PL | PLANTER |
| | BOLLARD | CO | CLEAN OUT |
| | TREE | | GENERATOR (NATURAL GAS OR OTHER) |
| | BUSH | IF | REBAR FOUND |
| | FIRE/WYE | R/C | REBAR W/IN CAP |
| | SIDEWALK | FND | FOUND |
| | TYPICAL | O/E | OPEN END |
| | CONCRETE | | BENCHMARK |
| | RETAINING WALL | | |
| | IRON PIPE FOUND | | |

NOTE:
BASED ON WMATA INFORMATION OBTAINED, AS-BUILT SURVEY OF WMATA TUNNELS, TRACKS, ETC. MUST BE COMPLETED PRIOR TO ANY DEVELOPMENT WITHIN THE LIMITS OF WMATA (ABOVE GROUND AND UNDERGROUND) RIGHT-OF-WAYS.

October 2009

EXHIBIT A TO TERM SHEET

THE JAZZ @ FLORIDA AVENUE

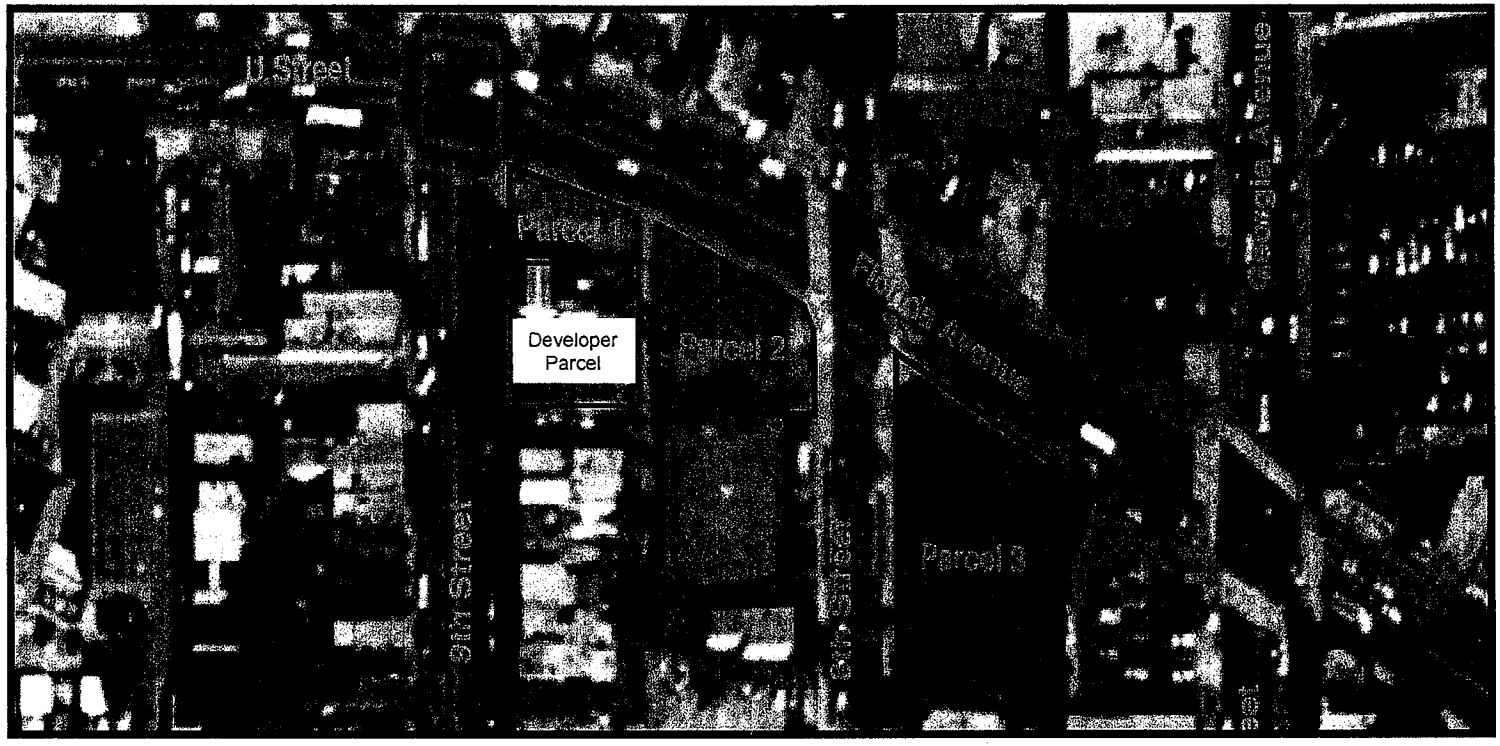
WMATA-INV 000582

10-28
Malcolm
EGI
capitalization

| | | |
|---|---|---|
| Retail (12,000 SF @ $30 PSF) | $ | 360,000 |
| Market Units (63,779 SF @ $30 PSF) | $ | 1,913,370 |
| Affordable Units (5,452 SF @ $18 PSF) | $ | 98,136 |
| | $ | 2,371,506 |
| Less 4% Vacancy/Rent Loss | $ | 94,860 |
| | $ | 2,276,646 |
| | | 0.01 |
| Participation Rent | $ | 22,766 |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Project




Developer will combine Metro's 3 parcels with developer-controlled adjacent parcel to create a unified retail and residential project.



WMATA-INV 000584

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

- Joint development agreement and lease reflect amended term sheet approved in November 2009
- 99-year lease with periodic rent adjustment
- Co-tenancy with targeted Metro decision-making authority



WMATA-INV 000585

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

Approve a joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site.



WMATA-INV 000586

O Kann
3/2/10

0 Parking / Roz to verify

1 • Light gauge Steel — Infinity System

2 • Spread Footings being looked at
Todd or Clark will call Tang directly

3. O. Wants to talk to Counsel
& will get back by COB Tomorrow

4. Lender, Lake Funding, 75 years is ok
~~[illegible]~~ with Steve

5. Verbal agreement from both Cabre & Graham
that Omar could replace BACDC & WMATA
must approve the substitute & must be equal
or better to BACDC

6. Tiwanna will get back to us if documentation exists

7. ~~Clark could give guarantee~~
~~LOC~~ Devlin will provide LOC
Clark will give estimate to stabilize structure
or fill in hole tomorrow
Tang to check out c Irving

or 10% of hard cost per Eric

8. Schedule COB tomorrow ~~start~~ - IDA July 30
to get to grade
including date foundation is at
street - 24 months from IDA July 2012

9. COB tomorrow

SURPLUS CASH
up to 2% of loan amount = $500,000
Donovan wants up to 4%
~~1.21~~ DSCR

10. 90% + PILOT

Omar 12/4/09 24th
10th

750K max cap. lease
every 10 years after 50 years

yesterday they lost their Stimulus package &
Draft CD could not get it out the door

3/29/09

Maurice Perry –

They went through a downsizing 1½ yrs ago
- He'll have someone else who is experienced in gym bve
- Also a CM arch. plans ↑ Tom Gallas
  He has been interviewing two CM firms,

Completed constr. dwgs
Working c Victory Hsg, strong org
Pres. Jim Brown has constr. background
Even though Maurice approves draws
4th quarter this year; 13 mo

Nancy Crowd in Charlotte assists on all contracts

Talking to Bozzuto as contractor; best suited for project

Once he has identified a ~~pipe~~ pipeline

He has always managed 2 projects at one time at Simpson & BACDC
~~At Cedar Hts~~

At any given time plan is not to have more than 2 active projects at any one time – one in pre-construction

Team Partner ~~team~~ would

Gene
~~Neil~~ Clerkin called Maurice
Thoughtful diligence - doing now
Submit a package to Boston - - -
to get Release of pre-dev funds

He wants to make sure rents are attainable
Doing an appraisal

45 days to get approval from Boston

His senior mgmt team will support him in any way necessary.

Maurice is taken aback by my process.

Bank of America doesn't put

3/13/09

Questions for B of A and BV

What projects did you directly supervise and were final decision maker on? Maurice - which have been built: What were you responsible for?

Size, scope, status of those projects, especially, construction budget for each project } Size of BADC today!

What staff or consultants such as a hired CM did you use?

Are those people still on your staff-- if not, who substitutes?

Who will have final decision making on a) overall development and b) construction on this FL Ave project? BACDC or Banneker

.....

He did not volunteer anything else about Banneker's competence as a builder.

I will call other firms mentioned in his experience documents, even though references have not been given.

B of A will act as developer on Parcel C.
How big is it?
How many people in your office
Do you have to go through a Committee approval process?
What is it + how close are you to approval ....

Duane Oates

Questions for B of A and BV

What projects did you directly supervise and were final decision maker on?

Size, scope, status of those projects, especially, construction budget for each project

What staff or consultants such as a hired CM did you use?

Are those people still on your staff-- if not who substitutes?

Woody Broughton
3/24/09

Woody: Since 2001
At that time, Maurice was with East of River CDC
Then M. went to BADC

Worked on redev. Cedar Hts.
Camp Springs
Wm. C Smith was contractor; had good rel. w/ BADC for a while

Maurice made the decisions; did a good job
Very level headed, straight shooter

Upscale market? They've not worked in such an area, but thinks Maurice can deal with that

M. is working with Harmel or Harkins on 98 unit senior hsg.

3/24/09

She oversees the R.E. Division of HDC
a parallel move, has been there for 1 year
it's one mile from her house

Maryann Dillon hired him @ 3 or 4 years ?? ago
Maurice has strong level of bkg background
moved to DC @ 1999
very detailed oriented
excellent project manager
good at human resources
He managed contractors & rehab projects from soup-nuts
Highland Condos, Cedar Height

used Bozzuto as GC + contractor
acq. + rehab Parkside
but Maurice did the
Senior hsg to count
~~[illegible]~~ + tax credit
through HFA

At BACDC ~~[illegible]~~ Maurice did rehab, as did BADC
They used William C Smith as contractor

Courts of Camp Springs was her project; Maurice took over
just at bond closing

Maryann Dillon replaced Chris who went to KSI

In new const. were going to use Hamel Builders,
Streuver

She remembers (?) from Trenton Park

3/27

BACDC DUE DILGENCE RESULTS TO DATE

Banneker references confirm that Banneker does not NOW have enough experience to manage a new construction project; it is apprenticing on some projects, but not capable yet

Banneker and Maurice Perry, a Bank of America CDC VP, agree that BACDC will be an equity partner and managing member of the project during the construction phase; after completion BADC will exit as it has done on other projects and Banneker will take over

Bank of America CDC (BACDC) is a wholly owned subsidiary of BoA

BACDC helps fulfill requirements of Community Reinvestment Act, invests in and develops affordable housing, usually LIHTC projects. Standard of construction is "affordable."

It has operated in DC area + Baltimore over the past decade, has built/rehabbed hundreds of units

It had a staff of several people a few years ago, Now Maurice is the only person. raises concerns re focus.

References for Maurice say he is solid, a straight shooter, detail-oriented. He has done rehab locally and has an excellent reference from Wm. C. Smith, BADC's contractor on many rehabs.

* I keep missing his California new construction reference.

* I also have a call into both Maurice and his supervisor in Boston about personnel backup and evidence of BoA approvals to date.

(a) approval process, ~~how do they~~ back Maurice up on this one
(b) What is Maurice's scope of responsibility
we are concerned that he cannot provide adequate focus

* Current sources of funds statement for the projects indicates a need for injection of @ $1M city subsidy which Mr. Albert would have to confirm would be forthcoming

Metropolis dropped out of the project because it "could not manage its risk," i.e. gain enough control of the development process.

DC has requested that we bring this forward
We'll be prepared to present our recommendation at Committee meeting

BACDC DUE DILGENCE RESULTS TO DATE

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## Doggett, Rosalyn

**From:** Moe Mohanna [Moe.Mohanna@housingpartners.com]
**Sent:** Friday, March 27, 2009 10:57 AM
**To:** Doggett, Rosalyn
**Subject:** Re: Maurice Perry

That works. Have a good weekend.
Moe

Please note new office address, phone and fax numbers as of December 29, 2008:

Moe Mohanna
Sr. Vice President
MacFarlane Costa Housing Partners, LLC
330 W. Victoria St.
Gardena, CA 90248-3527
Direct (424) 258-2890
Direct Fax (424) 258-2891
General office (424) 258-2800
General Fax (424) 258-2801

Please excuse any spelling or grammatical errors; message sent from handheld device.

---

**From**: Doggett, Rosalyn
**To**: Moe Mohanna
**Sent**: Fri Mar 27 07:53:30 2009
**Subject**: RE: Maurice Perry
I left before your last message came through on Friday. How about Monday morning?

---

**From:** Moe Mohanna [mailto:Moe.Mohanna@housingpartners.com]
**Sent:** Wednesday, March 25, 2009 6:21 PM
**To:** Doggett, Rosalyn
**Subject:** RE: Maurice Perry

Rosalyn,

I am traveling Friday. It is best we speak before my flight. How does 6:30 PST work for you. I can be reached on my cell at 714-270-0054. I am available anytime tomorrow.

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FOIA CONFIDENTIAL TREATMENT REQUESTED

3/30/09 Monica Warren-Jones
431 6078 cell

East of the River CDC
Tax Credit Syndication

Known him 5-7 years
She's with Enterprise now; sees him often

Done soup to nuts, construction & completion
Excellent business acumen
Close attn to detail
Sees things through well, manages it all

Construction oversight = a strength
Good in budget, keeping them on task

East of River
Affo
22d + T - Highland - Major Rehab
Blue Arts

Fairlawn Estates - didn't go well

BACDC -

Mike Mohanna
3/30/09

Great Team

Consultant, hardworking, etc.
Finance, design criteria deadlines
Great Coordinator

Proj. Mgr responsible for getting project done
Not directly responsible for getting contr. done
They have internal contr. management dept
Direct to day-to-day by contr. mgmt dept
Proj. Mgr = Owner Rep, Yes he was the project manager
Maurice Phar to oversee contr. mgmt

Sodium + ~~[illegible]~~ stick-built housing would be straight-up for Maurice

Maurice does not oversell, very careful

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B:(424) 258-2890
F:(424) 258-2891



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Friday, October 16, 2009 10:18 AM
**To:** Doggett, Rosalyn; Montague, Joshua W.
**Cc:** Maurice' 'Perry; 'Anthony Ives'; 'Tiwana Hicks'; Yohance S. Fuller; John' 'Hagner; Goldin, Steven
**Subject:** 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

Josh and Roz,

Attached please find the revised Term Sheet. The only change made to the document was the deletion of Section 9.8 (e). 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

**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 000602

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 000603

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 000604

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.

Make sure any rights of Adj. Condtr. Manual re added

**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 000605

~~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 000606

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.

7,721 21%
28,376 79%
36,097

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 Purchase Price for such Additional Density shall be subject to the 5.8% annual increase.

Comment [aji1]: delete

typo

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 000607

**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.

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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.

delete

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

~~WCSR 4219577v1~~

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~~for 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] & CGL policy

**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)~~ 60 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.

[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.~~ and CGL.

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~~Ok for us to add to~~

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

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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~~

BANNEKER VENTURES, LLC

**COMPANY OVERVIEW**

Banneker Ventures, LLC is a District of Columbia real estate development and construction management firm that focuses its resources and experience on transforming urban neighborhoods throughout the Metropolitan Washington area. We work closely with local governments, property owners, and neighborhood residents to create innovative combinations of housing, retail, commercial and public use spaces that support and advance positive community oriented values. The firm's management team has more than 20 years of real estate development and construction management experience.

**MANAGEMENT TEAM**

To accomplish its mission, Banneker is led by the firm's founding principal, Omar A. Karim and head of the firm's construction management division, Duane Oates, to provide a solid foundation for our growth. The firm is also comprised of other talented professionals with backgrounds in construction and design to help the firm complete projects on time and within budget. On the following pages, please find biographies of the firm's construction management staff followed by a few of the projects that the firm is currently working on.

BANNEKER VENTURES, LLC

**OMAR A. KARIM, PRINCIPAL**

**Education:** J.D./Howard University School of Law, concentration real estate law
B.S. Mechanical Engineering/Howard University School of Engineering

**Experience:**

**Banneker Ventures, LLC**

**Co-Program Manager, Walker Jones Education Facility, Washington, DC**
Serve as owner's representative in program and construction management of this $60M project which includes construction of a pre-k through 8 public school, recreation center and public library. Identify and select members of the development team, including architect, engineers and general contractor. Worked with other program manager to pull together entire team for project including architect, general contractor, engineers, land use counsels and other third party consultants. Construction is being done on an accelerated schedule and is 60% complete as of March 2009.

**Project Executive, 814 Thayer Avenue Residential Project, Silver Spring, MD**
Head all aspects of $18M new construction project which will result in 60,000 sq. ft. of residential space and 37 below-grade parking spaces. Oversee site acquisition, selection and management of architect, engineers, traffic consultants, attorneys and general contractor. Oversee all aspects of the construction management aspects of the project.

**Bundy Development Corporation**

**Project Manager, Sixth Street Flats (809 6th Street, NW), Washington, DC**
Managed all aspects of $14M new construction residential project in the Chinatown neighborhood of Washington, DC. Duties included overseeing design, day-to-day on-site construction management, move-in and warranty phases of project.

**Project Manager, The Icon Condominiums (1320 13th Street, NW), Washington, DC**
Managed final phase of construction work of 19,000 sq. ft. new construction residential project in the Logan Circle neighborhood of Washington, DC. Duties included overseeing punchlist work, commissioning and warranty phases of project.

**Assistant Project Manager, City Vista (5th & K Street, NW), Washington, DC**
Represented firm as member of joint venture with Lowe Enterprises and Neighborhood Development to bid on and ultimately construction this $133M mixed-use project, which includes apartments, condominiums and retail uses, including a Safeway Grocery store.

BANNEKER VENTURES, LLC

**Assistant Project Manager, The Old Convention Center Site, Washington, DC**
Represented Bundy Development Corporation as member of joint venture to oversee pre-development phase of 1M SQ. FT. mixed-use town center project, including office, apartments, condominiums, retail and civic uses. Project will cost in excess of $750M to build and will be located on 10 acre site on the 800 blocks of 9th & 11th Street, NW, Washington, DC.

**Kramer Levin Naftalis & Frankel LLP**

**Associate, Washington, DC/New York, New York**
Corporate attorney with New York-based law firm, counseling public and private investment companies on a variety of complex legal, technical, and policy issues implicated in the securities industry. Monitored funds for compliance with federal security rules and regulations. Drafted disclosure for filings with the SEC, including registration statements and proxy materials.

BANNEKER VENTURES, LLC

**DUANE W. OATES, SENIOR CONSTRUCTION EXECUTIVE**

**Years Experience: 14**

**Education:** Masters Studies/Columbia University
B.S./Seton Hall University
Minority Business Executive Program/Dartmouth College
Real Estate Development & Investment Course/John Hopkins University

**Experience:**

**Banneker Ventures, LLC**

**Project Executive, Deanwood Community Center, Washington, DC**
Oversee all aspects of this $31M new construction recreation center, pool and public library project. Responsible for preparing solicitation for general contractor, interviewing, and ultimately awarding contract for general contractor work. Oversee all on-site construction management issues, including oversight of the general contractor, architect, engineers, and other third party consultants.

**Construction Manager, Walker Jones Education Facility, Washington, DC** CM = Regan
Serve as firm's construction manager for this $60M new construction public school, library and recreation center project. Oversee all aspects of permitting and utility work on project. Manage $3.5M demolition phase of two structures on the site, including a health center and elementary school. Oversee all aspects of street opening which cuts through the site, including moving underground utilities. Oversee applications to Board of Zoning Adjustment Office of Surveyors and other District agencies. Manage permit expediting of raze, sheeting/shoring and building permits. Work with project executive to oversee general contractor.

**Construction Manager, Emery Recreation Center and Athletic Field, Washington, DC** Regan =
Serve as construction manager of this $1M, 51,000 sq. ft. upgrading of an existing baseball field and renovation of a tennis court and outdoor basketball court, including the addition of bleachers.

**Construction Manager, The Yards (Building 160), Washington, DC**
On-site representative for $50M adaptive re-use of historic Pattern and Joiner Shop, built in 1918, and now part of the Washington Navy Yard Annex. Project will include conversion of four-story, 157,000 sq. ft. Joiner Shop warehouse into a 170-unit apartment building and 7,000 sq. ft. of retail space. Manage the revenue bond issuance process from the District of Columbia Housing Finance Agency, including the approval of the issuance of the bonds and the pricing of

Marvin, briefly a partner – was once chair of WSSC
was close to Wayne Curry

BANNEKER VENTURES, LLC

at time, Duane had a company that did maintenance
was minority partner at Courthouses, bankrupt
lovely guy, has had financial issues
probably in late 40's (age)

Marvin did not see him as a Contractor, CM

bonds in the market. Oversee pre-development efforts to secure appropriate permits. Work with development executive to oversee day-to-day construction activities, operations upon completion of construction and commissioning.

**GSN Development & Construction**

Marvin's overstated

**Co-Principal in Charge, Arlington County Courthouse Metro Station, Arlington, VA**
General contractor of this $20M, 60,000 sq. ft. new construction project above a Metro station. Project includes education facilities, retail shops, and office space. Co-managed response to RFP and selection processes for the design phases and contractor award as well as land use issues.

**U Street/Cardozo Metro Development Project, Washington, DC**
Served as firm's project manager for this 30,000 sq. ft., three-story mixed-use development. Oversaw construction of firm's role in build-out of office and retail space.

**The Warrenton West Condominium, Washington, DC**
Serve as firm's project manager to facilitate the design phases, building permit approval, and construction of a 29 unit apartment building and total build-out of the shell space into 18 unit luxury condominium project.

**Development Management Services for The Warrenton Group**
Serve as firm's project manager to coordinate the project budget, real estate purchase, design phases, building permit approvals, tenant association negotiations, and construction scheduling for several projects including Taylor Street Flats, a 30-unit residential project and Webster Gardens, a 100-unit residential project.

**Prince George's County Police Station, Eastover Shopping Center, Oxon Hill, MD**
Serve as firm's project executive/construction manager to facilitate the design and construction of 10,000 SF facility, largest patrol district bordering the District of Columbia. Provided project oversight for $1.8M in construction trades, including masonry, rough carpentry, doors/frames/hardware, cell door installation, and interior architectural trades. New facility houses a regional processing center maintained by the Department of Corrections.

**FedEx Field Stadium, Landover, MD**
Serve as firm's project manager to facilitate the new construction of FedEx Field stadium including the installation of the initial 80,000 seats, construction of the Club House Level and build-out of vendors' shops. Construction management duties involved scheduling, procurement, contractor awards, and project oversight.

BANNEKER VENTURES, LLC

**SHAYLA TAYLOR, EIT, LEED AP, PROJECT MANAGER**

**Education:** B.S. Civil Engineering & Architecture/Massachusetts Institute of Technology

**Accreditations:** Engineer-In-Training and LEED® Accredited Professional

**Experience:**

**Banneker Ventures, LLC**

**Project Manager, Deanwood Community Center, Washington, DC**
Serve as firm's project manager for this $31M new construction recreation center, pool and public library project. Assist in procurement activities to solicit, review and award general contracting package and required consultant services. Work with project executive to finalize contractual agreements and to perform oversight of all contractors. Assist in permit expediting of raze and building permits. Organize meetings for design oversight, progress reporting, community outreach, end-user buy in and general project coordination.

**AVS/Regional Contracting**

**Project Manager & Field Supervisor, National Security Agency, Laurel MD**
Oversaw all aspects of this $4M, 44,000 sq. ft. laboratory and office renovation project. Oversaw the conversion of 44,000 sq ft of industrial space into laboratories and office renovations, including the large-scale MEP work for data center capabilities. Performed all bidding, subcontractor buyout, submittal and accounting processes. Scheduled and monitored on-site activities, including all trade and final inspections. Facilitated Owner-Architect-Contractor progress meetings. Scheduled air balancing, punch-list work and final project occupancy and turnover.

**Rand Construction Corporation**

**Project Manager, Syncom Funds, Silver Spring MD**
Oversaw all aspects of this $1M, 50,000 sq. ft. tenant build-out of commercial office space, including HVAC, Sprinkler, Plumbing and Interior Finish work. Ran all aspect of project management activities from preconstruction to project turnover. Oversaw the estimation for this hard bid project. Negotiated subcontractor buyout. Created project schedule. Maintained project budget and accounting. Managed field superintendent. Coordinated trade permits. Maintained relationship with building owner. Issued all RFIs, change orders and submittals. Negotiated change orders. Facilitated Owner meetings. Scheduled punch-list work. Created O&M manuals. Obtained early occupancy for the tenant.

BANNEKER VENTURES, LLC

**Project Engineer, American Capital, Bethesda MD**
Oversee day-to-day activities for this $11M, 327,000 sq. ft. project creating several office and data center spaces. Supervised five field superintendents. Procured all building and occupancy permits from Montgomery County. Released all subcontractors. Prepared and processed submittals. Issued RFIs. Processed and presented change orders. Maintained budget and performed accounting task for $6M of work. Facilitated Owner-Architect-Contractor weekly progress meetings. Issued meeting minutes. Coordinated trade permitting and inspections. Scheduled building engineer systems training. Obtained occupancy permits.

**Assistant Project Manager, AARP, Washington DC**
Assisted project manager on this $3M, 72,000 sq. ft. project creating tenant office space. Released all subcontractors at buyout. Prepared and processed submittals. Issued RFIs. Maintained project logs. Maintained weekly Owner progress meeting minutes. Facilitated subcontractor meetings. Oversaw field superintendent. Scheduled punch-list work. Created O&M manuals.

**Assistant Project Manager, Williams & Connolly, Washington DC**
Performed as assistant project manager in this $7M, 200,000 sq.ft. build-out of commercial office space. Prepared and processed normal construction and LEED® submittals. Issued RFIs. Maintained project logs. Maintained weekly progress meeting minutes. Created O&M manuals.

**BVH Architects & Shriver Architecture, Omaha NE**

**Architectural Intern, Various Clients, Omaha NE**
Performed as an intern for various new construction projects. Reviewed submittals from sub-contractors and vendors. Answered RFIs. Prepared bid materials. Updated and issued revision sketches.

BANNEKER VENTURES, LLC

**SHARNEISE TURPIN, PROJECT MANAGER**

**Education:** Masters in Architecture/The Cathelic University of America
B.S. in Architecture/The Catholic University of America

**Banneker Ventures, LLC**

**Assistant Project Manager, Deanwood Community Center, Washington DC**
Assist project manager with all aspects of the construction management of this $31M new construction recreation center, pool and public library project. Assist in procurement activities to solicit, review and award general contracting packages. Work with project executive to finalize contractual agreements and to perform oversight of all contractors. Assist in permit expediting of raze and building permits. Organize meetings for design oversight, progress reporting, community outreach, end-user buy-in and general project coordination.

**Shalome Baranes Associates**

**Assistant Project Manager, 1401 Wilson Boulevard Mixed-Use Project, Rosslyn VA**
Responsible for site plan coordination between civil and electrical consultants during initial site analysis for this 250-unit residential high-rise and office tower project. Reviewed utility drawings and coordinated with consultants and city to verify utility locations and necessary relocations for new structure.

**Staff Architect, The Old Convention Center Site, Washington DC**
Assisted in the design of unit layouts for condominiums, apartments and hotel rooms as part of the vertical design phase of this 1M sq. ft. mixed-use town center project in the center of Washington, DC. Helped produce construction documents for construction bids and building permit submissions for various mixed-use buildings on this master-planned site.

**Lawson & Associates Architects**

**Project Manager, Retirement Living Television Studio, UMBC Campus Baltimore MD**
Single point of contact between client, associate architects and consultants regarding all construction administration documentation including; product data, shop drawings, RFI's, ASI's, and ASK's. Designed the office method to manage and functionally organize the tracking of all official documentation.

BANNEKER VENTURES, LLC

**TIWANA Z. HICKS, PROJECT MANAGER**

**Education:** J.D. degree/Georgetown University Law Center
B.A. degree *(summa cum laude)* in Communications/Howard University

**Banneker Ventures, LLC**

**Project Manager, The Jazz @ Florida Avenue, Washington, DC**
Work with project executive in day-to-day activities of this $38M, mixed-use, transit-oriented residential and retail project. Oversee bids from general contractors, engineers and other members of the development team. Work with design team to ensure that project is efficiently designed. Negotiate terms of long-term lease with Washington Metropolitan Area Transit Authority (WMATA) as well as financial terms with joint venture development and equity partner.

**Project Manager, Banneker Plaza, Silver Spring, MD** ??
Work with project executive to complete daily activities associated with $54M mixed-use apartment and retail project, anchored by a 55,000 SF Lifestyle Safeway Grocery Store. Negotiate terms of purchase agreements with adjacent landowners for purchase of parcels. Oversee project architect and preliminary design plans.

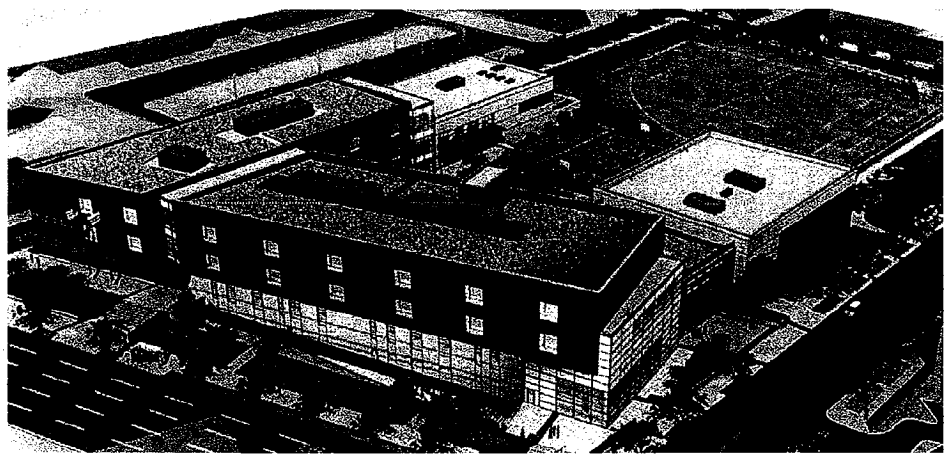
**Assistant Project Manager, Walker Jones Education Facility, Washington, DC**
Assist project manager and executive with legal aspects of the project. Draft operating agreement between users of the facility, including the District of Columbia Public Schools, District of Columbia Parks and Recreation and District of Columbia Public Libraries. Work with firm's out-side counsel to ensure zoning variances are received for project, including re-opening of a portion of L Street, NW.

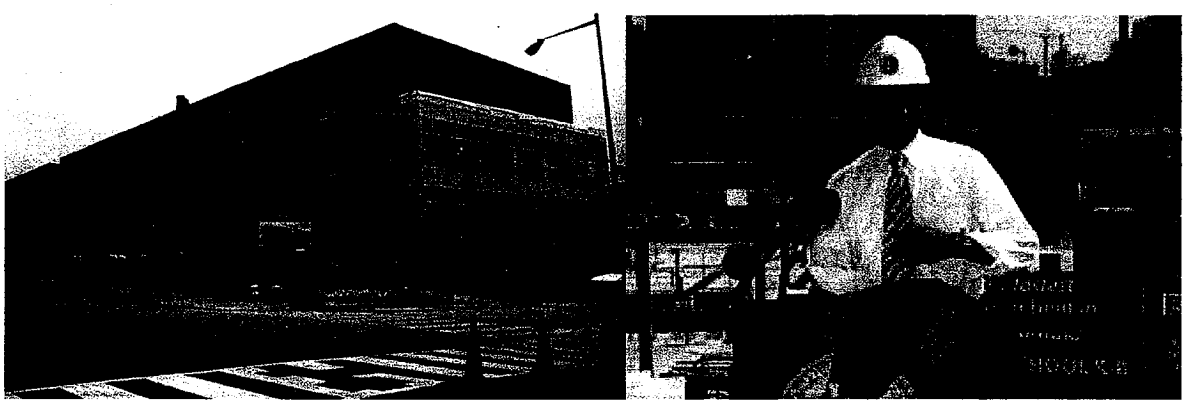
**Womble Carlyle Sandridge & Rice, PLLC, Real Estate Development Practice Group**

Real estate attorney for 500-attorney law firm. Represented both lenders and real estate investment trusts in real estate development matters, with particular emphasis on the acquisition and financing of commercial real estate projects. Prepared corporate, limited liability and partnership agreements and other related corporate documentation. She also represented a major grocery store company in the negotiation of leases and other corporate matters for stores located in Virginia, Washington, DC, and Maryland.

BANNEKER VENTURES, LLC

**Walker Jones Education and Recreation Facility**





**Mixed-Use Public School, Recreation Center and Library**
**New Jersey and L Streets, NW, Washington, DC**

| | | | |
|---|---|---|---|
| Size (GSF): | 120,000 | Architect: | Hord Coplin Macht |
| Status: | Construction Phase | Contractor: | Forrester Construction |
| | Completion Expected 3Q 09 | Land Use Counsel: | Pillsbury Winthrop LLP |

Banneker Ventures, LLC is the construction manager along with Regan Associates LLC in the development of this $60M, four-story, multi-use facility. The project includes demolition of an existing school, construction of new 120,000 square feet facility, re-opening a portion of L Street, NW, and massive underground utility repairs. The facility is being built on an accelerated schedule to meet the opening of the 2009 school year and is 60% complete as of March 2009.

BANNEKER VENTURES, LLC

**Pattern Shop Lofts – The Yards at Southeast Federal Center** Bldg 160

**Pattern Shop Lofts – The Yards at Southeast Federal Center**
**Mixed-Use Residential and Retail**
**Baseball District, Washington, DC**

| | | | |
|---|---|---|---|
| Size (GSF): | 210,000 | Architect: | SKI Architects |
| Cost: | $60M | Contractor: | KBS Construction |
| Status: | Construction Phase; Completion Expected 1Q 10 | | |

Banneker Ventures, LLC is the development manager for Forest City Washington for the first residential building at The Yards, a large-scale, mixed-use redevelopment of a 42 acre former annex to the Washington Navy Yard which is adjacent to the new Washington Nationals baseball stadium. Pattern Shop Lofts is a $60M, six-story, adaptive-use, residential and retail facility that includes the conversion of a 157,000 SF warehouse into a 170-unit apartment and retail project. The project is 20% complete as of March 2009.

exaggeration

FORESTCITY WASHINGTON



## Mixed-Use Projects

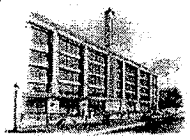
9 results

**Arthur Capper Carrollsburg Dwellings**

Southeast Washington, District of Columbia

Mixed-use

Forest City's revitalization of the Arthur Capper/Carrollsburg Dwellings will create a vibrant neighborhood from an outmoded pu housing develo...



**Edgeworth Office Building**

Richmond, Virginia

Mixed-use

This former pipe tobacco factory is being tra into class A office space in the latest additio Richmond's historic Tobacco Row district, ju

**Konterra**

Prince George's County, Maryland

Mixed-use

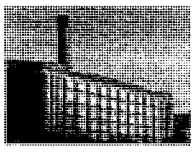
Konterra Town Center East is located in the populated Washington/Baltimore corridor, fc north of the Capital Beltway (I-495). Bisecte

**New East Baltimore Community**

Baltimore, Maryland

Mixed-use

A partnership between Forest City Enterpris group of prominent minority builders is deve first phase of this 80-acre mixed-use comm



**River Lofts/Lucky Strike**

Richmond, Virginia

Mixed-use

The River Lofts at Tobacco Row—Lucky Stril newest residential component of Forest City Row community, a 15-block area of former

**The River Lofts at Tobacco Row/Consolidated-Carolina**

Richmond, Virginia

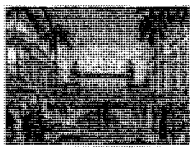
Mixed-use

With soaring windows, exposed brick, and e ceilings, the lofts of Consolidated-Carolina c historic details with today's conveniences. T

**The Village at Gulfstream Park**

Mixed-use

Located in one of the nation's largest and fa growing demographic areas, The Village at (



Hallandale, Florida

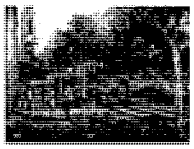
Park is a mixed-use, open-air lifestyle cente

**The Yards**

Washington, District of Columbia

Mixed-use

The Yards is bringing up to 1.8 million squa new office space, 2,800 residential units (bc lease and for sale), up to 400,000 SF of ret



**Waterfront**

Washington, District of Columbia

Mixed-use

The Waterfront site—overlooking the Washi Channel and in close proximity to Capitol Hi Airport, The Mall, and downtown Washingto being...



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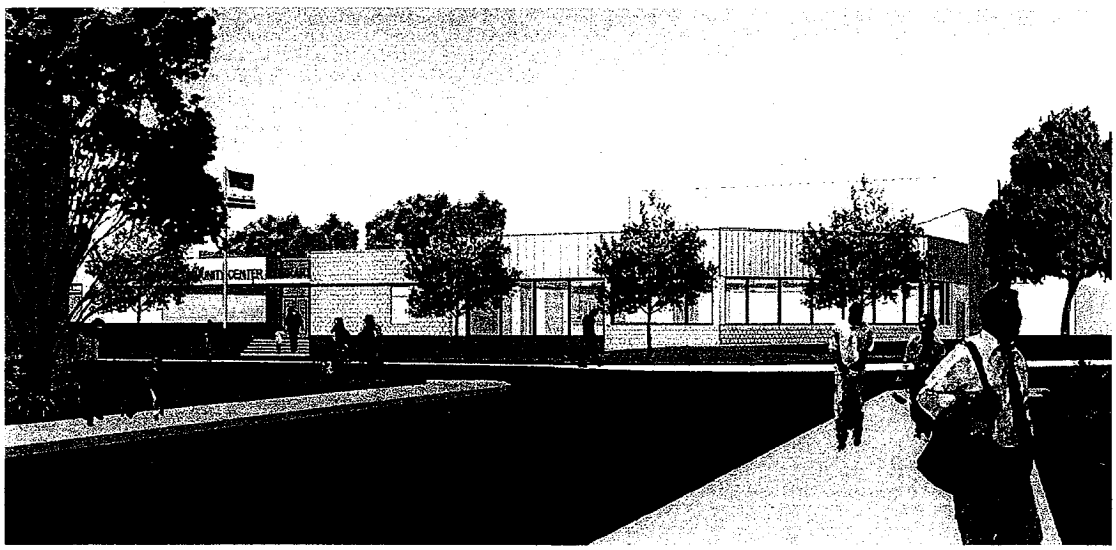
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000627

BANNEKER VENTURES, LLC

**Deanwood Community Center**



**Mixed-Use Recreation Center and Library**
**46th and Quarles Street, NE, Washington, DC**

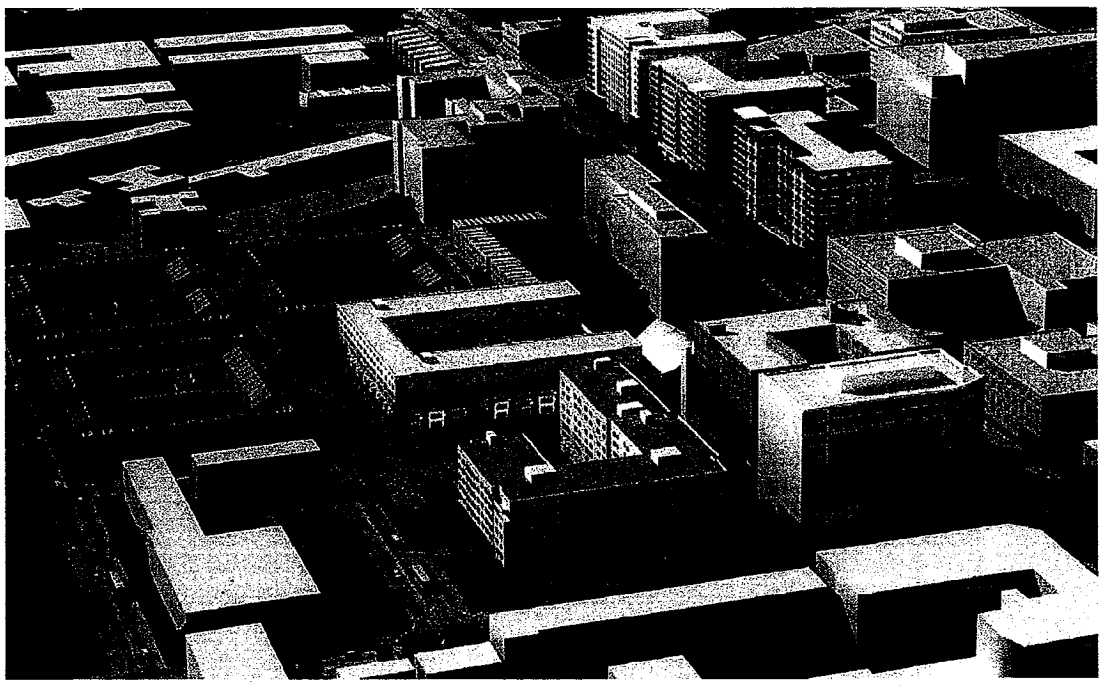
| | | | |
|---|---|---|---|
| Size (GSF): | 60,000 | Architect: | EEK Architects |
| Status: | Demolition Phase | Contractor: | Forney Construction/Manhattan |
| | Completion Expected 2Q 10 | Land Use Counsel: | Pillsbury Winthrop LLP |

Banneker Ventures, LLC serves as co-program manager with Regan Associates, LLC in the development of this $32M multi-use facility. Project includes construction of 63,000 SF co-location facility. It includes an indoor leisure swimming pool, locker rooms, gymnasium, game rooms, full library, child care center, dedicated senior space, kitchen, and multi-purpose rooms. The existing facilities, including tennis courts, a playground, swimming pool, and field lights are in the process of being demolished. Construction began in March 2009 and is expected to be complete in May 2010.

703 [illegible] 2208
Herndon

BANNEKER VENTURES, LLC

**Northwest One New Communities Redevelopment**



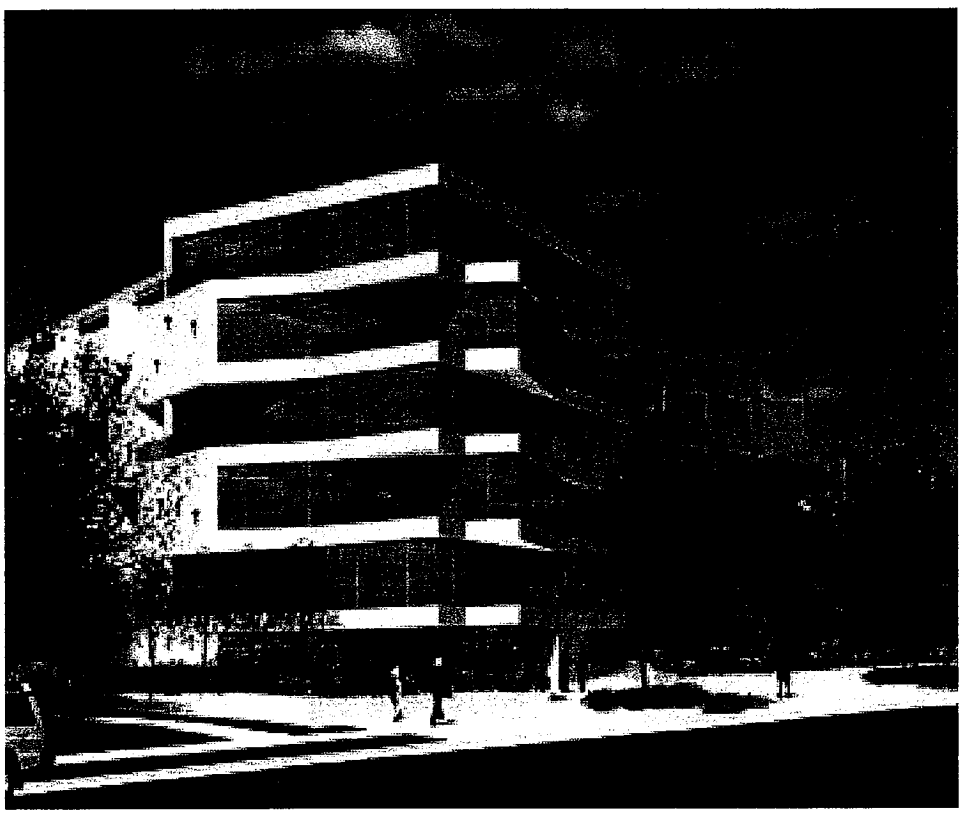
**Northwest One New Communities Redevelopment**
**Mixed-Use Residential, Retail and Office**
**North Capitol and K Streets, NW, Washington, DC**

| | | | |
|---|---|---|---|
| Size: | 1,633 residential units | Master-Plan Architects: | Stull and Lee |
| | 300,000 SF office, 40,000 SF retail | | PGN Architects |
| Status: | Design Phase; Project expected to be complete in 2017 | | |

Banneker Ventures, LLC serves as co-master developer and construction manager of the first "New Community" in the District of Columbia. This project is situated in the heart of the NOMA neighborhood, just blocks from Washington's Union Station. The total development will cost in excess of $679M, 20% of which will be owned and developed by Banneker. Once completed, the project will be a model mixed-income community which will include a mix of high-rise residential units, townhomes, office space, retail space and public parks. Banneker will serve as construction manager for a 250,000 sq. ft. mixed-use residential and retail high rise building located on North Capitol Street.

BANNEKER VENTURES, LLC

**The Residences @ Thayer Avenue**



**The Residences @ Thayer Avenue**
**Mixed-Income Residential**
**Downtown Silver Spring, MD**

| | | | |
|---|---|---|---|
| Size (GSF): | 60,000 | Architect: | Sorg and Associates |
| Status: | Zoning Approval Complete | Civil Engineer: | Vika Inc. |
| | Construction Expected: Fall 2010 | Contractor: | TBD |

Banneker Ventures, LLC is the developer and construction manager of this $18M, 5 story, 60,000 square feet mixed-income project at the former headquarters of the National Association of the Deaf located in the Central Business District of Silver Spring, Maryland. The project will include 52 residential units and one floor of underground parking. Banneker is responsible for overseeing all aspects of the project, including hiring the architect, engineers, general contractor and other third party consultants and overseeing the day-to-day construction management aspects of the project.

BANNEKER VENTURES, LLC

# BANNEKER VENTURES, LLC
# DESCRIPTION OF ON-GOING PROJECTS
# (as of March 2009)

Capitalized Lease Payment

Value of site with a capitalized lease payment is $1,980,000 as of today based on (1) valuation of site @ $55/sf for residential/retail, (2) proposed WMATA parcels build-out of 124,000 sf, (3) a deduction for the added costs of building over Metro tunnels, and (4) a deduction for 20% affordable housing at 50% of AMI absent any federal or local government subsidy assistance that reduces expenses or increases revenue other than 4% tax credit financing.

Payment at closing (lease execution) must equal today's value of $1,980,000 at WMATA's discount rate of 6.8%.

Payment to be increased by 80% of any additional subsidy dollar obtained.

Pre-Closing Payments

$50,000 first 12 months after joint development agreement (jda) xecution, payable in advance
$65,000 second 10 months, payable in advance

Additional Density

Payment for additional density at $55/FAR sf for additional density including the to-be-closed alley for non-residential sf over 11,000 sf attributable to the WMATA parcels and $27/FAR sf for residential sf over 113,000 sf attributable to the WMATA parcels escalated at 6.8% from jda execution.

Annual Operating Income Participation

1.5% of Effective Gross Income. Debt Service Coverage Ratio to be at 1.25% or higher to ensure surplus cash for WMATA participation.

Capital Event Participation

No exclusions from capital events except admission of initial equity partner. WMATA receives 10% of net proceeds after deduction of debt repayment, original cash equity to develop the project with a return of 20%, member loans to develop the project with a return at market but not to exceed 12%, and transaction costs. Member loans not to exceed 10% of original development costs; equity not to exceed 30% of original development costs.

Any other terms per T. Hicks e-mail summary of 6/25/09 and chart of agreed upon items.

Florida Avenue Status September 8, 2009

Staff is attempting to bring a term sheet to the Board in October at the developer's urgent request expressed this past week. Staff will request of the Planning, Development & Real Estate Committee and the Board at their September meetings 120 additional days (from the Board's last extension to August) to complete term sheet negotiations and bring a term sheet, joint development agreement and lease agreement to the Board for action in December. Staff would still expect to provide a proposed joint development agreement and lease for Board action in December.

At the present time, staff is completing a current appraisal, as required by FTA, for the highest and best use of the site. The appraisal will be compared to the developer's request for a further write down of the value of the WMATA site under the developer's proposed use of the site mainly for affordable housing, with 20% of residential renters earning 50% of Area Median Income. The comparison will allow the Board to determine if it wishes to approve a reduction in land value in order to meet community goals expressed in the Duke Plan or provide some other guidance to staff. FTA concurrence with the Board action would be needed, as always.

Meeting with Banneker tomorrow

Mark and I have discussed the proposal below and want to put it out to you for consideration:

Background

- The developer has asked for a co-tenancy agreement in Square 393, the western-most of the two blocks where they want to combine property they "control" (7700 sf) with property we own (12400 sf).
- We discussed with our general counsel today: She believes such a deal would be tantamount to a partnership forbidden by our Compact.
- Further, we believe that the proposal: 50-50 decision making and control is not attractive to us and would definitely be not attractive to anyone to whom we might have to market our part of this property in the event of developer default. (Further, we would not include the separate Square 416 property in any "co-tenancy" as the developer has requested.) We have asked Bolan Smart to have their partner Alvarez and Marsal (the Lehman Bros. bankruptcy czar) opine on this. The co-tenancy outline arrived from the developer's attorney around noon today 9/17.
- Therefore, the proposal is a potential deal breaker.
- Remedies would be 1) or them to drop the properties they control which make for a better total building site or2) for us to sell the properties on that square and, potentially, both squares.

Appraisal

- The final appraisal from Harps & Harps arrived around noon today 9/17. It considers only matter of right zoning and inclusionary zoning.
- It values the site at $4 million: [$55/FAR sf x 124,000 sf (slightly less than full buildout) at $6.8M with deductions of $500,000 for IZ and $2.3M for extraordinary costs of building over the tunnel. ]
- It values a capitalized lease at $3.134 million.

Developer Pro Formas

- Though not fully complete, they arrived Tuesday morning. Examined by Eric Smart + WMATA staff.
- It incorporates the $1.98 M we proposed for affordable housing and, compared to March previous proposals, shows that 1) addition of nearly $2M to developer fee in additional to other payouts to management team 2)even counting extraordinary tunnel costs they are paying 2.6 times what they are proposing to pay for WMATA land for land not even on Florida Ave (the 7700 sf) and 3) they have underestimated rent collection by their own estimation.

- All told, these additions plus full buildout of our site and allowance for value of alley closing would allow us to :
  1) Request a SALE PRICE of $4.6M for of all three of our parcels on Florida Avenue.
  2) Eric Smart believes that Banneker was expecting an appraisal price between $4 and $5 million based on his prior discussions with them.
- The advantages to all would be clear: no co-tenancy issue, no elaborate dealings with Banneker for WMATA and, for Banneker's part, all the upside and no elaborate dealings with WMATA.
- Counsel would not object to a sale, nor, we suspect, would FTA, based on past conversations (though they might object to an offer below the last lowest offer) and we could meet the appraisal.
- Cleaner and simpler for all.

We are working on adjustments to the term sheet Banneker sent on Tuesday afternoon and will have them later today. HOWEVER, SHOULD WE PUT A SALE PROPOSAL ON THE TABLE TOMORROW?

**Florida Avenue Term Sheet Negotiation Issues**

We would start with Omar's pro forma and sources and uses of funds table. When last we met with him, he recognized that he had at least a $1 million gap, and, that, I assume, is why he was going to apply for (in addition to tax credits: 4%, 9%?) TIF for retail. Who know? We have no current, solid information.

Further, if we write down the land cost, he really has no incentive to get other financing.

However, this is an outline of what we should ask for:

1. Any advantage (TIF, tax abatement, greater than assumed equity infusion through tax credits, etc. ) that reduces expenses or increases the income in the development and operating pro formas that Omar give us and that we agree upon should be reflected in rent adjustments to WMATA: 80 cents on the dollar x 6.8%.
2. Further, since WMATA's share of effective gross income must come from "surplus cash" under HUD insurance , we would need to include in any contract a debt service coverage ratio at all times of at least 1.2; higher, of course, if HUD required it. Otherwise, the project could be overleveraged and there would not be cash for WMATA to receive.
3. If there is no HUD insurance, then our participation in income would not be subordinated.
4. We assume that any prepaid capitalized base rent would be paid at lease closing, not at stabilization. We do not do any deals that are structured other than with payments at closing.
5. On capital event "premium rent" I am not sure if the Rhode Island Avenue lease is more or less advantageous than what we had tentatively agreed to since many transactions are excluded from a capital event in the RI Avenue lease.

## Doggett, Rosalyn

**From:** eric.smart@bolansmart.com
**Sent:** Thursday, September 24, 2009 8:26 AM
**To:** Doggett, Rosalyn
**Subject:** Re: FW: Comments to Appraisal of 700 and 800 blocks of Florida Avenue NW

Roz

Some quick comments on Omar's reasoning:

1. For size of lot, would say that price per sf of actual land area should become the reference, with WMATA surveying, or at least reviewing survey.

2. Why go with estimated FAR rather than actual achieved? If less, then maybe project may be somewhat less expensive to develop per achieved FAR, i.e. in area of tunnel deduct? Probably cannot quantify at this stage.

3. Suggestion that unencumbered value in 2009 of the property is $45 per FAR is not outrageous.

4. In approximate agreement with valuing of affordable deduct.

5. I have no basis to comment on extraordinary deducts, but to say that it did not appear in Omar's earlier proformas.

Bottom line though is that a net of approximately $25 per FAR including all the deducts may not be that far off for a hypothetical all cash sale deal forced to happen in 2009. Does not use ground lease tools or timing to advantage, but you know that anyway. Good luck, if that can possibly apply any more.

Eric

On Wed, 23 Sep 2009 3:08:30 -0500 (EST), "Doggett, Rosalyn"
<RDoggett@wmata.com> wrote:
> I am out of the office today (colonoscopy) so just opened this. Any
comments from you will be appreciated. I just spoke to Mark, and I expect that he, Malcolm
and I will meet at 9 tomorrow morning. Thanks.
> _____
> From: Omar A. Karim [okarim@bannekerventures.com]
> Sent: Tuesday, September 22, 2009 6:24 PM
> To: Doggett, Rosalyn; Marshall, Malcolm; Meister, Mark K.;
Bottigheimer, Nat
> 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
>
> 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

Land Value = $55 (versus $57 in 8/07 appraisal)

| | | | |
|---|---|---|---|
| land sf | 28,892sf | | |
| 4.5FAR sf | 130,174sf | | |
| $57 FARsf | Integra | | $7,500,000 |
| $55FAR sf | Harps | ($349,175) | $7,150,825 |
| limited sf | 113,441sf | ($911,570) | $6,239,255 |
| IZ sf rqt. | 8,782sf | | $5,756,245 |
| 50% bonus density | | ($483,010) | |
| IZ rent coverage | | ($219,550) | not incl. |
| Extra Constr cost $25/sf | | ($1,434,425) | $4,321,820 |
| TOTAL w/o line 16 | | ($3,178,180) | $4,321,820 |
| HARPS | total/w16 | ($3,397,730) | $4,102,270 |
| 20% aff. .8x$6,239,255 | (Nat) | | $4,991,425 |

8/5/2009

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar A. Karim [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

Steve,

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
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com



WMATA-INV 000639

FOIA CONFIDENTIAL TREATMENT REQUESTED

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**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?

---

**From:** Goldin, Steven [mailto: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,



WMATA-INV 000640

FOIA CONFIDENTIAL TREATMENT REQUESTED

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
okarim@bannekerventures.com



WMATA-INV 000641

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar A. Karim [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
**Attachments:** Banneker Ventures - Capability Statement.pdf; Representative Projects of Banneker Ventures and Omar Karim (WMATA).pdf

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
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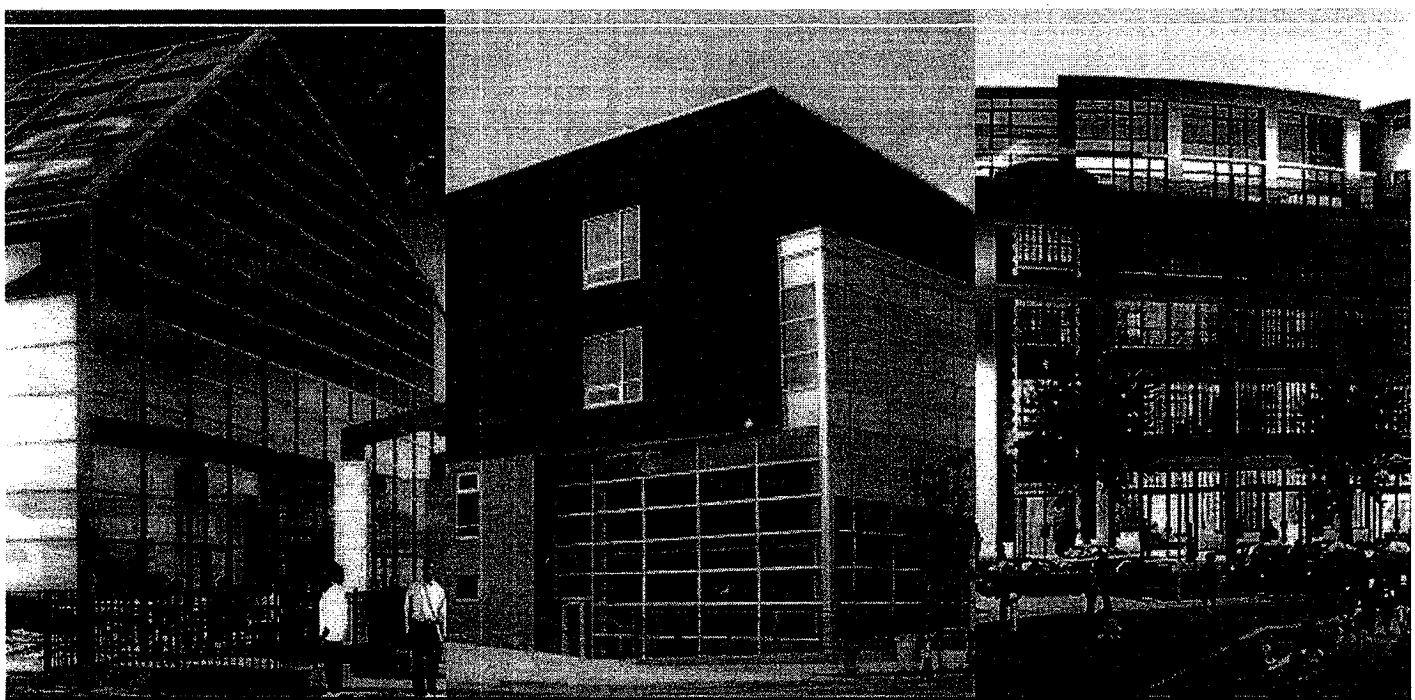
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com



WMATA-INV 000642



# Banneker Ventures

## CORPORATE CAPABILITY STATEMENT

729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone | (202) 393-5462 fax
www.bannekerventures.com

## About Us

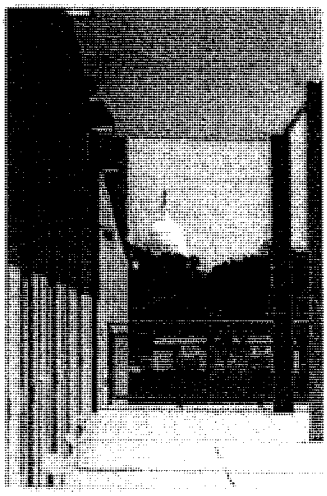
Banneker Ventures, LLC is a full service general contracting firm that specializes in providing construction, construction management, real estate development and real estate advisory services to the public and private sectors. The firm focuses its resources and experience on transforming neighborhoods throughout the MidAtlantic region of the United States. Its management team has more than 40 years of construction, construction management and development experience in the public and private real estate sectors.

Banneker is known for its ability to work on and complete complex construction projects—on time and within budget. Our staff regularly shares its ideas and expertise with members of the construction industry through its service on panels and Boards of professional organizations.

"...transforming neighborhoods..."

## Our History

Founded in 2005, Banneker is a privately held firm with its corporate offices in Washington, DC. The firm is named in honor of the brilliant mathematician, astronomer and surveyor Benjamin Banneker who worked on the survey for the Federal District, which is now Washington, DC. Since 2005, the firm has grown into a fully integrated construction firm with a client base that ranges from local governments to public development companies.



## Our Values

Everything that the firm is engaged in, whether it is for its own portfolio or for one of its clients, is based on three core values: *Honesty, Excellence and Service*.

## Our Mission

Banneker's mission is quite simple, yet quite ambitious: To change the world, starting in Washington, DC, one neighborhood at a time. It accomplishes this mission by not only transforming buildings, but transforming lives, through The Banneker Foundation, by giving back a portion of its profits to individuals and organizations in the communities in which the firm works.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000644

## Our Services

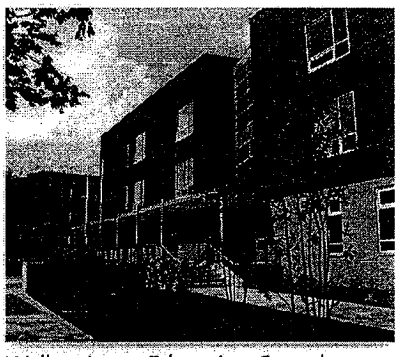
Banneker offers four main services: construction, construction management, real estate development and real estate advisory.

Our *construction division* provides preconstruction, construction management, general contracting and designbuild services to public and private sector clients in the Metropolitan Washington region. Its expertise is in: budget planning, scheduling, program management, quality assurance, contract administration, value engineering, constructability analysis, field supervision, procurement and relocation management.

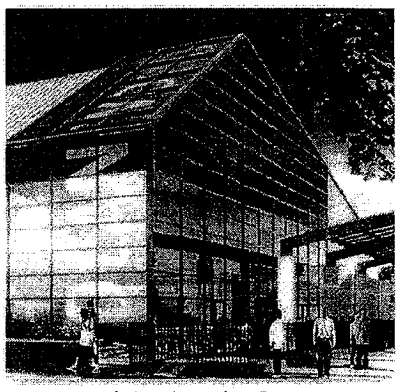
Our *construction management division* provides every conceivable construction management related service for public, private and public private clients, ranging from developing a project program; creating and evaluating project budgets and schedules; negotiating and entering into contracts with professional service firms; developing cost accounting and reporting strategies; and monitoring and coordinating daily construction and closeout activities.

Our *development division* provides a full range of real estate development services for Banneker and non-Banneker projects using the most innovative approaches in design, finance and construction. These services include developing governmental approval strategies; developing project schedules, budgets and cash flow analysis; developing and refining the project's program; selecting and structuring the project team; identifying sources of financing; and developing, implementing and coordinating community group and citizen advisory forums.

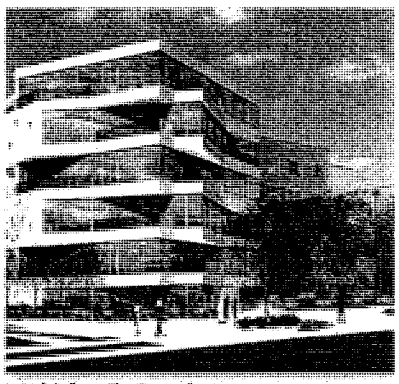
Our *real estate advisory division* advises public and private sector clients on the highest and best use of real estate assets; valuing real estate assets; developing and recommending financial structures for the development or disposition of assets; developing economic impact studies; performing detailed local market and submarket studies; and performing architectural and community based planning services.



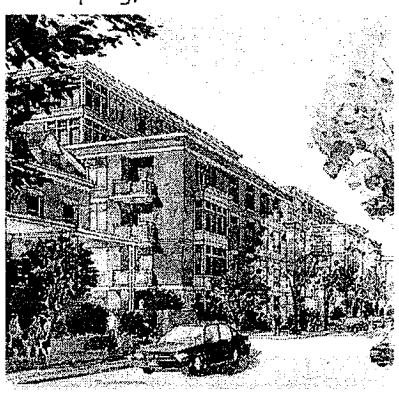
Walker Jones Education Complex, Washington, DC



Deanwood Community Center, Washington, DC



Multi-family Development, Silver Spring, MD



Park Morton Redevelopment, Washington, DC

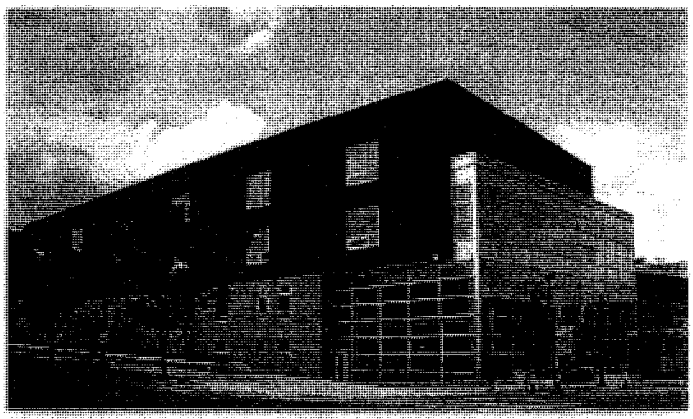


FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000645

## Experience

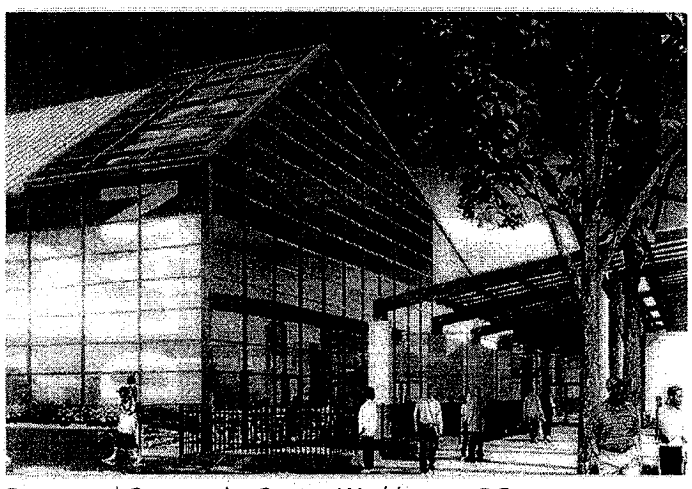
Some of the projects that Banneker has worked on include the following:

*Project:* Walker Jones Education Campus, Washington, DC
*Services:* PM/CM Services
*Project Cost:* $40M hard cost ($60M total)
*Description:* Construction of 100,000 SF public school, 20,000 SF recreation center and 5,000 SF library. Construction was completed in December 2009 and was the fastest public school ever built in Washington, DC.
*Client:* District of Columbia Government



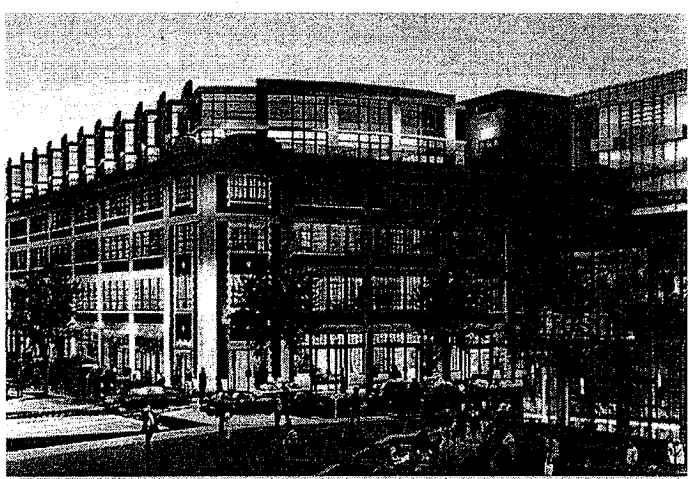
Walker Jones Education Complex, Washington, DC

*Project:* Deanwood Community Center, Washington, DC
*Services:* PM/CM Services
*Project Cost:* $24M hard cost ($32M total)
*Description:* Construction of 63,000 SF recreation center and library complex. Construction expected to be complete in June 2010. Project is the largest public recreation center ever built in Washington, DC.
*Client:* District of Columbia Government



Deanwood Community Center, Washington, DC

*Project:* Joiner Shop Lofts, Washington, DC
*Services:* CM Services
*Project Cost*: $40M hard cost ($60M total)
*Description:* Adaptive use, residential and retail construction project that includes the conversion of a 157,000 SF warehouse into a 170-unit apartment and retail project. The project is expected to be complete in December 2010.
*Client:* Forest City Washington



Joiner Shop Lofts, Washington, DC



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000646

## Representative Clients

District of Columbia Department of Parks and Recreation
District of Columbia Department of Housing and Community Development
District of Columbia Housing Authority
District of Columbia Housing Finance Agency
District of Columbia Office of Public Education Facilities Management
District of Columbia Office of the Deputy Mayor for Planning and Economic Development
District of Columbia Public Schools
Forest City Washington LLC
Franklin Parking LLC
Montgomery County Department of Housing and Community Affairs
Montgomery County Department of Public Works and Transportation
Washington Metropolitan Area Transit Authority

## Representative Partners

Holland + Knight LLP
Pillsbury Winthrop Shaw Pittman LLP
Safeway, Inc. – Real Estate Division
SunTrust Bank
Wachovia Bank
Sorg and Associates
Torti Gallas and Partners
Womble Carlyle Sandridge & Rice, PLLC

## Certifications

U.S. Small Business Administration 8(a) Business Development Certification (pending)
District of Columbia Certified Business Enterprise (local, small, disadvantaged business)
Montgomery County Minority, Female, and Disabled Persons Certification
Washington Suburban Sanitary Commission Small, Local Business Enterprise

## Memberships/Associations

African American Real Estate Professionals of Washington, DC
International Conference of Shopping Centers
Urban Land Institute
Washington, DC Development Industry Advisory Council



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000647

## Management Team

Our management team comprises of an experienced group of professionals, some of whom are described below:

### *Omar A. Karim – President*

Mr. Karim leads the daily operations of the firm and guides the implementation of its development, real estate advisory, construction and construction management plans. One of the most dynamic individuals in the real estate industry, Mr. Karim manages the daily operations of Banneker. Since founding Banneker in 2005, Mr. Karim has grown the Company from a boutique real estate development company to a full service, fully integrated real estate firm, with four divisions and $200M in projects under development.

Prior to founding Banneker, Mr. Karim served as General Counsel and Project Manager with a District of Columbia development firm, where he oversaw the construction of 40,000 SF of new construction, multifamily projects, and worked on two of the largest mixed-use construction projects in Washington, DC (City Center and City Vista) collectively comprising more than 1M SF. Prior to that, Mr. Karim worked as a corporate attorney with New York based Kramer Levin Naftalis & Frankel LLP, where he represented public and private investment companies. He holds a J.D. degree from the Howard University School of Law where he was a member of the Howard Law Journal, and a B.S. degree in Mechanical Engineering also from Howard where he served on the University's Board of Trustees, alongside such notables as Colin L. Powell and Jack F. Kemp.

### *Anthony J. Ives – Chief Financial Officer*

Mr. Ives serves as the chief financial officer for the Company overseeing all financial matters of its growing portfolio. He provides a range of financial leadership to the Company, including overseeing the preparation of the Company's financial statements, maintaining corporate data and financial accounts, preparing corporate restricting reports and implementing new revenue streams. With over 20 years of investment and executive level management experience, he is a valued asset to the Company.

Prior to joining Banneker, Mr. Ives most recently served as Executive Director of Fundación Heart Ventures based in Honduras where he was responsible for all managerial aspects of the Central American nonprofit company including policy, strategy, implementation, and grant procurement. Prior to that, Mr. Ives was Vice President and Director of Trading for Jurika & Voyles, Inc., a $7B asset management firm. Prior to that, he was co-manager of the internal equity for the California Public Employees Retirement System (CalPERS), the largest public pension fund in the United States. Prior to that, Mr. Ives worked for the City of Sacramento Treasurer's Office where he managed fixed income portfolios for the City's retirement system as well as the City's cash flow. He holds both a B.A. in Finance and an MBA in Finance and from California State University – Sacramento.

### *Duane W. Oates – Construction Executive*

Mr. Oates manages the Company's construction management division, including the planning, strategy, and execution of its operations. Under his leadership, the division has become one of the fastest growing construction management groups in the region with more than $150M in projects under construction. Prior to joining the Company, Mr. Oates ran a mid-size general contracting firm, where he completed more than $20M in construction projects. Mr. Oates is a former member of the Board of Directors of the Prince George's County Chamber of Commerce and Prince George's County Economic Development Corporation. He holds a B.S. degree from Seton Hall University and has completed the Minority Business Executive Program at Dartmouth College.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000648

*Tiwana Z. Hicks – General Counsel and Project Manager*

Mrs. Hicks is in-house counsel and a project manager. She brings a strong legal and real estate acumen to Banneker, having worked as a real estate and administrative law attorney in both the private and public sectors. She also maintains an unparalleled familiarity with the Washington Metropolitan real estate market. Mrs. Hicks is currently the development manager for The Jazz @ Florida Avenue, a 120,000 SF, mixed-use apartment and retail project that was awarded by the Washington Metropolitan Area Transit Authority. Prior to joining Banneker, Mrs. Hicks worked as an attorney in the Real Estate Development Practice Group of Womble Carlyle Sandridge & Rice, PLLC, a 500-attorney law firm where she represented lenders, real estate investment trusts, and a national grocer in real estate development matters. Mrs. Hicks holds a J.D. degree from Georgetown University Law Center and a B.A. degree (summa cum laude) in Communications from Howard University.

*Shayla Taylor, LEED AP – Senior Project Manager*

Ms. Taylor is a senior project manager where she oversees one of the firm's largest projects, the Deanwood Community Center, a 63,000 SF, multiuse recreation center and library project which is the largest recreation center ever built in Washington, DC. Prior to joining the Company, Ms. Taylor was a project manager for a well known general contracting firm where she managed over $11M in new construction projects within the retail and commercial interior sectors of the Washington, DC market. She also spent time as a project management consultant for a boutique general contracting firm, where she managed $4M in renovation and tenant improvement projects. Ms. Taylor holds a B.S. in Civil Engineering and Architecture from Massachusetts Institute of Technology.

*Malachi E. McKinney – Project Manager*

Mr. McKinney is a project manager responsible for managing the Company's 60,000 SF, new construction, multifamily development project in downtown Silver Spring, The Residences @ Thayer Avenue. Prior to joining the Company, Mr. McKinney was an attorney with the Real Estate Practice Group of Kirkland & Ellis LLP where he represented clients ranging from large public companies to private equity firms and their subsidiaries. Mr. McKinney holds a J.D. degree from Stanford Law School and a B.S. degree in Symbolic Systems also from Stanford.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000649

**Representative Projects of Banneker Ventures**

Project: Walker Jones Education Campus, 100 L Street, NW
Description: Construction of 100,000 SF school, 20,000 SF recreation center and 5,000 SF library
General Contractor: Forrester Construction Company
Banneker's Role: Co-Program/Construction Manager (2 Banneker staff worked daily on project)
Project Cost: $60M
Construction Status: ***100% complete;*** fastest public school ever built in DC.

Project: Deanwood Community Center and Library, 1349 49th Street, NE
Description: Construction of 63,000 SF recreation center and library. Largest rec. center in DC.
General Contractor: Forney Construction and Manhattan Construction Joint Venture
Banneker's Role: Program/Construction Manager (3 Banneker staff working daily on project)
Project Cost: $32M
Construction Status: ***75% complete***

Project: Joiner Shop Lofts, 301 Tingey Street, SE
Description: Conversion of 157,000 SF warehouse into 170-unit apt and retail project; six stories
General Contractor: KBS Construction, Inc.
Banneker's Role: Development Management (1 staff person working on project)
Project Cost: $53M
Construction Status: ***25% complete***

Project: The Residences @ Thayer Avenue, Silver Spring, MD
Description: Construction of 60,000 SF multi-family building
General Contractor: Bozzuto Construction
Banneker's Role: Developer; (2 Banneker staff work on project)
Project Costs: $17M

**Representative Projects of Banneker's Principal, Omar A. Karim**

Project: 6th Street Flats, 809 6th Street, NW, Washington, DC
Description: New construction of 30,000 SF multi-family project; six stories w/ concrete frame
General Contractor: James G. Davis Construction Company
Omar Karim's Role: Project Manager (finance, construction and close-out phase)
Project Costs: $8M; project is ***100% complete***

Project: The Icon Condominiums, 1320 13th Street, NW, Washington, DC
Description: Construction of 20,000 SF multi-family project; five stories w/ steel frame
General Contractor: Eichberg Construction
Omar Karim's Role: Project Manager (construction close-out phase)
Project Costs: $6M; project is ***100% complete***

Project: City Vista, 5th and K Street, NW, Washington, DC
Description: Construction of 685 residential units, 55,000 Safeway and 60,000 SF of retail space
General Contractor: James G. Davis Construction Company
Banneker's Role: Project Manager (award and design phase)
Project Costs: $220M; project is ***100% complete***

In addition, our GC on the project (Clark Construction) is the largest general contractor in the Region. Their, low-rise division, Clark Builder's Group, will be building the project. Some of the projects that they recently completed which are similar to the Jazz @ Florida Avenue include: North Tract Lofts, Fort Totten, The Clarendon, Massachusetts Court, Post Park, The Woodlands, 3883 Connecticut Avenue, Monument Place, Camden College Park, and Evergreens at Columbia Town Center

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Goldin, Steven
**Sent:** Tuesday, March 16, 2010 11:39 AM
**To:** Montague, Joshua W.; Bottigheimer, Nat
**Cc:** Doggett, Rosalyn
**Subject:** RE: Florida Avenue - Term Sheet

We need to bring this to closure. Roz and Josh, what do you recommend as a compromise on all 4 issues?
Steve

---

**From:** Montague, Joshua W.
**Sent:** Tuesday, March 16, 2010 11:37 AM
**To:** Goldin, Steven; Bottigheimer, Nat
**Cc:** Doggett, Rosalyn
**Subject:** RE: Florida Avenue - Term Sheet

I do not believe we have agreed on these terms.

#2 – The point of the time limit to get to grade is to ensure that this project does not linger. By tying it to closing, the developer can let the project linger by just pushing back closing. Additionally, WMATA does not get paid until closing. So, this time limit also ensures that the developer closes in a timely fashion and WMATA gets its money. no problem with 7 months after closing per current schedule

#3 – There were Capital Events in the previous version of the Term Sheet that went to the WMATA Board in November. Some of these Capital Event terms could allow the Developer to easily skirt around WMATA's participation (e.g., sales to other members or sales to wholly owned entities or sales to publicly traded companies).

Josh

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**From:** Goldin, Steven
**Sent:** Tuesday, March 16, 2010 11:30 AM
**To:** Bottigheimer, Nat
**Cc:** Doggett, Rosalyn; Montague, Joshua W.
**Subject:** RE: Florida Avenue - Term Sheet



WMATA-INV 000652

FOIA CONFIDENTIAL TREATMENT REQUESTED

Josh/Roz

Have we agreed to all of these items?

# 1 and 4 are pretty major changes at this point. Is there a market reset on the 25 year ground lease extension?

Steve

---

**From:** Bottigheimer, Nat
**Sent:** Tuesday, March 16, 2010 11:25 AM
**To:** Goldin, Steven
**Cc:** Doggett, Rosalyn
**Subject:** Re: Florida Avenue - Term Sheet

Pls update all materials to reflect these changes, including comparison of terms spreadsheet.

---

**From**: Goldin, Steven
**To**: Bottigheimer, Nat
**Sent**: Tue Mar 16 11:18:52 2010
**Subject**: FW: Florida Avenue - Term Sheet
fyi

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**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:

No 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;
OK 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.

higher amortization needs



WMATA-INV 000653

FOIA CONFIDENTIAL TREATMENT REQUESTED

Can 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

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



WMATA-INV 000654

FOIA CONFIDENTIAL TREATMENT REQUESTED

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, March 11, 2010 5:46 PM
**To:** Montague, Joshua W.; Tiwana Hicks
**Cc:** Doggett, Rosalyn; Goldin, Steven
**Subject:** Re: Florida Avenue - Term Sheet

Josh,

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
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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

Omar and Tiwana,



WMATA-INV 000655

FOIA CONFIDENTIAL TREATMENT REQUESTED

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,

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, March 09, 2010 11:29 PM
**To:** 'Tiwana Hicks'; Montague, Joshua W.
**Cc:** Doggett, Rosalyn
**Subject:** RE: Florida Avenue - Term Sheet



WMATA-INV 000656

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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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000657

FOIA CONFIDENTIAL TREATMENT REQUESTED

**Cc:** Goldin, Steven; Montague, Joshua W.; Bottigheimer, Nat; Tiwana Hicks; Anthony James Ives
**Subject:** Re: Florida Avenue - Term Sheet

Roz,

Thanks for your comments. For the sake of getting this thing done this week, we are acceptable to your comments.

Please send a final clean version to us.

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>
**Date:** Tue, 16 Mar 2010 16:03:00 -0400
**To:** Omar A. Karim<okarim@bannekerventures.com>
**Cc:** Goldin, Steven<sgoldin@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>; Bottigheimer, Nat<NBottigheimer@wmata.com>
**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



WMATA-INV 000658

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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.

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
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.

Can 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



WMATA-INV 000659

FOIA CONFIDENTIAL TREATMENT REQUESTED

(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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**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

Josh,



WMATA-INV 000660

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
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(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

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**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

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.



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000661

FOIA CONFIDENTIAL TREATMENT REQUESTED

Please do not hesitate 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 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.



WMATA-INV 000662

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000663

FLORIDA AVENUE 5/6/09

FOIA CONFIDENTIAL TREATMENT REQUESTED

**From:** <eric.smart@bolansmart.com>
**To:** "Rosalyn Doggett" <rdoggett@wmata.com>
**Date:** 2/3/2009 9:03:30 AM
**Subject:** Re: Florida question 2

Roz

A) Question 1 follow-up. BSA was asked which Banneker assumptions changes appear reasonable in this economic climate and which do not. While the careful answer to this question should involve dissecting what was reasonable or not reasonable at the starting point, skipping to the highlights we can say that the direction and magnitude of the changes in projections of market based income and third party financing costs are reasonable. We are less convinced that the cost of construction has gone up, but Banneker is not showing a large increase in that area. We are not persuaded that his financing requires the elimination of WMATA's long term capital event participation. What we could take issue with most, however, is that Banneker does not appear to have made a consistent effort to shave costs line item by line item to help offset the market downturn, for example in the area of developer fees. Most critically, he continues to plan for relatively large units in a market that has turned profoundly cost sensitive, the impact of which is all the more problematic when these unit sizes are carried over to the affordable units. In short, our view (as has been yours) is that if the WMATA deal structure is to be revisited based on market changes, then all the elements effected economic feasibility ought to be open to review. That being said, we are also sympathetic to Banneker's dilemma, both in getting his original proposal financed, and getting anywhere in today's market.

B) Question #2

597K to 197K

1) Assuming 80/20 financing can stay in tact at different AMI levels, and that Banneker's proforma model is reasonably accurate in its functionality, we can track that there is a band of approximately a $5.0M negative hit in project value when going from an all market unit mix to one offering 20% of the units at 50% of AMI. At an illustrative cap rate to the private owner of 8.0% this translates into a hit of $400,000 per year, not surprisingly quite close to what Banneker has proposed in terms of reducing his annual WMATA rent from $580K to $150K per year. The cost to the project of increasing the AMI levels to 60%, 70%, or 80% are basically linear in impact, meaning that in round numbers for every 10% of additional AMI allowed the hit is reduced by $80K per year. We suspect that Banneker would agree with this representation, and that despite being illustrated assuming an 80/20 tax credit deal structure, he would seek to finance by alternative means if necessary if the deal structure permitted this type of simple offset of $80K per year for each 10% of reduced AMI applied to 20% of the total units. A similar ratio is likely to effect a change in the number of affordable units required, examples being that capping the affordable units at 10% at 50% of AMI would result in a $200K per year negative hit, a $160K hit at 10% at 60% of AMI, etc.

8%

2) We discussed what benchmarks DMPED and others might use regarding a definition of affordable housing income levels. BSA is not aware of a fixed standard, with many variables seeming to interplay case-by-case.

On the most aggressive end, the Anacostia Waterfront Corporation policies which carried over to certain District of Columbia dispositions target 30% of units to be defined as affordable, with a substantial proportion being priced at 30% of AMI, and the rest in the range of 60% of AMI. We note that the target proportions can be less aggressive for ownership housing compared with rentals. These principles of course applied only to the transfer of District controlled property, and may or may not be upheld near term at the most challenged sites in a down market.

In a somewhat different example (not waterfront, started awhile back), we understand that a 2007 analysis of a major DC disposition may have employed an 80% AMI for 10%, 60% AMI for 5% and 30% AMI for 5% mix, which blends to an overall 62.5% AMI for 20%.

The typical assumptions that BSA has been asked to incorporate into our economic impact assessments associated with rezoning or PUD applications affecting non-District controlled development parcels range from 50% to 60% of AMI for up to 10% of the units. While recognizing the District has recently indicated that the proportion of affordable units should be 20% is some such situations, most of the currently active purely private sector projects were initiated prior the most recent District 20% guidelines. In another recent case where a coalition of developers was seeking some public assistance (TIF, etc.) the affordable component, while not mandatory, was illustrated to average 70% of AMI for something less than 10% of the units.

Our overall hunch it that if the District wants to see anything go forward over the next few years it is going to be under a lot of pressure to lighten up or to defer some aspects of its affordable housing direct or implied requirements.

Eric

On Mon, 02 Feb 2009 12:14:48 -0500 (EST), "Rosalyn Doggett" <rdoggett@wmata.com> wrote:
> RE Florida Question 1- we should discuss which assumptions changes appear
> reasonable in this economic climate and which do not. Please give a call at
> your convenience.
>
> Rosalyn P. Doggett
> Washington Metropolitan Area Transit Authority
> 600 Fifth St, NW
> Washington, DC 20001
> Phone: 202 962 2208
> Fax: 202 962 2396
> rdoggett@wmata.com
>
>
> >>> <eric.smart@bolansmart.com> 2/2/2009 11:45 AM >>>
> Roz
>
> Working today on question 2 approach discussed on Friday. Will have
> something

> drafted for your review no later than Tuesday morning.
>
> 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
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>
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Eric Smart, Bolan Smart Associates, Inc.
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202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com

FOIA CONFIDENTIAL TREATMENT REQUESTED

**1. Banneker (August 28, 2009) with 60 year ground lease** (based on current verbal described proposed terms; non-capitalized base rent; spring 2009 proforma effective gross income projections; assuming $5.0M appraised land value)

| | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Revenues** | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $50,000 | $65,000 | $80,000 | $80,000 | $80,000 | | | | | | | | | | | | |
| Base Rent (at 95% ocp) | prepaid | | | | | | | $0 | | | | | | | | | | | |
| | annual | | | | | | | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 |
| Total WMATA Base Rent | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 |
| Effective Gross Income | | Banneker projected | | | | | | $2,831,000 | | | | | | | | | | | |
| | 3.00% | EGI growth BSA adjusted | | | | | | $2,500,000 | $2,575,000 | $2,652,250 | $2,731,818 | $2,813,772 | $2,898,185 | $2,985,131 | $3,074,685 | $3,166,925 | $3,261,933 | $3,359,791 | $12,335,312 |
| | 1.50% | WMATA payment | | | | | | | | | | | $43,473 | $44,777 | $46,120 | $47,504 | $48,929 | $50,397 | $185,030 |
| Total WMATA Base Rent With Percentage of EGI | | | | | | | | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $293,473 | $294,777 | $296,120 | $297,504 | $298,929 | $300,397 | $435,030 |
| WMATA Participation | 12.50% | of defined capital events | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $5,000,000 | FY09 value | | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | |
| Terminal Value | $28,600,015 | on land only | | | | | | | | | | | | | | | | | $28,600,015 |
| **Cash Flow** | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $293,473 | $294,777 | $296,120 | $297,504 | $298,929 | $300,397 | $435,030 |
| **Cash Flow w/ residual** | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $293,473 | $294,777 | $296,120 | $297,504 | $298,929 | $300,397 | $29,035,045 |

| **NPV** | | | | | | |
|---|---|---|---|---|---|---|
| Base Rent | 5.73% | discount rate | $3,743,123 | 6.80% | discount rate | $3,158,180 |
| With Residual | 5.73% | discount rate | $4,753,474 | 6.80% | discount rate | $3,710,373 |
| With EGI and Res | 5.73% | discount rate | $5,419,021 | 6.80% | discount rate | $4,206,086 |
| With Participation | | | not considered | | | |

**2. Banneker (August 28, 2009) with 60 year ground lease** ($250,000 base rent prepaid discounted at 7%. Note if solely capitalized at 7% without regard for limited lease term the prepaid rent would total $3,572,500)

| | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Revenues** | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $50,000 | $65,000 | $80,000 | $80,000 | $80,000 | | | | | | | | | | | | |
| Base Rent (at 95% ocp) | prepaid | | | | | | | $3,065,636 | | | | | | | | | | | |
| | annual | | | | | | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 |
| Total WMATA Base Rent | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $3,065,636 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 |
| Effective Gross Income | | Banneker projected | | | | | | $2,831,000 | | | | | | | | | | | |
| | 3.00% | EGI growth BSA adjusted | | | | | | $2,500,000 | $2,575,000 | $2,652,250 | $2,731,818 | $2,813,772 | $2,898,185 | $2,985,131 | $3,074,685 | $3,166,925 | $3,261,933 | $3,359,791 | $12,335,312 |
| | 1.50% | WMATA payment | | | | | | | | | | | $43,473 | $44,777 | $46,120 | $47,504 | $48,929 | $50,397 | $185,030 |
| Total WMATA Base Rent With Percentage of EGI | | | | | | | | $3,065,636 | $0 | $0 | $0 | $0 | $43,473 | $44,777 | $46,120 | $47,504 | $48,929 | $50,397 | $185,030 |
| WMATA Participation | 12.50% | of defined capital events | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $5,000,000 | FY09 value | | | | | | | | | | | | | | | | | |
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| Terminal Value | $28,600,015 | on land only | | | | | | | | | | | | | | | | | $28,600,015 |
| **Cash Flow** | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $3,065,636 | $0 | $0 | $0 | $0 | $43,473 | $44,777 | $46,120 | $47,504 | $48,929 | $50,397 | $185,030 |
| **Cash Flow w/ residual** | | | $150,000 | $65,000 | $80,000 | $80,000 | $80,000 | $3,065,636 | $0 | $0 | $0 | $0 | $43,473 | $44,777 | $46,120 | $47,504 | $48,929 | $50,397 | $28,785,045 |

| **NPV** | | | | | | |
|---|---|---|---|---|---|---|
| Base Rent | 5.73% | discount rate | $2,734,966 | 6.80% | discount rate | $2,614,459 |
| With Residual | 5.73% | discount rate | $3,745,317 | 6.80% | discount rate | $3,166,652 |
| With EGI and Res | 5.73% | discount rate | $4,410,863 | 6.80% | discount rate | $3,662,365 |
| With Participation | | | not considered | | | |

WMATA-INV 000668

## Doggett, Rosalyn

**From:** Doggett, Rosalyn
**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 the 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:

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

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Thursday, August 27, 2009 6:00 PM
**To:** Doggett, Rosalyn
**Cc:** 'Tiwana Hicks'; eric.smart@bolansmart.com
**Subject:** RE:

1½% — Effective
12.5% Capital Event
Net Proceeds

**Importance:** High

Ms. Hicks, Doggett $250,000 $50K/year

Thanks for your email. Eric and I had a great conversation yesterday. Below please find answers to your questions:

1. 157,000 sf. (of the 157,000 gsf how much is retail?) 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

(Note to self — no more than 30-35% at 17-18%

any more could be recognized but at same rate as senior debt

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax

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 Guarantor
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

Cell: (202) 486-1863
thicks@bannekerventures.com

---

**From:** Doggett, Rosalyn [mailto:RDoggett@wmata.com]
**Sent:** Thursday, May 28, 2009 8:27 AM
**To:** thicks
**Subject:** RE: Revised Florida Avenue Economic Terms Chart

Thanks, Tiwana. I will be working on this later today and try to get back either late this aft. Or early morning tomorrow depending on availability of those I need to consult.

---

**From:** thicks [mailto:thicks@bannekerventures.com]
**Sent:** Wednesday, May 27, 2009 11:14 AM
**To:** Doggett, Rosalyn; Montague, Joshua W.
**Cc:** Maurice L. Perry; okarim@bannekerventures.com; eric.smart@bolansmart.com; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
**Subject:** Revised Florida Avenue Economic Terms Chart
**Importance:** High

Mrs. Doggett,
As a follow-up to our meeting yesterday, attached please find the revised Florida Avenue Economic Terms Chart. We look forward to receiving a final determination on the 5 remaining open items in the coming days. Please call us if you have any further questions. Thanks.
Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
Office: (202) 667-4110
Fax: (301) 565-4982
Cell: (202) 486-1863
thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED 

## Doggett, Rosalyn

**From:** Tiwana Hicks [thicks@bannekerventures.com]
**Sent:** Thursday, August 20, 2009 6:56 PM
**To:** Doggett, Rosalyn
**Cc:** 'Maurice' 'Perry'; 'Omar A. Karim'
**Subject:** The Jazz - Square 416, Lot 0018

**Importance:** High

Mrs. Doggett:

We had our surveyor confirm the exact lot and square numbers of the WMATA parcels. He found that Square 416, Lot 0018 is no longer a valid lot. WMATA performed a subdivision of Square 416, Lots 12 to 18 to create Square 416, Lot 0031 (15,956 sq. ft). This subdivision was completed on December 26, 1996. Can you confirm this information when you have a moment so we can all be on the same page? 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

## Doggett, Rosalyn

**From:** Bottigheimer, Nat
**Sent:** Friday, August 07, 2009 9:15 AM
**To:** Moneme, Emeka
**Cc:** Meister, Mark K.; Doggett, Rosalyn
**Subject:** RE: MEAD Routing - MEAD(100426) Extend Negotiating Period for Shaw-Howard U/FL Ave

A key issue is we're preparing both revised terms AND ALSO a joint development agreement. Both would be on the agenda, as separate items, in sequence.

FYI, initial information from the appraisal we've received indicates a full market rate value of $6.3 million, i.e., without any affordable housing requirement factored in.

Our proposed going forward approach is to agree to a base value reflective of the most stringent affordable housing requirements possible being imposed, but to establish a schedule the increases the value to us proportional to the affordable housing requirements eventually imposed.

The key is that we just don't know what the eventual affordable housing requirements will be, and we will need to have an agreement that allows us to go forward in light of that ambiguity.

FYI, the 6.3 million value is obviously a lot lower than the 14 million value Banneker bid originally, and with affordable housing requirements imposed would be lower still.

-----Original Message-----
From: Moneme, Emeka
Sent: Thursday, August 06, 2009 5:47 PM
To: Bottigheimer, Nat
Subject: FW: MEAD Routing - MEAD(100426) Extend Negotiating Period for Shaw-Howard U/FL Ave

120 days??? Do we really need that much time?

Emeka

-----Original Message-----
From: ProcAdmin@wmata.com [mailto:ProcAdmin@wmata.com]
Sent: Tuesday, August 04, 2009 4:06 PM
To: Moneme, Emeka
Subject: MEAD Routing - MEAD(100426) Extend Negotiating Period for Shaw-Howard U/FL Ave

TO: EMEKA MONEME
FROM: JOHN BOTTIGHEIMER (nbottigheimer@wmata.com)
INIT. ROUTER: ROSALYN DOGGETT (rdoggett@wmata.com)
DOCUMENT: MEAD(100426) Extend Negotiating Period for Shaw-Howard U/FL Ave

SUBJECT: A document from MEAD has been routed to you and requires your approval at the MEAD web site.

---

Please go to the MEAD site by clicking on the link below:
http://mead.wmata.com/prod/pimsApprove/approval.cfm?q_route_id=129321&q_empid=008002

## Doggett, Rosalyn

**From:** Meister, Mark K.
**Sent:** Friday, July 10, 2009 4:08 PM
**To:** Doggett, Rosalyn
**Subject:** FW: Florida Avenue JD Update for DC Deputy Mayor Santos

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**From:** Moneme, Emeka
**Sent:** Friday, July 10, 2009 10:36 AM
**To:** Catoe, John B.
**Cc:** Bottigheimer, Nat; Meister, Mark K.
**Subject:** Florida Avenue JD Update for DC Deputy Mayor Santos

John,

We have been in constant communication with the developer, Banneker Ventures, over the last 4 months to finalize the Joint Development Agreement and Lease.

In regards to the question about the timing of the appraisal, we expect to have a draft appraisal by the end of the month, with the final appraisal complete by mid-August. The appraisal process has been slow due to our desire to identify a top-notch appraiser (as you may remember, this deal was complicated by the last minute introduction of inclusionary zoning provisions, and the Board Chair has shown a particular interest and scrutiny to this award). I feel that our rigorous selection process will bear out in the end.

For your benefit, in the emails that I have been copied on, the developer has appeared to be comfortable with our current working schedule.

Please let me know if you would like for me to follow up directly with the DM or the Developer.

Emeka

Emeka Moneme
Chief Administrative Officer
**Washington Metropolitan Area Transit Authority (WMATA)**
600 Fifth Street, NW
Washington, DC 20001

202.962.1900 (office)
www.wmata.com



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## Wallace, Maria A

**From:** Catoe, John B.
**Sent:** Tuesday, September 08, 2009 9:22 AM
**To:** Bottigheimer, Nat
**Cc:** Smith, Candace E.; Alexander, LaRisa A.; Chambliss, Leenda M.
**Subject:** FW: U Street Flea Market Slated for Redevelopment

Please provide a response to Candace Smith, for the GM to respond to Mr. Graham; thanks.

Deborah. M. Porter
Executive Secretary
Office of the General Manager

-----Original Message-----
From: Jim Graham [mailto:Jim@grahamwone.com]
Sent: Monday, September 07, 2009 9:08 AM
To: Catoe, John B.
Subject: FW: U Street Flea Market Slated for Redevelopment

Where are we on this?

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 Transportation (including alcohol regulation). Main Committee Number: 202-724-8195. 1350 Pa. Ave., NW, #116, Washington, DC 20004.

Chairman and Voting Member, Board of Directors, WMATA/Metro.

Website: www.grahamwone.com

-----Original Message-----
From: wnagroup@googlegroups.com [mailto:wnagroup@googlegroups.com] On Behalf Of Scott Pomeroy
Sent: Monday, September 07, 2009 9:09 AM
To: ustreetnews@yahoogroups.com; WNAGroup
Subject: U Street Flea Market Slated for Redevelopment

U Street Flea Market Slated for Redevelopment Retail and Apartments Planned for WMATA-owned Site by Hunter Gorinson

[http://capitalcommu nitynews. com/CCN_Website0 9/publication% 20html/papers/ DCN/0909/ UStFleaMarket. html]

More than a year after gaining development rights to a string of Washington Metro Area Transit Authority (WMATA)-owned vacant lots along Florida Avenue NW, Banneker Ventures LLC and the Banc



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of America Community Development Corporation have announced the details behind the mixed-use, mixed-income project they're now calling "The Jazz @ Florida Avenue."

Per an application for Federal Low Income Housing Tax Credits filed with the District's Department of Housing and Community Development (DHCD) in July, the Jazz will bring some 153,770 square feet of new apartments and retail to the current site of Shaw's U Street Flea Market. In total, WMATA owns three separate properties between Seventh and Ninth streets on the north side [actually, the south side] of Florida Avenue, totaling nearly 29,000 square feet, above the Green Line tunnel linking the Howard-Shaw and U Street-Cardozo stations. Those lots, all of which will be incorporated in to the Jazz, stand just blocks from Howard University and delineate the border of the booming U Street corridor from the less development- prone Shaw/LeDroit Park communities.

"We've had challenges at Ninth and U," said Bryan N. Martin Firvida, president of the U Street Neighborhood Association. "It'll be nice to see new activity and investment on that corner. The neighborhood is always looking for new opportunities for more daytime traffic and more retail. Everyone loves the idea of the 24-hour neighborhood that serves not only people who are just visiting, but residents as well. This is one of the gateway corners into the neighborhood, and it's going to be nice have something other than a vacant lot there."

Since being selected to develop the project by WMATA in June of last year, Banneker has gone on to acquire two other privately-owned parcels along Ninth Street, thereby adding an additional 7,720 square feet of buildable ground area to their project plan. At present, the Jazz is slated to consist of three adjacent four-story buildings, for a total of 124 apartments and 20,000 square feet of ground-floor retail.

Designed by Torti Gallas and Partners, each of the glass and brick buildings will feature between 32 and 52 units, one level of underground parking and a private interior courtyard for use by residents only. According to the development teams application, their plans call for "a mix of studio, junior one-bedroom, one-bedroom and two-bedroom units" with finishes like "9-foot ceilings, in-unit laundry, granite countertops and ceramic kitchen tiles." Kettler Management has already been contracted to handle the day-to-day of the residential operation.

Making it Affordable and Profitable

Twenty-six of the Jazz's apartment units have been earmarked for affordable housing (defined as housing for District residents making 50 percent or less of the Area Median Income), with the remainder slated to hit the market as workforce housing targeted at the "young and affluent professionals" now flooding into the greater U Street area.

It is the Jazz's affordable housing component, however, that has put the project on the fast track to development. Since posting their application with DHCD, the Banneker/Banc of America proposal has drawn several letters of support from prominent local authorities, businesses and residents, including Advisory Neighborhood Commissioner Myla Moss (1B01), Suman Sorg, head of a U Street-based architectural firm unaffiliated with the project, and Dr Rodney D. Green, executive director of the Howard University Center for Urban Progress.

"The injection of commercial and residential development will have a transformative impact on two city blocks on the Florida Avenue corridor that have been underutilized for over 40 years," wrote Green, who has previously worked with Banneker Ventures on the redevelopment of Petworth"s Park Morton public housing complex. "The plans for this project include 26 units of affordable housing, which is both a



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commendable and necessary element of any urban development. We are confident [of Banneker's] ability to ensure that The Jazz @ Florida Avenue will be a successful community partner."

A key component of that partnership will be the Jazz's retail outlets, which will front along a two-block span of Florida Avenue. Though the development team has not formally outlined uses for the commercial space, the Florida Avenue lots do fall under the purview of three District planning initiatives: the Great Streets plan for Seventh Street and Georgia Avenue NW; the Neighborhood Investment Fund that seeks to "provide a much-needed economic stimulus to the immediate area"; and, most importantly, the District of Columbia's Uptown Cultural District Plan for Greater Shaw/U Street (aka "the Duke Plan"), which envisions the neighborhood as DC's newest "arts and entertainment district with active restaurants, shopping and music/theatre venues"

Once completed, the Jazz @ Florida Avenue will stand directly across from such area nightlife destinations as Nellie's Sports Bar and the DC9 and Town nightclubs, and two blocks from the soon-to-be renovated, historic Howard Theatre. As such, the Jazz's strategic positioning makes it a linchpin of the Duke Plan's intent to extend the success of the U Street corridor even farther south. For their part, Banneker hopes to invite area foot traffic in with not only new shopping opportunities, but three public, open-air plazas along Eighth Street, Ninth Street and Florida Avenue, as well.

Extra Credit

Apart from the application for $695,000 in tax credits currently pending with DHCD, the $40 million project is being funded in part by Tax Incremental Financing (TIF) "tentatively awarded" by the Office of the Deputy Mayor for Planning and Economic Development (DMPED). According to the DHCD, the developers are "currently in final negotiations with [DMPED] to receive $7 million in the form of a promissory note to help pay costs associated with infrastructure, parking and the retail component." Banneker founder and principal Omar Karim did not respond to repeated inquiries concerning the status of these negotiations.

Moss, however, has been receiving quarterly updates from the developer for the past two years and states that an announcement regarding the tax credit application will be coming in the next several weeks.

"I understand that they have been notified that they have been tentatively awarded the credits that they were seeking and that on Sept. 9, there will be a meeting of those who have made the short list. [DHCD] will absolutely make an approval after [that date]," said Moss.

Though the Jazz is scheduled to start construction in the summer of 2010, the Banneker team has yet to fully reach joint development and lease agreements with WMATA. A final, conclusive meeting with that agency's board of directors was expected in late July but failed to materialize. Angela Gates, an information specialist with WMATA, says that the board will now likely meet with Banneker representatives this winter, and according to Moss, the developer hopes to have the Jazz "fully operational by the fall of 2011."

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You received this message because you are subscribed to the Google Groups "WNAGroup" group.
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For more options, visit this group at http://groups.google.com/group/wnagroup?hl=en



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## Doggett, Rosalyn

**From:** Omar Karim [okarim@bannekerventures.com]
**Sent:** Thursday, July 09, 2009 4:42 PM
**To:** Doggett, Rosalyn; Montague, Joshua W.
**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
(301) 523-1810 cell
okarim@bannekerventures.com

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**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



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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 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

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**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

---

**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.

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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 

## Doggett, Rosalyn

**From:** Doggett, Rosalyn
**Sent:** Tuesday, July 07, 2009 5:43 PM
**To:** 'thicks'
**Cc:** Montague, Joshua W.; 'eric.smart@bolansmart.com'
**Subject:** RE: The Jazz Economic Terms (as of June 23, 2009)

Tiwanna, this will confirm receipt of the e-mail. I will respond on items 1,5 and 11 as soon as possible and want to put on the record that some of the items where you seem to indicate agreement in items 9 and 10, for example, are not accurate, e.g. escalation %'s and % of land value for rental.

---

**From:** thicks [mailto:thicks@bannekerventures.com]
**Sent:** Monday, July 06, 2009 6:41 PM
**To:** Doggett, Rosalyn
**Cc:** Maurice' 'Perry; arashid@bannekerventures.com; okarim@bannekerventures.com; eric.smart@bolansmart.com; Moneme, Emeka; Montague, Joshua W.; Meister, Mark K.; Bottigheimer, Nat
**Subject:** FW: The Jazz Economic Terms (as of June 23, 2009)
**Importance:** High

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Fax: (202) 347-9047

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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

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**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'
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NO 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. market rate

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000686

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Tuesday, June 30, 2009 2:13 PM
**To:** Doggett, Rosalyn
**Subject:** RE: Capital Events - Rhode Island

assignment of sale of member interests?

Check out Section 7.5 of the Joint Development Agreement. It was also in Section 4.5 of the component lease. Here is the relevant language from the JDA:

*In..Capital Events that involve a Capital Transaction relating to this Agreement or Developer, the Developer shall pay WMATA as a Premium Payment two percent (2.0%)* ***of any and all Gross*** ~~***Proceeds of each***~~ *such Capital Event on the date that such Gross Proceeds are received or otherwise realized by Developer or other transferors. In Capital Events that involve a Capital Transaction constituting any refinance or financial restructuring in which Developer or any such other transferor receives or otherwise realizes any proceeds therefrom, Developer shall pay WMATA as a Premium Payment two percent (2.0%)* ***of any and all Adjusted Gross Proceeds*** *of each such Capital Event on the date that such Adjusted Gross Proceeds are received or otherwise realized by Developer or such other transferors. Developer shall certify to WMATA in writing as true and correct the amount of the Gross Proceeds, Adjusted Gross Proceeds, and Gross Debt Deductions applicable to each Capital Event.*

Municipe Financials

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**From:** Doggett, Rosalyn
**Sent:** Tuesday, June 30, 2009 1:51 PM
**To:** Montague, Joshua W.
**Subject:** RE: Capital Events - Rhode Island

Can you copy and send me the relevant Pages, or cite them so I can look them up?

Thanks,
R.

---

**From:** Montague, Joshua W.
**Sent:** Friday, June 26, 2009 5:24 PM
**To:** Doggett, Rosalyn
**Subject:** Capital Events - Rhode Island

Hi Roz,

In the Rhode Island agreement, they did use a different strategy that might be relevant if we cannot figure out an agreement on WMATA getting a preferred return.

- On certain identified Capital Events, WMATA took a percentage on all gross proceeds of the Capital Event.
- On the occurrence of other specified Capital Events, WMATA took a percentage of the adjusted gross proceeds.

So, if WMATA agrees to take a backseat to 15 or 20% interest on member loans on some capital events (e.g. refinance or addition of new member), maybe WMATA gets a preferred return on other events (e.g., sale of interest or other exit of member).



FOIA CONFIDENTIAL TREATMENT REQUESTED

Just something to consider...

Have a great weekend!

Josh



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Friday, June 26, 2009 1:01 PM
**To:** Doggett, Rosalyn
**Subject:** RE: The Jazz Economic Terms (as of June 23, 2009)

Thanks!

RE: Mr. Schraven. Here is the latest:

- As you can imagine, I am not getting any response from them this week.
- I have been researching our other JD project documents (Grosvenor North, Ft. Totten, Silver Spring, Wheaton, and Rhode Island) and I have found that every agreement requires the tenant/developer, all contractors, and all subcontractors to get the required insurance policies.
- The following limitations are negotiated in some of the agreements:
    - Almost all agreements allowed different levels of insurance required during pre-construction, construction, and operations periods (though our developer has not specifically requested this change yet);
    - Two agreements only required *major* subcontractors to get the required insurance. What is a major subcontractor? The Rhode Island Ave agreement defined *major subcontractors* as those contractors and subcontractors of Tenant whose cumulative contract or subcontract amount exceeds $2,000,000.

As you may recall, Banneker's extensive redline comments only took exception with who was required to obtain insurance (they wanted developer OR contractor) and how long the insurance requirements were to survive the expiration or earlier termination of the agreement. They did not make any comments on the policy type or dollar levels required.

While I would like to have Mr. Schraven's version of the JD language, I think that we can get our response to their question out of the uniform language of the old agreements. We could also make the promise that the required language will be in the first draft that we provide to them.

Please let me know what you think,

Josh

---

**From:** Doggett, Rosalyn
**Sent:** Friday, June 26, 2009 10:45 AM
**To:** Montague, Joshua W.
**Subject:** RE: The Jazz Economic Terms (as of June 23, 2009)

Malcolm says it would be appraised for highest and best use, including assemblage, if appropriate.

---

**From:** Montague, Joshua W.
**Sent:** Friday, June 26, 2009 10:24 AM
**To:** Doggett, Rosalyn
**Subject:** FW: The Jazz Economic Terms (as of June 23, 2009)
**Importance:** High

Hi Roz,



FOIA CONFIDENTIAL TREATMENT REQUESTED

RE: number 1 below, have we appraised our Florida Ave property in light of the possibility of combining it with the adjacent property? Wouldn't the small lot be worth more if it was necessary for (and capable of) a larger building?

Please let me know what you think, as I am compiling a list of issues to consider for when (if) the developer comes up with a coherent offer that describes the combining of our lot with the adjacent lot.

Josh

---

**From:** thicks [mailto:thicks@bannekerventures.com]
**Sent:** Thursday, June 25, 2009 1:51 PM
**To:** Doggett, Rosalyn
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## Doggett, Rosalyn

**From:** eric.smart@bolansmart.com
**Sent:** Friday, June 26, 2009 3:07 PM
**To:** Doggett, Rosalyn
**Subject:** away june 30 to July 6 etc..

Roz

FYI I am away to Scotland next Tuesday to attend my daughter's graduation from the University of Edinburgh, with a few days visit thereafter. Can cover the basics while in transit, but obviously no meetings.

Omar: Regarding latest note back from Tiwana would comment that still do not see a reference to the upfront $800k, would encourage that any rent reset after 60 years earn a market based yield in place of 5.0%, and regarding capital event participation, that the 20% return to member equity goes away after the first paydown. Concerning participation after the first investment period, the replacement equity would still be paid back first, then the splits would be 90/10 thereafter net of any preferred. If this does not work, then could recognize a preferred on replacement equity at some index, say cost of debt, or 30 yr US treasuries plus 350 basis points, or some such equivalent.
Would also cap equity at not more than 35% of project funding, with any other equity getting a preferred return matching cost of debt.

Talyor:??

Huntington: Working on second piece with Gary.

Invoice: Will submit for June by June 30.

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



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Has to be higher - next door property is too small to account for 21% of EGI

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thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED

Red = Conference Call of 6/23/09

**Doggett, Rosalyn**

**From:** thicks [thicks@bannekerventures.com]
**Sent:** Tuesday, June 09, 2009 1:12 PM
**To:** Doggett, Rosalyn
**Cc:** Maurice' 'Perry; arashid@bannekerventures.com; okarim@bannekerventures.com; eric.smart@bolansmart.com; Moneme, Emeka; Montague, Joshua W.; Meister, Mark K.; Bottigheimer, Nat
**Subject:** The Jazz @ Florida Avenue - Economic Terms

Rog. Josh Maurice Omar

Mrs. Doggett,

Below, please see our responses to your email sent May 29, 2009:

(open) 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. *

Need Response Before Any Further Negotiations

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. (open)

as is now not yet

5. INSURANCE – Has Josh received a response from the Risk Management division?

6. GUARANTOR – Banc of America CDC is the Guarantor. give me a note with statement

would not numbers yes but not agreed to part of an agreement with

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? As much as anyone else When do you expect to have the results of the new appraisal? ~35 days, hopefully (open) could affect timing rent?

8. AFFORDABLE HOUSING – We are in agreement to delete "minimum". 20% is fine. We are in the process of reviewing the IZ regulations What's your conclusion 20%

(open) 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.~~ 99 yrs in term left at market but no less than 5% not in SPA/dev agr GL for BCP **

(open) 100 based on appraisal

10. BASE RENT – See response to #9 above. n/a

$800K up front?

11. CAPITAL EVENTS – We agree that WMATA participates in 10% of capital event proceeds following: (a) repayment of all ORIGINAL 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. ***

original debt, equity

~~12. Same prohibited payment~~

We look forward to hearing from you. Please call us with any questions you may have. Thanks in advance.
Tiwana

* In case of default, WMATA makes payment out of revenue from project so it will be revenue-neutral – in next week


Tiwana Z. Hicks
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
Office: (202) 667-4110


(1) ** Maurice wants abstract of appraisal (1) yes on basic numbers

(2) in principal OK BUT depends on how structured. If the loan is subordinate to prof. equity profit No Deal

(2) *** subordinated debt from DC? likely needed

**** member loans = BACDC at 8%

** (3) Roz to write back on Capital Events by end of week



FOIA CONFIDENTIAL TREATMENT REQUESTED

Fax: (202) 558-5157
Cell: (202) 486-1863
thicks@bannekerventures.com



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## Doggett, Rosalyn

**From:** thicks [thicks@bannekerventures.com]
**Sent:** Tuesday, June 09, 2009 1:12 PM
**To:** Doggett, Rosalyn
**Cc:** Maurice' 'Perry; arashid@bannekerventures.com; okarim@bannekerventures.com; eric.smart@bolansmart.com; Moneme, Emeka; Montague, Joshua W.; Meister, Mark K.; Bottigheimer, Nat
**Subject:** 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?
6. 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. No - at market or $7. Whichever is higher
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%~~ 3% 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
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Cell: (202) 486-1863
thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Doggett, Rosalyn
**Sent:** 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

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FOIA CONFIDENTIAL TREATMENT REQUESTED

Cell: (202) 486-1863
thicks@bannekerventures.com

---

**From:** Doggett, Rosalyn [mailto:RDoggett@wmata.com]
**Sent:** Thursday, May 28, 2009 8:27 AM
**To:** thicks
**Subject:** RE: Revised Florida Avenue Economic Terms Chart

Thanks, Tiwana. I will be working on this later today and try to get back either late this aft. Or early morning tomorrow depending on availability of those I need to consult.

---

**From:** thicks [mailto:thicks@bannekerventures.com]
**Sent:** Wednesday, May 27, 2009 11:14 AM
**To:** Doggett, Rosalyn; Montague, Joshua W.
**Cc:** Maurice L. Perry; okarim@bannekerventures.com; eric.smart@bolansmart.com; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
**Subject:** Revised Florida Avenue Economic Terms Chart
**Importance:** High

Mrs. Doggett,
As a follow-up to our meeting yesterday, attached please find the revised Florida Avenue Economic Terms Chart. We look forward to receiving a final determination on the 5 remaining open items in the coming days. Please call us if you have any further questions. Thanks.
Tiwana

Tiwana Z. Hicks
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thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED 

## Doggett, Rosalyn

**From:** Doggett, Rosalyn
**Sent:** Friday, May 29, 2009 4:53 PM
**To:** 'Omar A. Karim'
**Cc:** 'thicks'; Maurice' 'Perry; eric.smart@bolansmart.com; Meister, Mark K.; Montague, Joshua W.
**Subject:** RE: Florida Avenue Terms

Omar, this morning we met with executive staff, including General Counsel and AGM. While there was agreement that we have a possible framework for a deal, there was also agreement that no deal can be finally evaluated until we get an outside appraisal from an independent contractor. Ordering the outside appraisal and obtaining and reviewing its results will take approximately 60 days at best. Therefore, though we can continue to address the point other than rent in the economic terms chart, and I will send you thoughts in a separate e-mail, we will have to await the appraisal to finalize numbers.

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Friday, May 29, 2009 3:55 PM
**To:** Doggett, Rosalyn
**Cc:** 'thicks'
**Subject:** Florida Avenue Terms
**Importance:** High

Mrs. Doggett,

Any word on where we are with the final terms of our negotiations of the economic terms of the Florida Avenue deal?

Omar

Omar A. Karim
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(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com



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5/27/09

$380

$1.4M is difference between $380 +

$250,000 = 5% year
1½% EGI better in inflationary

**BSA Table 1 (May 27/09)**

**Florida Avenue / Shaw - Proposals (60 year Term)**

| | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | | 60 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | July | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | | 2068 |
| **Banneker (May 26, 2009 Illustrative) with 60 year ground lease** | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | |
| Predevelopment Rent | | | $50,000 | $57,500 | $72,500 | $80,000 | $40,000 | | | | | | | | |
| Base Rent (at 95% ocp) | prepaid | | | | $800,000 | | | | | | | | | | |
| | annual | | | | | | $125,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | | $250,000 |
| Total WMATA Base Rent | | | $150,000 | $57,500 | $872,500 | $80,000 | $165,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | $250,000 | | $250,000 |
| Effective Gross Income | Banneker projected | | | | | | | $2,831,000 | | | | | | | |
| | 3.00% EGI growth BSA adjusted | | | | | | | $2,500,000 | $2,575,000 | $2,652,250 | $2,731,818 | $2,813,772 | $2,898,185 | | $12,335,312 |
| | 1.50% WMATA payment | | | | | | | $37,500 | $38,625 | $39,784 | $40,977 | $42,207 | $43,473 | | $185,030 |
| Total WMATA Base Rent With Percentage of EGI | | | | | | | | $287,500 | $288,625 | $289,784 | $290,977 | $292,207 | $293,473 | | $435,030 |
| WMATA Participation | ~~10.00% of defined capital events~~ | | | | | | | | | | | | | | |
| Implied Initial Land Value | $5,088,000 2009 value estimate (OME) | | | | | | | | | | | | | | |
| | 3.00% annual compounded increase | | | | | | | | | | | | | | |
| Terminal Value | $29,103,375 on land only | | | | | | | | | | | | | | $29,103,375 |
| **Cash Flow** | | | $150,000 | $57,500 | $872,500 | $80,000 | $165,000 | $287,500 | $288,625 | $289,784 | $290,977 | $292,207 | $293,473 | | $435,030 |
| **Cash Flow w/ residual** | | | $150,000 | $57,500 | $872,500 | $80,000 | $165,000 | $287,500 | $288,625 | $289,784 | $290,977 | $292,207 | $293,473 | | $29,538,405 |
| **NPV** Base Rent | 5.73% discount rate | $4,512,977 | | | | | | | | | | | | | |
| ~~With Residual~~ | 5.73% discount rate | $5,600,022 | | | | | | | | | | | | | |
| With EGI | 5.73% discount rate | $6,438,472 | | | | | | | | | | | | | |
| With Participation | | not considered | | | | | | | | | | | | | |

one time payment

+ 250 = $300,000

Rent is 5% of Implied Initial Land Value
Do I change term sheet which was 7% x $7.5M?

I want 5% or market whichever is greater or 7%

WMATA-INV 000702

Omar
Maurice
Tiwanna

Chris
Adam (intern)

Tom
Roz
Eric

5/26/09

Rent at 54th month, ~~57th month, 60th month?~~
worth 100K more?
$800K comes at closing + is funded by
Contr. loan
worth 150K more?

$250 + 1% EGI from stabilization

10% = after original equity (20%) + required return, debt,
member loans ~~plus~~ accrued interest (16%)
high enough

call Omar: 99 vs 60 years

valued as if vacant
option to extend

Next Steps

1. Prepared to sign contract immediately
2. Omar does not see an interim step to the Board but Maurice does
3. So, Nat/Omar

4. We will take a revised term sheet to the Board?

   Nat, Emeka

5. What about the adjacent property??

6. New Sources & Uses of Funds Statements
   Gap financing will be cited

7. Adjacent property: Maurice wants to do original research
   additional

## Doggett, Rosalyn

**From:** thicks [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
**Attachments:** Florida Avenue Terms (updated as of 5-26-09).doc

**Importance:** High

Mrs. Doggett,
As a follow-up to our meeting yesterday, attached please find the revised Florida Avenue Economic Terms Chart. We look forward to receiving a final determination on the 5 remaining open items in the coming days. Please call us if you have any further questions. Thanks.
Tiwana

Tiwana Z. Hicks
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Fax: (301) 565-4982
Cell: (202) 486-1863
thicks@bannekerventures.com

# Florida Avenue – Economic Terms

| JDA | [illegible] | [illegible] | [illegible] |
|---|---|---|---|
| **Developer** | Banneker, District Development, Metropolis | Banneker, District Development, Metropolis | **Agreed:** Banneker and BACDC |
| **Project** | Single phase, including minimum:<br>Gross FAR: 130,014 sf<br>Units: 104<br>Retail: 11,750 sf<br>Parking: 47 spaces | Single phase, including minimum:<br>Gross FAR: 130,014 sf<br>Units: 104<br>Retail: 11,750 sf<br>Parking: 47 spaces | **Agreed:** Single Phase<br>Gross FAR: 130,1014 sf<br>(WMATA parcels only) |
| **Improvements** | No mention of ownership or purchase of improvements. | Developer owns all improvements but ownership rights automatically transfer to WMATA at end of Lease. | **Agreed:**<br>Developer owns all improvements but ownership rights automatically transfer to WMATA at end of Lease. |
| **Pre-stabilization period** | Stabilization or 45 months | Stabilization or 45 months | **Agreed:** Stabilization or 54 months |
| **Lease closing** | On or before 20 months | On or before 20 months | **Agreed:** On or before 20 months |
| **Pre-stabilization period payments** | *Note: paragraph 7.8 appears to have a typo in reference to payments during extensions of pre-stabilization period due to WMATA delay.* | Payments are due from effective date of JDA to Stabilization (at which time rent payments begin) | **Agreed:** Payments are due from effective date of JDA to Stabilization (at which time rent payments begin) |
| **Deposit** | Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer | Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer | **Agreed:** Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer within 10 business days |
| **Completion Bond** | Not mentioned (only have performance and payment) | 120% of replacement costs | **Agreed:** N/A |
| **FTA Approval** | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; JDA will include appropriate termination provisions in the case FTA denies approval | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; Said agreement is automatically terminated if FTA denies approval and all appeals are exhausted. | **Agreed:** WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Economic Terms

| [illegible] | [illegible] | [illegible] | [illegible] |
|---|---|---|---|
| **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;<br>After Final Completion – only change of control upon WMATA approval. | **Agreed:**<br>Prior to Final Completion – no change of control;<br>After Final Completion – Developer can change control freely among Developer members, including Tax Credit Syndicators. |
| **Pre-stabilization period payment amounts** | First 15 months: $100,000/year<br>Next 12 months: $115,000/year<br>Thereafter: $130,000 per year | First 15 months: $100,000/year<br>Next 12 months: $115,000/year<br>Thereafter: $130,000 per year | **Open:**<br>First 18 months: $50,000/year<br>Next 12 months: $65,000/year<br>Thereafter: $80,000 per year |
| **Insurance** | WMATA policy: According to Kim Brown, we will require insurance on everybody. | Everybody: Developer, contractor, subcontractor, etc. | **Open:** WMATA to provide alternative insurance language |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Economic Terms

| Lease | Term Sheet | WMATA Draft | Agreed Upon Terms as Shown |
|---|---|---|---|
| **Developer** | See JDA | See JDA | See JDA |
| **Guarantor** | Requires guarantor for "remediation of all hazardous materials as required by the Definitive Agreement or by applicable law…and the timely payment and performance of all Developer obligations under the Definitive Agreement." *Q – was guaranty contemplated to be for lease also?* | Required guarantor with net worth exceeding 3 times value of project | **Agreed:** Required guarantor with net worth equal to cost to complete project per approved plans and specifications. |
| **Stabilization** | TBD in JDA | 90% occupancy | **Agreed:** 92.5% project occupancy |
| **Density Adjustment Rent** | Add to base rent based on formula in Section 7.11 of term sheet. | Add to base rent based on formula in Section 7.11 of term sheet. | **Agreed:** Add to base rent based on formula in Section 7.11 of term sheet. |
| **Affordable Housing** | No mention | No mention | **Agreed:** A minimum of 20% of the total number of units |
| **Right to assign Lease** | Section 1.2 states that Developer's interest in the Project or the Improvements may not be assigned or sold without the written consent of WMATA. | Not assignable prior to Final Completion; only assignable upon WMATA consent after Final Completion | **Agreed:** WMATA agreed to insert "reasonableness" language in JDA and Lease |
| **Right of First Offer** | N/A; *Q – was this mentioned in negotiations? What is normal consideration to WMATA for this right?* | N/A | N/A |
| **Environ Condition** | Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS | Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS | **Agreed:** Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer takes property AS IS, WHERE IS |
| **Insurance** | See JDA | See JDA | **Agreed:** See JDA |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Economic Terms

| Lease | Term Sheet | WMATA Draft | Agreed Upon Terms to Date |
|---|---|---|---|
| **Term** | 60 year lease | 60-year lease | **Open:** 60 year lease with option to extend. Rosslyn Doggett to provide language. |
| **Base Rent** | $597,000 in quarterly payments | $597,000 in quarterly payments | **Open:** $250K base rent, plus $800K pre-payment paid at construction loan closing, plus 1.5% of Effective Gross Income paid thru term of lease. |
| **Escalation (Years 1 to 10)** | 1.5% increase *(note: may have been typo on term sheet)* | 1.5% increase | N/A |
| **Escalation (Years 11 to end)** | 3% increase | 3% increase | N/A |
| **Periodic Rent Revaluation** | Upon Capital Event or every 10 years | Upon Capital Event or every 10 years | N/A |
| **Capital Event Participation** | 10% of gross income from Capital Event | 10% of gross income from Capital Event | **Open:** 10 % of any income from Capital Event after repayment of all debt, member loans, outstanding member loans, accrued interest, equity and preferred return on equity. Member loans to receive no more than 16% annual interest and equity to receive no more than 20% annual interest before WMATA participation |
| **Late Charge** | TBD in JDA | 20% of delinquent amount | **Agreed:** 5% |
| **Default interest rate** | Not mentioned. | 15% or 10% over prime (whichever is higher) | **Agreed:** 4% over prime |

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Bottigheimer, Nat
**Sent:** Thursday, May 07, 2009 6:58 PM
**To:** Moneme, Emeka
**Cc:** Montague, Joshua W.; Meister, Mark K.; Doggett, Rosalyn; Heppen, Bruce P.; O'Keeffe, Carol B.
**Subject:** Talked with Omar

Omar wants to be on the June agenda. I told him I thought that would be tough if staff initiated at this point. That said, if we have completed our analysis of Banneker's proposal to us, there's no reason that a DC Board member couldn't introduce the item himself.

My biggest issue currently is the reduction in land value due to affordable housing and financing. The NPV of the current proposal is about $5 million. This compares to a threshold appraised value of about $7 million that we'd set based on development comparables that included affordable housing in them. This appraisal may need to be updated to get a current estimate of the land value write-down for affordable housing.

From what I understand, there really hasn't been any change in the affordable housing requirements pre- and post-award. The Duke Plan has always had a 20-30% affordable housing requirement. We asked proposers – as I understand it – not to include affordable housing in their proposals to us so we'd have a level playing field for evaluating proposals. Asking proposers to negotiate terms that included affordable housing requirements could possibly be interpreted as a change in conditions, but might not in reality really be a change in conditions. Likewise, Mr. Graham has evidently proposed very significant AH requirements on Banneker, but I don't believe their current proposal to us reflects those.

The two biggest housing affordability components of the Banneker offer to us are the 20% Duke Plan requirement at 50% AMI, and lease terms that allegedly reflect the requirements of HUD financing. According to Omar, their original terms with us stipulated that the final JDA reflect such requirements. (not true)

Unless I'm missing something – which I certainly may be – the important issue is the affordable housing policy issue, i.e., how much of a reduction in land value is the Board willing to accept to support a JD project's affordable housing element. To determine this, I think we'd need an updated appraisal. We'd also have to be satisfied that the value of Banneker's offer to us would reflect the affordable housing requirements ultimately applied.

Thanks,

Nat

updated appraisal to reflect aff. hsg write down



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** DCRealEstate.com [ken@dcrealestate.ccsend.com] on behalf of DCRealEstate.com [newsletter@dcrealestate.com]
**Sent:** Thursday, July 09, 2009 12:06 PM
**To:** Doggett, Rosalyn
**Subject:** DCRealEstate.com Newsletter - July 9th

Link to Web Version

SPONSORS

DC Developers Vie for Stimulus Money

K-Street Think Tank Seeks Scott Circle Development



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000711

[illegible]

## Downtown - BID Reports on State of the Downtown

[illegible]

## DC Opens Affordable Housing Center

Mayor Adrian Fenty [illegible] the Department of Housing and Community Development [illegible]

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000712

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Friday, June 26, 2009 5:24 PM
**To:** Doggett, Rosalyn
**Subject:** Capital Events - Rhode Island

Hi Roz,

In the Rhode Island agreement, they did use a different strategy that might be relevant if we cannot figure out an agreement on WMATA getting a preferred return.

- On certain identified Capital Events, WMATA took a percentage on all gross proceeds of the Capital Event.
- On the occurrence of other specified Capital Events, WMATA took a percentage of the adjusted gross proceeds.

So, if WMATA agrees to take a backseat to 15 or 20% interest on member loans on some capital events (e.g. refinance or addition of new member), maybe WMATA gets a preferred return on other events (e.g., sale of interest or other exit of member).

Just something to consider...

Have a great weekend!

Josh



FOIA CONFIDENTIAL TREATMENT REQUESTED

5. **"Board of Real Property Assessments and Appeals for the District of Columbia Louis Patrick Chauvin Confirmation Resolution of 2009", PR 18-0299.** To confirm the appointment of Mr. Louis Patrick to the Board of Real Property Assessments and Appeals for the District of Columbia.

6. **"Board of Real Property Assessments and Appeals for the District of Columbia Frank Sanders Confirmation Resolution of 2009", PR 18-0300.** To confirm the appointment of Mr. Frank Sanders to the Board of Real Property Assessments and Appeals for the District of Columbia.

7. **"Board of Real Property Assessments and Appeals for the District of Columbia Keith Stone Confirmation Resolution of 2009", PR 18-0301.** To confirm the appointment of Mr. Keith Stone to the Board of Real Property Assessments and Appeals for the District of Columbia.

8. **"Release of the Deed of Trust Amendment Act of 2009", Bill 18-0265.** To amend section 545b of An Act To establish a code of law for the District of Columbia to provide that section is not intended to be a total bar from further recovery action and to provide that the sections does not apply to promissory notes and deeds of trust securing debts held by the District of Columbia.

Passed

9. **"Affordable Housing Opportunities Residential Rental Project Property Tax Exemption and Equitable Real Property Tax Relief Amendment Act of 2009", Bill 18-0281.** To amend Chapter 10 of Title 47 of the District of Columbia Official Code to exempt from taxation certain property owned by Affordable Housing Opportunities, Inc. and its affiliates, which is to be developed as extremely low-income housing; and to provide for equitable real property tax relief for Affordable Housing Opportunities.

10. **"Waterfront Park at The Yards Act of 2009", Bill 18-0299.** To authorize the Mayor to enter into an agreement to provide for the operation and maintenance of a public park on the Anacostia River Waterfront; to establish a Waterfront Park Maintenance Fund into which certain designated revenues, including certain sales tax revenue, shall be deposited; and to impose a special assessment on properties specially benefited by park

11. **"F Street, N.W., Downtown Retail Priority Area Clarification Amendment Act of 2009", Bill 18-0303.** To amend the Retail Incentive Act of 2004 to clarify the boundary of the F Street, N.W., corridor of the Downtown Retail Priority Area.

12. **"Fiscal Year 2009 Income Tax Secured Revenue Refunding Bond Issuance Approval Resolution of 2009", PR 18-0358.** To approve the borrowing of funds by the District through the issuance and sale of income tax secured revenue bonds.

**10:30 AM, COUNCIL CHAMBER, ROOM 500, PUBLIC HEARING, COMMITTEE OF THE WHOLE,** Vincent C. Gray, Chairman

Agenda item:

1. **"Closing of a Public Alley in Square 5928, S.O. 08-4393 Act of 2009", Bill 18-0292.** To order the legal closing of an alley in Square 5928, bounded by Lots 14-20 and 91-93 in Ward 8.

**11:00 AM, ROOM 123, COMMITTEE MEETING, COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,** Jim Graham, Chairperson

(The Committee's agenda has not been set.)

**2:00 PM, ROOM 120, COMMITTEE MEETING, COMMITTEE ON PUBLIC SERVICES AND CONSUMER AFFAIRS**, Muriel Bowser, Chairperson

(The Committee's agenda has not been set.)

COUNCIL OF THE DISTRICT OF COLUMBIA

# *Legislative Calendar*

***Vincent C. Gray, Chairman***

***John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004***

**JUNE 22 – JULY 3, 2009**
*(Please note this is a two-week calendar)*

**Legislative Calendar is also available on-line!!**
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**MONDAY, JUNE 22**

(No public hearings scheduled.)

**TUESDAY, JUNE 23**

**10:00 AM, COUNCIL CHAMBER, ROOM 500, PUBLIC HEARING, COMMITTEE OF THE WHOLE,** Vincent C. Gray, Chairman

Agenda item:

1. **"Bloomingdale Court Alley Designation Act of 2009", Bill 18-0154.** To designate the alley bordered by the 100 blocks of U and V Streets, NW and the 2000 blocks of 1st Street and Flagler Place, NW, as "Bloomingdale Court".

**10:00 AM, ROOM 412, PUBLIC HEARING, COMMITTEE ON FINANCE AND REVENUE,** Jack Evans, Chairperson

Agenda items:

1. **"Board of Real Property Assessments and Appeals for the District of Columbia Towanda Paul-Bryant Confirmation Resolution of 2009", PR 18-0236.** To confirm the appointment of Ms. Towanda Paul-Bryant as Chairperson of the Board of Real Property Assessments and Appeals for the District of Columbia.

2. **"Board of Real Property Assessments and Appeals for the District of Columbia Trent Williams Confirmation Resolution of 2009", PR 18-0233.** To confirm the appointment of Mr. Trent Williams to the Board of Real Property Assessments and Appeals for the District of Columbia.

3. **"Board of Real Property Assessments and Appeals for the District of Columbia Robert Cooper Confirmation Resolution of 2009", PR 18-0234.** To confirm the appointment of Mr. Robert Cooper to the Board of Real Property Assessments and Appeals for the District of Columbia.

4. **"Board of Real Property Assessments and Appeals for the District of Columbia Leslie Boissiere Confirmation Resolution of 2009", PR 18-0235.** To confirm the appointment of Mrs. Leslie Boissiere to the Board of Real Property Assessments and Appeals for the District of Columbia.

The Legislative Calendar is prepared by the Office of the Secretary. The items to be considered by the Council and/or its Committees are subject to change. For copies of legislation, please call the Council's Legislative Services Division at (202) 724-8050. Public Hearings in the Chamber are broadcast live on Council Channel 13. The Chamber is equipped with an assistive listening system to enhance sound for those with difficulty hearing.

## Doggett, Rosalyn

**From:** Doggett, Rosalyn
**Sent:** 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
Fax: (202) 558-5157


If our rent amounts to 5% of land value ($250K vs $380K per [illegible]) is the additional $130K write-down a reflection of market & additional write-down?



FOIA CONFIDENTIAL TREATMENT REQUESTED

Cell: (202) 486-1863
thicks@bannekerventures.com

---

**From:** Doggett, Rosalyn [mailto:RDoggett@wmata.com]
**Sent:** Thursday, May 28, 2009 8:27 AM
**To:** thicks
**Subject:** RE: Revised Florida Avenue Economic Terms Chart

Thanks, Tiwana. I will be working on this later today and try to get back either late this aft. Or early morning tomorrow depending on availability of those I need to consult.

---

**From:** thicks [mailto:thicks@bannekerventures.com]
**Sent:** Wednesday, May 27, 2009 11:14 AM
**To:** Doggett, Rosalyn; Montague, Joshua W.
**Cc:** Maurice L. Perry; okarim@bannekerventures.com; eric.smart@bolansmart.com; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
**Subject:** Revised Florida Avenue Economic Terms Chart
**Importance:** High

Mrs. Doggett,
As a follow-up to our meeting yesterday, attached please find the revised Florida Avenue Economic Terms Chart. We look forward to receiving a final determination on the 5 remaining open items in the coming days. Please call us if you have any further questions. Thanks.
Tiwana

**Tiwana Z. Hicks**
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
Office: (202) 667-4110
Fax: (301) 565-4982
Cell: (202) 486-1863
thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED 

## Doggett, Rosalyn

**From:** Doggett, Rosalyn
**Sent:** Friday, May 29, 2009 4:53 PM
**To:** 'Omar A. Karim'
**Cc:** 'thicks'; Maurice' 'Perry; eric.smart@bolansmart.com; Meister, Mark K.; Montague, Joshua W.
**Subject:** RE: Florida Avenue Terms

Omar, this morning we met with executive staff, including General Counsel and AGM. While there was agreement that we have a possible framework for a deal, there was also agreement that no deal can be finally evaluated until we get an outside appraisal from an independent contractor. Ordering the outside appraisal and obtaining and reviewing its results will take approximately 60 days at best. Therefore, though we can continue to address the point other than rent in the economic terms chart, and I will send you thoughts in a separate e-mail, we will have to await the appraisal to finalize numbers.

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Friday, May 29, 2009 3:55 PM
**To:** Doggett, Rosalyn
**Cc:** 'thicks'
**Subject:** Florida Avenue Terms
**Importance:** High

Mrs. Doggett,

Any word on where we are with the final terms of our negotiations of the economic terms of the Florida Avenue deal?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** eric.smart@bolansmart.com
**Sent:** Thursday, May 28, 2009 1:20 PM
**To:** Doggett, Rosalyn
**Cc:** Montague, Joshua W.
**Subject:** RE: Revised Florida Avenue Economic Terms Chart

Some comments on particpation:

1) Addressing rent adjustment at option period suggest that after sixty years the instructions for appraisal include determining a yield rate appropriate to market conditions at that time in addition to setting a fee simple land value. Fine to leave at 7.0% if such an approach is not conforming to WMATA practice.

2) Percent interest in capital events should conceptually be based on the land value relative to the entire project investment at the time of the initial investment. For example, if the development cost of the WMATA portion of the subject project is $28M, and the land value is in the range of $5M, the combined development cost as if the land value cost was fully capitalized would be $33M. Of this total cost, the land interest would represent approximately 15%, which would then be the basis for the WMATA distribution of excess capital event proceeds. If the going in land value was higher, as previously assumed, the distribution percentage could be argued to be correspondingly higher.

Another argument can be made that after all other investment capital has been repaid, including the cumulative risk premium yields, in this case proposed between 16% and 20%, the land should be entitled to a higher yield than a prorate share for two reasons. First, unlike the other contributed capital, the principal, in this case the original land value, has not be paid, and until it is paid it should get a premium over the other already paid down capital contributions. Second, over time, it is the land which is generally appreciating while the improvements are depreciating (not to speak of tax treatment benefiting the returns on the improvements), meaning that if the relative values of the land to the improvements were to guide the distribution of property income, they would increasing accrue to the land. This is especially true after the initial at risk cash investments have been repaid, including the initial risk period risk premiums. And of course all of these approaches need to match up with whether the ground lease annual rent is below, at, or somehow above market at different points of the lease term.

Notwithstanding the above, we are inclined to recommend in this case that WMATA agrees to a fixed 10% participation in defined capital events, with a safeguard however that any equity or member yield rates related to replacement capital subsequent to the initial investment period are adjusted to a then market rate commensurate with the norms for stabilized income producing properties.

Hope this helps, first in posing some more complexities, then in getting simple.

Eric

On Thu, 28 May 2009 12:30:57 -0000 (GMT), "Doggett, Rosalyn"
<RDoggett@wmata.com> wrote:
> I was not looking at the latest draft. I probably have not yet
> printed
it out.
>



FOIA CONFIDENTIAL TREATMENT REQUESTED 

> From: Montague, Joshua W.
> Sent: Wednesday, May 27, 2009 6:18 PM
> To: Doggett, Rosalyn; eric.smart@bolansmart.com
> Subject: RE: Revised Florida Avenue Economic Terms Chart
>
> RE: Valued as if vacant language.
>
> Do you have the latest draft, which includes your comments from
Vancouver?
>
> Here is Section 5.3.4:
>
> 1. Extended Term Base Rent. Upon the commencement of the Extended
Term,
> Base Rent shall be adjusted to seven percent (7%) of Property land
value
> established through the Fair Market Value Process.
> a. For the Base Rent adjustment at the commencement of the Extended
Term, the
> Property is to be appraised as if vacant and at its highest and best
use.
> b. At no time shall the Base Rent for the Extended Term decrease
> below
the then
> payable Base Rent at the end of the Initial Term.
>
>
>
>
>
> From: Doggett, Rosalyn
> Sent: Wednesday, May 27, 2009 5:15 PM
> To: eric.smart@bolansmart.com
> Cc: Montague, Joshua W.
> Subject: FW: Revised Florida Avenue Economic Terms Chart
> Importance: High
>
> I should have asked you when you called for your advice on % of what
> is
now net
> capital event income. I would rather take a % of gross if you have an
> alternative formulation.
>
> On revaluation after 60 years, I am thinking of using Navy Yard
> Chiller
language
> which is for revaluation as if vacant after 60 years. Except that,
Josh, now
> that I look at the Navy Yard Chiller lease language I don't see
language about
> valued as if vacant. Perhaps I missed it in a rush. It does allow a
33-year
> extension.
>
> From: thicks [mailto:thicks@bannekerventures.com]
> Sent: Wednesday, May 27, 2009 11:14 AM
> To: Doggett, Rosalyn; Montague, Joshua W.



FOIA CONFIDENTIAL TREATMENT REQUESTED

> Cc: Maurice L. Perry; okarim@bannekerventures.com;
eric.smart@bolansmart.com;
> Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
> Subject: Revised Florida Avenue Economic Terms Chart
> Importance: High
>
> Mrs. Doggett,
> As a follow-up to our meeting yesterday, attached please find the
revised
> Florida Avenue Economic Terms Chart. We look forward to receiving a
final
> determination on the 5 remaining open items in the coming days.
> Please
call us
> if you have any further questions. Thanks.
> Tiwana
>
> Tiwana Z. Hicks
> Banneker Ventures, LLC
> 700 12th Street, NW, Suite 700
> Washington, DC 20005
> Office: (202) 667-4110
> Fax: (301) 565-4982
> Cell: (202) 486-1863
> thicks@bannekerventures.com
>
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>
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>
--
Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037 202-776-7740 (direct), 202-841-2227
(cell), 202-371-1333 (BSA general) www.bolansmart.com



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Bottigheimer, Nat
**Sent:** Thursday, May 28, 2009 8:57 PM
**To:** Moneme, Emeka; Doggett, Rosalyn; Meister, Mark K.
**Subject:** RE: Revised Florida Avenue Economic Terms Chart

Emeka--

As I understand it, the earliest we could get an appraisal would be 45 days from now. That's too long to wait for, so I've asked for staff analysis of appraised value -- which is different from an actual appraisal -- that would get us close.

If and when we get an actual appraisal, I believe it should be used to confirm valuations as opposed to being the basis for negotiations.

The key issues for me are:

yes Is Banneker's proposal more valuable than our assessment of the land's worth?

32% How much has the value of the property declined since we first appraised and offered the property?

20% How much of a reduction in land value is caused by the affordable housing requirements in place?
But maybe Mahedin needs to tighten

Josh Are there legal obstacles to us continuing to proceed with Banneker? – Carol : maybe

These are the things that are folks are working on at the moment.

Thanks,

Nat

---

**From:** Moneme, Emeka
**Sent:** Thursday, May 28, 2009 5:34 PM
**To:** Doggett, Rosalyn; Meister, Mark K.; Bottigheimer, Nat
**Subject:** RE: Revised Florida Avenue Economic Terms Chart

Have we received the re-appraisal for this site yet?

Emeka

---

**From:** thicks [mailto:thicks@bannekerventures.com]
**Sent:** Wednesday, May 27, 2009 11:14 AM
**To:** Montague, Joshua W.; Doggett, Rosalyn
**Cc:** Maurice L. Perry; okarim@bannekerventures.com; eric.smart@bolansmart.com; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
**Subject:** Revised Florida Avenue Economic Terms Chart
**Importance:** High

Mrs. Doggett,
As a follow-up to our meeting yesterday, attached please find the revised Florida Avenue Economic Terms Chart. We look forward to receiving a final determination on the 5 remaining open items in the coming days. Please call us if you have any further questions. Thanks.
Tiwana



FOIA CONFIDENTIAL TREATMENT REQUESTED 

**Tiwana Z. Hicks**
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
Office: (202) 667-4110
Fax: (301) 565-4982
Cell: (202) 486-1863
thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED

Also need revised 3/27/09 Sources & Uses

# Florida Avenue – Economic Terms

| JDA | Term Sheet | WMATA draft | Agreed Upon Terms or Status |
|---|---|---|---|
| **Developer** | Banneker, District Development, Metropolis | Banneker, District Development, Metropolis | **Agreed:** Banneker and BACDC |
| **Project** | Single phase, including minimum:<br>Gross FAR: 130,014 sf<br>Units: 104<br>Retail: 11,750 sf<br>Parking: 47 spaces | Single phase, including minimum:<br>Gross FAR: 130,014 sf<br>Units: 104<br>Retail: 11,750 sf<br>Parking: 47 spaces | **Agreed:** Single Phase<br>Gross FAR: 130,1014 sf<br>(WMATA parcels only)<br>* Sale or not |
| **Improvements** | No mention of ownership or purchase of improvements. | Developer owns all improvements but ownership rights automatically transfer to WMATA at end of Lease. | **Agreed:**<br>Developer owns all improvements but ownership rights automatically transfer to WMATA at end of Lease. |
| **Pre-stabilization period** | Stabilization or 45 months | Stabilization or 45 months | **Agreed:** Stabilization or 54 months |
| **Lease closing** | On or before 20 months | On or before 20 months | **Agreed:** On or before 20 months |
| **Pre-stabilization period payments** | *Note: paragraph 7.8 appears to have a typo in reference to payments during extensions of pre-stabilization period due to WMATA delay.* | Payments are due from effective date of JDA to Stabilization (at which time rent payments begin) | **Agreed:** Payments are due from effective date of JDA to Stabilization (at which time rent payments begin) |
| **Deposit** | Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer | Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer | **Agreed:** Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer within 10 business days |
| **Completion Bond** | Not mentioned (only have performance and payment) | 120% of replacement costs | **Agreed:** N/A |
| **FTA Approval** | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; JDA will include appropriate termination provisions in the case FTA denies approval | WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; Said agreement is automatically terminated if FTA denies approval and all appeals are exhausted. | **Agreed:** WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; add |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Economic Terms

| IDA | Term Sheet | WMATA draft | Agreed Upon Terms or Status |
|---|---|---|---|
| **Change of control** | Section 1.2 states that WMATA consent is needed to: 1) include other parties in the Developer (except for equity finance partners) and 2) assign or sell Developer's interest in the Project or the Improvements. | Prior to Final Completion – no change of control;<br>After Final Completion – only change of control upon WMATA approval. | **Agreed:**<br>Prior to Final Completion – no change of control;<br>After Final Completion – Developer can change control freely among Developer members, including Tax Credit Syndicators. do BADC + Bamekar want to exit? leverage litigation? |
| **Pre-stabilization period payment amounts** | First 15 months: $100,000/year<br>Next 12 months: $115,000/year<br>Thereafter: $130,000 per year | First 15 months: $100,000/year<br>Next 12 months: $115,000/year<br>Thereafter: $130,000 per year | **Open:** → need to see<br>First 18 months: $50,000/year<br>Next 12 months: $65,000/year<br>Thereafter: $80,000 per year |
| **Insurance** | WMATA policy: According to Kim Brown, we will require insurance on everybody. | Everybody: Developer, contractor, subcontractor, etc. | **Open:** WMATA to provide alternative insurance language |

not happily I agreed but it is quite low

X

Josh

effect of Inclusionary Zoning

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue – Economic Terms

| Lease | Term Sheet | WMATA draft | Agreed Upon Terms or Status |
|---|---|---|---|
| **Developer** | See JDA | See JDA | See JDA (B J A) |
| **Guarantor** | Requires guarantor for "remediation of all hazardous materials as required by the Definitive Agreement or by applicable law…and the timely payment and performance of all Developer obligations under the Definitive Agreement." *Q – was guaranty contemplated to be for lease also?* | Required guarantor with net worth exceeding 3 times value of project | **Agreed:** Required guarantor with net worth equal to cost to complete project per approved plans and specifications. |
| **Stabilization** | TBD in JDA | 90% occupancy | **Agreed:** 5 months will 92.5% project occupancy to total |
| **Density Adjustment Rent** | Add to base rent based on formula in Section 7.11 of term sheet. | Add to base rent based on formula in Section 7.11 of term sheet. | **Agreed:** Add to base rent based on formula in Section 7.11 of term sheet. |
| **Affordable Housing** | No mention | No mention | **Agreed:** ~~[illegible]~~ 20% of the total number of units but was we must take at IZ |
| **Right to assign Lease** | Section 1.2 states that Developer's interest in the Project or the Improvements may not be assigned or sold without the written consent of WMATA. | Not assignable prior to Final Completion; only assignable upon WMATA consent after Final Completion | **Agreed:** WMATA agreed to insert "reasonableness" language in JDA and Lease |
| **Right of First Offer** | N/A; *Q – was this mentioned in negotiations? What is normal consideration to WMATA for this right?* | N/A | N/A |
| **Environ Condition** | Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS | Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS | **Agreed:** Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer takes property AS IS, WHERE IS |
| **Insurance** | See JDA | See JDA | **Agreed:** See JDA |

WMATA-INV 000726

# Florida Avenue – Economic Terms

Grosvenor

| Lease | Term Sheet | WMATA draft | Agreed Upon Terms or Status |
|---|---|---|---|
| **Term** | 60 year lease | 60-year lease | **Open:** 60 year lease with option to extend. Rosalyn Doggett to provide language. valued as if vacant |
| **Base Rent** | $597,000 in quarterly payments | $597,000 in quarterly payments | **Open:** $250K base rent, plus $800K pre-payment paid at construction loan closing, plus 1.5% of Effective Gross Income paid thru term of lease. $300K + $800K up front as ~~begins~~ EGI = all revenue received. |
| **Escalation (Years 1 to 10)** | 1.5% increase *(note: may have been typo on term sheet)* | 1.5% increase | N/A |
| **Escalation (Years 11 to end)** | 3% increase | 3% increase | N/A |
| **Periodic Rent Revaluation** | Upon Capital Event or every 10 years | Upon Capital Event or every 10 years | N/A |
| **Capital Event Participation** | 10% of gross income from Capital Event | 10% of gross income from Capital Event | **Open:** 10 % of any income from Capital Event ~~after repayment~~ of all debt, ~~member loans,~~ outstanding ~~member loans, accrued interest,~~ original equity ~~and~~ preferred return on equity. ~~Member loans to receive no more than 15% annual interest and~~ original equity ~~to receive~~ no more than 20% annual interest before WMATA participation |
| **Late Charge** | TBD in JDA | 20% of delinquent amount | **Agreed:** 5% |
| **Default interest rate** | Not mentioned. | 15% or 10% over prime (whichever is higher) | **Agreed:** 4% over prime |

no more than 8%

to develop the project of

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** thicks [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
**Attachments:** Florida Avenue Terms (updated as of 5-26-09).doc

**Importance:** High

Mrs. Doggett,
As a follow-up to our meeting yesterday, attached please find the revised Florida Avenue Economic Terms Chart. We look forward to receiving a final determination on the 5 remaining open items in the coming days. Please call us if you have any further questions. Thanks.
Tiwana

**Tiwana Z. Hicks**

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

Office: (202) 667-4110

Fax: (301) 565-4982

Cell: (202) 486-1863

thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED 

5/26/09

ARTS OVERLAY

1904.3 3.5 = res

1904.2 1.0 = retail/arts

If you have 3.0 res., you can get .

e.g. if you have 1 sf retail you get 2 sf more

.5 + .5

Below market housing (at up to 80% AMI) you get 3 s more for every 1 sf

DUKE PLAN

p46 Encourages WMATA to include Aff Hsg at 7th + Florida s

p 20 Recommends dev. program at 6 FAR of " " (25-38 units " 20% - 30% of F

at 7th + FL Side

p9 Refers to Convention Center Area Strategic Dev. Plan for more detailed info. on Aff Hsg Issues in Shaw + says Public + private sites should accommodate a percentage of "very affordable" units.

15,956 SF = 7th + F

APPRAISAL TO REFLECT AFF. HSG WRITEDOWN

$7.5M

.8

$6.00 (Can write down to $6 M)

APPRAISAL

4.5 x 28,892 x $50 = $6.5M

$7.5 M

4.5 x 16,472 x $57 = $4.225M

less 20% of 4.22 = .845

7.500

.845

$6,655

5/26/09

4.5 x 16,472 x $57 = 4.225
less 20% .845

$ 7,500
— .845
$ 6,655

less 20% mill 6,000

Eric: 10yr min. tax abatement, declining thereafter
$2+ res
$5 commercial
$300,000/year

(Eric thinks DC has owned the ground at $7.8M)

① Aff Hsg Rqt
② Change in Economy

1. Change in Economy — Appraisal = $6M
2. Owner offer - lock in Higher or Lower than Appraisal
3. Take land value off for Aff units 20% x FL Ave

## Doggett, Rosalyn

**From:** Montague, Joshua W.
**Sent:** Thursday, March 26, 2009 9:31 AM
**To:** Washington, Joel R.; Doggett, Rosalyn
**Subject:** Florida Avenue - Insurance

Hi Joel and Rosalyn,

I met with Kim Brown this morning to discuss the flexibility in our insurance requirements in the JDA (or other document).

She told me the following:

- Ideally we would require everyone who works on/at the project (GC, Subs, and possibly Construction Manger) to hold their own policy.
- Ideally the developer would carry a Commercial General Liability Policy, even if they are not doing any actual work on the project.
- Railroad policies are project specific, and so one policy should be enough for all parties involved.

This should allow some flexibility from what we initially required in our JDA draft.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority 600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000731

## Doggett, Rosalyn

**From:** Malasky, Gary
**Sent:** Thursday, June 25, 2009 11:53 AM
**To:** Doggett, Rosalyn; Meister, Mark K.; Burns, Bob; Wyner, Jonathan S.
**Subject:** FW: For Immediate Release - District Receives $33.7 Million for Affordable Housing Development
**Attachments:** image007.jpg; image005.jpg

FYI

Gary Malasky
WMATA
600 Fifth Street, NW
Washington, DC 20001
202-962-1504

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**From:** Folake Oyegbola [mailto:folake@dcbia.org]
**Sent:** Thursday, June 25, 2009 9:15 AM
**To:** Malasky, Gary
**Subject:** For Immediate Release - District Receives $33.7 Million for Affordable Housing Development

Government of the District of Columbia
Department of Housing and Community Development

Office of Strategy and Communications

CONTACT: Angelita Colón-Francia, Senior Public Information Officer
(202)442-7277
Angelita.Colon-Francia@dc.gov

For Immediate Release

June 22, 2009

## District Receives $33.7 Million for Affordable Housing Development

(Washington, DC) – Today, the Treasury Department announced the District of Columbia will receive $33.7 million in American Recovery and Reinvestment Act (ARRA) funding to spur the continued development of affordable housing units.

"This new stimulus funding will have an immediate and critical impact on the development and rehabilitation of affordable housing in the District of Columbia," said Mayor Adrian M. Fenty. "It will help us move forward with affordable housing projects, and it will generate much needed jobs for District residents."

Under Section 1602 of the American Recovery and Reinvestment Tax Act of 2009, housing credit agencies, such as the District's Department of Housing and Community Development (DHCD), are eligible to receive grants in lieu of low-income housing credits under section 42 of the Internal Revenue Code (the Code) for 2009. In doing so, the District is electing to



FOIA CONFIDENTIAL TREATMENT REQUESTED 

take a portion of its 2009 housing credit ceiling in the form of grant amounts, and agreeing to the terms and conditions applicable to the Section 1602 program.

DHCD submitted the application to the Treasury Department on June 9, 2009. In advancement of its mission to create and preserve opportunities for affordable housing and economic development in the nation's capital city, DHCD will direct the Section 1602 grant funds to finance construction or acquisition and rehabilitation of qualified low-income building for low-income housing in lieu of low-income housing tax credits.

"I am extremely proud of the DHCD team's quick turnaround on this application, as funds like these are especially necessary in this difficult financing market," said DHCD Director Leila Finucane Edmonds.

Working to maximize ARRA funding, DHCD issued a Notice of Funding Availability (NOFA) in April for projects focused on elderly housing; special needs housing; housing for chronically homeless individuals and families in mixed-income buildings with supportive services; preservation of housing affected by expiring federal subsidies; new/substantial rehabilitation of housing; and new construction and preservation of affordable housing units. The application deadline was June 1. DHCD will review all qualified applications and will announce the selection of projects at a later date.

- 30 -

The mission of the Department of Housing and Community Development is to create and preserve opportunities for affordable housing and economic development and to revitalize underserved communities in the District of Columbia. DHCD fulfills its mission by providing gap financing; increasing first-time homeownership opportunities; providing funding to rehabilitate single-family and multi-family homes; supporting communities through neighborhood based activities; providing funding for homelessness prevention; addressing vacant and abandoned properties; and overseeing the administration of rental housing laws. DHCD is located at 1800 Martin Luther King Jr. Ave., SE, Washington, DC 20020.

Please consider the environment before printing this e-mail



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000733

Eric Phone Message
3/29/09

1. Yield on ground lease
   There is a discount on what land is worth
   7 - 7½ - should be
   10-15 % discount

2. Transit Farms on ground lease
   can renegotiate

5/29/09
6/1/09

Eric re yield

60 yr - ground lease discount on value for ,

Malcolm re rent

Issues

1. 80% 50% 30%
2. rent is 5% not 7% of ~~[illegible]~~ value
3. way Eric counts residual; does not capitalize rent stream but rather assumes land value at end of term

Carol, Bruce, Josh  Nat Roz Mark  5/29/09

FLORIDA AVE

Inclusionary Zoning - ~~[illegible]~~
how does it get reflected in the
Term Sheet negotiation

Issue: indeterminate provisions in the plan -
maybe really 12 %
~~maybe up to 80% AMI~~

45 days min. for contract reappraisal

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Monday, March 16, 2009 7:20 PM
**To:** Doggett, Rosalyn; Washington, Joel R.
**Cc:** 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.
- 4% 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. Where is the Subsidy coming from?
- 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; Eric?
- 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; Ron
- 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. What gap?

We look forward to discussing the terms with you tomorrow.

Omar

Omar A. Karim
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Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED 

FL. Ave Pro Forma 7-10/08

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000738

Land area went up

7.77 22%

28.40 88%

36.1

Costs went up

50%

$27 to 40M

Metro should get higher return for land
corp subsidy

② Wheels 1.5% of EGI on pro forma?

③ Square 416 must be a separate partnership from Square 393 to divorce after 40 years

④ Developer Fees

~~31,596~~

Income — 32% higher??

157,000 sf.

$\frac{39}{11.9}$ 32% more development

Op Expense

(157,000 sf) land up 27%
FAR up 32%
dev cost up 50%
income?
expense?

P15 We need to see a schedule of approvals cannot be obtained in 20 months

FOIA CONFIDENTIAL TREATMENT REQUESTED

| SUMMARY DATA | | | |
|---|---|---|---|
| Site Area - WMATA Parcels | SF | | 28,892 |
| Site Area - Adjacent parcel 1 (9th Street) | | | 3,051 |
| Site Area - Adjacent parcel 2 (9th Street) | | | 4,669 |
| Site Area - Total | SF | | 36,612 |
| Total Actual Project GSF (above grade | 4.30 | FAR | 157,432 |
| Total Buildable Residential + Retail GSF | | | 157,432 |
| Retail GSF | | | 20,200 |
| Retail NSF | 90% | efficiency | 18,180 |
| Residential Gross SF (including loading | 100% | | 138,232 |
| Less - Leasing, lobbies, ramps, etc. | | | 12,780 |
| Residential Gross SF (residential flrs only) | | | 125,452 |
| Residential Net SF (residential flrs only) | | | 96,240 |
| Residential Net SF - Market Rate | 80% | | 77,840 |
| Residential Net SF - Affordable | 20% | | 18,400 |
| Total No. of Residential Units | | | 132 |
| Market Rate Units | 80% | | 106 |
| Affordable Units | 20% | | 26 |
| Below Grade Parking (Resid Parking) | 450.0 | SF | 49 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | | 22 |
| Total Parking Spaces | | | 71 |
| WMATA Security Deposit | | $ | 250,000 |
| WMATA Pre-Stabilization Payments | | $ | 115,000 |
| Program % Breakdown | | | |
| Residential | | | 87.80% |
| Retail | | | 12.83% |
| Bad Debt and Vacancy | | | |
| Residential | | | 7.0% |
| Retail | | | 20.0% |
| WMATA SF as % of total | | | 78.9% |

77,200 sf × 45/sf = 3,470,000

(without alley)

PERMANENT SOURCES AND USES OF FUNDS

September 15 | March 19

| Sources | Residential | Retail | Total | | | % Total |
|---|---|---|---|---|---|---|
| FHA/GNMA Debt | $ 22,284,000 | $ - | $ 22,284,000 | +4 | 18.1 | 55.9% |
| Gap Financing - PILOT | - | 4,078,000 | $ 4,078,000 | +3 | 1.1 | 10.2% |
| Gap Financing - Sales Tax TIF | - | 3,219,563 | $ 3,219,563 | +3 | | 8.1% |
| Gap Financing - 9% Tax Credit Equity | 4,550,000 | - | $ 4,550,000 | +3.4 | 1.2 | 11.4% |
| Private Equity - Deferred Developer Fee | 750,000 | | $ 750,000 | 1.6 | | 1.9% |
| Private Equity - Developer/Sponsor | 4,715,045 | 278,519 | $ 4,993,565 | 1.6 | 6.6 | 12.5% |
| Total Sources of Funds | $ 32,299,045 | $ 7,576,082 | $ 39,875,128 | +13 | 27.0 | + 48% |

total sf 157K $254 | 119K cost/sf $227

| Uses | Residential | Retail | Total | Cost/SF | |
|---|---|---|---|---|---|
| Land | $ 5,137,425 | $ 750,740 | $ 5,888,165 | 14.8% | |
| Hard Costs | 17,875,861 | 3,449,193 | 21,325,054 | 53.5% | |
| Transaction/Leasing Fees | 291,510 | 42,599 | 334,109 | | |
| Architectural/MEP, Structural Services | 1,143,211 | 167,059 | 1,310,270 | | |
| Marketing | 183,657 | 57,454 | 241,112 | | |
| General and Administrative | 3,141,196 | 559,028 | 3,700,224 | | |
| Financing Costs | 2,229,266 | 325,766 | 2,555,032 | | |
| Real Estate Taxes | 249,142 | 36,407 | 285,549 | | |
| Permit, Utility and Municipal Fees | 406,397 | 59,387 | 465,785 | | |
| Legal and Accounting | 288,413 | 163,493 | 451,906 | | |
| Retail | - | 1,459,575 | 1,459,575 | | |
| Insurance | 16,875 | 2,466 | 19,341 | | |
| Reserves | 1,092,882 | 159,705 | 1,252,587 | | |
| Miscellaneous Expenses | 243,209 | 343,209 | 586,419 | | |
| Total Uses of Funds | $ 32,299,045 | $ 7,576,082 | $ 39,875,128 | | |

Soft = 31.7% of total 12,662,000±

Soft = 59.4% of hard costs

38 / 119,000 SF / 157,000

project - has gone up 38,000 SF. and 13M up $342/SF.

WMATA-INV 000741

FOIA CONFIDENTIAL TREATMENT REQUESTED

| PROJECT COSTS | | | | Residential | Retail |
|---|---|---|---|---|---|
| 1 LAND COSTS | | | | | |
| WMATA Parcels | | | | | |
| WMATA - Proposal Deposit | | 100,000.00 | | 87,804.23 | 12,830.97 |
| WMATA - Option Fee | | 100,000.00 | | 87,804.23 | 12,830.97 |
| WMATA - Security Deposit | | 250,000.00 | | 219,510.57 | 32,077.42 |
| WMATA - Capitalized Lease Payment | | 2,100,000.00 | | 1,843,888.77 | 269,450.35 |
| Pre-Stabilization Lease Payments | | 115,000.00 | | 100,974.86 | 14,755.61 |
| 1933-1935 9th Street Parcel | | | | | |
| Purchase Price Less Lease-Option Fees and Deposit | | 1,240,000.00 | | 1,088,772.42 | 159,104.02 |
| Deposit | | 10,000.00 | | 8,780.42 | 1,283.10 |
| Lease-Option Payments (18 months) | $2,000 per mo | 36,000.00 | | 31,609.52 | 4,619.15 |
| 1931 9th Street Parcel | | | | | |
| Purchase Price Less Deposit | | 1,800,000.00 | | 1,580,476.09 | 230,957.44 |
| Deposit | | 100,000.00 | | 87,804.23 | 12,830.97 |
| TOTAL LAND COSTS | | | 5,851,000.00 | 5,137,425.34 | 750,740.00 |
| 2 HARD COSTS | | | | | |
| Residential Structure | | 10,800,000.00 | | 10,800,000.00 | |
| Parking Structure | | 2,100,000.00 | | 1,470,000.00 | 630,000.00 |
| Retail Structure | | 2,000,000.00 | | | 2,000,000.00 |
| Site Improvements | | 1,800,000.00 | | 1,580,476.09 | 230,957.44 |
| General Requirements | | 1,100,000.00 | | 965,846.50 | 141,140.66 |
| Contractor Contingency | 5.0% | 890,000.00 | | 781,457.62 | 114,195.63 |
| Payment and Performance Bond | | 160,000.00 | | 140,486.76 | 20,529.55 |
| Overhead | | 200,000.00 | | 175,608.45 | 25,661.94 |
| Fee | | 800,000.00 | | 702,433.82 | 102,647.75 |
| Furniture, Fixtures and Equipment | | 500,000.00 | | 439,021.14 | 64,154.85 |
| Hard Cost Contingency | 5.0% | 934,500.00 | | 820,530.50 | 119,905.41 |
| TOTAL HARD COSTS | | | 21,284,500.00 | 17,875,860.90 | 3,449,193.22 |
| SOFT COSTS | | | | | |
| 3 Transaction/Leasing Fees | | | | | |
| Title Insurance - Lender's Policy | $0.60 per $1000 of loar | 32,000.00 | | 28,097.35 | 4,105.91 |
| Legal - Term Sheet, JDA, Lease | | 225,000.00 | | 197,559.51 | 28,869.68 |
| Legal - General, P&S Agreements | | 50,000.00 | | 43,902.11 | 6,415.48 |
| Appraisal Fee | | 25,000.00 | | 21,951.06 | 3,207.74 |
| Total Transaction/Leasing Fees | | | 332,000.00 | 291,510.03 | 42,598.82 |

will be refunded

will be refunded

$3,186,000

14.7% of total cost $39,730,000

10 Contingency too high for new Constr.

$135/sf for 157,000 sf

land + hard = 27,135 = 68% total dev cost
32% soft cost

WMATA Land Cost

$2,100,000 ÷ 28,400sf = $73.94/sf
with tunnel $4,300,000 ÷ 28,400sf = $151/sf
$33/FAR sf

$1,286,000
1,900,000
$3,186,000 ÷ 7,720sf = $412.77/sf
not on FL Ave ÷ 34,740sf = $91.70/FAR sf

for small parcels they are paying 5.5 X what they are paying for the WMATA lot not counting tunnel ← 2.6 X WMATA counting tunnel cost

further we based our pro forma on 4% tax credits, not 9% tax credits, not TIF

WMATA-INV 000742

FOIA CONFIDENTIAL TREATMENT REQUESTED

| | | | Total | | |
|---|---|---|---|---|---|
| 4 Architectural/Engineering | | | | | |
| A/E Fees (includes structural, interior de | 6.00% hard cost | 1,002,000.00 | | 879,798.36 | 128,566.31 |
| Surveys, Civil, Geotechnical Fees | | 300,000.00 | | 263,412.68 | 38,492.91 |
| Total Architectural/Engineering | | | 1,302,000.00 | 1,143,211.04 | 167,059.22 |
| 5 Marketing | | | | | |
| Marketing Center | | 40,000.00 | | 35,121.69 | 5,132.39 |
| Marketing Materials (Residential) | | 30,000.00 | | 30,000.00 | 0.00 |
| Marketing Materials (Retail) | | 20,000.00 | | 0.00 | 20,000.00 |
| Retail Conferences (ICSC, ULI, etc.) | | 15,000.00 | | 0.00 | 15,000.00 |
| Media (newspapers, etc.) | | 30,000.00 | | 26,341.27 | 3,849.29 |
| Signage | | 30,000.00 | | 26,341.27 | 3,849.29 |
| Special Events | | 40,000.00 | | 35,121.69 | 5,132.39 |
| Model | | 20,000.00 | | 17,560.85 | 2,566.19 |
| Website | | 15,000.00 | | 13,170.63 | 1,924.65 |
| Total Marketing | | | 240,000.00 | 183,657.40 | 57,454.20 |
| 6 General and Administrative | | | | | |
| Development Fee , includes pdc. cost | | 2,550,000.00 | 67% of $48M | 2,239,007.80 | 327,189.71 |
| Project Management/Administration | | 450,000.00 | | 395,119.02 | 57,739.36 |
| Construction Management | | 520,000.00 | | 456,581.98 | 66,721.04 |
| Consulting Fees - Retail | | 100,000.00 | | 0.00 | 100,000.00 |
| Market Study | | 17,500.00 | | 15,365.74 | 2,245.42 |
| Parking Study | | 15,000.00 | | 13,170.63 | 1,924.65 |
| Security | | 25,000.00 | | 21,951.06 | 3,207.74 |
| Total General and Administrative | | | 3,677,500.00 | 3,141,196.23 | 559,027.92 |
| | | | 9.3% | | |
| 7 Financing Costs | | | | | |
| Construction Period Interest | | 1,464,119.30 | | 1,285,558.64 | 187,860.70 |
| Pre-Development Loan Interest | | 50,000.00 | | 43,902.11 | 6,415.48 |
| Construction Loan Fees | 1.0% loan amount | 222,840.00 | | 195,662.94 | 28,592.53 |
| Loan Transaction Fees | | 100,000.00 | | 87,804.23 | 12,830.97 |
| HUD Fees (application and inspection fe | 0.80% loan amount | 178,272.00 | | 156,530.35 | 22,874.03 |
| HUD upfront MIP fees | 0.90% | 200,556.00 | | 176,096.65 | 25,733.28 |
| Transfer & Record Taxes (Construct Loa | 1.45% | 323,118.00 | | 283,711.26 | 41,459.17 |
| Total Financing Costs | | | 2,538,905.30 | 2,229,266.18 | 325,766.16 |
| 8 Real Estate Taxes | | | | | |
| Land ($1.85 per $100) | 18 months | 283,746.80 | | | |

WMATA-INV 000743

FOIA CONFIDENTIAL TREATMENT REQUESTED

Total

| | | | | | |
|---|---|---|---|---|---|
| Total Real Estate Taxes | | | 283,746.80 | 249,141.69 | 36,407.46 |
| 9 Permit, Utility and Municipal Fees | | | | | |
| DCRA, WASA, DDOE Permits | 1.00% hard costs | 212,845.00 | | 186,886.91 | 27,310.08 |
| DDOT Permits | | 200,000.00 | | 175,608.45 | 25,661.94 |
| 3rd Party Reviews | | 50,000.00 | | 43,902.11 | 6,415.48 |
| 3rd Party Inspections | | 50,000.00 | | 43,902.11 | 6,415.48 |
| Total Permit, Utility and Municipal Fees | | | 462,845.00 | 406,397.48 | 59,387.50 |
| 10 Legal and Accounting | | | | | |
| Legal - Financing (General) | | 100,000.00 | | 87,804.23 | 12,830.97 |
| Legal - Zoning | | 100,000.00 | | 87,804.23 | 12,830.97 |
| Legal - General | | 100,000.00 | | 87,804.23 | 12,830.97 |
| Legal - Retail Leases | | 100,000.00 | | 0.00 | 100,000.00 |
| Accounting | | 50,000.00 | | 25,000.00 | 25,000.00 |
| Total Legal and Accounting: | | | 450,000.00 | 288,412.68 | 163,492.91 |
| 11 Retail | | | | | |
| Tenant Allowance | $60 per SF | 1,090,800.00 | | 0.00 | 1,090,800.00 |
| Commissions | 6.00% | 368,774.98 | | 0.00 | 368,774.98 |
| Total Retail | | | 1,459,574.98 | 0.00 | 1,459,574.98 |
| 12 Insurance | | | | | |
| Builder's Risk (Hard Costs) | $0.06 per $100 | 12,770.70 | | 11,213.21 | 1,638.60 |
| Builder's Risk (Soft Costs) | $0.06 per $100 | 6,447.94 | | 5,661.57 | 827.33 |
| Total Insurance | | | 19,218.64 | 16,874.78 | 2,465.94 |
| 13 Reserves | | | | | |
| Operating Deficit Reserve | 6 mos. | 819,680.71 | | 719,714.32 | 105,172.98 |
| Working Capital Fee - HUD Requiremer | 2% mortgage amoun | 425,000.00 | | 373,167.97 | 54,531.62 |
| Total Reserves | | | 1,244,680.71 | 1,092,882.28 | 159,704.60 |
| 14 Miscellaneous Expenses | | | | | |
| Testing Expenses | | 100,000.00 | | 0.00 | 100,000.00 |
| Misc Soft Costs & Contingencies | 4% soft costs | 486,418.86 | | 243,209.43 | 243,209.43 |
| Total Miscellaneous Expenses | | | 586,418.86 | 243,209.43 | 343,209.43 |
| TOTAL SOFT COSTS | | | 12,596,890.30 | 9,285,759.23 | 3,376,149.13 |
| TOTAL PROJECT COSTS | | 39,732,390.30 | | 32,299,045.47 | 7,576,082.36 |

$253/SF
for 157,000 SF

WMATA-INV 000744

9/16/09

Eric
Imputed Rent is $2.43/SF
$2.90 without rent concession
they're using $2.43 base for whole pro forma period

| | |
|---|---|
| # of Units (Market) | 106 |
| # of Units (Afford) | 24 |
| | 130 |

Total (all unit types) — Market

| Type | No. of Units | Avg. Unit Size | Net Rent* | No. of Units | Total Rent |
|---|---|---|---|---|---|
| Studio | 16 | 480 | 1,318 | 12 | 15,810 |
| Studio | 4 32 | 490 | 1,318 | 3 | 3,953 |
| Studio | 12 | 560 | 1,407 | 10 | 14,068 |
| Jr. 1BR | 8 | 600 | 1,551 | 4 | 6,205 |
| Jr. 1BR | 12 32 | 625 | 1,577 | 12 | 18,921 |
| Jr. 1BR | 12 | 635 | 1,598 | 9 | 14,382 |
| Jr. 1BR | 8 24 | 645 | 1,598 | 8 | 12,784 |
| 1 BR | 16 | 695 | 1,658 | 13 | 21,548 |
| 2 BR | 4 | 920 | | | |
| 2 BR | 12 | 955 | 2,125 | 8 | 17,000 |
| 2 BR | 8 28 | 960 | 2,316 | 8 | 18,530 |
| 2 BR | 4 | 980 | 2,338 | 3 | 7,013 |
| 2 BR | 4 20 | 1040 | 2,380 | 4 | 9,520 |
| 2 BR | 8 | 1060 | 2,423 | 8 | 19,380 |
| 2 BR | 4 | 1075 | 2,465 | 4 | 9,860 |
| Unit Total | 132 | | | 106 | 188,972 |

*Includes 2 months of rent concessions

| LIHTC Units | Rent | Utilities | | |
|---|---|---|---|---|
| Studio | $ 894.00 | 126 | $ 768.00 | = |
| 1 BR | $ 962.00 | 173 | $ 789.00 | |
| 2 BR | $ 1,155.00 | 222 | $ 933.00 | |

Eric affordable ~~so~~ imputes to $1.13 OK

Affordable

| Rent | # of Units | Total Rent | Total Monthly F | Total Annual Rent (all units) |
|---|---|---|---|---|
| 768 | 4 | 3,072 | 18,882 | 226,584 |
| 768 | 1 | 768 | 4,721 | 56,646 |
| 768 | 2 | 1,536 | 15,604 | 187,242 |
| 789 | 4 | 3,156 | 9,361 | 112,332 |
| | | | 18,921 | 227,052 |
| 789 | 3 | 2,367 | 16,749 | 200,988 |
| | | | 12,784 | 153,408 |
| 789 | 3 | 2,367 | 23,915 | 286,974 |
| 933 | 4 | 3,732 | 3,732 | 44,784 |
| 933 | 4 | 3,732 | 20,732 | 248,784 |
| | | | 18,530 | 222,360 |
| | 1 | | 7,013 | 84,150 |
| | | | 9,520 | 114,240 |
| | | | 19,380 | 232,560 |
| | | | 9,860 | 118,320 |
| | 26 | 20,730 | 209,702 | 2,516,424 |

Eric: Thinks these are correct

SUPPORTABLE DEBT CALCULATIONS

| | FHA/GNMA Debt without TIF | FHA/GNMA Debt with TIF | | | |
|---|---|---|---|---|---|
| | | Base Loan | PILOT | Sales Tax TIF | Total Property Taxes |
| Base Residential NOI (net of reserves) | 1,355,648 | 1,355,648 | 0 | 0 | 420,558 |
| Base Retail NOI (net of reserves) | 464,054 | 464,054 | 0 | 0 | |
| Property Taxes Non-WMATA parcels (assuming 60% eligible for TIF) | | | 52,990 | | |
| Property Taxes WMATA parcels (assuming 100% eligible for TIF) | 0 | 0 | 332,240 | 0 | |
| Sales Taxes (assuming 100% eligible for TIF) | 0 | 0 | 0 | 532,100 | |
| | 1,819,702 | 1,819,702 | 385,231 | 532,100 | |
| DSCR | 1.11 | 1.11 | 1.11 | 1.50 | |
| Amount Available for Debt Service | 1,639,371 | 1,639,371 | 347,055 | 354,733 | |
| Calculation of Loan Constant | | | | | |
| Amortization Term | 40 | 40 | 25 | 25 | |
| Loan Constant with MIP | 7.36% | 7.36% | 8.51% | 9.37% | |
| Gross Possible Mortgage Bond Amount | 22,284,000 | 22,284,000 | 4,078,000 | 3,786,000 | |
| Less: Debt Service Reserve Fund | | - | - | (396,986) | |
| Net Max. Mortgage Bond Amount | | 22,284,000 | 4,078,000 | 3,389,014 | |
| Less: Financing Fees | | | | 169,451 | |
| Actual Mortgage Bond Amount | | 22,284,000 | 4,078,000 | 3,219,563 | |
| Max. Debt Service Payment | | 1,639,361 | 347,016 | 301,605 | |
| Actual Debt Service Payment | | 1,639,361 | 347,016 | 301,605 | |
| Rate | 6.00% | 6.00% | 6.00% | 8.00% | |
| FHA/GNMA | 0.25% | 0.25% | 0.25% | 0.00% | |
| Aggregate Rate | 6.25% | 6.25% | 6.25% | 8.00% | |
| Loan Constant | 6.86% | 6.86% | 8.01% | 9.37% | |
| Mortgage Insurance Premium | 0.50% | 0.50% | 0.50% | 0.00% | |
| Loan Constant with MIP | 7.36% | 7.36% | 8.51% | 9.37% | |

FOIA CONFIDENTIAL TREATMENT REQUESTED

Eric Smart
9/17/09

Incomplete Pro Forma
Can't line up costs +

(A) • Huge cost for property next door - not even on FL Ave
•

(B) Dev. Fee Went
Commit
Project Mgmt Fee } over 200% increase

$2M fees — Dev fee from $750,000 to $2,550,000
Hefty leasing commissions

Retail

(C) Leveraging conservative vs. assumptions
2% rent concession for entire life of project

~~Leverage~~ undercounted income

$200,000 capped = $3M — fees

$2.5M
+2.1M
4.6M

Residential 9/15/09

| Year | | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|---|---|---|
| Income | % of Income | | | | | | | | | |
| Market Rents | | $94,486 | $1,596,813 | $2,313,017 | $ 2,359,278 | $ 2,406,463 | $ 2,454,592 | $ 2,503,684 | $ 2,553,758 | $ 2,604,833 |
| Affordable Units | | $20,108 | $217,665 | $253,735 | $ 258,810 | $ 263,986 | 269,266 | 274,651 | 280,144 | 285,747 |
| Other Income | 3.00% | $2,097 | $35,440 | 51,838 | 53,393 | 54,461 | 55,551 | 56,662 | 57,795 | 58,951 |
| Parking | | $5,200 | $87,879 | 128,542 | 131,113 | 133,735 | 136,410 | 139,138 | 141,921 | 144,759 |
| Bad Debt and Vacancy — Vacancy & assumptions? high | 7.00% | (1,918) | (23,869) | (30,388) | 13% (31,032) X | (31,653) | (32,286) | (32,932) | (33,590) | (34,262) |
| Effective Gross Income | | 119,973 | 1,913,928 | 2,716,745 | 2,771,562 | 2,826,993 | 2,883,533 | 2,941,203 | 3,000,028 | 3,060,028 |
| Operating Expenses | Escalation | | | | | | | | | |
| WMATA Lease Payment (% of EGI) | | | | | 25,918 | 26,436 | 26,965 | 27,504 | 28,054 | 28,615 |
| Real Estate Taxes (Market) | 3.00% | 84,800 | 254,400 | 254,400 | 262,032 | 269,893 | 277,990 | 286,329 | 294,919 | 303,767 |
| Real Esate Taxes (Afford) | 3.00% | 8,667 | 26,000 | 26,000 | 26,780 | 27,583 | 28,411 | 29,263 | 30,141 | 31,045 |
| Property Insurance | 3.00% | 17,600 | 52,800 | 52,800 | 54,384 | 56,016 | 57,696 | 59,427 | 61,210 | 63,046 |
| Utilities | 3.00% | 26,400 | 79,200 | 79,200 | 81,576 | 84,023 | 86,544 | 89,140 | 91,815 | 94,569 |
| Repairs and Maintenance | 3.00% | 48,400 | 145,200 | 145,200 | 149,556 | 154,043 | 158,664 | 163,424 | 168,327 | 173,376 |
| Management Fee | | 3,599 | 57,418 | 81,502 | 83,147 | 84,810 | 86,506 | 88,236 | 90,001 | 91,801 |
| Payroll | 3.00% | 96,800 | 290,400 | 290,400 | 299,112 | 308,085 | 317,328 | 326,848 | 336,653 | 346,753 |
| Advertising & Marketing | 2.00% | 26,400 | 79,200 | 79,200 | 80,784 | 82,400 | 84,048 | 85,729 | 87,443 | 89,192 |
| Administrative, Painting, Contract Services | 3.00% | 35,200 | 422,400 | 105,600 | 108,768 | 112,031 | 115,392 | 118,854 | 122,419 | 126,092 |
| Total Expenses | | 347,866 | 1,407,018 | 1,114,302 | 1,172,057 | 1,205,320 | 1,239,543 | 1,274,754 | 1,310,982 | 1,348,256 |
| Net Operating Income | | $ (227,893) | $ 506,910 | $ 1,602,442 | $ 1,599,505 | $ 1,621,673 | $ 1,643,990 | $ 1,666,449 | $ 1,689,046 | $ 1,711,772 |
| Reserves — went up by 50% – did | | 13,200 | $39,600 | 39,996 | 40,396 | 40,800 | 41,208 | 41,620 | 42,036 | 42,457 |
| Cash Flow Before Debt Service | | (241,093) | 467,310 | 1,562,446 | 1,559,109 | 1,580,873 | 1,602,782 | 1,624,829 | 1,647,009 | 1,669,315 |
| Debt Service | | | | | | | | | | |
| Senior Loan | | 546,454 | 1,639,361 | 1,639,361 | 1,639,361 | 1,639,361 | 1,639,361 | 1,639,361 | 1,639,361 | 1,639,361 |
| Before Tax Cash Flow | | $ (787,547) | $ (1,172,051) | $ (76,915) | $ (80,252) | $ (58,488) | $ (36,579) | $ (14,532) | $ 7,648 | $ 29,954 |
| Base Loan Principal Balance | 22,284,000 | | 22,148,809 | 22,006,039 | 21,855,324 | 21,696,287 | 21,528,539 | 21,351,685 | 21,165,321 | 20,969,037 |
| Property Tax TIF Note Balance | 4,078,000 — PILOT? | | | 4,006,249 | 3,930,014 | 3,849,014 | 3,762,951 | 3,671,510 | 3,574,353 | 3,471,125 |
| Sales Tax TIF Note Balance | 3,219,563 | | | 3,175,523 | 3,127,960 | 3,076,592 | 3,021,115 | 2,961,200 | 2,896,491 | 2,826,605 |

*Reflects repayment of WMATA Deposit of $250,000

2.0% annual escalation in market rate unit income and parking

Why do you have these w/ vs or also a PILOT

doesn't seem to be 0119 or even 1%

FOIA CONFIDENTIAL TREATMENT REQUESTED

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 2.0% | annual escalation in affordable rate unit income | 1 | | | | | | |
| 3.0% | annual escalation in other income | | | | | | | |
| 3.0% | annual escalation in expenses | | | | | | | |
| 1.0% | annual escalation in reserves | | | | | | | |
| 1.19% | of EGI | | | | | | | |
| | % of Building Leased | | | | | | | |
| | Market Units | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | Affordable Units | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | Parking | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

FOIA CONFIDENTIAL TREATMENT REQUESTED

| 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 |
|---|---|---|---|---|---|---|
| $ 2,656,930 | $ 2,710,068 | $ 2,764,270 | $ 2,819,555 | $ 2,875,946 | $ 2,933,465 | $ 2,992,134 |
| 291,462 | 297,291 | 303,237 | 309,302 | 315,488 | 321,798 | 328,234 |
| 60,130 | 61,332 | 62,559 | 63,810 | 65,086 | 66,388 | 67,716 |
| 147,654 | 150,607 | 153,620 | 156,692 | 159,826 | 163,022 | 166,283 |
| (34,947) | (35,646) | (36,359) | (37,086) | (37,828) | (38,585) | (39,356) |
| 3,121,229 | 3,183,653 | 3,247,326 | 3,312,273 | 3,378,518 | 3,446,089 | 3,515,010 |
| | | | | | | |
| 29,188 | 29,771 | 30,367 | 30,974 | 31,594 | 32,225 | 32,870 |
| 312,880 | 322,266 | 331,934 | 341,892 | 352,149 | 362,714 | 373,595 |
| 31,977 | 32,936 | 33,924 | 34,942 | 35,990 | 37,070 | 38,182 |
| 64,937 | 66,885 | 68,892 | 70,959 | 73,088 | 75,280 | 77,539 |
| 97,406 | 100,328 | 103,338 | 106,438 | 109,631 | 112,920 | 116,308 |
| 178,578 | 183,935 | 189,453 | 195,137 | 200,991 | 207,020 | 213,231 |
| 93,637 | 95,510 | 97,420 | 99,368 | 101,356 | 103,383 | 105,450 |
| 357,155 | 367,870 | 378,906 | 390,273 | 401,982 | 414,041 | 426,462 |
| 90,976 | 92,795 | 94,651 | 96,544 | 98,475 | 100,445 | 102,454 |
| 129,875 | 133,771 | 137,784 | 141,918 | 146,175 | 150,560 | 155,077 |
| 1,386,608 | 1,426,068 | 1,466,670 | 1,508,445 | 1,551,430 | 1,595,658 | 1,641,168 |
| | | | | | | |
| $ 1,734,621 | $ 1,757,585 | $ 1,780,657 | $ 1,803,828 | $ 1,827,088 | $ 1,850,430 | $ 1,873,843 |
| | | | | | | |
| 42,881 | 43,310 | 43,743 | 44,180 | 44,622 | 45,068 | 45,519 |
| | | | | | | |
| 1,691,739 | 1,714,275 | 1,736,914 | 1,759,647 | 1,782,466 | 1,805,362 | 1,828,324 |
| | | | | | | |
| 1,639,361 | 1,639,361 | 1,639,361 | 1,639,361 | 1,639,361 | 1,639,361 | 1,639,361 |
| | | | | | | |
| $ 52,378 | $ 74,914 | $ 97,552 | $ 120,286 | $ 143,105 | $ 166,000 | $ 188,962 |
| | | | | | | |
| 20,762,420 | 20,545,053 | 20,316,518 | 20,076,401 | 19,824,291 | 19,559,789 | |
| 3,361,444 | 3,244,909 | 3,121,090 | 2,989,532 | 2,849,752 | 2,701,235 | |
| 2,751,129 | 2,669,615 | 2,581,579 | 2,486,501 | 2,383,816 | 2,272,917 | |

FOIA CONFIDENTIAL TREATMENT REQUESTED

| | | | | | | |
|---|---|---|---|---|---|---|
| 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| 100% | 100% | 100% | 100% | 100% | 100% | 100% |

FOIA CONFIDENTIAL TREATMENT REQUESTED

Retail 9/15/09

Eric Retail Revenues prob OK compared to peak
Except for TIF that we don't understand

use $2.43 versus $2.90 before they escalated rents at 4%; now 2%, very too conservative
3% expense = too high

| Assumptions | Total |
|---|---|
| Rentable S.F. | 18,180 |
| Market Space | 16,180 |
| Affordable/Non-Profit Space | 2,000 |

Triple Net Lease

| | Per S.F. | Escalation | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Operating Income | | | | | | | | | | | |
| Retail Tenants - Market (CAM included?) | $38.00 | 3% | 117,844 | 561,042 | 614,840 | 633,285 | 652,284 | 671,852 | 692,008 | 712,768 | 734,151 |
| Retail Tenants - Affordable/Non-Profit | $10.00 | 2% | - | 6,667 | 20,000 | 20,400 | 20,808 | 21,224 | 21,649 | 22,082 | 22,523 |
| Parking | $200.00 | 2% | 10,120 | 52,800 | 52,800 | 53,856 | 54,933 | 56,032 | 57,152 | 58,295 | 59,461 |
| Less: General Vacancy (Eric thinks OK, lowered to 7% from 9%) | | 20.0% | (25,593) | (124,102) | (137,528) | (141,508) | (145,605) | (149,822) | (154,162) | (158,629) | (163,227) |
| Net Rental Income | | | 102,371 | 496,407 | 550,112 | 566,033 | 582,420 | 599,287 | 616,647 | 634,516 | 652,909 |
| Recoverable Expenses | | | | | | | | | | | |
| Ownership Expenses (CAM, Ins, etc.) | $3.75 | 3.00% | 22,725 | 70,220 | 68,175 | 70,220 | 72,327 | 74,497 | 76,732 | 79,034 | 81,405 |
| Real Estate Taxes | 1.85 | per $100 | 46,719 | 140,158 | 140,158 | 144,362 | 148,693 | 153,154 | 157,749 | 162,481 | 167,355 |
| Total Operating Expenses | | | 69,444 | 210,378 | 208,333 | 214,582 | 221,020 | 227,651 | 234,480 | 241,514 | 248,760 |
| Non-recoverable Expenses | | | | | | | | | | | |
| WMATA Lease (% of EGI) 15% of 7.9% = 1.19 | 1.19% | of EGI | | | | 5,293 | 5,446 | 5,604 | 5,766 | 5,934 | 6,106 |
| Non-recoverable Ownership Expense | $1.30 | 3.00% | 7,878 | 24,343 | 23,634 | 24,343 | 25,073 | 25,826 | 26,600 | 27,398 | 28,220 |
| Total Expenses | | | 7,878 | 24,343 | 23,634 | 29,636 | 30,520 | 31,430 | 32,367 | 33,332 | 34,326 |
| Net Operating Income | | | 94,493 | 468,368 | 526,478 | 536,397 | 551,900 | 567,857 | 584,280 | 601,184 | 618,583 |
| Capital Reserves | | 2.00% | 20,000 | 61,200 | 62,424 | 64,297 | 66,226 | 68,212 | 70,259 | 72,367 | 74,538 |
| Cash Flow ~~Before Debt Service~~ | | | $ 74,493 | $ 407,168 | $ 464,054 | $ 472,100 | $ 485,675 | $ 499,645 | $ 514,022 | $ 528,818 | $ 544,045 |
| TIF Payment from District | | | $ 242,172 | $ 906,099 | $ 952,658 | $ 965,274 | $ 978,269 | $ 991,655 | | | |
| Total Cash Flow Before Debt Service | | | 316,665 | 1,313,266 | 1,416,712 | 1,437,374 | 1,463,944 | 1,491,299 | 514,022 | 528,818 | 544,045 |
| Debt Service | | | | | | | | | | | |
| Property Tax TIF | | | 115,672 | 347,016 | 347,016 | 347,016 | 347,016 | 347,016 | | | |
| Sales Tax TIF | | | 100,535 | 301,605 | 301,605 | 301,605 | 301,605 | 301,605 | | | |
| CASH FLOW AFTER DEBT SERVICE | | | 100,458 | 664,646 | 768,091 | 788,754 | 815,323 | 842,679 | 514,022 | 528,818 | 544,045 |
| % of Retail Space Leased | | | | | | | | | | | |
| Market Rate Spaces | | | | | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| Affordable Space | | | | | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

Eric can't understand TIF doesn't make sense

Money goes into retail ~~Pad~~ amortized on Res Rev Form

Seems to imply $350 - $375/sf gross sales

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

| 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 |
|---|---|---|---|---|---|---|
| 756,176 | 778,861 | 802,227 | 826,294 | 851,082 | 876,615 | 902,913 |
| 22,974 | 23,433 | 23,902 | 24,380 | 24,867 | 25,365 | 25,872 |
| 60,651 | 61,864 | 63,101 | 64,363 | 65,650 | 66,963 | 68,302 |
| (167,960) | (172,832) | (177,846) | (183,007) | (188,320) | (193,789) | (199,418) |
| 671,840 | 691,326 | 711,384 | 732,029 | 753,280 | 775,154 | 797,670 |
| | | | | | | |
| 83,847 | 86,362 | 88,953 | 91,621 | 94,370 | 97,201 | 100,117 |
| 172,376 | 177,547 | 182,874 | 188,360 | 194,011 | 199,831 | 205,826 |
| 256,223 | 263,909 | 271,827 | 279,981 | 288,381 | 297,032 | 305,943 |
| | | | | | | |
| 6,283 | 6,465 | 6,652 | 6,845 | 7,044 | 7,249 | 7,459 |
| 29,067 | 29,939 | 30,837 | 31,762 | 32,715 | 33,696 | 34,707 |
| 35,349 | 36,404 | 37,489 | 38,608 | 39,759 | 40,945 | 42,167 |
| | | | | | | |
| 636,491 | 654,923 | 673,894 | 693,422 | 713,521 | 734,209 | 755,504 |
| | | | | | | |
| 76,774 | 79,077 | 81,449 | 83,893 | 86,409 | 89,002 | 91,672 |
| | | | | | | |
| $ 559,717 | $ 575,846 | $ 592,445 | $ 609,529 | $ 627,111 | $ 645,207 | $ 663,832 |
| | | | | | | |
| 559,717 | 575,846 | 592,445 | 609,529 | 627,111 | 645,207 | 663,832 |
| | | | | | | |
| 559,717 | 575,846 | 592,445 | 609,529 | 627,111 | 645,207 | 663,832 |
| | | | | | | |
| 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| 100% | 100% | 100% | 100% | 100% | 100% | 100% |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Banneker Proforma Comparisons

| | Dec 2007 | Spring 2008 | Oct 2008 | Dec 2008 | Dec 07 to Dec 08 Variance Capitalized at 8.00% |
|---|---|---|---|---|---|
| Project FAR | 4.5 | 4.5 | 4.5 | 4.5 | |
| GSF | 127,692 | 127,692 | 135,414 | 135,414 | |
| Retail GSF | 11,757 | 11,757 | 14,000 | 14,000 | |
| Community Retail | | | | 40.00% of retail = community retail? | |
| Total Apts Units | 103 | 103 | 106 | 106 | |
| Market | 93 | 103 | 106 | 85 | |
| Affordable | 10 | 0 | 0 | 21 | |
| percent Afford | 9.71% | 0.00% | 0.00% | 19.81% | |
| Total Dev Cost | $35,634,114 | | $37,743,561 | $38,370,300 | |
| per GSF | $279 | | $279 | $283 | ($581,261) not capped |
| Retail Mkt Rent / RSF NNN | $55.00 these retail | | | $30.00 local retail | ($4,232,938) |
| Retail Community Rent / RSF | | | | $10.00 | |
| Market Apt / RSF | $3.00 | | $2.70 | $2.90 | ($1,211,250) |
| Afford Apt / RSF | $1.50 80% - 70% | | $1.20 | $1.10 | ($1,197,000) |
| Annual Escalations | 3.00% | | | 3.00% | |
| Operating Costs / GSF | | | | $4.80 | |
| Debt | 80.00% | | 78.00% | 62.00% | ?? |
| Loan Constant | 8.48% | | 7.40% | 8.32% | ?? |
| Amort Years | 25 | | 40 | 30 | ?? |
| Equity | $7,126,823 | | $8,384,561 | $14,709,301 | |
| Exit Cap Rate | 6.50% | | | 6.50% | |
| WMATA | | | | | |
| Base Rent | $500,000 | $580,000 | | $150,000 | $4,375,000 |
| Annual Escalation | 3.00% | 3.00% | | 1.50% | $187,500 |
| Cap Event | | 10.00% | | 0.00% | |
| | | | | | ($2,659,949) total net of financing |

BSA Jan 30, 2009

– $6 million was with this much extra though he was willing to

WMATA-INV 000754

**From:** <eric.smart@bolansmart.com>
**To:** "Rosalyn Doggett" <rdoggett@wmata.com>
**Date:** 1/30/2009 3:44:58 PM
**Subject:** Re: Task Order

Roz

Here is a draft addressing question 1 below. We have noted the available info tracking changes from Dec 07 to Dec 08, plus some highlights from the interim months. While Banneker's changing proforma format has made some direct comparisons difficult to assess we hope that the exercise is helpful.

Eric

On Wed, 28 Jan 2009 11:42:39 -0500 (EST), "Rosalyn Doggett" <rdoggett@wmata.com> wrote:
> Please take a look at the attached Task Order and provide any comments.
>
> Under that Task Order, I know that I would like you to do two things on
> Florida Avenue ASAP:
>
> 1. A comparison of the Dec 2007 pro forma assumptions from Banneker with
> those of Dec 2008 to document your point that even without affordable housing
> the current pro forma is "under water" by $6 million compared to Dec 2007
> because some basic assumptions were changed. I guess that we would have to
> take into account final negotiations last spring and effect on Dec 2007 pro
> forma. We can discuss this in further detail. If I misunderstand your
> point, we need to clear that up. as well.
>
> 2. A matrix showing the effect on our lease revenue with two variables: %
> of affordable housing and % of AMI for the affordable housing component. I
> guess that we would assume no other subsidies except land writedown.
>
>
>
> Rosalyn P. Doggett
> Washington Metropolitan Area Transit Authority
> 600 Fifth St, NW
> Washington, DC 20001
> Phone: 202 962 2208
> Fax: 202 962 2396
> rdoggett@wmata.com
>
>
>
>

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Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037
202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com

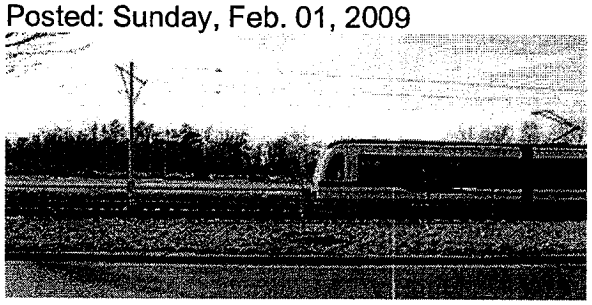
charlotteobserver.com | Local News

Comments (29) | Recommend (1)

# 'Transit-oriented' project along Lynx line is getting delayed

**Developer asks city to let him put off part of payment for land near Scaleybark rail station.**

By Steve Harrison
sharrison@charlotteobserver.com
Posted: Sunday, Feb. 01, 2009



Developer Peter Pappas, citing the severe recession, has asked to delay part of his payment to the city for land near the Scaleybark light-rail station. DIEDRA LAIRD – dlaird@charlotteobserver.com

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The developer of Charlotte's signature "transit-oriented development" near the Scaleybark light-rail station has asked the city for another year to finish paying for 16 acres of land.

Charlotte-based Pappas Properties agreed to buy the property a year ago for $5.185 million, with the goal of building offices, retail and apartments, including 80 for low-income residents. The firm has paid the city of Charlotte and the Charlotte Area Transit System roughly $1.9 million, and still owes $3.3 million.

Pappas Properties is scheduled to pay that balance this month, but only wants to pay $2.2 million. The company has requested that it pay the last $1.1 million by February 2010, with 6 percent interest.

Developer Peter Pappas cited the severe recession for the delay.

"We're adjusting based on market conditions," Pappas said. "We'll need to start the project later."

The City Council will consider the request Feb. 9.

The city said the deadline for moving forward with the promised 80 affordable apartments hasn't changed. Pappas must apply for federal low-income tax credits in three years and begin building the units two years after that.

Charlotte's Housing Trust Fund contributed $2 million to buy the land, which was then sold to Pappas at a loss. That helped secure the affordable housing, which is for renters earning 60 percent or less of the region's median income.

"All things considered, these are minor requests," said Peter Zeiler, who works in the city's economic development office. "It doesn't materially change the deal."

CATS has had success enticing developers to build high-density housing near Lynx Blue Line train stations. The Scaleybark project is the system's most important project, in part because its seen as a catalyst for the surrounding area. CATS and the city believe the area can be transformed into an urban village of apartments, stores and offices.

The Scaleybark project hasn't been a smooth ride for the city.

The city and CATS bought the land for $9.2 million. The idea was to sell the land at a discount to get the affordable housing, along with getting open space and perhaps a library.

The city ultimately selected Pappas last spring to develop the site, and agreed it would pay just under $7 million for the site. That price was discounted to $5.185 million because of soil conditions on the site, which made it difficult to build.

CATS is set to receive $2.3 million when the sale is complete. That money is penciled for the Lynx Blue Line construction budget, and will be used to pay for the train. Pappas will also build a parking deck with at least 315 spaces for CATS, which will replace the surface lot.

"It's important to be patient," said Tina Votaw, who oversees CATS' efforts for transit-oriented development. "These economic cycles happen. If not, site plan work would have already started."

Pappas said he doesn't know when he would begin construction, and would be studying how other apartments fare along the rail line. It's possible some work could begin in a year. Offices and retail would likely be built last, he said.

Charlotte City Council member John Lassiter, who chairs the city's economic development/planning committee, said he believes the project will be built when the economy recovers.

"The good news is that we still have a quality developer with a good balance sheet," Lassiter said.

A number of other projects along the Lynx Blue Line that started construction at least six months ago are moving forward.

Votaw said there are 1,240 apartments in four developments that are under construction and

will likely open in 2009. The developments are north of the New Bern station, closer to uptown than the Scaleybark site.

Farther south, at the Arrowood station, Harris Development is close to finishing grading land for a large townhome and office community. The first phase of the project will have 153 townhomes within walking distance to the train station.

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Comments: 29 Showing: Newest first

**rick_clt wrote on 02/01/2009 09:39:03 PM:**

Let's not forget something else on this property. The main reason is hasn't been built out already was because of government intervention in the first place around city hall demands regarding public/subsidized/affordable housing components that the city required of any developer who was going to get their hands on the property. This is the same piece of land that had its original plans fall through because BOA couldn't get some tax credits on it. If the open market had been allowed to function properly, this station would have *already* been built out. Instead we're dealing with another government handout.

Recommend (0) Report abuse

**LiberalBoogerEater wrote on 02/01/2009 08:16:28 PM:**

The return on investment better be good:

Charlotte purchased the land for $9.2 MM
Sold it to Pappas for $5.189 MM
Is on the tax roles for $3.3 MM

Did you learn how to add and subtract in school? Thats a $5.9 MM deficit. Who's going to make up the difference??

Or, are you going to pull out that liberal lunatic math and show a positive return?

Nice try.

Recommend (0) Report abuse

**LNBruno wrote on 02/01/2009 07:05:51 PM:**

GovCo's fiscal policy: I still have checks! I can't be broke!

Recommend (0) Report abuse

**freeordie wrote on 02/01/2009 06:46:43 PM:**

I know a whole lot of people who are not (and have not been) paying tax on the real value of their property LiberalBoogerEater.... In addition, any idea what the return on the investment will be once the property is developed??

Recommend (0) Report abuse

**jose2 wrote on 02/01/2009 06:25:27 PM:**

what is transit-oriented development? charlote already has many trailer parks...

Recommend (0) Report abuse

**LiberalBoogerEater wrote on 02/01/2009 05:16:11 PM:**

Pappas paid $45k on $3.3 MM 'value'. Their purchase agreement $5.185 MM --- which was a taxpayer funded hair cut of $4.01 MM.

So, Pappas did not pay the full property tax value of the property. Anyway you cut it, they are making out like bandits on the taxpayers dime.

Who's making up the difference? It's sure not Pappas.

Recommend (2) Report abuse

**freeordie wrote on 02/01/2009 04:29:58 PM:**

LiberalBoogerEater - don't you pay full property taxes on your property even though you owe money on your property? I know I do.

Recommend (0) Report abuse

**RamblingReck wrote on 02/01/2009 03:39:09 PM:**

Gee. Maybe they'll let me pay my property tax a year late and only pay 6% interest. Fat Chance.

**Recommend (1)** **Report abuse**

**LiberalBoogerEater wrote on 02/01/2009 03:04:36 PM:**

My, My, its amazing how the transit loonies think it's OK to give 'big business' / 'big developers' a pass on something that lunatics want. Talk about hypocrasy. Truly amazing.

What a sweet-heart deal. Pappas wants a 6% loan in turn for not paying FULL property taxes on $5.12 MM in property value. Who's really getting screwed here and who's doing the screwin'?? I guarantee you the average citizen could not sniff such a great deal.

Hopefully the dimwits in Gov Co will AT LEAST be smart enough to demand that Pappas pay a proportion of the property taxes relative to payment already received IN ADDITON TO the 6%. Unfortunately, they'll likely just cave.

So, who is making up the property tax difference?? I thought that was the whole goal of this disaster --- more property tax revenue!

**Recommend (1)** **Report abuse**

**jepthas wrote on 02/01/2009 03:00:05 PM:**

How on earth is selling land for development "getting open space?" Let the city keep the land as open space. And why is one private developer getting all this free publicity from a newspaper?

**Recommend (0)** **Report abuse**

More comments on this story: 1 2 3

Disclaimer

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**From:** <eric.smart@bolansmart.com>
**To:** "Rosalyn Doggett" <rdoggett@wmata.com>
**Date:** 1/5/2009 1:00:37 PM
**Subject:** Re: Florida Avenue

Roz

Wonder if Omar may now be valuing the gap at $1.0M, considerably less than previously asserted.

Apart from obvious political factors, also wonder that with TIF as a form of tax related investment or abatement how long it would take the District, including City Council, to approve?

Eric

On Mon, 05 Jan 2009 11:01:26 -0500 (EST), "Rosalyn Doggett" <rdoggett@wmata.com> wrote:
> Omar called. He said that the DMPED office wants to arrange a meeting to
> "close the gap."
> He will contact me on Wednesday about that and also our thoughts.
>
> He would like to get $1 million of TIIF funds as Monty Hoffman did.
>
> I asked him if he had discussed any city contribution to help close the gap
> like tax abatement, and the effective answer was "no."
>
> I asked him if he had changed any of his assumptions since his assumptions
> and results, even without affordable housing, were far more negative than
> what it appeared he had proposed to us before. He claimed that the
> increased rent negotiated just before the Board presentation made it so. In
> short he has not changed any of his assumptions either.
>
> I said that I would go over his numbers (I need to) and be prepared to
> discuss more concretely with him on Wednesday.
>
> Rosalyn P. Doggett
> Washington Metropolitan Area Transit Authority
> 600 Fifth St, NW
> Washington, DC 20001
> Phone: 202 962 2208
> Fax: 202 962 2396
> rdoggett@wmata.com
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Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037
202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)

**From:** <eric.smart@bolansmart.com>
**To:** "Rosalyn Doggett" <rdoggett@wmata.com>
**Date:** 1/7/2009 3:18:56 PM
**Subject:** Re: Florida Avenue

Roz

On another note we have confirmed that at least in principle the DCHFA multifamily bond / tax credit program assumes interchangeability between market and affordable rental units, meaning same average units sizes are also assumed. Since the 20% requirement seems to have come along as an unexpected overlay it obviously begs the question(s) of how the project would have been otherwise approached from the beginning, including consideration of unit sizes, bedroom count and what comprises the affordability thresholds. Nothing new here.

Eric

On Mon, 05 Jan 2009 3:24:11 -0500 (EST), "Rosalyn Doggett"
<rdoggett@wmata.com> wrote:
> question 1- he is just fishing and has not lowered the gap
> question 2- not any longer than subsidies of other kinds (tax
credits,
> etc.)
>
>
> Rosalyn P. Doggett
> Washington Metropolitan Area Transit Authority
> 600 Fifth St, NW
> Washington, DC 20001
> Phone: 202 962 2208
> Fax: 202 962 2396
> rdoggett@wmata.com
>
>
> >>> <eric.smart@bolansmart.com> 1/5/2009 1:01 PM >>>
> Roz
>
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>
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**From:** <eric.smart@bolansmart.com>
**To:** "Rosalyn Doggett" <rdoggett@wmata.com>
**Date:** 12/17/2008 2:39:54 PM
**Subject:** more florida

Roz

1) Attached is a revised illustration of variations to OmarÆs most recent proforma. Among a few changes we factored for a very modest rise in affordable rents per sf that can be achieved in conjunction with lowering average affordable unit sizes and used a more precise valuation of hypothetical RE tax abatements. Please note that the differences shown for lines 1 to 3 do not directly sum up in line 4 due to the effect of combining lines 1 and 2 in a single computation.

2) At some point we may want to illustrate the effect of altering market unit sizes downward, but this illustration will require more attention to other interrelated assumptions and computations within OmarÆs model.

3) We are checking out what tax credit finance and DC OP polices may apply to varying affordable unit sizes somewhat from market units.

4) Also attached is a revised copy of WMATA Rent Valuation comparison that BSA submitted Tuesday. We have conformed the rent numbers with the executed Term Sheet and added an illustration of a scenario showing an aggressive recapture of a discounted initial rent (alternative 1). In Box 2 you can see that allowing for a 20% credit for the affordable housing land rent results in a WMATA present value that approximates the value associated with Moodie TurayÆs Dec 2007 base case cash flow.

Eric

--
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BSA Ilustration 12-17-08

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

## Summary Data

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Total Possible Project GSF | **4.50 FAR** | 135,414 |
| Total Buildable Residential + Retail GSF | | 135,414 |
| Retail GSF | | 14,000 |
| Retail NSF | 94% efficiency | 13,160 |
| Residential Gross SF | 100% | 121,414 |
| Residential Net SF | 83% efficiency | 100,774 |
| Residential Net SF - Market | 80% | 80,619 |
| Residential Net SF - Affordable | 20% | 20,155 |
| Total No. of Residential Units | 950 SF avg | 106 |
| Market Rate Units | 80% | 85 |
| Affordable Units | 20% | 21 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | 15 |
| Total Parking Spaces | | 60 |

**Program % Breakdown**

| | |
|---|---|
| Residential | 89.66% |
| Retail | 10.34% |

**Lease Payments**

| | | |
|---|---|---|
| WMATA - Year 1 of Stabilization | $ | 150,000 |

**Project Vacancy**

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

**% of Project Revenue**

| | |
|---|---|
| Residential | 93% |
| Retail | 7% |

**Residential Per SF revenues**

| | | |
|---|---|---|
| Market | $ | 2.90 |
| Affordable Units (at 50% of AMI) | $ | 1.10 |
| WMATA Annual Lease Payment - Year 1 | $ | 150,000 |
| Security Deposit | | 100,000 |
| Pre-Lease Payment | | 100,000 |

## Sources and Uses of Funds

| **Sources** | | **Residential** | **Retail** | **Total** |
|---|---|---|---|---|
| Debt | 62% LTC | $ 23,661,000 | $ - | $ 23,661,000 |
| Equity - LIHTC | | 2,019,750 | - | 2,019,750 |
| Equity - Sponsor/Institutional | | 8,889,406 | 3,800,145 | 12,689,551 |
| **Total Sources of Funds** | | **$ 34,570,156** | **$ 3,800,145** | **$ 38,370,300** |

| **Uses** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Land | $ 268,984 | $ 31,016 | $ 300,000 |
| Hard Costs | 26,918,338 | 2,208,233 | 29,126,570 |
| Transaction/Leasing Fees | 297,676 | 34,324 | 332,000 |
| Architectural/MEP, Structural Services | 1,083,784 | 124,969 | 1,208,753 |
| Marketing | 430,374 | 49,626 | 480,000 |
| General and Administrative | 1,340,437 | 254,563 | 1,595,000 |
| Financing Costs | 2,116,086 | 35,470 | 2,151,556 |
| Real Estate Taxes | 331,747 | 38,253 | 370,000 |
| Permit, Utility and Municipal Fees | 516,684 | 59,578 | 576,262 |
| Legal and Accounting | 582,799 | 67,201 | 650,000 |
| Retail | - | 818,127 | 818,127 |
| Insurance | 20,071 | 2,314 | 22,385 |
| Miscellaneous Expenses | 663,177 | 76,470 | 739,647 |
| **Total Uses of Funds** | **$ 34,570,156** | **$ 3,800,145** | **$ 38,370,300** |

## Summary of Stabilized Returns at Sale

| **2015** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Effective Gross Income | $ 3,422,435 | $ 268,310 | $ 3,690,745 |
| Expenses | $ 856,073 | $ 210,750 | $ 1,066,823 |
| **Net Operating Income** | **$ 2,566,362** | **$ 57,560** | **$ 2,623,922** |
| Less | | | |
| Reserves | $ 28,978 | $ 32,782 | $ 61,760 |
| Debt Service | $ 1,967,975 | - | $ 1,967,975 |
| Stabilized Net Cash Flow 2015 | **$ 569,409** | **$ 24,778** | **$ 594,187** |

| | | | |
|---|---|---|---|
| **Avail Proceeds before WMATA & Returns** | | | **6,986,155** |
| Avail pre WMATA share | | | 6,986,155 |
| WMATA Share of Avail Profit | | **0% avail profit** | - |
| Net Proceeds after WMATA share paid | | | 6,986,155 |
| **Equity Yield Target** | | **17.00% IRR** | 18,068,615 |
| **Actual Equity Yield** | | **8.94% IRR** | |
| **Potential proceeds avail after IRR met** | | **0% affordable** | -6,166,645 |
| | | 20% affordable | -11,082,460 |
| including 1.05% upward rent adjst | 1) | 905 rsf affordable unit size | -10,291,986 |
| | 2) | $1.32 affordable rent (60% AMI) | -9,910,569 |
| | 3) | 0% subsidized retail sf | -8,615,353 |
| including 1.05% upward rent adjst | 4) | 1-3 together | -6,657,173 |
| discounted to yr 1 @ 8.0% | 5) | 15 yr 75% RE tax abate on res | -9,625,028 |
| discounted to yr 1 @ 8.0% | 6) | 15 yr 75% RE tax abate on ret | -10,278,863 |
| | 7) | 5-6 together | -8,821,430 |
| | 8) | 4+7 together | -4,396,143 |

WMATA-INV 000767

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**BSA Table 1 (Dec 08 revised)**
**Florida Avenue / Shaw - Proposal Comparisons**

| | | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 60 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2067 |
| **1. Banneker (March 2008)** | | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | | $60,000 | $100,000 | $115,000 | $130,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | | |
| Base Rent | 1.500% | fixed annual escalations years 6 to 14 | | | | | | $597,000 | $605,955 | $615,044 | $624,270 | $633,634 | $643,139 | $652,786 | $662,577 | $672,516 | $682,604 | | |
| | 3.000% | fixed annual escalations years 15+ | | | | | | | | | | | | | | | | $703,082 | $2,658,772 |
| Total WMATA Base Rent | | | | $160,000 | $100,000 | $115,000 | $130,000 | $597,000 | $605,955 | $615,044 | $624,270 | $633,634 | $643,139 | $652,786 | $662,577 | $672,516 | $682,604 | $703,082 | $2,658,772 |
| WMATA Participation | 7.00% | of defined capital events | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 | FY08 assessed values | | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ residual** | | | | $160,000 | $100,000 | $115,000 | $130,000 | $597,000 | $605,955 | $615,044 | $624,270 | $633,634 | $643,139 | $652,786 | $662,577 | $672,516 | $682,604 | $703,082 | $48,117,237 |
| **NPV** Base Rent | 5.73% | discount rate | | $12,495,070 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | | $14,192,997 | | | | | | | | | | | | | | | |
| With Participation | 0.00% | not applicable | | $14,192,997 | | | | | | | | | | | | | | | |
| **2. Banneker (March 2008) with 20% affordable credit** | | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | | $60,000 | $100,000 | $115,000 | $130,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | | |
| Base Rent | 1.500% | fixed annual escalations years 6 to 14 | | | | | | $477,600 | $484,764 | $492,035 | $499,416 | $506,907 | $514,511 | $522,229 | $530,062 | $538,013 | $546,083 | | |
| | 3.000% | fixed annual escalations years 15+ | | | | | | | | | | | | | | | | $562,466 | $2,127,017 |
| Total WMATA Base Rent | | | | $160,000 | $100,000 | $115,000 | $130,000 | $477,600 | $484,764 | $492,035 | $499,416 | $506,907 | $514,511 | $522,229 | $530,062 | $538,013 | $546,083 | $562,466 | $2,127,017 |
| WMATA Participation | 10.00% | of defined cash flow | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 | FY08 assessed values | | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow** | | | | $160,000 | $100,000 | $115,000 | $130,000 | $477,600 | $484,764 | $492,035 | $499,416 | $506,907 | $514,511 | $522,229 | $530,062 | $538,013 | $546,083 | $562,466 | $2,127,017 |
| **Cash Flow w/ residual** | | | Moodie Turay 12-07 | $160,000 | $100,000 | $115,000 | $130,000 | $477,600 | $484,764 | $492,035 | $499,416 | $506,907 | $514,511 | $522,229 | $530,062 | $538,013 | $546,083 | $562,466 | $47,585,483 |
| **NPV** Base Rent | 5.73% | disc rate | $10,054,995 | $10,085,624 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | disc rate | $11,660,904 | $11,783,551 | | | | | | | | | | | | | | | |
| **3. Banneker (March 2008) with 20% affordable credit - alternative 1** | | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | | $60,000 | $100,000 | $115,000 | $130,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | | |
| Base Rent | 6.000% | fixed annual escalations years 6 to 14 | | | | | | $342,000 | $362,520 | $384,271 | $407,327 | $431,767 | $457,673 | $485,134 | $514,242 | $545,096 | $577,802 | | |
| | 3.000% | fixed annual escalations years 15+ | | | | | | | | | | | | | | | | $595,136 | $2,250,563 |
| Total WMATA Base Rent | | | | $160,000 | $100,000 | $115,000 | $130,000 | $342,000 | $362,520 | $384,271 | $407,327 | $431,767 | $457,673 | $485,134 | $514,242 | $545,096 | $577,802 | $595,136 | $2,250,563 |
| WMATA Participation | 7.00% | of defined cash flow | | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 | FY08 assessed values | | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ residual** | | | | $160,000 | $100,000 | $115,000 | $130,000 | $342,000 | $362,520 | $384,271 | $407,327 | $431,767 | $457,673 | $485,134 | $514,242 | $545,096 | $577,802 | $595,136 | $47,709,029 |
| **NPV** Base Rent | 5.73% | discount rate | | $10,059,144 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | | $11,757,071 | | | | | | | | | | | | | | | |
| **4. Banneker (March 2008) with 20% affordable credit - alternative 2** | | | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | | | |
| Option Fee | | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | | $60,000 | $100,000 | $115,000 | $130,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | | |
| Base Rent | 3.000% | fixed annual escalations years 6 to 14 | | | | | | $342,000 | $352,260 | $362,828 | $373,713 | $384,924 | $396,472 | $408,366 | $420,617 | $433,235 | $446,232 | | |
| | 3.000% | fixed annual escalations years 15+ | | | | | | | | | | | | | | | | $459,619 | $1,738,095 |
| Total WMATA Base Rent | | | | $160,000 | $100,000 | $115,000 | $130,000 | $342,000 | $352,260 | $362,828 | $373,713 | $384,924 | $396,472 | $408,366 | $420,617 | $433,235 | $446,232 | $459,619 | $1,738,095 |
| WMATA Participation | $4,000,000 | gross revenue breakpoint | | | | | | | | | | | | | | | | | |
| | 3.00% | gross revenue escalator | | | | | | | | | | | $4,000,000 | $4,120,000 | $4,243,600 | $4,370,908 | $4,502,035 | $4,637,096 | $17,535,624 |
| | | cumulative escalated gross rent above breakpoint | | | | | | | | | | | | $120,000 | $243,600 | $370,908 | $502,035 | $637,096 | $13,535,624 |
| | 50.00% | WMATA eligible share after escalated Base Rent and Operating Costs | | | | | | | | | | | | $60,000 | $121,800 | $185,454 | $251,018 | $318,548 | $6,767,812 |
| | 20.00% | WMATA share of gross revenue above defined breakpoint | | | | | | | | | | | | $12,000 | $24,360 | $37,091 | $50,204 | $63,710 | $1,353,562 |
| Implied Initial Land Value | $0 | FY08 assessed values | | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ residual and Participation** | | | | $160,000 | $100,000 | $115,000 | $130,000 | $342,000 | $352,260 | $362,828 | $373,713 | $384,924 | $396,472 | $420,366 | $444,977 | $470,328 | $496,436 | $523,329 | $47,196,560 |
| **NPV** Base Rent | 5.73% | discount rate | | $8,155,903 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | | $9,853,831 | | | | | | | | | | | | | | | |
| With Participation | 9.00% | discount rate | | $11,930,985 | | | | | | | | | | | | | | | |

WMATA-INV 000768

**From:** <eric.smart@bolansmart.com>
**To:** "Rosalyn Doggett" <rdoggett@wmata.com>
**Date:** 12/16/2008 8:30:18 AM
**Subject:** Florida mods

Roz

Attached is a summary illustrating selected mods to Omar's spreadsheets premised on solving for what his calcs generate if there were no affordables. These do not include a possible credit for writing down 20% of his land rent in conjunction with 20% affordables. His current background model already reflects this deduct and much more. With some ramifications could add a land rent adjustment as an additional layer, but for immediate purposes the attached depicts possible impacts from Omar revisiting the affordables assumptions and perhaps some consideration from DC. Note that in discounting for RE tax abatement we have used a simple model mod of assuming that upwards of a 100% tax abatement for xx years is the equivalent of an effective permanent 50% reduction in RE taxes. With some more time we can reformat Omar's model to capture a period of abatement, but direction of impact should be similar.

Eric

--
Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037
202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jim Bob, JP

From Eric 11/08

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

## Summary Data

| | | | |
|---|---|---|---|
| Site Area | SF | | 28,892 |
| Total Possible Project GSF | **4.50** | **FAR** | 135,414 |
| Total Buildable Residential + Retail GSF | | | 135,414 |
| Retail GSF | | | 14,000 |
| Retail NSF | 94% | efficiency | 13,160 |
| Residential Gross SF | 100% | | 121,414 |
| Residential Net SF | 83% | efficiency | 100,774 |
| Residential Net SF - Market | 80% | | 80,619 |
| Residential Net SF - Affordable | 20% | | 20,155 |
| Total No. of Residential Units | 950 | SF avg | 106 |
| Market Rate Units | 80% | | 85 |
| Affordable Units | 20% | | 21 |
| Below Grade Parking (Resid Parking) | 450.0 | SF | 45 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | | 15 |
| Total Parking Spaces | | | 60 |

**Program % Breakdown**

| | |
|---|---|
| Residential | 89.66% |
| Retail | 10.34% |

**Lease Payments**

| | | |
|---|---|---|
| WMATA - Year 1 of Stabilization | $ | 150,000 |

**Project Vacancy**

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

**% of Project Revenue**

| | |
|---|---|
| Residential | 93% |
| Retail | 7% |

**Residential Per SF revenues**

| | | |
|---|---|---|
| Market | $ | **2.90** |
| Affordable Units (at 50% of AMI) | $ | **1.10** |
| WMATA Annual Lease Payment - Year 1 | $ | **150,000** |
| Security Deposit | | **100,000** |
| Pre-Lease Payment | | **100,000** |

## Sources and Uses of Funds

| **Sources** | | **Residential** | **Retail** | **Total** |
|---|---|---|---|---|
| Debt | 62% LTC | $ 23,661,000 | $ - | $ 23,661,000 |
| Equity - LIHTC | | 2,019,750 | - | 2,019,750 |
| Equity - Sponsor/Institutional | | 8,889,406 | 3,800,145 | 12,689,551 |
| **Total Sources of Funds** | | **$ 34,570,156** | **$ 3,800,145** | **$ 38,370,300** |

| **Uses** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Land | $ 268,984 | $ 31,016 | $ 300,000 |
| Hard Costs | 26,918,338 | 2,208,233 | 29,126,570 |
| Transaction/Leasing Fees | 297,676 | 34,324 | 332,000 |
| Architectural/MEP, Structural Services | 1,083,784 | 124,969 | 1,208,753 |
| Marketing | 430,374 | 49,626 | 480,000 |
| General and Administrative | 1,340,437 | 254,563 | 1,595,000 |
| Financing Costs | 2,116,086 | 35,470 | 2,151,556 |
| Real Estate Taxes | 331,747 | 38,253 | 370,000 |
| Permit, Utility and Municipal Fees | 516,684 | 59,578 | 576,262 |
| Legal and Accounting | 582,799 | 67,201 | 650,000 |
| Retail | - | 818,127 | 818,127 |
| Insurance | 20,071 | 2,314 | 22,385 |
| Miscellaneous Expenses | 663,177 | 76,470 | 739,647 |
| **Total Uses of Funds** | **$ 34,570,156** | **$ 3,800,145** | **$ 38,370,300** |

## Summary of Stabilized Returns at Sale

| **2015** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Effective Gross Income | $ 3,422,435 | $ 268,310 | $ 3,690,745 |
| Expenses | $ 856,073 | $ 210,750 | $ 1,066,823 |
| **Net Operating Income** | **$ 2,566,362** | **$ 57,560** | **$ 2,623,922** |
| Less | | | |
| Reserves | $ 28,978 | $ 32,782 | $ 61,760 |
| Debt Service | $ 1,967,975 | - | $ 1,967,975 |
| Stabilized Net Cash Flow 2015 | **$ 569,409** | **$ 24,778** | **$ 594,187** |

| | | |
|---|---|---|
| **Avail Proceeds before WMATA & Returns** | | **6,986,155** |
| Avail pre WMATA share | | 6,986,155 |
| WMATA Share of Avail Profit | **0% avail profit** | - |
| Net Proceeds after WMATA share paid | | 6,986,155 |
| **Equity Yield Target** | **17.00% IRR** | 18,068,615 |
| **Actual Equity Yield** | **8.94% IRR** | |

| **Potential proceeds avail after IRR met** | | | |
|---|---|---|---|
| | | 0% affordable | -6,166,645 in hole |
| | | 20% affordable | -11,082,460 in hole |
| net ?? | 1) | 900 rsf affordable unit size | -10,569,596 in hole 400k svgs |
| | 2) | $1.32 affordable rent (60% AMI) | -9,910,569 |
| | 3) | 0% subsidized retail sf | -8,615,353 in hole |
| | 4) | 1-3 together | -6,991,081 |
| | 5) | 50% RE tax abate on retail | -9,787,952 |
| | 6) | 50% RE tax abate on res | -8,497,716 |
| | 7) | 5-6 together | -7,203,208 – slightly under $4M |
| | 8) | 1+7 together | -6,179,632 still big hole |

WMATA-INV 000770

**From:** <eric.smart@bolansmart.com>
**To:** "Rosalyn Doggett" <rdoggett@wmata.com>
**Date:** 12/15/2008 9:35:49 AM
**Subject:** Re: Fwd: Re: Jazz @ Florida Avenue - Updated Proforma

Roz

Here I am, finally.

Attached are some examples of solving for WMATA present value assuming a 20% base rent reduction and the ability to recognize participation. We could pursue a point-by-point critique of OmarÆs most recent proforma, but since he continues to alter new aspects and push the results into increasingly negative territory we are not sure what will be gained by trying to negotiate with him off of his spread sheets, at least for the moment. FYI we did test for the simple elimination of all affordable units in his latest iteration and the results still put him more than $6.0M in the hole?? With some more time, and with confirmation from you, will dissect further.

Per the attached you will note that we are still using our valuation template from March 2008 that may not entirely reflect the signed term sheet. While I prepared this over the weekend with only partial files I am not sure that BSA received a copy of the signed term sheet indicating the final details you agreed upon regarding the $597K rent and phased escalation. If Base Rent is supposed to escalate from the beginning at 3.0% from year one then the Alternative 1 illustration is irrelevant.

Alternative 2 attempts to put some definition on participation without having to construct a financing model and net capital event proceeds. As you know the concept of participating in gross revenue above a breakpoint has WMATA precedence, although tends to be applied in place of long term base rent escalations. We have compensated for this by applying WMATAÆs participation share to only a portion of the upside escalations after recognizing for the underlying increasing WMATA Base Rent and Operating Costs. We can run more variations, juggling Base Rent, near term Base Rent Escalations and Participation. We could more aggressively increase Base Rent at some point to recapture forgone initial rent, but over the longer term would have to revert to no more than a 3.0% annual escalation. In addition we could model for capital event participation, which you would nonetheless want to include in a contract, but frankly the premium returns after getting annual cash flow of some sort would be limited unless there was another serious round of cap rate compression. So participations does not solve the problem

Going back to FridayÆs misstep on my part I did not know the full extent of your view until I picked up your phone message after the afternoon meeting and saw this email. Since you described yourself as being very disappointed I believe it calls for an explanation.

At the time you informed me on Thursday afternoon of the 3:00 pm meeting on Friday I immediately dropped what I was doing to focus on OmarÆs rent question. I then needed to leave the office a little after 4:00 to help prepare for a DMPED community meeting on Capitol Hill concerning the Hill East disposition that BSA is staffing. It lasted to past 10:00 pm,

including some time afterwards when Omar approached me concerning Florida Ave.

I had a previously scheduled meeting on Friday through lunch in Bethesda that of course ran late. During the aforementioned time I monitored on my phone what I took to be a note from you that OmarÆs new spread sheets and been sent, which I hoped for an opportunity to print out and review in advance. I found myself having to ask someone else to print them out for me along with your follow up message before leaving for your office, and only then on route driving down did I read that you had asked in your follow up email that I get there at 2:30. I knew from our phone call that you wanted me to get there a little early, but I did not know that you expected me by 2:30 until that point. My oversight in not opening the email earlier, but the situation was compounded when I discovered that ~~my cell phone~~ battery had just gone dead, and I was without a charger. I was pressed for time as it was, so determined I could not stop to seek an alternative phone source.

By the time I arrived at your office, full brief case in hand, it was all very frustrating for me, and after I sensed your skepticism about my issues, and then the seriousness of your subsequently retrieved messages, I was all the more unhappy. Apart from missing the advanced meeting time, I was naturally embarrassed that I had not been able to review in the new proforma, which made me question if I had over committed from the day before. I can only say I am sorry for the circumstances and will obviously try to watch out for the conditions that led to it.

Eric

On Fri, 12 Dec 2008 2:45:45 -0500 (EST), "Rosalyn Doggett" <rdoggett@wmata.com> wrote:
> Eric, where are you?
>
> Rosalyn P. Doggett
> Washington Metropolitan Area Transit Authority
> 600 Fifth St, NW
> Washington, DC 20001
> Phone: 202 962 2208
> Fax: 202 962 2396
> rdoggett@wmata.com
>
>
> >>> Rosalyn Doggett 12/11/2008 4:18 PM >>>
> Let's get together at 2:30 to discuss this
>
> Rosalyn P. Doggett
> Washington Metropolitan Area Transit Authority
> 600 Fifth St, NW
> Washington, DC 20001
> Phone: 202 962 2208
> Fax: 202 962 2396
> rdoggett@wmata.com
>
>

FOIA CONFIDENTIAL TREATMENT REQUESTED

for term sheet 3/08

**BSA Table 1**
**Florida Avenue / Shaw - Proposal Comparisons**

| | | | 1 2008 | 2 2009 | 3 2010 | 4 2011 | 5 2012 | 6 2013 | 7 2014 | 8 2015 | 9 2016 | 10 2017 | 11 2018 | 12 2019 | 13 2020 | 14 2021 | 15 2022 | 60 2067 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Banneker / District - lease (mid December 2007)** | | | | | | | | | | | | | | | | | | |
| Revenues | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $60,000 | $100,000 | $100,000 | | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | |
| Base Rent | 3.000% | fixed annual escalations | | | | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $2,617,307 |
| Other Base Rent Adjustment | | not applicable | | | | | | | | | | | | | | | | |
| Total Gross Revenue | | | $160,000 | $100,000 | $100,000 | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $2,617,307 |
| WMATA Participation | 10.00% | of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $7,947,280 | FY08 assessed values | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,486 | 3.00% annual compounded increase on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,486 |
| Cash Flow w/ residual | | | $160,000 | $100,000 | $100,000 | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $48,075,772 |
| NPV | | | | | | | | | | | | | | | | | | |
| Base Rent | 5.73% | discount rate | $12,338,401 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $14,036,328 | | | | | | | | | | | | | | | |
| **Banneker / District - lease (March 2008)** | | | | | | | | | | | | | | | | | | |
| Revenues | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $60,000 | $100,000 | $115,000 | $130,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | |
| Base Rent | $560,000 | unpaid year 4, then escalated @ 1.03% to next year | | | | | | | | | | | | | | | | |
| | 12.14% | fixed annual escalations years 6 to 14 | | | | | $597,400 | $605,256 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | | |
| | 3.000% | fixed annual escalations years 15+ | | | | | | | | | | | | | | | $692,096 | $2,617,226 |
| Other Base Rent Adjustment | | not applicable | | | | | | | | | | | | | | | | |
| Total Gross Revenue | | | $160,000 | $100,000 | $115,000 | $130,000 | $597,400 | $605,256 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | $692,096 | $2,617,226 |
| WMATA Participation | 10.00% | of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 | FY08 assessed values | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,486 | 3.00% annual compounded increase on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,486 |
| Cash Flow w/ residual | | | $160,000 | $100,000 | $115,000 | $130,000 | $597,400 | $605,256 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | $692,096 | $48,075,692 |
| NPV | | | | | | | | | | | | | | | | | | |
| Base Rent | 5.73% | discount rate | $12,339,898 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $14,037,825 | | | | | | | | | | | | | | | |

WMATA-INV 000773

FOIA CONFIDENTIAL TREATMENT REQUESTED

**BSA Table 1 (Dec 08)**
**Florida Avenue / Shaw - Proposal Comparisons**

| | | 1<br>2008 | 2<br>2009 | 3<br>2010 | 4<br>2011 | 5<br>2012 | 6<br>2013 | 7<br>2014 | 8<br>2015 | 9<br>2016 | 10<br>2017 | 11<br>2018 | 12<br>2019 | 13<br>2020 | 14<br>2021 | 15<br>2022 | 60<br>2067 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **1. Banneker (March 2008)** | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | |
| Option Fee | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | $60,000 | $100,000 | $115,000 | $130,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | |
| Base Rent | 1.315% fixed annual escalations years 6 to 14 | | | | | $597,400 | $605,258 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | | |
| | 3.000% fixed annual escalations years 15+ | | | | | | | | | | | | | | | $692,096 | $2,617,229 |
| Total WMATA Base Rent | | $160,000 | $100,000 | $115,000 | $130,000 | $597,400 | $605,258 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | $692,096 | $2,617,229 |
| WMATA Participation | 10.00% of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ residual** | | $160,000 | $100,000 | $115,000 | $130,000 | $597,400 | $605,258 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | $692,096 | $48,075,692 |
| NPV Base Rent | 5.73% discount rate | $12,339,898 | | | | | | | | | | | | | | | |
| With Residual | 5.73% discount rate | $14,037,825 | | | | | | | | | | | | | | | |
| **2. Banneker (March 2008) with 20% affordable credit** | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | |
| Option Fee | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | $60,000 | $100,000 | $115,000 | $130,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | |
| Base Rent | 1.315% fixed annual escalations years 6 to 14 | | | | | $477,920 | $484,205 | $490,572 | $497,023 | $503,559 | $510,181 | $516,889 | $523,687 | $530,573 | $537,550 | | |
| | 3.000% fixed annual escalations years 15+ | | | | | | | | | | | | | | | $553,677 | $2,093,781 |
| Total WMATA Base Rent | | $160,000 | $100,000 | $115,000 | $130,000 | $477,920 | $484,205 | $490,572 | $497,023 | $503,559 | $510,181 | $516,889 | $523,687 | $530,573 | $537,550 | $553,677 | $2,093,781 |
| WMATA Participation | 10.00% of defined cash flow | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow** | | $160,000 | $100,000 | $115,000 | $130,000 | $477,920 | $484,205 | $490,572 | $497,023 | $503,559 | $510,181 | $516,889 | $523,687 | $530,573 | $537,550 | $553,677 | $2,093,781 |
| **Cash Flow w/ residual** | | $160,000 | $100,000 | $115,000 | $130,000 | $477,920 | $484,205 | $490,572 | $497,023 | $503,559 | $510,181 | $516,889 | $523,687 | $530,573 | $537,550 | $553,677 | $47,552,247 |
| NPV Base Rent | 5.73% discount rate | $9,961,466 | | | | | | | | | | | | | | | |
| With Residual | 5.73% discount rate | $11,659,413 | | | | | | | | | | | | | | | |
| With Participation | 0.00% not applicable | $11,659,413 | | | | | | | | | | | | | | | |
| **3. Banneker (March 2008) with 20% affordable credit - alternative 1** | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | |
| Option Fee | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | $60,000 | $100,000 | $115,000 | $130,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | |
| Base Rent | 3.000% fixed annual escalations years 6 to 14 | | | | | $422,100 | $434,763 | $447,806 | $461,240 | $475,077 | $489,330 | $504,009 | $519,130 | $534,704 | $550,745 | | |
| | 3.000% fixed annual escalations years 15+ | | | | | | | | | | | | | | | $567,267 | $2,145,175 |
| Total WMATA Base Rent | | $160,000 | $100,000 | $115,000 | $130,000 | $422,100 | $434,763 | $447,806 | $461,240 | $475,077 | $489,330 | $504,009 | $519,130 | $534,704 | $550,745 | $567,267 | $2,145,175 |
| WMATA Participation | 10.00% of defined cash flow | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ residual** | | $160,000 | $100,000 | $115,000 | $130,000 | $422,100 | $434,763 | $447,806 | $461,240 | $475,077 | $489,330 | $504,009 | $519,130 | $534,704 | $550,745 | $567,267 | $47,603,640 |
| NPV Base Rent | 5.73% discount rate | $9,961,213 | | | | | | | | | | | | | | | |
| With Residual | 5.73% discount rate | $11,659,140 | | | | | | | | | | | | | | | |
| With Participation | 0.00% not applicable | $11,659,140 | | | | | | | | | | | | | | | |
| **4. Banneker (March 2008) with 20% affordable credit - alternative 2** | | | | | | | | | | | | | | | | | |
| **Revenues** | | | | | | | | | | | | | | | | | |
| Option Fee | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | $60,000 | $100,000 | $115,000 | $130,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | |
| Base Rent | 3.000% fixed annual escalations years 6 to 14 | | | | | $330,000 | $339,900 | $350,097 | $360,600 | $371,418 | $382,560 | $394,037 | $405,858 | $418,034 | $430,575 | | |
| | 3.000% fixed annual escalations years 15+ | | | | | | | | | | | | | | | $443,492 | $1,677,109 |
| Total WMATA Base Rent | | $160,000 | $100,000 | $115,000 | $130,000 | $330,000 | $339,900 | $350,097 | $360,600 | $371,418 | $382,560 | $394,037 | $405,858 | $418,034 | $430,575 | $443,492 | $1,677,109 |
| WMATA Participation | $4,000,000 gross revenue breakpoint | | | | | | | | | | | | | | | | |
| | 3.00% gross revenue escalator | | | | | | | | | | $4,000,000 | $4,120,000 | $4,243,600 | $4,370,908 | $4,502,035 | $4,637,096 | $17,535,624 |
| | cumulative escalated gross rent above breakpoint | | | | | | | | | | | $120,000 | $243,600 | $370,908 | $502,035 | $637,096 | $13,535,624 |
| | 50.00% WMATA eligible share after escalated Base Rent and Operating Costs | | | | | | | | | | | $60,000 | $121,800 | $185,454 | $251,018 | $318,548 | $6,767,812 |
| | 20.00% WMATA share of gross revenue above defined breakpoint | | | | | | | | | | | $12,000 | $24,360 | $37,091 | $50,204 | $63,710 | $1,353,562 |
| Implied Initial Land Value | $0 FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| **Cash Flow w/ residual and Participation** | | $160,000 | $100,000 | $115,000 | $130,000 | $330,000 | $339,900 | $350,097 | $360,600 | $371,418 | $382,560 | $406,037 | $430,218 | $455,125 | $480,779 | $507,202 | $47,135,575 |
| NPV Base Rent | 5.73% discount rate | $7,885,445 | | | | | | | | | | | | | | | |
| With Residual | 5.73% discount rate | $9,583,372 | | | | | | | | | | | | | | | |
| With Participation | 9.00% discount rate | $11,660,527 | | | | | | | | | | | | | | | |

WMATA-INV 000774

**From:** <eric.smart@bolansmart.com>
**To:** "Joel R. Washington" <jrwashington@wmata.com>
**Date:** 12/15/2008 10:10:54 AM
**Subject:** Re: Jazz @ Florida Avenue - Updated Proforma

Joel (and Roz, per Joel's question below)

While from a proforma standpoint I am relatively sympathetic to Omar's situation, his treatment of numbers is very much a moving target, and one that gets progressively worse. If there is supposed to be a partnership in seeking to solve for the gap presented by the affordable housing I am not pursuaded that the developer entity has shown its full hand in helping solve for the problem (or even fully understands some aspects of it's own proforma), which may be part of why Omar says he is willing to try and arrive at a strike number above what he has illustrated for Base Rent.

We are working with Roz on some alternative WMATA cash flow recovery scenarios that Omara might be open to, predicated on WMATA being able to flex some on recognizing deferred returns and participation in speculative future upside. I am not sure what leeway you have in resetting a deal without going back to the Board, but if it can be achieved by maintaining a WMATA present value after absorbing the 20% affordables land value there is the possibilty of getting there with Omar.

After a few efforts to date, we may not get much further if the solution relies on solving for the proforma ROI issues Omar has presented. We can see if Roz can get Omar to bring something back from the District, and offer up something himself, then maybe incorporate some prescribed WMATA Base Rent and Participation numbers. My sense is that at this stage a negotations approach may work better than getting all the numbers to align in a proforma or other more technical example, respecting nonetheless the importance also to track the numbers.

Eric

On Mon, 15 Dec 2008 8:27:09 -0500 (EST), "Joel R. Washington" <jrwashington@wmata.com> wrote:
> Roz explained that you did not receive the email! I really would like to
> reach an equitable agreement with Omar and not have to go back to the Board.
> What do you think about the numbers in his pro forma?
>
> Joel
>
> -----Original Message-----
> From: <eric.smart@bolansmart.com>
> To: Washington, Joel R. <jrwashington@wmata.com>
>
> Sent: 12/15/2008 7:39:34 AM
> Subject: Re: Jazz @ Florida Avenue - Updated Proforma
>

Omar Karmi
Tawanna Hicks

Josh, Roz
Eric, Joel

12/11/08

$432,080 in rent — = $6.65M gap

$330,000

Omar to consider

City above fees - permit, recordation, DDOT, etc
Tax abatement
Unit size @ 950 ft

WMATA to consider

~~Can~~
No rent payment at all from FAR increase.

**From:** "Omar A. Karim" <okarim@bannekerventures.com>
**To:** "'Rosalyn Doggett'" <rdoggett@wmata.com>
**Date:** 12/11/2008 3:55:25 PM
**Subject:** Jazz @ Florida Avenue - Updated Proforma

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

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

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

**Financial Model**

**as of 12/10/08**

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Summary Data

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

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Total Possible Project GSF | 4.50 FAR | 135,414 |
| Total Buildable Residential + Retail GSF | | 135,414 |
| Retail GSF | | 14,000 |
| Retail NSF | 94% efficiency | 13,160 |
| Residential Gross SF | 100% | 121,414 |
| Residential Net SF | 83% efficiency | 100,774 |
| Residential Net SF - Market | 80% | 80,619 |
| Residential Net SF - Affordable | 20% | 20,155 |
| Total No. of Residential Units | 950 SF avg | 106 |
| Market Rate Units | 80% | 85 |
| Affordable Units | 20% | 21 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | 15 |
| Total Parking Spaces | | 60 |

### Program % Breakdown

| | |
|---|---|
| Residential | 89.66% |
| Retail | 10.34% |

### Lease Payments

| | |
|---|---|
| WMATA - Year 1 of Stabilization | $ 150,000 |

### Project Vacancy

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

### % of Project Revenue

| | |
|---|---|
| Residential | 93% |
| Retail | 7% |

### Residential Per SF revenues

| | |
|---|---|
| Market | $ 2.90 |
| Affordable Units (at 50% of AMI) | $ 1.10 |

| | |
|---|---|
| WMATA Annual Lease Payment - Year 1 | $ 150,000 |
| Security Deposit | 100,000 |
| Pre-Lease Payment | 100,000 |

double check — & double check whether avg. unit size is not high

## Sources and Uses of Funds

| Sources | | Residential | Retail | Total |
|---|---|---|---|---|
| Debt | 62% LTC | $ 23,661,000 | $ - | $ 23,661,000 |
| Equity - LIHTC | | 2,019,750 | - | 2,019,750 |
| Equity - Sponsor/Institutional | | 8,889,406 | 3,800,145 | 12,689,551 |
| **Total Sources of Funds** | | **$ 34,570,156** | **$ 3,800,145** | **$ 38,370,300** |

| Uses | Residential | Retail | Total |
|---|---|---|---|
| Land | $ 268,984 | $ 31,016 | $ 300,000 |
| Hard Costs | 26,918,338 | 2,208,233 | 29,126,570 |
| Transaction/Leasing Fees | 297,676 | 34,324 | 332,000 |
| Architectural/MEP, Structural Services | 1,083,784 | 124,969 | 1,208,753 |
| Marketing | 430,374 | 49,626 | 480,000 |
| General and Administrative | 1,340,437 | 254,563 | 1,595,000 |
| Financing Costs | 2,116,086 | 35,470 | 2,151,556 |
| Real Estate Taxes | 331,747 | 38,253 | 370,000 |
| Permit, Utility and Municipal Fees | 516,684 | 59,578 | 576,262 |
| Legal and Accounting | 582,799 | 67,201 | 650,000 |
| Retail | - | 818,127 | 818,127 |
| Insurance | 20,071 | 2,314 | 22,385 |
| Miscellaneous Expenses | 663,177 | 76,470 | 739,647 |
| **Total Uses of Funds** | **$ 34,570,156** | **$ 3,800,145** | **$ 38,370,300** |

### Summary of Stabilized Returns at Sale

| 2015 | Residential | Retail | Total |
|---|---|---|---|
| Effective Gross Income | $ 3,422,435 | $ 268,310 | $ 3,690,745 |
| Expenses | $ 856,073 | $ 210,750 | $ 1,066,823 |
| **Net Operating Income** | **$ 2,566,362** | **$ 57,560** | **$ 2,623,922** |
| Less | | | |
| Reserves | $ 28,978 | $ 32,782 | $ 61,760 |
| Debt Service | $ 1,967,975 | - | $ 1,967,975 |
| Stabilized Net Cash Flow 2015 | **$ 569,409** | **$ 24,778** | **$ 594,187** |

| | | |
|---|---|---|
| **Avail Proceeds before WMATA & Returns** | | **6,986,155** |
| Avail pre WMATA share | | 6,986,155 |
| WMATA Share of Avail Profit | 0% avail profit | - |
| Net Proceeds after WMATA share paid | | 6,986,155 |
| **Equity Yield Target** | 17.00% IRR | 18,068,615 |
| **Actual Equity Yield** | 8.94% IRR | |
| **Potential proceeds avail after IRR met** | | -11,082,460 |

LIHTC = equity but not necessary if not all is ~~below market~~ 50-60% AMI

WMATA-INV 000779

| | PROJECT COSTS | | | | Residential | Retail |
|---|---|---|---|---|---|---|
| 1 | **LAND COSTS** | | | | | |
| | WMATA Parcels | | | | | |
| | WMATA - Option Fee | | 100,000.00 | | 89,661.33 | 10,338.67 |
| | WMATA - Security Deposit | | 100,000.00 | | 89,661.33 | 10,338.67 |
| | Pre-Development Lease Payments | | 100,000.00 | | 89,661.33 | 10,338.67 |
| | **TOTAL LAND COSTS** | | | **300,000.00** | **268,984.00** | **31,016.00** |
| 2 | **HARD COSTS** | | | | | |
| | Residential Units | $185 SF | 22,461,590.00 | | 22,461,590.00 | 0.00 |
| | Retail Space | $100 SF | 1,400,000.00 | | 0.00 | 1,400,000.00 |
| | Below-grade parking (Residential) | $30,000 per space | 1,350,000.00 | | 1,350,000.00 | 0 |
| | Below-grade parking (Retail) | $30,000 per space | 450,000.00 | | 0.00 | 450,000.00 |
| | Infrastructure Costs | | 500,000.00 | | 448,306.67 | 51,693.33 |
| | Index to start Q2/2010 | 4% | 1,656,900.70 | | 1,485,599.29 | 171,301.41 |
| | Contingency | 5% | 1,308,079.50 | | 1,172,841.54 | 135,237.96 |
| | **TOTAL HARD COSTS** | | | **29,126,570.20** | **26,918,337.50** | **2,208,232.70** |
| | **SOFT COSTS** | | | | | |
| 3 | **Transaction/Leasing Fees** | | | | | |
| | Title Insurance - Lender's Policy | $0.60 per $1000 of loan | 32,000.00 | | 28,691.63 | 3,308.37 |
| | Surveys | | 20,000.00 | | 17,932.27 | 2,067.73 |
| | Legal - Term Sheet and Joint Development Agreement | | 150,000.00 | | 134,492.00 | 15,508.00 |
| | Legal - Partnership Documents | | 25,000.00 | | 22,415.33 | 2,584.67 |
| | Appraisal Fee | | 30,000.00 | | 26,898.40 | 3,101.60 |
| | Geotechnical & Environmental | | 75,000.00 | | 67,246.00 | 7,754.00 |
| | Total Transaction/Leasing Fees | | | **332,000.00** | **297,675.63** | **34,324.37** |
| 4 | **Architectural/MEP, Structural Services** | | | | | |
| | A/E Fees | 3.00% hard costs | 873,797.11 | | 783,458.15 | 90,338.96 |
| | Structural Services | 1.00% hard costs | 291,265.70 | | 261,152.72 | 30,112.99 |
| | Reimburseables | 5.00% A/E fees | 43,689.86 | | 39,172.91 | 4,516.95 |
| | Total Architectural/MEP, Structural Services | | | **1,208,752.66** | **1,083,783.77** | **124,968.89** |
| 5 | **Marketing** | | | | | |
| | Marketing Center | | 100,000.00 | | 89,661.33 | 10,338.67 |
| | Marketing Materials | | 100,000.00 | | 89,661.33 | 10,338.67 |
| | Media (newspapers, etc.) | | 100,000.00 | | 89,661.33 | 10,338.67 |
| | Signage | | 50,000.00 | | 44,830.67 | 5,169.33 |
| | Special Events | | 40,000.00 | | 35,864.53 | 4,135.47 |
| | Model | | 75,000.00 | | 67,246.00 | 7,754.00 |
| | Website | | 15,000.00 | | 13,449.20 | 1,550.80 |
| | Total Marketing | | | **480,000.00** | **430,374.41** | **49,625.59** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 6 | **General and Administrative** | | | | | | |
| | Development Management | $30,000 mo. | 24 mos. | 720,000.00 | | 645,561.61 | 74,438.39 |
| | Project Management/Administration | $10,000 mo. | 30 mos. | 300,000.00 | | 268,984.00 | 31,016.00 |
| | Construction Management | $25,000 mo. | 18 mos. | 450,000.00 | | 403,476.01 | 46,523.99 |
| | Consulting Fees - Retail | | | 100,000.00 | | 0.00 | 100,000.00 |
| | Security | | | 25,000.00 | | 22,415.33 | 2,584.67 |
| | Total General and Administrative | | | | **1,595,000.00** | **1,340,436.96** | **254,563.04** |
| 7 | **Financing Costs** | | | | | | |
| | Construction Period Interest | | | 1,214,708.96 | | 1,214,708.96 | 0.00 |
| | DCHFA Application Fee | 0.10% | | 23,661.00 | | 23,661.00 | 0.00 |
| | DCHFA Construction Monitoring Fee | 0.40% | | 94,644.00 | | 94,644.00 | 0.00 |
| | DCHFA Financing Fee | 0.40% | | 94,644.00 | | 94,644.00 | 0.00 |
| | DCHFA Tax Credit Allocation Fee | 0.10% | | 23,661.00 | | 23,661.00 | 0.00 |
| | DCHFA Internal, External Legal & Consulting | | | 100,000.00 | | 100,000.00 | 0.00 |
| | Administrative Agent Fee | | | 150,000.00 | | 150,000.00 | 0.00 |
| | Credit Enhancement Fee | 0.25% | | 59,152.50 | | 59,152.50 | 0.00 |
| | Lender Inspection Fees | $2,000 mo. | 24 mos. | 48,000.00 | | 48,000.00 | 0.00 |
| | Transfer & Record Taxes (Construct Loan) | 1.45% | | 343,084.50 | | 307,614.14 | 35,470.36 |
| | Total Financing Costs | | | | **2,151,555.96** | **2,116,085.60** | **35,470.36** |
| 8 | **Real Estate Taxes** | | | | | | |
| | Land ($1.85 per $100) | 24 mos. | | 370,000.00 | | | |
| | Total Real Estate Taxes | | | | **370,000.00** | **331,746.94** | **38,253.06** |
| 9 | **Permit, Utility and Municipal Fees** | | | | | | |
| | Permits | 2% hard costs x 70% | | 366,262.26 | | 328,395.63 | 37,866.63 |
| | Water Connection Fee | | | 50,000.00 | | 44,830.67 | 5,169.33 |
| | Submetering | | | 50,000.00 | | 44,830.67 | 5,169.33 |
| | Tap/Connection Fees | | | 40,000.00 | | 35,864.53 | 4,135.47 |
| | Stormwater Management Fee | | | 20,000.00 | | 17,932.27 | 2,067.73 |
| | Sidewalk Bond | | | 50,000.00 | | 44,830.67 | 5,169.33 |
| | Total Permit, Utility and Municipal Fees | | | | **576,262.26** | **516,684.43** | **59,577.83** |
| 10 | **Legal and Accounting** | | | | | | |
| | Legal - Financing | | | 250,000.00 | | 224,153.34 | 25,846.66 |
| | Legal - Zoning | | | 150,000.00 | | 134,492.00 | 15,508.00 |
| | Legal - General/Retail Leases, etc. | | | 150,000.00 | | 134,492.00 | 15,508.00 |
| | Accounting | | | 100,000.00 | | 89,661.33 | 10,338.67 |
| | Total Legal and Accounting: | | | | **650,000.00** | **582,798.68** | **67,201.32** |
| 11 | **Retail** | | | | | | |
| | Tenant Allowance | $50 per SF | | 658,000.00 | | 0.00 | 658,000.00 |
| | Commissions | 6.00% | | 160,127.47 | | 0.00 | 160,127.47 |
| | Total Retail | | | | **818,127.47** | **0.00** | **818,127.47** |

| | | | | | | |
|---|---|---|---|---|---|---|
| 12 | **Insurance** | | | | | |
| | Builder's Risk (Hard Costs) | $0.06 per $100 | 17,475.94 | | 15,669.16 | 1,806.78 |
| | Builder's Risk (Soft Costs) | $0.06 per $100 | 4,909.02 | | 4,401.49 | 507.53 |
| | Total Insurance | | | **22,384.96** | **20,070.65** | **2,314.31** |
| 13 | **Miscellaneous Expenses** | | | | | |
| | Lease-up Reserves | | 1,338,852.76 | | 1,200,433.26 | 138,419.50 |
| | Testing Expenses | | 150,000.00 | | 134,492.00 | 15,508.00 |
| | Third Party Inspections | | 100,000.00 | | 89,661.33 | 10,338.67 |
| | Misc Soft Costs & Contingencies | 5% soft costs | 489,646.80 | | 439,023.86 | 50,622.94 |
| | Total Miscellaneous Expenses | | | **2,078,499.56** | **663,177.20** | **76,469.61** |
| | **TOTAL SOFT COSTS** | | | **10,282,582.87** | **7,382,834.27** | **1,560,895.84** |
| | **TOTAL PROJECT COSTS** | | **39,709,153.07** | | **34,570,155.78** | **3,800,144.54** |

over $300/sf

**SUMMARY**

| | | | |
|---|---|---|---|
| Market | | | 80% |
| # of Units | | | 85 |
| $ per SF | | $ | 2.90 |
| | | | |
| Affordable | | | 20% |
| # of Units | | | 21 |
| $ per SF | | $ | 1.10 |
| | | | |
| Parking | | | |
| # of spaces | | | 45 |
| $ per space | | $ | 150.00 |
| | | | |
| **Income** | | | **Year 1** |
| Market Units | | $ | 2,805,538 |
| Affordable Units | | $ | 266,042 |
| Other Income | 2.00% | $ | 61,432 |
| Parking | | $ | 81,000 |
| Vacancy | 5.00% | $ | (160,701) |
| **Total Income** | | $ | 3,053,311 |
| | | | |
| **Expenses** | | | |
| WMATA Land Lease | | $ | 134,492 |
| Real Estate Taxes (Market) | $2,000 | $ | 169,724 |
| Real Estate Taxes (Affordable) | $1,000 | $ | 21,215 |
| Property Insurance | 1.00% | $ | 30,533 |
| Utilities | 2.00% | $ | 61,066 |
| Repairs and Maintenance | 2.00% | $ | 61,066 |
| Property Management | 6.00% | $ | 183,199 |
| Asset Management | 1.00% | $ | 30,533 |
| Advertising & Marketing | 1.00% | $ | 30,533 |
| Professional Fees | 1.00% | $ | 30,533 |
| General and Administrative | 1.00% | $ | 30,533 |
| **Total Expenses** | | $ | 783,428 |
| per unit $ | 7,385 | | |
| | | | |
| **NOI** | | $ | **2,269,883** |
| | | | |
| Reserves | $250 | $ | 26,519 |
| | | | |
| Cash Flow before Debt Service | | $ | 2,243,363 |
| | | | |
| Debt Service | | $ | 1,967,975 |

| | | |
|---|---|---|
| **Net Cash Flow Before Taxes** | **$** | **275,389** |

| | | |
|---|---|---|
| **Net Cash Flow Before Taxes** | **$** | **275,389** |

FOIA CONFIDENTIAL TREATMENT REQUESTED

$57/sf

20% units
18% income

The Jazz @ Florida Avenue
Residential Proforma

| Year | | 1<br>2012 | 2<br>2013 | 3<br>2014 | 4<br>2015 | 5<br>2016 | 6<br>2017 | 7<br>2018 | 8<br>2019 | 9<br>2020 | 10<br>2021 | 11<br>2022 | 12<br>2023 | 13<br>2024 | 14<br>2025 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Income** | % of Income | | | | | | | | | | | | | | |
| Market Units | | $ 2,805,538 | $ 2,917,759 | $ 3,034,469 | $ 3,155,848 | $ 3,282,082 | $ 3,413,365 | $ 3,549,900 | $ 3,691,896 | $ 3,839,572 | $ 3,993,155 | $ 4,152,881 | $ 4,318,996 | $ 4,491,756 | $ 4,671,426 |
| Affordable Units | | $ 266,042 | 272,693 | 279,511 | 286,499 | 293,661 | 301,003 | 308,528 | 316,241 | 324,147 | 332,250 | 340,557 | 349,071 | 357,797 | 366,742 |
| Other Income | 3.00% | $ 61,432 | 63,889 | 66,444 | 69,102 | 71,866 | 74,741 | 77,731 | 80,840 | 84,073 | 87,436 | 90,934 | 94,571 | 98,354 | 102,288 |
| Parking | | $ 81,000 | 84,240 | 87,610 | 91,114 | 94,759 | 98,549 | 102,491 | 106,590 | 110,854 | 115,288 | 119,900 | 124,696 | 129,684 | 134,871 |
| Vacancy | 5.00% | (160,701) | (166,929) | (173,402) | (180,128) | (187,118) | (194,383) | (201,932) | (209,778) | (217,932) | (226,406) | (235,214) | (244,367) | (253,880) | (263,766) |
| Effective Gross Income | | $ 3,053,311 | $ 3,171,652 | $ 3,294,633 | $ 3,422,435 | $ 3,555,250 | $ 3,693,275 | $ 3,836,717 | $ 3,985,789 | $ 4,140,714 | $ 4,301,723 | $ 4,469,058 | $ 4,642,967 | $ 4,823,711 | $ 5,011,561 |
| **Operating Expenses** | Escalation | | | | | | | | | | | | | | |
| WMATA Land Lease | 1.50% * | $ 134,492 | 136,509 | 138,557 | 140,635 | 142,745 | 144,886 | 147,059 | 149,265 | 151,504 | 153,777 | 158,390 | 163,142 | 168,036 | 173,077 |
| Real Estate Taxes (Market) | 3.00% | $ 169,724 | 174,816 | 180,060 | 185,462 | 191,026 | 196,757 | 202,659 | 208,739 | 215,001 | 221,451 | 228,095 | 234,938 | 241,986 | 249,245 |
| Real Esate Taxes (Afford) | 3.00% | $ 21,215 | 21,852 | 22,508 | 23,183 | 23,878 | 24,595 | 25,332 | 26,092 | 26,875 | 27,681 | 28,512 | 29,367 | 30,248 | 31,156 |
| Property Insurance | 3.00% | $ 30,533 | 31,449 | 32,393 | 33,364 | 34,365 | 35,396 | 36,458 | 37,552 | 38,678 | 39,839 | 41,034 | 42,265 | 43,533 | 44,839 |
| Utilities | 3.00% | $ 61,066 | 62,898 | 64,785 | 66,729 | 68,731 | 70,792 | 72,916 | 75,104 | 77,357 | 79,678 | 82,068 | 84,530 | 87,066 | 89,678 |
| Repairs and Maintenance | 3.00% | $ 61,066 | 62,898 | 64,785 | 66,729 | 68,731 | 70,792 | 72,916 | 75,104 | 77,357 | 79,678 | 82,068 | 84,530 | 87,066 | 89,678 |
| Property Management | 3.00% | $ 183,199 | 188,695 | 194,355 | 200,186 | 206,192 | 212,377 | 218,749 | 225,311 | 232,071 | 239,033 | 246,204 | 253,590 | 261,197 | 269,033 |
| Asset Management | 3.00% | $ 30,533 | 31,449 | 32,393 | 33,364 | 34,365 | 35,396 | 36,458 | 37,552 | 38,678 | 39,839 | 41,034 | 42,265 | 43,533 | 44,839 |
| Advertising & Marketing | 3.00% | $ 30,533 | 31,449 | 32,393 | 33,364 | 34,365 | 35,396 | 36,458 | 37,552 | 38,678 | 39,839 | 41,034 | 42,265 | 43,533 | 44,839 |
| Professional Fees | 3.00% | $ 30,533 | 31,449 | 32,393 | 33,364 | 34,365 | 35,396 | 36,458 | 37,552 | 38,678 | 39,839 | 41,034 | 42,265 | 43,533 | 44,839 |
| General and Administrative | 3.00% | $ 30,533 | 31,449 | 32,393 | 33,364 | 34,365 | 35,396 | 36,458 | 37,552 | 38,678 | 39,839 | 41,034 | 42,265 | 43,533 | 44,839 |
| | | 783,428 | 806,931 | 831,139 | 856,073 | 881,755 | 908,208 | 935,454 | 963,518 | 992,423 | 1,022,196 | 1,052,862 | 1,084,448 | 1,116,981 | 1,150,491 |
| **Net Operating Income** | | $ 2,269,883 | $ 2,364,721 | $ 2,463,494 | $ 2,566,362 | $ 2,673,494 | $ 2,785,067 | $ 2,901,262 | $ 3,022,271 | $ 3,148,291 | $ 3,279,527 | $ 3,416,196 | $ 3,558,519 | $ 3,706,730 | $ 3,861,071 |
| **Reserves** | | 26,519 | 27,315 | 28,134 | 28,978 | 29,848 | 30,743 | 31,666 | 32,615 | 33,594 | 34,602 | 35,640 | 36,709 | 37,810 | 38,945 |
| **Cash Flow Before Debt Service** | | 2,243,363 | 2,337,406 | 2,435,359 | 2,537,383 | 2,643,647 | 2,754,324 | 2,869,597 | 2,989,655 | 3,114,697 | 3,244,926 | 3,380,556 | 3,521,810 | 3,668,920 | 3,822,126 |
| **Total Annual Debt Service** | | 1,967,975 | 1,967,975 | 1,967,975 | 1,967,975 | 1,967,975 | 1,967,975 | 1,967,975 | 1,967,975 | 1,967,975 | 1,967,975 | 1,967,975 | 1,967,975 | 1,967,975 | 1,967,975 |
| **Before Tax Cash Flow** | | $ 275,389 | $ 369,432 | $ 467,384 | $ 569,409 | $ 675,672 | $ 786,349 | $ 901,622 | $ 1,021,681 | $ 1,146,722 | $ 1,276,951 | $ 1,412,581 | $ 1,553,836 | $ 1,700,945 | $ 1,854,151 |
| 1st Mortgage Principal Balance | $ 23,661,000 | $ 23,463,971 | $ 23,250,555 | $ 23,232,805 | $ 23,000,162 | $ 22,961,586 | $ 22,706,386 | $ 22,643,376 | $ 22,361,710 | $ 22,270,033 | $ 21,957,315 | $ 21,832,004 | $ 21,482,854 | $ 21,318,081 | $ 20,926,188 |

Cannot do

1.5% WMATA increase

Need $4/sf market rate today

4.0% annual escalation in market rate unit income and parking → 4.50 in 4 years

2.5% annual escalation in affordable rate unit income

3.0% annual escalation in expenses (except land lease where first 10 years, increase is at 1.5% and next 3% thereafter)*

3.0% annual escalation in reserves

24,283 gsf (affordable) x $57 = $1,384,131 = WMATA subsidy

$2.50 x 97,131 gsf (market) = $242,828 ÷ .07 = $3.5M gap

OR get Owner equity:
do one bldg — say on small site
at 60% AMI family & the others at market

If he goes PVD + uses LIHTC gap will be greater

WMATA-INV 000786

The Jazz @ Florida Avenue
Residential Proforma

| 15 |
|---|
| 2026 |
| |
| $ 4,858,283 |
| 375,911 |
| 106,380 |
| 140,266 |
| (274,042) |
| $ 5,206,798 |
| |
| 178,269 |
| 256,723 |
| 32,090 |
| 46,184 |
| 92,368 |
| 92,368 |
| 277,104 |
| 46,184 |
| 46,184 |
| 46,184 |
| 46,184 |
| 1,185,005 |
| |
| $ 4,021,792 |
| |
| 40,113 |
| |
| 3,981,679 |
| |
| 1,967,975 |
| |
| $ 2,013,705 |
| |
| $ 20,715,117 |

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

**The Jazz @ Florida Avenue**
**Retail Proforma**

**Assumptions**

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

| | Per S.F. | Escalation | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Operating Income** | | | | | | | | | | | | |
| Retail Tenants - Market | $30.00 | 3% | 232,800 | 239,784 | 246,978 | 254,387 | 262,018 | 269,879 | 277,975 | 286,315 | 294,904 | 303,751 |
| Retail Tenants - Affordable/Non-Profit | $10.00 | 2% | 54,000 | 55,080 | 56,182 | 57,305 | 58,451 | 59,620 | 60,813 | 62,029 | 63,270 | 64,535 |
| Parking | $50.00 | 2% | 9,000 | 9,180 | 9,364 | 9,551 | 9,742 | 9,937 | 10,135 | 10,338 | 10,545 | 10,756 |
| Less: General Vacancy | | 5% | (14,086) | (14,478) | (14,882) | (15,297) | (15,724) | (16,164) | (16,615) | (17,080) | (17,558) | (18,050) |
| Expense Recovery | | | | | | | | | | | | |
| CAM | 3.00 SF | | 39,480 | 40,664 | 41,884 | 43,141 | 44,435 | 45,768 | 47,141 | 48,555 | 50,012 | 51,512 |
| RE Taxes | 8.00 SF | | 105,280 | 108,438 | 111,692 | 115,042 | 118,494 | 122,048 | 125,710 | 129,481 | 133,366 | 137,367 |
| Insurance | 0.40 SF | | 5,264 | 5,422 | 5,585 | 5,752 | 5,925 | 6,102 | 6,285 | 6,474 | 6,668 | 6,868 |
| Administrative | 30.00% | | 8,401 | 8,653 | 8,912 | 9,180 | 9,455 | 9,739 | 10,031 | 10,332 | 10,642 | 10,961 |
| Total Operating Revenue | | | 440,139 | 452,743 | 465,713 | 479,060 | 492,796 | 506,930 | 521,475 | 536,444 | 551,848 | 567,701 |
| **Operating Expenses** | | **Escalation** | | | | | | | | | | |
| CAM | 3.00 SF | 3% | 39,480 | 40,664 | 41,884 | 43,141 | 44,435 | 45,768 | 47,141 | 48,555 | 50,012 | 51,512 |
| RE Taxes | 8.00 SF | 3% | 105,280 | 108,438 | 111,692 | 115,042 | 118,494 | 122,048 | 125,710 | 129,481 | 133,366 | 137,367 |
| Insurance | 0.40 SF | 3% | 5,264 | 5,422 | 5,585 | 5,752 | 5,925 | 6,102 | 6,285 | 6,474 | 6,668 | 6,868 |
| Payroll | 0.25 | 3% | 3,290 | 3,389 | 3,490 | 3,595 | 3,703 | 3,814 | 3,928 | 4,046 | 4,168 | 4,293 |
| Payroll Taxes | 0.04 | 3% | 526 | 542 | 558 | 575 | 592 | 610 | 629 | 647 | 667 | 687 |
| Management Fee (% Total Op Rev) | 4.00% | 3% | 17,606 | 18,134 | 18,678 | 19,238 | 19,815 | 20,410 | 21,022 | 21,653 | 22,302 | 22,971 |
| Leasing Agent Fee | 0.20 | 3% | 2,632 | 2,711 | 2,792 | 2,876 | 2,962 | 3,051 | 3,143 | 3,237 | 3,334 | 3,434 |
| Accounting & Legal Fees | 0.20 | 3% | 2,632 | 2,711 | 2,792 | 2,876 | 2,962 | 3,051 | 3,143 | 3,237 | 3,334 | 3,434 |
| Misc Administrative (Retail) | 0.10 | 3% | 1,316 | 1,355 | 1,396 | 1,438 | 1,481 | 1,526 | 1,571 | 1,619 | 1,667 | 1,717 |
| WMATA Lease | | 1.5% | 15,508 | 15,741 | 15,977 | 16,216 | 16,460 | 16,707 | 16,957 | 17,211 | 17,470 | 17,732 |
| **Total Operating Expenses** | | | 193,534 | 199,107 | 204,844 | 210,750 | 216,829 | 223,087 | 229,529 | 236,161 | 242,988 | 250,015 |
| **Net Operating Income** | | | 246,605 | 253,636 | 260,869 | 268,310 | 275,966 | 283,843 | 291,946 | 300,283 | 308,861 | 317,685 |
| Capital Reserves | | 3.00% | 30,000 | 30,900 | 31,827 | 32,782 | 33,765 | 34,778 | 35,822 | 36,896 | 38,003 | 39,143 |
| **Before Tax Cash Flow** | | | $ 216,605 | $ 222,736 | $ 229,042 | $ 235,529 | $ 242,201 | $ 249,064 | $ 256,124 | $ 263,387 | $ 270,857 | $ 278,542 |

WMATA-INV 000788

## SUPPORTABLE DEBT CALCULATIONS

| | Loan |
|---|---|
| ***Base Residential NOI (net of reserves)*** | 2,243,363 |
| ***Base Retail NOI (net of reserves)*** | 216,605 |
| | 2,459,968 |
| | |
| *DSCR* | 1.25 |
| **Amount Available for Debt Service** | 1,967,975 |
| | |
| **Calculation of Loan Constant** | |
| Amortization Term | 30 |
| Loan Constant | 8.32% |
| | |
| Max Supportable Mortgage | 23,661,000 |
| | |
| Bond Rate | 6.00% |
| DCHFA Fee | 0.40% |
| Trustee Fee | 0.05% |
| GNMA Fee | 0.25% |
| Aggregate Rate | 6.70% |
| | |
| Loan Constant | 7.82% |
| Mortgage Insurance Premium | 0.50% |
| Calculation of Loan Constant | 8.32% |

| NOI Projection | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|---|---|---|---|---|---|---|---|
| Net Operating Income | | | | $ 629,122 | $ 2,356,521 | $ 2,724,362 | $ 2,834,672 | $ 2,949,460 |
| Debt Service | | | | $ 1,967,975 | $ 1,967,975 | $ 1,967,975 | $ 1,967,975 | $ 1,967,975 |
| Net Cash Flow | | | | $ (1,338,853) | $ 388,547 | $ 756,388 | $ 866,697 | $ 981,486 |

| IRR Calculation | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|---|---|---|---|---|---|---|---|
| Equity (Cash) | $ (1,015,164) | $ (2,537,910) | $ (9,136,476) | $ - | $ - | $ - | $ - | $ - |
| Net Cash Flow | - | | | (1,338,853) | 388,547 | 756,388 | 866,697 | 981,486 |
| Return of Equity (Sale) | | | | | | | | 14,028,403 |
| Net Sales Proceeds | | | | | | | | 6,986,155 |
| Total Paid to All Equity | $ (1,015,164) | $ (2,537,910) | $ (9,136,476) | $ (1,338,853) | $ - | $ - | $ - | $ 21,996,044 |

**ACTUAL PROJECT IRR** 8.94%

| Assumed Sale in 2015 | | Amount |
|---|---|---|
| NOI in 2015 | | 2,949,460 |
| Cap Value | 6.50% | 45,376,000 |
| Cost of Sale | 3.00% | (1,361,280) |
| Gross Sale Proceeds | | 44,014,720 |
| Balance of Loan | | (23,000,162) |
| Net Sales Proceeds | | 21,014,558 |
| Return of Outstanding Equity | | (14,028,403) |
| **Net Sales Proceeds Before Pref and Splits** | | **6,986,155** |

| | | |
|---|---|---|
| WMATA Share | 0% sales proceeds | - |
| Net Proceeds after WMATA share paid | | **6,986,155** |
| **Targeted IRR** 17% | 2008 equity | 2,031,589 |
| | 2009 equity | 3,972,246 |
| | 2010 equity | 10,894,773 |
| | 2011 equity | 1,170,006 |
| **Equity Yield Target** | | **18,068,615** |
| **Potential proceeds avail after IRR met** | | **-11,082,460** |

FOIA CONFIDENTIAL TREATMENT REQUESTED

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**LIHTC Calculation**

| **Qualifying Costs** | | **LIHTC** |
|---|---|---|
| Total Development Cost (Residential Portion) | $ | 34,570,156 |
| Less: | | |
| FF&E | | 150,000 |
| Parking | | 1,350,000 |
| Marketing | | 430,374 |
| Total Non-Qualifying Costs | $ | 1,930,374 |
| **Total Eligible Costs** | $ | 32,639,781 |
| **Valuation** | | |
| Total Eligible Costs (see above) | $ | 32,639,781 |
| x Factor ( LIHTC - High Cost Area Adjustment) | | 130% |
| Total Adjusted Basis | | 42,431,716 |
| x Applicable Fraction | | 20% |
| **Total Qualified Basis** | | **8,486,343** |
| x Annual Tax Rate | | 3.4% |
| Annual Credit | | 288,536 |
| Applicable Period (Years) | | 10 |
| Credit Amount | | 2,885,357 |
| x Equity Proceeds from Sale of Credits @ | | $0.70 |
| **Realized Value to Project** | **$** | **2,019,750** |

WMATA-INV 000791

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| Loan Balance | Month | Monthly Draw | Interest Earnings 2.50% | Interest Cost 8.32% | Net Interest |
|---|---|---|---|---|---|
| **23,661,000** | 0 | 200,000 | - | | |
| 23,461,000 | 1 | 350,000 | 49,294 | 163,994 | 114,700 |
| 23,111,000 | 2 | 500,000 | 48,877 | 163,994 | 115,117 |
| 22,611,000 | 3 | 750,000 | 48,148 | 163,994 | 115,846 |
| 21,861,000 | 4 | 1,000,000 | 47,106 | 163,994 | 116,887 |
| 20,861,000 | 5 | 1,490,071 | 45,544 | 163,994 | 118,450 |
| 19,370,929 | 6 | 1,490,071 | 43,460 | 163,994 | 120,533 |
| 17,880,857 | 7 | 1,490,071 | 40,356 | 163,994 | 123,638 |
| 16,390,786 | 8 | 1,490,071 | 37,252 | 163,994 | 126,742 |
| 14,900,714 | 9 | 1,490,071 | 34,147 | 163,994 | 129,846 |
| 13,410,643 | 10 | 1,490,071 | 31,043 | 163,994 | 132,951 |
| 11,920,571 | 11 | 1,490,071 | 27,939 | 163,994 | 136,055 |
| 10,430,500 | 12 | 1,490,071 | 24,835 | 163,994 | 139,159 |
| 8,940,429 | 13 | 1,490,071 | 21,730 | 163,994 | 142,263 |
| 7,450,357 | 14 | 1,490,071 | 18,626 | 163,994 | 145,368 |
| 5,960,286 | 15 | 1,490,071 | 15,522 | 163,994 | 148,472 |
| 4,470,214 | 16 | 1,490,071 | 12,417 | 163,994 | 151,576 |
| 2,980,143 | 17 | 1,490,071 | 9,313 | 163,994 | 154,681 |
| 1,490,071 | 18 | 1,490,071 | 6,209 | 163,994 | 157,785 |
| **TOTAL** | | **23,661,000** | **425,228** | **1,639,937** | **1,214,709** |

WMATA-INV 000792

Duke Plan on Affordable Housing-- 12/11/08

Duke Plan calls for 20%-30% (25-38) affordable housing units on combined Howard (20,646 sf)/WMATA (8,621 sf) site (total 29,627 sf) at Florida and 7th. WMATA % of 25-38 units = 29%, 7- 11 units, 7 units at 20% affordability.

It does not address affordability on the other two parcels about which it says, merely, go with the Howard proposal (now defunct) for ground floor retail with residential above.

It asks that federal and local zoning and funding incentives be targeted to the site (pledging availability as part of an RFP).

It does not define affordable mix —

Duke Plan on Affordable Housing-- 12/11/08

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It does not address affordability on the other two parcels about which it says, merely, go with the Howard proposal (now defunct) for ground floor retail with residential above.

It asks that federal and local zoning and funding incentives be targeted to the site (pledging availability as part of an RFP).

Neil Albert | Joel Washington | Elizabeth Moreno
Rocky Doggett | Nat Bottigheimer | 301 523 1810

1210

\# 1. Metropolis – Replace with Competent Development Partner
\# 2. Write down off market only – Ceiling/Floor
3. Combine with Lot Adler – lease to sale ??
~~4.~~
\# 4 TIF impact
5 99 years – Neil said do it
Nat said yes

---

Radio One

FLORIDA AVENUE JOINT DEVELOPMENT PROJECT
AFFORDABLE HOUSING ISSUES

- The Metro Board approved the Florida Avenue joint development in June 2008. The project did not include affordable housing. As part of its approval the Board asked that the project include "an affordable housing component."

- The Developer met with Board Member, CM Graham, and reported that Mr. Graham requested that the project include at lease 20% affordable housing for low income rather than moderate income (work force) households.

- The Developer revised its proposal to Metro to accommodate this request with greatly reduced proposed rents, resulting in values to Metro that are below appraised value and below the offers in the other two proposals for the site.

Writing down land value to accommodate affordable housing presents policy issues for the WMATA Board and for FTA which would have to approve the project:

- Should the Board accept a lower value than that which it initially approved?
- Should it simply re-bid the project?
- If it were to re-bid, what should the policy guidance be on land write downs for affordable housing?*

WMATA staff consulted with FTA's local office for guidance and received this response:

1. Metro would have to be satisfied that changing the terms from the Joint Development Solicitation would not require re-bidding. (COUN has indicated that since the Board made the request for affordable housing, re-bidding is not required).

2. In no instance could the finally approved project result in a net present value to Metro that is less than that of the next highest bidder irrespective of whether the next highest bidder had any affordable housing at all.

3. If the net present value were to go still lower to include desired affordable housing the project would have to be re-bid. — with explicit instructions regarding type + amount of affordable housing

---

*In past projects, Metro appraisers and staff have fully or partially discounted the value for the land for the affordable units only. The write down was for units that were required by local jurisdiction regulation or law and consequently had to be accommodated in an appraisal. For Twinbrook there was a negotiated requirement with the City of Rockville that did not dilute the original value approved by the Board since part of the negotiation was extra density for the project.

no Metropolis

**From:** Rosalyn Doggett
**To:** Joel R. Washington
**Date:** 12/3/2008 12:11:16 PM
**Subject:** Fwd: Florida Avenue - update

fyi

>>> Joshua W. Montague 12/3/2008 11:23 AM >>>
Hi Roz,

As you may have noticed, I did not include the clarification list with the drafts sent to Developer/DLA. I decided to just call Devorah Lewin at DLA and go over my concerns informally.

During the course of that conversation, she mentioned two things that you should be aware of:

1. Devorah said that Banneker "bought out" Metropolis. I told her that this might be an issue since WMATA approved the developer on the basis of all members of the team. She is going to check with Omar and let me know what the actual status is.

2. She said the Developer might be planning on developing a building which traverses our property and the adjacent property. I told her that this might be an issue since this was not the project that WMATA approved and may cause problems if we had to terminate the lease. She will check with Omar and let me know what the intention is.

I have been trying to catch you but you have been out of your office. I will try to pop up again later this afternoon to discuss.

Josh

**From:** <eric.smart@bolansmart.com>
**To:** "Omar A. Karim" <okarim@bannekerventures.com>
**Date:** 12/11/2008 4:21:02 PM
**Subject:** RE: Question

Omar

If rents for The Ellington (and other new downtown proximate properties) average $3.10+ per rsf for a typical one bedroom, I assume your question goes back to your concern of discounting for the presence of affordable units. As I discussed with you at that time, our view is that for one-off properties in relatively sought after locations like the subject the possible stigma of affordable units has a more limited impact, if any, than at locations including a larger gross number of affordable units and where the background markets rents are lower. We could also make the argument that the type of tenant you will attract to this location and property type is already of the social mind set to embrace affordable unit tenants. (If the project were condo, we might view this somewhat differently, given the longer term nature of the market users' commitment to the property, and the need to deal first hand with the division of condo fees, etc., but such is not the case.)

For discussion purposes if we assume that The Ellington is actually generating 90% of a face average rent of $3.15, the net effective rent is $2.84 per rsf. While you might want to apply a small downward adjustment for the presence of affordables, and maybe the comparative locations, a similarly sized upward adjustment could be argued favoring The Jazz related to being a newer building, and one that will undoubtedly include a stronger green building profile. So on balance let us assume you could net $2.80 per rsf for the subject property in 2009.

Do we know this?

Going further, let us expect that there will be no opportunity for a material increase in building rents through 2009, meaning that not until calendar year 2010 could we start to see the resumption of modest rental rate increases. Allowing for a conservative 2.5% increase in rents resuming during 2010 means that it would be reasonable to predicate your proforma net effective rent in the range of $2.90 per rsf going into 2011. This would still be below other examples in today's market at the end of 2008.

Eric

On Thu, 11 Dec 2008 3:07:16 -0500 (EST), "Omar A. Karim" <okarim@bannekerventures.com> wrote:
> Eric,
>
> Any word on your opinion on what the market rate units in the project would
> rent for on a per SF basis assuming that we have 20% affordable units?
>
> Omar
>
> -----Original Message-----
> From: eric.smart@bolansmart.com [mailto:eric.smart@bolansmart.com]

(301) 523-1810 cell

okarim@bannekerventures.com

**CC:** "'Joel R. Washington'" <jrwashington@wmata.com>, <eric.smart@bolansmart.com>, <thicks@bannekerventures.com>, <eric.smart@bolansmart.com>

11/6/08

Josh Adler –

still ground lease to WMATA rather than the other way around

he's had conversations with Omar who is not able to execute on a deal until he gets financial backing

Omar has faded out over time as he doesn't have the ability to execute

Josh knows it could be difficult to build on Parcel 2 alone

Eric Smart 11/3/08

Retail efficiency – better
rent structure – add 15 cents to market rent
escalate at 3%, instead 1.5%

$430K matches Turay
Need to solve for Moddie Turay

Larry Levine P&P

SpN WS2go

July 11-17 2008



# InnerLoop

Continued from Page 1

... **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.

Metro officials said they would specify what those guidelines are by September. No word from Williams about the whole brouhaha. [MELISSA CASTRO]

D.C. CHAMBER OF COMMERCE

**LINE OF FIRE:** Mayor's aide Rodney Mitchell, in white hat, protests outside the D.C. Chamber July 1, in support of ex-offenders.

... **Steve Case** isn't the only local techie who wants to make it easier for consumers and merchants to use credit cards.

Arlington-based **Evolution Finance Inc.**, founded by **Odysseas Papadimitriou**, is launching an ad-supported Web site called Card Hub. The site lets consumers search, compare and apply for credit cards through customized preferences — including credit history, personal or business needs, interest rates and reward preferences. The site also magnifies and unravels the fine print.

"When it comes to managing credit card spending and debt, the process has become overly complex and confusing for consumers," says Papadimitriou, the company's chief executive officer. "Consumers deserve a better experience when they make financial decisions."

Case last year formed **Revolution Money** to create a credit card with lower fees for merchants and free online money transfer.

Papadimitriou, an eight-year veteran of **Capital One Financial Corp.**, has partnerships with Visa, MasterCard, American Express and Discover that will pay Evolution for any new credit card accounts that originate from Card Hub.

The company has secured an undisclosed sum of angel investor financing. [DARLENE DARCY]

... The last of the Levins is stepping down from tech company the family created more than four d ago.

**Gilbert Levin**, director of science and technol Bethesda-based **Spherix Inc.**, will retire Aug. 14 - years after he founded the company in Beltsville. wife, **Karen Levin**, who worked at Spherix for 40 most recently as vice president, retired in January His nephew and Spherix's former CEO, **Richard I** left the biotech for a park-reservation database sul that Spherix sold last year.

The company recently has been concentrating o third phase of clinical trials for its key product, a T diabetes treatment. But it has dabbled in everythin low-calorie sweeteners to a biological nutrient rem tem for city wastewater. It even performed a life de experiment on Mars in 1976 — the files for which i Gilbert Levin is taking with him in retirement.

But that's not all he's taking. The elder Levin an wife will each receive $50,000 a year for the rest of lives, along with consulting agreements, health ins cell phones and computers through August 2011 — a $15,000 lump sum apiece. Oh, and also the water painting by artist **Willard Bond** that previously hu Levin's office. [VANDANA SINHA]

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000802

**From:** <eric.smart@bolansmart.com>
**To:** <rdoggett@wmata.com>
**Date:** 11/7/2008 2:52:16 PM
**Subject:** FL Ave

Roz

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

Eric

--
Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037
202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

## Summary Data

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

*affordable unit size @ 95% of market?*

### Program % Breakdown

| | |
|---|---|
| Residential | 92.17% |
| Retail | 7.83% |

### Lease Payments

| | | |
|---|---|---|
| WMATA - Year 1 of Stabilization | $ | 430,000 |

### Project Vacancy

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

### % of Project Revenue

| | |
|---|---|
| Residential | 92% |
| Retail | 8% |

### Residential Per SF revenues

| | | | |
|---|---|---|---|
| Market | *2012?* | $ | **2.85** |
| Affordable Units (at 50% of AMI) | | $ | **1.15** |
| Loan Rate | | | 7.40% |
| WMATA Annual Lease Payment - Year 1 | | $ | **430,000** |
| Security Deposit | *credited* | | **100,000** |
| Pre-Lease Payment | | | **275,000** |

[$ 250,000]

## Sources and Uses of Funds

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

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

## Summary of Stabilized Returns at Sale

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

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

WMATA-INV 000804

**SUMMARY**

| | | | | | | |
|---|---|---|---|---|---|---|
| Market | | | 80% | | | |
| # of Units | | | 115 | | | |
| $ per SF | | $ | 2.85 | Monthly 08 dollars | $ | 2.85 |
| Affordable | | | 20% | | | |
| # of Units | | | 29 | | | |
| $ per SF | | $ | 1.15 | Monthly 08 dollars | $ | 1.15 |
| Parking | | | | | | |
| # of spaces | | | 45 | | | |
| $ per space | | $ | 150.00 | Monthly 08 dollars | $ | 150.00 |

| **Income** | | | **Year 1** |
|---|---|---|---|
| Market Units | | $ | 3,741,320 |
| Affordable Units | | $ | 377,414 |
| Other Income | 2.00% | $ | 82,375 |
| Parking | | $ | 81,000 |
| Vacancy | 5.00% | $ | (214,105) |
| **Total Income** | | $ | 4,068,003 |

| **Expenses** | | | |
|---|---|---|---|
| WMATA Land Lease | | $ | 396,322 |
| Real Estate Taxes (Market) | $2,000 | $ | 230,306 |
| Real Estate Taxes (Affordable) | $1,000 | $ | 28,788 |
| Property Insurance | 1.00% | $ | 40,680 |
| Utilities | 2.00% | $ | 81,360 |
| Repairs and Maintenance | 2.00% | $ | 81,360 |
| Property Management | 6.00% | $ | 244,080 |
| Asset Management | 1.00% | $ | 40,680 |
| Advertising & Marketing | 1.00% | $ | 40,680 |
| Professional Fees | 1.00% | $ | 40,680 |
| General and Administrative | 1.00% | $ | 40,680 |
| **Total Expenses** | | $ | 1,265,617 |
| per unit $ | 8,793 | | |

from Bozzuto acc. to Omar

| | | | |
|---|---|---|---|
| **NOI** | | $ | **2,802,387** |
| Reserves | $250 | $ | 35,985 |
| Cash Flow before Debt Service | | $ | 2,766,401 |
| Debt Service | | $ | 2,710,873 |

| | | |
|---|---|---|
| **Net Cash Flow Before Taxes** | **$** | **55,528** |

FOIA CONFIDENTIAL TREATMENT REQUESTED

The Jazz @ Florida Avenue
Residential Proforma

| Year | | 1<br>2012 | 2<br>2013 | 3<br>2014 | 4<br>2015 | 5<br>2016 | 6<br>2017 | 7<br>2018 | 8<br>2019 | 9<br>2020 | 10<br>2021 | 11<br>2022 | 12<br>2023 | 13<br>2024 | 14<br>2025 | 15<br>2026 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Income** | % of Income | | | | | | | | | | | | | | | |
| Market Units | | $ 3,741,320 | $ 3,890,973 | $ 4,046,612 | $ 4,208,476 | $ 4,376,815 | $ 4,551,888 | $ 4,733,964 | $ 4,923,322 | $ 5,120,255 | $ 5,325,065 | $ 5,538,068 | $ 5,759,591 | $ 5,989,974 | $ 6,229,573 | $ 6,478,756 |
| Affordable Units | | $ 377,414 | 386,849 | 396,520 | 406,433 | 416,594 | 427,009 | 437,684 | 448,627 | 459,842 | 471,338 | 483,122 | 495,200 | 507,580 | 520,269 | 533,276 |
| Other Income | 3.00% | $ 82,375 | 85,670 | 89,096 | 92,660 | 96,367 | 100,221 | 104,230 | 108,399 | 112,735 | 117,245 | 121,935 | 126,812 | 131,885 | 137,160 | 142,646 |
| Parking | | $ 81,000 | 84,240 | 87,610 | 91,114 | 94,759 | 98,549 | 102,491 | 106,590 | 110,854 | 115,288 | 119,900 | 124,696 | 129,684 | 134,871 | 140,266 |
| Vacancy | 5.00% | (214,105) | (222,387) | (230,992) | (239,934) | (249,227) | (258,883) | (268,918) | (279,347) | (290,184) | (301,447) | (313,151) | (325,315) | (337,956) | (351,094) | (364,747) |
| Effective Gross Income | | $ 4,068,003 | $ 4,225,345 | $ 4,388,847 | $ 4,558,750 | $ 4,735,308 | $ 4,918,784 | $ 5,109,451 | $ 5,307,592 | $ 5,513,502 | $ 5,727,490 | $ 5,949,873 | $ 6,180,983 | $ 6,421,166 | $ 6,670,780 | $ 6,930,197 |
| **Operating Expenses** | Escalation | | | | | | | | | | | | | | | |
| WMATA Land Lease | 3.00% * | $ 396,322 | 408,212 | 420,458 | 433,072 | 446,064 | 459,446 | 473,229 | 487,426 | 502,049 | 517,110 | 532,624 | 548,602 | 565,060 | 582,012 | 599,473 |
| Real Estate Taxes (Market) | 3.00% | $ 230,306 | 237,215 | 244,332 | 251,662 | 259,211 | 266,988 | 274,997 | 283,247 | 291,745 | 300,497 | 309,512 | 318,797 | 328,361 | 338,212 | 348,358 |
| Real Esate Taxes (Afford) | 3.00% | $ 28,788 | 29,652 | 30,541 | 31,458 | 32,401 | 33,373 | 34,375 | 35,406 | 36,468 | 37,562 | 38,689 | 39,850 | 41,045 | 42,277 | 43,545 |
| Property Insurance | 3.00% | $ 40,680 | 41,900 | 43,157 | 44,452 | 45,786 | 47,159 | 48,574 | 50,031 | 51,532 | 53,078 | 54,671 | 56,311 | 58,000 | 59,740 | 61,532 |
| Utilities | 3.00% | $ 81,360 | 83,801 | 86,315 | 88,904 | 91,571 | 94,319 | 97,148 | 100,063 | 103,064 | 106,156 | 109,341 | 112,621 | 116,000 | 119,480 | 123,064 |
| Repairs and Maintenance | 3.00% | $ 81,360 | 83,801 | 86,315 | 88,904 | 91,571 | 94,319 | 97,148 | 100,063 | 103,064 | 106,156 | 109,341 | 112,621 | 116,000 | 119,480 | 123,064 |
| Property Management | 3.00% | $ 244,080 | 251,403 | 258,945 | 266,713 | 274,714 | 282,956 | 291,445 | 300,188 | 309,193 | 318,469 | 328,023 | 337,864 | 348,000 | 358,440 | 369,193 |
| Asset Management | 3.00% | $ 40,680 | 41,900 | 43,157 | 44,452 | 45,786 | 47,159 | 48,574 | 50,031 | 51,532 | 53,078 | 54,671 | 56,311 | 58,000 | 59,740 | 61,532 |
| Advertising & Marketing | 3.00% | $ 40,680 | 41,900 | 43,157 | 44,452 | 45,786 | 47,159 | 48,574 | 50,031 | 51,532 | 53,078 | 54,671 | 56,311 | 58,000 | 59,740 | 61,532 |
| Professional Fees | 3.00% | $ 40,680 | 41,900 | 43,157 | 44,452 | 45,786 | 47,159 | 48,574 | 50,031 | 51,532 | 53,078 | 54,671 | 56,311 | 58,000 | 59,740 | 61,532 |
| General and Administrative | 3.00% | $ 40,680 | 41,900 | 43,157 | 44,452 | 45,786 | 47,159 | 48,574 | 50,031 | 51,532 | 53,078 | 54,671 | 56,311 | 58,000 | 59,740 | 61,532 |
| | | 1,265,617 | 1,303,585 | 1,342,693 | 1,382,974 | 1,424,463 | 1,467,197 | 1,511,213 | 1,556,549 | 1,603,245 | 1,651,343 | 1,700,883 | 1,751,910 | 1,804,467 | 1,858,601 | 1,914,359 |
| **Net Operating Income** | | $ 2,802,387 | $ 2,921,760 | $ 3,046,154 | $ 3,175,776 | $ 3,310,845 | $ 3,451,587 | $ 3,598,238 | $ 3,751,043 | $ 3,910,257 | $ 4,076,147 | $ 4,248,990 | $ 4,429,074 | $ 4,616,699 | $ 4,812,179 | $ 5,015,838 |
| **Reserves** | | 35,985 | 36,345 | 36,709 | 37,076 | 37,446 | 37,821 | 38,199 | 38,581 | 38,967 | 39,357 | 39,750 | 40,148 | 40,549 | 40,955 | 41,364 |
| **Cash Flow Before Debt Service** | | 2,766,401 | 2,885,415 | 3,009,445 | 3,138,701 | 3,273,399 | 3,413,767 | 3,560,039 | 3,712,462 | 3,871,290 | 4,036,790 | 4,209,240 | 4,388,926 | 4,576,150 | 4,771,224 | 4,974,474 |
| **Total Annual Debt Service** | | 2,710,873 | 2,710,873 | 2,710,873 | 2,710,873 | 2,710,873 | 2,710,873 | 2,710,873 | 2,710,873 | 2,710,873 | 2,710,873 | 2,710,873 | 2,710,873 | 2,710,873 | 2,710,873 | 2,710,873 |
| **Before Tax Cash Flow** | | $ 55,528 | $ 174,542 | $ 298,572 | $ 427,827 | $ 562,526 | $ 702,893 | $ 849,166 | $ 1,001,588 | $ 1,160,417 | $ 1,325,917 | $ 1,498,366 | $ 1,678,053 | $ 1,865,277 | $ 2,060,351 | $ 2,263,601 |

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

WMATA-INV 000807

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

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 6 | **General and Administrative** | | | | | | |
| | Development Management | $30,000 mo. | 24 mos. | 720,000.00 | | 663,609.02 | 56,390.98 |
| | Project Management/Administration | $10,000 mo. | 30 mos. | 300,000.00 | | 276,503.76 | 23,496.24 |
| | Construction Management | $25,000 mo. | 18 mos. | 450,000.00 | | 414,755.64 | 35,244.36 |
| | Consulting Fees - Retail | | | 100,000.00 | | 0.00 | 100,000.00 |
| | Security | | | 25,000.00 | | 23,041.98 | 1,958.02 |
| | Total General and Administrative | | | | **1,595,000.00** | **1,377,910.40** | **217,089.60** |
| 7 | **Financing Costs** | | | | | | |
| | Construction Period Interest | | | 1,362,279.72 | | 1,362,279.72 | 0.00 |
| | DCHFA Application Fee | 0.10% | | 36,638.00 | | 36,638.00 | 0.00 |
| | DCHFA Construction Monitoring Fee | 0.40% | | 146,552.00 | | 146,552.00 | 0.00 |
| | DCHFA Financing Fee | 0.40% | | 146,552.00 | | 146,552.00 | 0.00 |
| | DCHFA Tax Credit Allocation Fee | 0.10% | | 36,638.00 | | 36,638.00 | 0.00 |
| | DCHFA Internal, External Legal & Consulting | | | 100,000.00 | | 100,000.00 | 0.00 |
| | Administrative Agent Fee | | | 150,000.00 | | 150,000.00 | 0.00 |
| | Credit Enhancement Fee | 0.25% | | 91,595.00 | | 91,595.00 | 0.00 |
| | Lender Inspection Fees | $2,000 mo. | 24 mos. | 48,000.00 | | 48,000.00 | 0.00 |
| | Transfer & Record Taxes (Construct Loan) | 1.45% | | 531,251.00 | | 489,643.00 | 41,608.00 |
| | Total Financing Costs | | | | **2,649,505.72** | **2,607,897.72** | **41,608.00** |
| 8 | **Real Estate Taxes** | | | | | | |
| | Land ($1.85 per $100) | 24 mos. | | 370,000.00 | valuing land at $10M | | |
| | Total Real Estate Taxes | | | | **370,000.00** | **341,021.30** | **28,978.70** |
| 9 | **Permit, Utility and Municipal Fees** | | | | | | |
| | Permits | 2% hard costs x 40% | | 273,432.96 | | 252,017.47 | 21,415.49 |
| | Water Connection Fee | | | 5,000.00 | | 4,608.40 | 391.60 |
| | Submetering | | | 20,000.00 | | 18,433.58 | 1,566.42 |
| | Tap/Connection Fees | | | 40,000.00 | | 36,867.17 | 3,132.83 |
| | Stormwater Management Fee | | | 20,000.00 | | 18,433.58 | 1,566.42 |
| | Sidewalk Bond | | | 50,000.00 | | 46,083.96 | 3,916.04 |
| | Total Permit, Utility and Municipal Fees | | | | **408,432.96** | **376,444.16** | **31,988.80** |
| 10 | **Legal and Accounting** | | | | | | |
| | Legal - Financing (General) | | | 100,000.00 | | 92,167.92 | 7,832.08 |
| | Legal - Zoning | | | 150,000.00 | | 138,251.88 | 11,748.12 |
| | Legal - General/Retail Leases, etc. | | | 150,000.00 | | 138,251.88 | 11,748.12 |
| | Accounting | | | 100,000.00 | | 92,167.92 | 7,832.08 |
| | Total Legal and Accounting: | | | | **500,000.00** | **460,839.60** | **39,160.40** |
| 11 | **Retail** | | | | | | |
| | Tenant Allowance | $50 per SF | | 658,000.00 | | 0.00 | 658,000.00 |
| | Commissions | 6.00% | | 240,502.20 | | 0.00 | 240,502.20 |
| | Total Retail | | | | **898,502.20** | **0.00** | **898,502.20** |

| | | | | | | |
|---|---|---|---|---|---|---|
| 12 | **Insurance** | | | | | |
| | Builder's Risk (Hard Costs) | $0.06 per $100 | 22,831.65 | | 21,043.46 | 1,788.19 |
| | Builder's Risk (Soft Costs) | $0.06 per $100 | 5,287.58 | | 4,873.45 | 414.13 |
| | Total Insurance | | | **28,119.23** | **25,916.91** | **2,202.32** |
| 13 | **Miscellaneous Expenses** | | | | | |
| | Lease-up Reserves | | -462,616.31 | | -426,383.83 | -36,232.48 |
| | Testing Expenses | | 150,000.00 | | 138,251.88 | 11,748.12 |
| | Third Party Inspections | | 100,000.00 | | 92,167.92 | 7,832.08 |
| | Misc Soft Costs & Contingencies | 5% soft costs | 431,406.65 | | 397,618.54 | 33,788.12 |
| | Total Miscellaneous Expenses | | | **218,790.35** | **628,038.34** | **53,368.32** |
| | **TOTAL SOFT COSTS** | | | **9,059,539.74** | **8,021,977.84** | **1,500,178.20** |
| | **TOTAL PROJECT COSTS** | | **47,487,293.34** | | **44,227,814.65** | **3,722,094.99** |
| | | | 1.52% | | | |

FOIA CONFIDENTIAL TREATMENT REQUESTED

**The Jazz @ Florida Avenue**
**Retail Proforma**

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Assumptions** | | | | | | | | | | | | |
| Rentable S.F. | 13,160 | | | | | | | | | | | |
| Market Space | 7,760 | | | | | | | | | | | |
| Affordable/Non-Profit Space | 5,400 | | | | | | | | | | | |
| Triple Net Lease | | | | | | | | | | | | |
| | **Per S.F.** | **Escalation** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **2020** | **2021** |
| **Operating Income** | | | | | | | | | | | | |
| Retail Tenants - Market | $30.00 | 3% | 232,800 | 239,784 | 246,978 | 254,387 | 262,018 | 269,879 | 277,975 | 286,315 | 294,904 | 303,751 |
| Retail Tenants - Affordable/Non-Profit | $10.00 | 2% | 54,000 | 55,080 | 56,182 | 57,305 | 58,451 | 59,620 | 60,813 | 62,029 | 63,270 | 64,535 |
| Parking | $50.00 | 2% | 9,000 | 9,180 | 9,364 | 9,551 | 9,742 | 9,937 | 10,135 | 10,338 | 10,545 | 10,756 |
| Less: General Vacancy | 5% | | (14,790) | (15,202) | (15,626) | (16,062) | (16,511) | (16,972) | (17,446) | (17,934) | (18,436) | (18,952) |
| Net Rental Income | | | 281,010 | 288,842 | 296,897 | 305,181 | 313,701 | 322,464 | 331,477 | 340,748 | 350,283 | 360,090 |
| Expense Recovery | | | 131,271 | 135,209 | 139,265 | 143,443 | 147,747 | 152,179 | 156,744 | 161,447 | 166,290 | 171,279 |
| Total Operating Revenue | | | 412,281 | 424,051 | 436,162 | 448,624 | 461,448 | 474,643 | 488,222 | 502,195 | 516,573 | 531,369 |
| **Recoverable Expenses** | | | | | | | | | | | | |
| Pass-through expenses | $2.50 | 3.00% | 32,900 | 33,887 | 34,904 | 35,951 | 37,029 | 38,140 | 39,284 | 40,463 | 41,677 | 42,927 |
| Real Estate Taxes | $8.00 SF | | 105,280 | 108,438 | 111,692 | 115,042 | 118,494 | 122,048 | 125,710 | 129,481 | 133,366 | 137,367 |
| Total Operating Expenses | | | 138,180 | 142,325 | 146,595 | 150,993 | 155,523 | 160,188 | 164,994 | 169,944 | 175,042 | 180,294 |
| **Non-recoverable Expenses** | | | | | | | | | | | | |
| Non-recoverable WMATA Expenses | | 3.00% | 33,678 | 34,688 | 35,729 | 36,801 | 37,905 | 39,042 | 40,213 | 41,420 | 42,662 | 43,942 |
| Non-recoverable Ownership Expenses | | 2.00% | 7,500 | 7,650 | 7,803 | 7,959 | 8,118 | 8,281 | 8,446 | 8,615 | 8,787 | 8,963 |
| Total Expenses | | | 41,178 | 42,338 | 43,532 | 44,760 | 46,023 | 47,323 | 48,659 | 50,035 | 51,450 | 52,905 |
| **Net Operating Income** | | | 371,103 | 381,713 | 392,630 | 403,864 | 415,425 | 427,321 | 439,562 | 452,160 | 465,123 | 478,464 |
| Capital Reserves | | | 20,000 | 20,400 | 20,808 | 21,224 | 21,649 | 22,082 | 22,523 | 22,974 | 23,433 | 23,902 |
| **Before Tax Cash Flow** | | | $ 351,103 | $ 361,313 | $ 371,822 | $ 382,640 | $ 393,776 | $ 405,239 | $ 417,039 | $ 429,186 | $ 441,690 | $ 454,562 |

WMATA-INV 000811

## SUPPORTABLE DEBT CALCULATIONS

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

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

Cap. value should be 2016

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

**ACTUAL PROJECT IRR** 20.26%

NPV @ 8% 5,651,807

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

plug in paid down principal

*what about paid principal?*

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

WMATA-INV 000813

**From:** <eric.smart@bolansmart.com>
**To:** <okarim@bannekerventures.com>
**Date:** 10/27/2008 11:11:44 AM
**Subject:** Re: Jazz Pro Forma

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?

(b) 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.
>
> 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
> in
> 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 BlackBerry™ smartphone with SprintSpeed
>
>
--
Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037
202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com

**CC:** "Rosalyn Doggett" <rdoggett@wmata.com>

Meeting with Omar

Josh Roy
Joel 10/24/08

Joel - follow up with Brian next week ...
Omar: you must discount FMV if there is affordable
Omar - relying on

**From:** <okarim@bannekerventures.com>
**To:** "Rosslyn Doggett" <rdoggett@wmata.com>
**Date:** 10/24/2008 12:33:59 PM
**Subject:** Re: Pro Forma

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.

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.

Equity gets 17% pref
Other 3% goes to?
Project pencils at 21%
Equity wants 17%

3) There seems to be no account for five years of paid down principal in 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 BlackBerry® smartphone with SprintSpeed

**CC:** "Joel Washington" <jrwashington@wmata.com>, "Joshua W. Montague" <jwmontague@wmata.com>

Affordable Housing Issues for Consideration

The Florida Avenue joint developer (Banneker)
is essentially asking WMATA to write down the cost of affordable housing by reducing rent as greatly as possible, including rent from market rate housing. WMATA would like a reading from FTA as to what would be acceptable.

Is it acceptable to write the cost of housing down beyond the land value (and resultant rent) assigned to the affordable housing? In the past our appraisers have deemed affordable housing (as defined by each local jurisdiction) to have 0% or a somewhat higher percentage of affordable land value. FTA has accepted these appraisals. Further, these appraisals were based on legislative requirements of local jurisdictions which have ranged from 8% to 15% of housing units constructed at the local definition of affordable.

**From:** Rosalyn Doggett
**To:** Joel R. Washington
**Date:** 10/23/2008 5:53:56 PM
**Subject:** FTA Affordable Housing Questions

Does the writeup below make sense?

Affordable Housing Issues for Consideration

The Florida Avenue joint developer (Banneker)
is essentially asking WMATA to write down the cost of affordable housing by reducing rent as greatly as possible, including rent from market rate housing and retail, based on a residual land value analysis. The residual land value analysis takes into account income from rents , etc., expenses, assumptions on reasonable investment costs and returns and assesses what is left over to pay a ground lease. WMATA would like a reading from FTA as to what would be acceptable.

- Is it acceptable to write the cost of housing down beyond the land value (and resultant rent) assigned to the affordable housing?

In the past our appraisers have deemed affordable housing (as defined by each local jurisdiction) to have 0% or a somewhat higher percentage of ~~land~~ total value. FTA has accepted these appraisals. Further, these appraisals were based on legislative requirements of local jurisdictions which have ranged from 8% to 15% of housing units ~~constructed at the local definition of affordable~~ being affordable. In the case of the District of Columbia, there is presently no legislative or regulatory requirement; however, in going through a process of getting Planned Unit Development approvals for higher density, it is likely that the developer would be required to have a percentage of affordable housing as a condition of approval.

- If it is acceptable, what should the parameters be?

It is understood that the value could not dip below appraised value, but is there another benchmark above that?

**From:** <eric.smart@bolansmart.com>
**To:** <rdoggett@wmata.com>
**Date:** 10/23/2008 4:07:04 PM
**Subject:** Florida IRR

Roz

Per my phone message, as we progressed to sensitivity test the Jazz model we discovered what may be a pretty serious flaw in the IRR computations. It appears the developer is not including all of the interim net cash flow as part of the 17% return on equity. The attached PDFs summarize what happens if the IRR comps are corrected to reflect a 17% IRR, plus what happens to the returns if some of WMATA's deal structure is restored.

Let's discuss. Might be helpful in the interim if you sent something like the following to the developer:

In working through the provided proforma we discovered what we think are some computation problems regarding the IRR:

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 actuall IRR of 20.16% is excessive.

3) There seems to be no account for five years of paid down principal in the debt payment schedule.

While addressing these needed corrections we would ask that you also to conform the spreadsheets with the summary PDF pages presented to us earlier, in particular using a $1.20 psf rent for the affordables, the annual WMATA lease payment and the prior project construction costs.
--
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Roy / Eric
10/16/08

179
130

sf 49,000 × $57 × .07 = 196
$597 (deal) − $530 (affu) = 67
263 rent discount from today

total rent 179 × $57 × .07 = 714
− 263
$ 451 today × .03 until closing
$ 507

1. What is affordable structure? what % at what % AMI?
   20% at 50% AMI?
2. You will still need $4 to $5M grant (on land value for 179,000 sf = $10M)

---

29 units = 29,000 sf (generous) × .57 × .07 = $115,000
land value of aff. units

714 today
− 116 today
$ 598 K today
673 K in 4 years

**From:** <eric.smart@bolansmart.com>
**To:** "Rosalyn Doggett" <rdoggett@wmata.com>
**Date:** 10/15/2008 2:30:44 PM
**Subject:** Re: Florida Avenue

To: Roz
Re: Florida Ave revised proposal

Three summary comments per yesterday's discussion:

1) Do not see why developer should get a LEEDS related credit when overall project cost is the same per square foot between the two presented scenarios.

2) Obviously the recently submitted developer comparisons do not permit easy comparison to the proforma data relied upon as part of the initial developer designation. Without clarification of many changed items it would not seem there is a basis provided to change the deal structure, at least as it relates to the assumptions presented at the time of the preliminary award.

3) Focusing on the 20% affordable housing component alone, we make the following observations:

a) The developer's willingness to increase the ground rent structure by $97,000 earlier in 2008 suggests, at least at some level, that they valued the cost of providing 10 affordables at approximately 60% AMI in the range of $10,000 per unit per year. Employing a 6.0% cap rate would value the waived affordable subsidy in the range of $165,000 per unit, not out of line with what an independent analysis would likely substantiate.

10 units

b) Unfortunately the above ratios cannot be applied as a constant when increasing the percentage of affordables, since at 20% vs. 10% there are fewer market units per affordable to help offset the extra costs. The simple math on this suggests that if there are 11.11% fewer market units to be built relative to the number of affordables there is an additional proportional developer cost needed to offset the extra affordable on the order of $11,250 per unit ($10,000 x 9/8).

c) The drop of proforma affordables rent from $1.50 to $1.20 per FAR appears to pretty much conform with going from a 60% AMI income to a 50% AMI, assuming the affordable units' apt sizes average 95% of the market units (per DC standard requirements). This 20% drop in rents, other things being constant, would increase the relative cost of the affordables to the developer by 20%, or $13,500 per unit compared with the initial $10,000 cost per unit ($11,250 x (($1.50-$1.20)/$1.50)).

d) Figure that if you allow for a discount for the 29 affordables totaling $391,500 ($13,500 x 29 units), you will gross up the overall rent structure to include the additional 43,338 FAR (178,752 gsf – 135,414 gsf) valued at $60 per FAR per the term sheet equaling $130,014 per year ($2,600,280 x .5.0%), or a total of $727,014 ($597,000 + $130,014), then perhaps offer to discount $391,500 as a recognized credit for the affordables, netting out at a base year ground rent of $355,514 (all else being held the same). This is probably much more than you were thinking of conceding, so you can simplify based on whatever starting

but we used 7%, not 5%

$260,000 ±
597,000
797,000
− 497,000
300,000

point you wish.

Perhaps you can begin by simply saying, as I thought you were saying yesterday, that you will credit them 20% on the grossed up land rent, or $581,600 ($727,014 x 80%), then maybe work down to a more comprehensive number. For what it is worth, if need be we think you could fall back on the kind of basic analysis outlined above.

Eric

On Fri, 10 Oct 2008 4:13:14 -0500 (EST), "Rosalyn Doggett" <rdoggett@wmata.com> wrote:
> I have sent you a barrage of e-mails and don't even know if you are around.
> I would like to talk to you about FL Ave on Tues. Essentially, this
> developer is attempting to renege on a number of bases. Only a correction
> for actual affordable housing makes sense to me. He is claiming he had 10%
> work force only in his prior pro formas which you have and I will attempt to
> look at this weekend along with 3 other work assignments!
>
>
>
--
Eric Smart, Bolan Smart Associates, Inc.
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www.bolansmart.com

FOIA CONFIDENTIAL TREATMENT REQUESTED

**LIHTC Calculation**

| **Qualifying Costs** | | **LIHTC** |
|---|---|---|
| Total Development Cost (Residential Portion) | $ | 44,228,870 |
| Less: | | |
| FF&E | | 150,000 |
| Parking | | 1,350,000 |
| Marketing | | 442,406 |
| Total Non-Qualifying Costs | $ | 1,942,406 |
| **Total Eligible Costs** | $ | 42,286,464 |

| **Valuation** | | |
|---|---|---|
| Total Eligible Costs (see above) | $ | 42,286,464 |
| x Factor ( LIHTC - High Cost Area Adjustment) | | 130% |
| Total Adjusted Basis | | 54,972,403 |
| x Applicable Fraction | | 20% |
| **Total Qualified Basis** | | **10,994,481** |
| x Annual Tax Rate | | 3.4% |
| Annual Credit | | 373,812 |
| Applicable Period (Years) | | 10 |
| Credit Amount | | 3,738,123 |
| x Equity Proceeds from Sale of Credits @ | | $0.65 |
| **Realized Value to Project** | **$** | **2,429,780** |

WMATA-INV 000826

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

## Summary Data

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Total Possible Project GSF | **6.00 FAR** | 178,752 |
| Total Buildable Residential + Retail GSF | | 178,752 |
| Retail GSF | | 14,000 |
| Retail NSF | 90% efficiency | 12,600 |
| Residential Gross SF | 100% | 164,752 |
| Residential Net SF | 83% efficiency | 136,744 |
| **Residential Net SF - Market** | **80%** | 109,395 |
| **Residential Net SF - Affordable** | **20%** | 27,349 |
| Total No. of Residential Units | 950 SF avg | 144 |
| Market Rate Units | 80% | 115 |
| Affordable Units | 20% | 29 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | 15 |
| Total Parking Spaces | | 60 |

**Program % Breakdown**

| | |
|---|---|
| Residential | 92.17% |
| Retail | 7.83% |

**Lease Payments**

| | | |
|---|---|---|
| WMATA - Year 1 of Stabilization | $ | 150,000 |

**Project Vacancy**

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

**% of Project Revenue**

| | |
|---|---|
| Residential | 91% |
| Retail | 9% |

**Residential Per SF revenues**

| | | |
|---|---|---|
| Market | $ | 2.70 |
| Affordability | $ | 1.10 |
| Loan Rate | | 7.40% |
| WMATA Annual Lease Payment - Year 1 | $ | 150,000 |
| Security Deposit | | 50,000 |
| Pre-Lease Payment | | 100,000 |

## Sources and Uses of Funds

| **Sources** | | **Residential** | **Retail** | **Total** |
|---|---|---|---|---|
| FHA Bonds | 80% LTC | $ 38,142,000 | $ - | $ 38,142,000 |
| LIHTC | | 2,429,780 | $ - | $ 2,429,780 |
| Private Equity | | 3,657,090 | 3,691,662 | 7,348,752 |
| **Total Sources of Funds** | | **$ 44,228,870** | **$ 3,691,662** | **$ 47,920,532** |

| **Uses** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Land | $ 230,420 | $ 19,580 | $ 250,000 |
| Hard Costs | 35,860,207 | 2,192,546 | 38,052,754 |
| Transaction/Leasing Fees | 305,997 | 26,003 | 332,000 |
| Architectural/MEP, Structural Services | 1,455,506 | 123,683 | 1,579,189 |
| Marketing | 442,406 | 37,594 | 480,000 |
| General and Administrative | 1,377,910 | 217,090 | 1,595,000 |
| Financing Costs | 2,720,648 | 43,316 | 2,763,964 |
| Real Estate Taxes | 341,021 | 28,979 | 370,000 |
| Permit, Utility and Municipal Fees | 376,444 | 31,989 | 408,433 |
| Legal and Accounting | 460,840 | 39,160 | 500,000 |
| Retail | - | 875,853 | 875,853 |
| Insurance | 25,968 | 2,207 | 28,174 |
| Miscellaneous Expenses | 631,503 | 53,663 | 685,165 |
| **Total Uses of Funds** | **$ 44,228,870** | **$ 3,691,662** | **$ 47,920,532** |

## Summary of Stabilized Returns at Sale

| **2016** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Effective Gross Income | $ 4,165,754 | $ 412,065 | $ 4,577,819 |
| Expenses | $ 995,047 | $ 20,244 | $ 1,015,291 |
| **Net Operating Income** | **$ 3,170,707** | **$ 391,821** | **$ 3,562,528** |
| Less | | | |
| Reserves | $ 36,709 | $ 21,224 | $ 57,933 |
| Debt Service | $ 2,822,160 | - | $ 2,822,160 |
| Stabilized Net Cash Flow 2016 | **$ 311,838** | **$ 370,597** | **$ 682,435** |

| | | |
|---|---|---|
| **Avail Proceeds before LEED, WMATA & Return to Equity Investor** | | **12,635,657** |
| **Impact of LEED Certification** | 0.0% hard costs | - |
| Avail pre WMATA share | | 12,635,657 |
| WMATA Share of Avail Profit | 0% avail profit | - |
| Net Proceeds after WMATA share paid | | 12,635,657 |
| **Preferred Return** | 17% per year | 9,159,396 |
| **Potential proceeds avail to Developers after pref paid** | | 3,476,262 |

WMATA-INV 000827

**From:** Joshua W. Montague
**To:** Doggett, Rosalyn
**Date:** 10/8/2008 12:02:15 PM
**Subject:** Fwd: Re: Florida Avenue: Draft of the JDA / Lease

Is this something we normally make official by putting in writing? We might want to take this opportunity to extend the return of the Proposal Security also.

>>> Rosalyn Doggett 10/8/2008 12:00:37 PM >>>
The JDS (solicitation) asks developers to allow 5 months for negotiation and approval of a contract. This has been informal board policy in the past (which we have used to prevent developers from extending negotiations forever). We need to talk to Omar anyway about his extensive rent reduction requests. So, I would be willing to grant an extension of a month so that we would finish negotiations by the end of November to take to the Board in January instead of December.

>>> Joshua W. Montague 10/8/2008 11:30 AM >>>
Hi Rosalyn,

I went through the Term Sheet and looked at the provisions for delay. Here is what I found:

1. Though Section 2 states that WMATA will prepare the JDA, no mention is made as to the timing.

2. The parties have 5 months after the execution of the Term Sheet to present the JDA to the BOD. No mention is made of extending this period. The only references to this time period concern 1) the Developer has the exclusive right to negotiate the JDA for these 5 months; and 2) if the JDA is not executed within said 5 months, WMATA must return the Proposal Security to the Developer (it appears that the Proposal Security must be returned whether the Term Sheet is terminated or not).

3. Section 7.8 of the Term Sheet addresses extensions due to "WMATA Delays". But, this section only allows for extending the maximum length of the Pre-stabilization period.

So, the Term Sheet does not effectively address a delay due to WMATA's tardiness in providing a draft of the JDA.

How have you handled this in the past?

Josh

>>> "Omar A. Karim" <okarim@bannekerventures.com> 10/7/2008 5:50:52 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
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

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 A. Karim" <okarim@bannekerventures.com>
**To:** "'Rosalyn Doggett'" <rdoggett@wmata.com>
**Date:** 10/6/2008 1:48:11 PM
**Subject:** FW: Follow-up re: LEED Certification and Affordability Impact on Florida Avenue Project

Ms. Doggett,

Any word on when we might receive the draft JDA and Lease? One of our counsel will be out of town all next week and we would love to get the negotiations going as soon as possible.

Thanks.

Omar

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, October 02, 2008 7:09 PM
To: 'Rosalyn Doggett'
Cc: 'Joel R. Washington'
Subject: Follow-up re: LEED Certification and Affordability Impact on Florida Avenue Project
Importance: High

Ms. Doggett,

As a follow-up to our meeting last Friday, attached please find an updated analysis of the impact of the LEED certification and affordable unit inclusion on the Jazz @ Florida Avenue project. In sum, based on the LEED and affordable requirements imposed on the project, to keep us in the same financial situation that we were in prior to these impositions, the following changes would have to be made:

- Project would increase from 4.5 FAR to 6.0 FAR w/ no impact to any payments to WMATA

- Affordable Units: Increase from 0% affordable units to 20% affordable at 50% AMI

- Rents: Decrease from $3/SF to $2.70/SF (market rate) and $1.20/SF (affordable units)

- LEED Certification: 2.5% of hard costs which is $959k reduction in available proceeds ~~[illegible]~~ no. not retroactive for WMATA not library from city

- WMATA Share of Profit upon sale of Project: Decrease from 10% to 0% of potential profit no

- Annual Lease Payment: Decrease from $597k/year to $205k/year to $4776

- Security Deposit: Decrease from $250k to $50k no

- Pre-Lease Payment: Decrease from $345k to $100k no

We would like to schedule a follow-up meeting next week to discuss these impacts. Also, when should we expect to receive drafts of the JDA and lease?

Looking forward to speaking with you soon.

Omar

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED

I want 164,752 = res. gsf  131,801 (res. mkt) + retail gsf 14,000 = 145,801 × $57 gsf  $8,310,657 × .07 = ~~$835,001~~ $581,745 today  Can do 157, E bonds

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

## Summary Data

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Total Possible Project GSF | **6.00 FAR** | 178,752 |
| Total Buildable Residential + Retail GSF | | 178,752 |
| Retail GSF | | 14,000 |
| Retail NSF | 90% efficiency | 12,600 |
| Residential Gross SF | 100% | 164,752 |
| Residential Net SF | 83% efficiency | 136,744 |
| **Residential Net SF - Market** | **80%** | 109,395 |
| **Residential Net SF - Affordable** | **20%** | 27,349 |
| Total No. of Residential Units | 950 SF avg | 144 |
| Market Rate Units | 80% | 115 |
| Affordable Units | 20% | 29 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | 15 |
| Total Parking Spaces | | 60 |

399,288 ~~271,894~~ ~~300,298~~ monthly rent is same as in old pro forma  ×2.70  ×1.20

**Program % Breakdown**  109,395 × 2.70 = 295,366  27,349 × 1.20 = 32,818  136,744  328,184 per month

| | |
|---|---|
| Residential | 92.17% |
| Retail | 7.83% |

**Lease Payments**

| | |
|---|---|
| WMATA - Year 1 of Stabilization | $ 205,000 |

**Project Vacancy**

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

**% of Project Revenue**

| | |
|---|---|
| Residential | 91% |
| Retail | 9% |

**Residential Per SF revenues**

| | | |
|---|---|---|
| Market | $3.00 | $ 2.70 |
| Affordability | $1.50 | $ 1.20 vs 1.35 |
| Loan Rate | verify | 7.53% |
| WMATA Annual Lease Payment | | $ 205,000 |
| Security Deposit | | 50,000 |
| Pre-Lease Payment | | 100,000 |

## Sources and Uses of Funds

| **Sources** | | **Residential** | **Retail** | **Total** |
|---|---|---|---|---|
| Bond Financing | 73% LTC | $ 35,784,000 | $ - | $ 35,784,000 |
| LIHTC (closes to 1/3 of dev. cost for a 40% project) | | 2,327,629 | $ - | $ 2,327,629 |
| Private Equity | | 5,317,088 | 5,745,304 | 11,062,392 |
| **Total Sources of Funds** (is it 1/2 for a 20% project?) | | **$ 41,101,088** | **$ 5,745,304** | **$ 49,174,021** |

| **Uses** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Land | $ 230,420 | $ 19,580 | $ 250,000 |
| Hard Costs | 35,738,509 | 2,639,717 | 38,378,226 |
| Transaction/Leasing Fees | 329,039 | 27,961 | 357,000 |
| Architectural/MEP, Structural Services | 1,270,293 | 322,404 | 1,592,696 |
| Marketing | 442,406 | 37,594 | 480,000 |
| General and Administrative | 758,042 | 836,958 | 1,595,000 |
| Financing Costs | 1,165,157 | 99,011 | 1,264,168 |
| Real Estate Taxes | 341,021 | 28,979 | 370,000 |
| Permit, Utility and Municipal Fees | 380,131 | 32,302 | 412,433 |
| Legal and Accounting | 175,000 | 425,000 | 600,000 |
| Retail | - | 877,970 | 877,970 |
| Insurance | 25,398 | 2,158 | 27,556 |
| Miscellaneous Expenses | 245,671 | 395,671 | 641,341 |
| **Total Uses of Funds** | **$ 41,101,088** | **$ 5,745,304** | **$ 46,846,392** |

~~$201/sf~~  ÷ 178,752 = $262/gsf

## Summary of Stabilized Returns at Sale/Refinance

| **2017** (in 8 years or 72 months) | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Effective Gross Income | $ 4,537,008 | $ 439,880 | $ 4,976,889 |
| Expenses | $ 965,093 | $ 26,894 | $ 991,987 |
| **Net Operating Income** | **$ 3,571,915** | **$ 412,987** | **$ 3,984,902** |
| Less | | | |
| Reserves | $ 37,446 | $ 22,082 | $ 59,528 |
| Debt Service | $ 2,694,609 | - | $ 2,694,609 |
| Stabilized Net Cash Flow 2017 | **$ 839,859** | **$ 390,905** | **$ 1,230,764** |

Est 3,741,298

| | | |
|---|---|---|
| **Avail Proceeds before LEED, WMATA & Return to Equity Investor** | | **18,990,508** |
| **Impact of LEED Certification** (is LEED not reflected above?) | **2.5% hard costs** | **959,456** |
| Avail pre WMATA share | | 18,031,053 |
| WMATA Share of Avail Profit | **0% avail profit** | - |
| Net Proceeds after WMATA share paid | | 18,031,053 |
| **Preferred Return** to Whom | **17% per year** 8 years (how many years, if $11M) | 15,252,893 |
| **Potential proceeds avail to Developers after pref paid** | | 3,737,615 |

- mixes up income + cap. cost & ?

Should be $9,5,000

What about AIHTC? need a full cash flow

WMATA-INV 000832

FOIA CONFIDENTIAL TREATMENT REQUESTED

**Summary Data**

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

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Total Possible Project GSF | **4.50 FAR** | 135,414 |
| Total Buildable Residential + Retail GSF | | 135,414 |
| Retail GSF | | 14,000 |
| Retail NSF | 90% efficiency | 12,600 |
| Residential Gross SF | 100% | 121,414 |
| Residential Net SF | 83% efficiency | 100,774 |
| **Residential Net SF - Market** | **100%** | 100,774 |
| **Residential Net SF - Affordable** | **0%** | 0 |
| Total No. of Residential Units | 950 SF avg | 106 |
| Market Rate Units | 100% | 106 |
| Affordable Units | 0% | 0 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | 15 |
| Total Parking Spaces | | 60 |

**Program % Breakdown**

| | |
|---|---|
| Residential | 89.66% |
| Retail | 10.34% |

**Lease Payments**

| | | |
|---|---|---|
| WMATA - Year 1 of Stabilization | $ | 597,000 |

**Project Vacancy**

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

**% of Project Revenue**

| | |
|---|---|
| Residential | 92% |
| Retail | 8% |

**Residential Per SF revenues**

| | | |
|---|---|---|
| Market | $ | **3.00** |
| Affordability | $ | - |
| Loan Rate | | 7.53% |
| WMATA Annual Lease Payment | $ | **597,000** |
| Security Deposit | | **250,000** |
| Pre-Lease Payment | | **345,000** |

| **Sources** | | **Residential** | **Retail** | **Total** |
|---|---|---|---|---|
| Debt | 78% LTC | $ 29,359,000 | $ - | $ 29,359,000 |
| Private Equity | | 2,647,754 | 5,736,807 | 8,384,561 |
| **Total Sources of Funds** | | **$ 32,006,754** | **$ 5,736,807** | **$ 37,743,561** |

| **Uses** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Land | $ 623,146 | $ 71,854 | $ 695,000 |
| Hard Costs | 26,861,471 | 2,644,022 | 29,505,493 |
| Transaction/Leasing Fees | 320,091 | 36,909 | 357,000 |
| Architectural/MEP, Structural Services | 968,106 | 256,372 | 1,224,478 |
| Marketing | 430,374 | 49,626 | 480,000 |
| General and Administrative | 757,415 | 837,585 | 1,595,000 |
| Financing Costs | 977,930 | 112,763 | 1,090,693 |
| Real Estate Taxes | 331,747 | 38,253 | 370,000 |
| Permit, Utility and Municipal Fees | 312,284 | 36,009 | 348,293 |
| Legal and Accounting | 175,000 | 425,000 | 600,000 |
| Retail | - | 846,560 | 846,560 |
| Insurance | 19,591 | 2,259 | 21,851 |
| Miscellaneous Expenses | 229,597 | 379,597 | 609,194 |
| **Total Uses of Funds** | **$ 32,006,754** | **$ 5,736,807** | **$ 37,743,561** |

**Summary of Stabilized Returns at Sale/Refinance**

| **2017** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Effective Gross Income | $ 4,209,872 | $ 386,941 | $ 4,596,813 |
| Expenses | $ 1,266,521 | $ 79,833 | $ 1,346,355 |
| **Net Operating Income** | **$ 2,943,350** | **$ 307,108** | **$ 3,250,458** |
| Less | | | |
| Reserves | $ 27,596 | $ 22,082 | $ 49,678 |
| Debt Service | $ 2,210,790 | - | $ 2,210,790 |
| Stabilized Net Cash Flow 2017 | **$ 704,965** | **$ 285,026** | **$ 989,991** |

| | | |
|---|---|---|
| **Avail Proceeds before LEED, WMATA & Return to Equity Investor** | | **17,050,539** |
| **Impact of LEED Certification** | **0.0% hard costs** | - |
| Avail pre WMATA share | | 17,050,539 |
| WMATA Share of Avail Profit | **10% avail profit** | 1,705,054 |
| Net Proceeds after WMATA share paid | | 15,345,485 |
| **Preferred Return** | **17% per year** | 11,560,684 |
| **Potential proceeds avail to Developers after pref paid** | | 3,784,802 |

WMATA-INV 000833

130
57
910
650
7410
.07
$518.70 taking

FOIA CONFIDENTIAL TREATMENT REQUESTED

Carol Bruce Lorch
Nat Food Roz

10/6/08

- Green Bldg. not specified in our RFP but is if in fact required (in City Green Building Act)
  ONLY ENCOURAGE for future
- ~~Affordable housing~~
  Whatever you must do to meet DC Act of 2006 is your problem

- Reduce by affordable sf.

Carol: How high would we go
Roz: Not more than 20%.

**From:** "Omar A. Karim" <okarim@bannekerventures.com>
**To:** "'Rosalyn Doggett'" <rdoggett@wmata.com>
**Date:** 10/2/2008 7:09:03 PM
**Subject:** Follow-up re: LEED Certification and Affordability Impact on Florida Avenue Project

Ms. Doggett,

As a follow-up to our meeting last Friday, attached please find an updated analysis of the impact of the LEED certification and affordable unit inclusion on the Jazz @ Florida Avenue project. In sum, based on the LEED and affordable requirements imposed on the project, to keep us in the same financial situation that we were in prior to these impositions, the following changes would have to be made:

- Project would increase from 4.5 FAR to 6.0 FAR w/ no impact to any payments to WMATA

- Affordable Units: Increase from 0% affordable units to 20% affordable at 50% AMI

- Rents: Decrease from $3/SF to $2.70/SF (market rate) and $1.20/SF (affordable units)

- LEED Certification: 2.5% of hard costs which is $959k reduction in available proceeds

- WMATA Share of Profit upon sale of Project: Decrease from 10% to 0% of potential profit

- Annual Lease Payment: Decrease from $597k/year to $205k/year

- Security Deposit: Decrease from $250k to $50k

- Pre-Lease Payment: Decrease from $345k to $100k

We would like to schedule a follow-up meeting next week to discuss these impacts. Also, when should we expect to receive drafts of the JDA and lease?

Looking forward to speaking with you soon.

Omar

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

**CC:** "'Joel R. Washington'" <jrwashington@wmata.com>

Omar
Joel
Jon
Roz

9/26/08

1. LEED base level = 3% cost Δ = $1.1 M @ 4.5 FAR
dla piper / marc biondi agree that WMATA is "instrumentality of DC"

2. 20% affordability, said Jim Graham
mix within the 20% as to % of AMI TBD

financial implications of affordability
previous proposal was 10%

Budget Implications

| | | |
|---|---|---|
| 4.5 all mkt | $27M debt | old project |
| 4.5 20% aff | | 0 to WMATA |
| 6.0 20% aff | | less than 50% of RFP to WMATA |

3. Jim Graham wants to have a BID U St to 14th St

4.

Omar by phone 9/8/08

Graham: Omar met with Lemon Thursday
Graham suspended 20% at 30% AMI
10% at 30%

40% at 60%
20% at 50%

Omar coming in on Friday - 9am.
with financial recommendation re affordable

JDA

Chad DuBeau - Roz + Kermit

8/29/08
Omar
Roz
Joel

$1.5M arch. fee
.5M

Contemplated $1.5M land loan in pro forma — NO

Equity = ~~Mitsubishi~~ Goldman

Affordable Housing
LEED

Land loan - 8%, Equity 20%

Extend flea market on same terms
Can you get a land loan on a terminable lease?

Board = Dec 18

FOIA CONFIDENTIAL TREATMENT REQUESTED

not sure where these are from —

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

**Summary Data** *CLARIFICATION??*

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Total Possible Project GSF | **6.00 FAR** | 178,752 |
| Total Buildable Residential + Retail GSF | | 178,752 |
| Retail GSF | | 14,000 |
| Retail NSF | 90% efficiency | 12,600 |
| Residential Gross SF | 100% | 164,752 |
| Residential Net SF | 83% efficiency | 136,744 |
| **Residential Net SF - Market** | **80%** | 109,395 |
| **Residential Net SF - Affordable** | **20%** | 27,349 |
| Total No. of Residential Units | 950 SF avg | 144 |
| Market Rate Units | 80% | 115 |
| Affordable Units | 20% | 29 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | 15 |
| Total Parking Spaces | | 60 |

**Program % Breakdown**

| | |
|---|---|
| Residential | 92.17% |
| Retail | 7.83% |

**Lease Payments**

| | | |
|---|---|---|
| WMATA - Year 1 of Stabilization | $ | 150,000 |

**Project Vacancy**

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

**% of Project Revenue**

| | |
|---|---|
| Residential | 91% |
| Retail | 9% |

**Residential Per SF revenues**

| | | |
|---|---|---|
| Market | $ | 2.70 |
| Affordable Units (at 50% of AMI) | $ | 1.10 |
| Loan Rate | | 7.40% |
| WMATA Annual Lease Payment - Year 1 | $ | **150,000** |
| Security Deposit | | **50,000** |
| Pre-Lease Payment | | **100,000** |

average ?

**Sources and Uses of Funds**

| **Sources** | | **Residential** | **Retail** | **Total** |
|---|---|---|---|---|
| FHA Bonds | 79% LTC | $ 37,688,000 | $ - | $ 37,688,000 |
| LIHTC | | 2,426,863 | $ - | $ 2,426,863 |
| Private Equity | | 4,063,245 | 3,690,971 | 7,754,216 |
| **Total Sources of Funds** | | **$ 44,178,109** | **$ 3,690,971** | **$ 47,869,080** |

| **Uses** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Land | $ 230,420 | $ 19,580 | $ 250,000 |
| Hard Costs | 35,860,207 | 2,192,546 | 38,052,754 |
| Transaction/Leasing Fees | 305,997 | 26,003 | 332,000 |
| Architectural/MEP, Structural Services | 1,455,506 | 123,683 | 1,579,189 |
| Marketing | 442,406 | 37,594 | 480,000 |
| General and Administrative | 1,377,910 | 217,090 | 1,595,000 |
| Financing Costs | 2,671,951 | 42,800 | 2,714,752 |
| Real Estate Taxes | 341,021 | 28,979 | 370,000 |
| Permit, Utility and Municipal Fees | 376,444 | 31,989 | 408,433 |
| Legal and Accounting | 460,840 | 39,160 | 500,000 |
| Retail | - | 875,853 | 875,853 |
| Insurance | 25,940 | 2,204 | 28,145 |
| Miscellaneous Expenses | 629,465 | 53,490 | 682,955 |
| **Total Uses of Funds** | **$ 44,178,109** | **$ 3,690,971** | **$ 47,869,080** |

**Summary of Stabilized Returns at Sale**

| **2016** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Effective Gross Income | $ 4,165,754 | $ 412,065 | $ 4,577,819 |
| Expenses | $ 1,036,012 | $ 20,244 | $ 1,056,256 |
| **Net Operating Income** | **$ 3,129,742** | **$ 391,821** | **$ 3,521,563** |
| Less | | | |
| Reserves | $ 36,709 | $ 21,224 | $ 57,933 |
| Debt Service | $ 2,788,584 | - | $ 2,788,584 |
| Stabilized Net Cash Flow 2016 | **$ 304,450** | **$ 370,597** | **$ 675,047** |

*this section is wrong, but does not matter*

| | | |
|---|---|---|
| **Avail Proceeds before LEED, WMATA & Return to Equity Investor** | | **20,505,170** |
| **Impact of LEED Certification** | **0.0% hard costs** | **-** |
| Avail pre WMATA share | | 20,505,170 |
| WMATA Share of Avail Profit | **10% avail profit** | 2,050,517 |
| Net Proceeds after WMATA share paid | | 18,454,653 |
| **Preferred Return to Equity Investors** | **17% per year** | 11,781,164 |
| **Potential proceeds avail to Developers after pref paid** | | 6,673,489 |

WMATA-INV 000841

*CORRECTED IRR COMPUTATIONS?*

| NOI Projection | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|---|---|---|---|
| Net Operating Income | | | | $ 3,262,857 | $ 3,393,864 | $ 3,530,158 | $ 3,671,952 | $ 3,819,470 |
| Debt Service | $ 37,688,000 | | | $ 2,788,584 | $ 2,788,584 | $ 2,788,584 | $ 2,788,584 | $ 2,788,584 |
| Net Cash Flow | | | | $ 474,273 | $ 605,280 | $ 741,574 | $ 883,368 | $ 1,030,886 |

| IRR Calculation | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|---|---|---|---|
| Equity (Cash) | $ (1,938,554) | $ (5,815,662) | $ - | $ - | $ - | $ - | $ - | $ - |
| Net Cash Flow to Equity | - | | | 474,273 | 605,280 | 741,574 | 883,368 | 1,030,886 |
| Net Sales Proceeds to Equity | | | | | | | | 15,800,000 |
| Total Paid to All Equity | $ (1,938,554) | $ (5,815,662) | $ - | $ 474,273 | $ 605,280 | $ 741,574 | $ 883,368 | $ 16,830,886 |
| | IRR | 17.00% | | | | | | |

| Assumed Sale in 2016 | | | Amount |
|---|---|---|---|
| NOI in 2016 | | | 3,819,470 |
| Cap Value | 6.50% | | 58,761,000 |
| Cost of Sale | 3.00% | | (1,762,830) |
| Gross Sale Proceeds | | | 56,998,170 |
| Loan Amount | | *what about $1,195,000 in five years of paid principal?* | (36,493,000) |
| Net Sales Proceeds | | | 20,505,170 |
| **Net Sales Proceeds Before Pref and Splits** | | | **20,505,170** |
| WMATA Share | | *10% sales proceeds* | (2,050,517) |
| Net Proceeds after WMATA share paid | | | **18,454,653** |
| Additional Preferred Return | | | (15,800,000) |
| **Available proceeds after pref paid** | | *per developer inputs* | **6,673,489** |

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

## Summary Data

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

**Program % Breakdown**

| | |
|---|---|
| Residential | 92.17% |
| Retail | 7.83% |

**Lease Payments**

| | | |
|---|---|---|
| WMATA - Year 1 of Stabilization | $ | 150,000 |

**Project Vacancy**

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

**% of Project Revenue**

| | |
|---|---|
| Residential | 94% |
| Retail | 6% |

**Residential Per SF revenues**

| | | |
|---|---|---|
| Market | $ | 2.90 |
| Affordable Units (at 50% of AMI) | $ | 1.10 |

| | | |
|---|---|---|
| WMATA Annual Lease Payment - Year 1 | $ | 150,000 |
| Security Deposit | | 100,000 |
| Pre-Lease Payment | | 100,000 |

## Sources and Uses of Funds

| **Sources** | | **Residential** | **Retail** | **Total** |
|---|---|---|---|---|
| Debt | 65% LTC | $ 31,600,000 | $ - | $ 31,600,000 |
| Equity - LIHTC | | 2,651,984 | - | 2,651,984 |
| Equity - Sponsor/Institutional | | 10,547,314 | 3,674,467 | 14,221,780 |
| **Total Sources of Funds** | | **$ 44,799,298** | **$ 3,674,467** | **$ 48,473,765** |

| **Uses** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Land | $ 276,504 | $ 23,496 | $ 300,000 |
| Hard Costs | 35,860,207 | 2,192,546 | 38,052,754 |
| Transaction/Leasing Fees | 305,997 | 26,003 | 332,000 |
| Architectural/MEP, Structural Services | 1,455,506 | 123,683 | 1,579,189 |
| Marketing | 442,406 | 37,594 | 480,000 |
| General and Administrative | 1,377,910 | 217,090 | 1,595,000 |
| Financing Costs | 2,726,690 | 35,887 | 2,762,577 |
| Real Estate Taxes | 341,021 | 28,979 | 370,000 |
| Permit, Utility and Municipal Fees | 634,583 | 53,924 | 688,508 |
| Legal and Accounting | 599,091 | 50,909 | 650,000 |
| Retail | - | 818,127 | 818,127 |
| Insurance | 26,173 | 2,224 | 28,397 |
| Miscellaneous Expenses | 753,208 | 64,005 | 817,213 |
| **Total Uses of Funds** | **$ 44,799,298** | **$ 3,674,467** | **$ 48,473,765** |

## Summary of Stabilized Returns at Sale

| **2015** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Effective Gross Income | $ 4,613,156 | $ 272,242 | $ 4,885,398 |
| Expenses | $ 1,108,792 | $ 206,819 | $ 1,315,611 |
| **Net Operating Income** | **$ 3,504,364** | **$ 65,423** | **$ 3,569,787** |
| Less | | | |
| Reserves | $ 39,322 | $ 32,782 | $ 72,104 |
| Debt Service | $ 2,628,306 | - | $ 2,628,306 |
| Stabilized Net Cash Flow 2015 | **$ 836,735** | **$ 32,642** | **$ 869,377** |

| | | |
|---|---|---|
| **Avail Proceeds before WMATA & Returns** | | **11,918,465** |
| Avail pre WMATA share | | 11,918,465 |
| WMATA Share of Avail Profit | **0% avail profit** | - |
| Net Proceeds after WMATA share paid | | 11,918,465 |
| **Equity Yield Target** | **17.00% IRR** | 20,503,735 |
| **Actual Equity Yield** | **12.18% IRR** | |
| **Potential proceeds avail after IRR met** | | -8,585,269 |

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

**Summary Data** *MODIFIED CLARIFICATION*

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Total Possible Project GSF | **6.00 FAR** | 178,752 |
| Total Buildable Residential + Retail GSF | | 178,752 |
| Retail GSF | | 14,000 |
| Retail NSF | 90% efficiency | 12,600 |
| Residential Gross SF | 100% | 164,752 |
| Residential Net SF | 83% efficiency | 136,744 |
| **Residential Net SF - Market** | **80%** | 109,395 |
| **Residential Net SF - Affordable** | **20%** | 27,349 |
| Total No. of Residential Units | 950 SF avg | 144 |
| Market Rate Units | 80% | 115 |
| Affordable Units | 20% | 29 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | 15 |
| Total Parking Spaces | | 60 |

**Program % Breakdown**

| | |
|---|---|
| Residential | 92.17% |
| Retail | 7.83% |

**Lease Payments**

| | | |
|---|---|---|
| WMATA - Year 1 of Stabilization | $ | 310,000 |

**Project Vacancy**

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

**% of Project Revenue**

| | |
|---|---|
| Residential | 91% |
| Retail | 9% |

**Residential Per SF revenues**

| | | |
|---|---|---|
| Market | $ | **2.70** |
| Affordable Units (at 50% of AMI) | $ | **1.20** |
| Loan Rate | | 7.40% |
| WMATA Annual Lease Payment - Year 1 | $ | **310,000** |
| Security Deposit | | **250,000** |
| Pre-Lease Payment | | **345,000** |

**Sources and Uses of Funds**

| **Sources** | | **Residential** | **Retail** | **Total** |
|---|---|---|---|---|
| FHA Bonds | 75% LTC | $ 36,125,000 | $ - | $ 36,125,000 |
| LIHTC | | 2,444,716 | $ - | $ 2,444,716 |
| Private Equity | | 5,919,084 | 3,715,653 | 9,634,736 |
| **Total Sources of Funds** | | **$ 44,488,799** | **$ 3,715,653** | **$ 48,204,452** |

| **Uses** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Land | $ 640,567 | $ 54,433 | $ 695,000 |
| Hard Costs | 35,860,207 | 2,192,546 | 38,052,754 |
| Transaction/Leasing Fees | 305,997 | 26,003 | 332,000 |
| Architectural/MEP, Structural Services | 1,455,506 | 123,683 | 1,579,189 |
| Marketing | 442,406 | 37,594 | 480,000 |
| General and Administrative | 1,377,910 | 217,090 | 1,595,000 |
| Financing Costs | 2,576,603 | 41,025 | 2,617,628 |
| Real Estate Taxes | 341,021 | 28,979 | 370,000 |
| Permit, Utility and Municipal Fees | 376,444 | 31,989 | 408,433 |
| Legal and Accounting | 460,840 | 39,160 | 500,000 |
| Retail | - | 867,806 | 867,806 |
| Insurance | 25,882 | 2,199 | 28,082 |
| Miscellaneous Expenses | 625,415 | 53,145 | 678,560 |
| **Total Uses of Funds** | **$ 44,488,799** | **$ 3,715,653** | **$ 48,204,452** |

**Summary of Stabilized Returns at Sale**

| **2016** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Effective Gross Income | $ 4,199,185 | $ 398,961 | $ 4,598,146 |
| Expenses | $ 1,197,522 | $ 33,348 | $ 1,230,869 |
| **Net Operating Income** | **$ 3,001,663** | **$ 365,614** | **$ 3,367,276** |
| Less | | | |
| Reserves | $ 36,709 | $ 21,224 | $ 57,933 |
| Debt Service | $ 2,672,959 | - | $ 2,672,959 |
| Stabilized Net Cash Flow 2016 | **$ 291,995** | **$ 344,389** | **$ 636,385** |

*this section is wrong, but does not matter*

| | | |
|---|---|---|
| **Avail Proceeds before LEED, WMATA & Return to Equity Investor** | | **19,837,170** |
| **Impact of LEED Certification** | **0.0% hard costs** | **-** |
| Avail pre WMATA share | | 19,837,170 |
| WMATA Share of Avail Profit | **10% avail profit** | 1,983,717 |
| Net Proceeds after WMATA share paid | | 17,853,453 |
| **Preferred Return to Equity Investors** | **17.00% per year** | 14,973,206 |
| **Potential proceeds avail to Developers after pref paid** | | 2,880,247 |

WMATA-INV 000844

*CORRECTED IRR COMPUTATIONS?*

| NOI Projection | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|---|---|---|---|
| Net Operating Income | | | | $ 3,129,888 | $ 3,256,944 | $ 3,389,168 | $ 3,526,769 | $ 3,669,967 |
| Debt Service | $ 36,125,000 | | | $ 2,672,959 | $ 2,672,959 | $ 2,672,959 | $ 2,672,959 | $ 2,672,959 |
| Net Cash Flow | | | | $ 456,929 | $ 583,985 | $ 716,209 | $ 853,811 | $ 997,008 |

| IRR Calculation | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|---|---|---|---|
| Equity (Cash) | $ (2,408,684) | $ (7,226,052) | $ - | $ - | $ - | $ - | $ - | $ - |
| Net Cash Flow to Equity | - | | | 456,929 | 583,985 | 716,209 | 853,811 | 997,008 |
| Net Sales Proceeds to Equity | | | | | | | | 21,000,000 |
| Total Paid to All Equity | $ (2,408,684) | $ (7,226,052) | $ - | $ 456,929 | $ 583,985 | $ 716,209 | $ 853,811 | $ 21,997,008 |

| | |
|---|---|
| IRR | 17.00% |

| Assumed Sale in 2016 | | | Amount |
|---|---|---|---|
| NOI in 2016 | | | 3,669,967 |
| Cap Value | 6.50% | | 56,461,000 |
| Cost of Sale | 3.00% | | (1,693,830) |
| Gross Sale Proceeds | | | 54,767,170 |
| Loan Amount | | *what about $1,195,000 in five years of paid principal?* | (34,930,000) |
| Net Sales Proceeds | | | 19,837,170 |
| **Net Sales Proceeds Before Pref and Splits** | | | **19,837,170** |
| WMATA Share | | *10% sales proceeds* | (1,983,717) |
| Net Proceeds after WMATA share paid | | | **17,853,453** |
| Additional Preferred Return | | | (21,000,000) |
| **Available proceeds after pref paid** | | *per developer inputs* | **2,880,247** |

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

he discounted market rents by 15% vs. original proforma

### Summary Data

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Total Possible Project GSF | **6.00 FAR** | 178,752 |
| Total Buildable Residential + Retail GSF | | 178,752 |
| Retail GSF | | 14,000 |
| Retail NSF | 90% efficiency | 12,600 |
| Residential Gross SF | 100% | 164,752 |
| Residential Net SF | 83% efficiency | 136,744 |
| **Residential Net SF - Market** | **80%** | 109,395 |
| **Residential Net SF - Affordable** | **20%** | 27,349 |
| Total No. of Residential Units | 950 SF avg | 144 |
| Market Rate Units | 80% | 115 |
| Affordable Units | 20% | 29 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | 15 |
| Total Parking Spaces | | 60 |

**Program % Breakdown**

| | |
|---|---|
| Residential | 92.17% |
| Retail | 7.83% |

**Lease Payments**

| | |
|---|---|
| WMATA - Year 1 of Stabilization | $ 250,000 |

**Project Vacancy**

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

**% of Project Revenue**

| | |
|---|---|
| Residential | 91% |
| Retail | 9% |

**Residential Per SF revenues**

| | |
|---|---|
| Market | $ 2.70 |
| Affordability | $ 1.20 |
| Loan Rate | 7.53% |
| WMATA Annual Lease Payment | $ 250,000 |
| Security Deposit | 50,000 |
| Pre-Lease Payment | 50,000 |

maybe get Trust Funds @ 50-80 $1.5 at 50K for 30 dec

### Sources and Uses of Funds

| **Sources** | | **Residential** | **Retail** | **Total** |
|---|---|---|---|---|
| Bond Financing | 71% LTC | $ 35,306,000 | $ - | $ 35,306,000 |
| LIHTC | | 2,350,490 | $ - | $ 2,350,490 |
| Private Equity | | 6,192,948 | 5,776,338 | 11,969,285 |
| **Total Sources of Funds** | | **$ 41,498,948** | **$ 5,776,338** | **$ 49,625,775** |

| **Uses** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Land | $ 640,567 | $ 54,433 | $ 695,000 |
| Hard Costs | 35,738,509 | 2,639,717 | 38,378,226 |
| Transaction/Leasing Fees | 329,039 | 27,961 | 357,000 |
| Architectural/MEP, Structural Services | 1,270,293 | 322,404 | 1,592,696 |
| Marketing | 442,406 | 37,594 | 480,000 |
| General and Administrative | 758,042 | 836,958 | 1,595,000 |
| Financing Costs | 1,153,262 | 98,000 | 1,251,262 |
| Real Estate Taxes | 341,021 | 28,979 | 370,000 |
| Permit, Utility and Municipal Fees | 380,131 | 32,302 | 412,433 |
| Legal and Accounting | 175,000 | 425,000 | 600,000 |
| Retail | - | 875,546 | 875,546 |
| Insurance | 25,390 | 2,158 | 27,547 |
| Miscellaneous Expenses | 245,287 | 395,287 | 640,574 |
| **Total Uses of Funds** | **$ 41,498,948** | **$ 5,776,338** | **$ 47,275,285** |

### Summary of Stabilized Returns at Sale/Refinance

| **2017** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Effective Gross Income | $ 4,537,008 | $ 435,795 | $ 4,972,803 |
| Expenses | $ 1,011,774 | $ 30,979 | $ 1,042,754 |
| **Net Operating Income** | **$ 3,525,234** | **$ 404,815** | **$ 3,930,049** |
| Less | | | |
| Reserves | $ 37,446 | $ 22,082 | $ 59,528 |
| Debt Service | $ 2,658,609 | - | $ 2,658,609 |
| Stabilized Net Cash Flow 2017 | **$ 829,178** | **$ 382,734** | **$ 1,211,912** |

| | | |
|---|---|---|
| **Net Sales Proceeds Before LEED Impact, Splits and Pref** | | **17,736,065** |
| **Impact of LEED Certification** | **2.5% hard costs** | **959,456** |
| Avail pre WMATA share | | 16,776,609 |
| WMATA Share of Avail Profit | **0% avail profit** | - |
| Net Proceeds after WMATA share paid | | 16,776,609 |
| **Preferred Return** | **16% per year** | 15,181,470 |
| **Potential proceeds avail to Developers after pref paid** | | 2,554,594 |

— Demonstrate to "Share" any subsidy; he keeps 50% etc etc

WMATA-INV 000846

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

## Summary Data

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Total Possible Project GSF | **4.50 FAR** | 135,414 |
| Total Buildable Residential + Retail GSF | | 135,414 |
| Retail GSF | | 14,000 |
| Retail NSF | 90% efficiency | 12,600 |
| Residential Gross SF | 100% | 121,414 |
| Residential Net SF | 83% efficiency | 100,774 |
| **Residential Net SF - Market** | 80% | 80,619 |
| **Residential Net SF - Affordable** | 20% | 20,155 |
| Total No. of Residential Units | 950 SF avg | 106 |
| Market Rate Units | 80% | 85 |
| Affordable Units | 20% | 21 |
| Below Grade Parking (Resid Parking) | 550.0 SF | 31 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | 15 |
| Total Parking Spaces | | 46 |

**Program % Breakdown**

| | |
|---|---|
| Residential | 89.66% |
| Retail | 10.34% |

**Lease Payments**

| | | |
|---|---|---|
| WMATA - Year 1 of Stabilization | $ | - |

**Project Vacancy**

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

**% of Project Revenue**

| | |
|---|---|
| Residential | 87% |
| Retail | 13% |

**Residential Per SF revenues**

| | | |
|---|---|---|
| Market | $ | 2.55 |
| Affordability | $ | 1.20 |
| Loan Rate | | 7.53% |
| WMATA Annual Lease Payment | $ | - |
| Security Deposit | | 0 |
| Pre-Lease Payment | | 0 |

## Sources and Uses of Funds

| **Sources** | | **Residential** | **Retail** | **Total** |
|---|---|---|---|---|
| Bond Financing | 71% LTC | $ 27,659,000 | $ - | $ 27,659,000 |
| LIHTC | | 1,775,851 | $ - | $ 1,775,851 |
| Private Equity | | 3,827,244 | 5,764,808 | 9,592,052 |
| **Total Sources of Funds** | | **$ 31,486,244** | **$ 5,764,808** | **$ 39,026,903** |

| **Uses** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Land | $ 623,146 | $ 71,854 | $ 695,000 |
| Hard Costs | 26,401,303 | 2,639,390 | 29,040,693 |
| Transaction/Leasing Fees | 320,091 | 36,909 | 357,000 |
| Architectural/MEP, Structural Services | 952,856 | 252,333 | 1,205,189 |
| Marketing | 430,374 | 49,626 | 480,000 |
| General and Administrative | 757,415 | 837,585 | 1,595,000 |
| Financing Costs | 936,775 | 108,018 | 1,044,793 |
| Real Estate Taxes | 331,747 | 38,253 | 370,000 |
| Permit, Utility and Municipal Fees | 309,271 | 35,661 | 344,933 |
| Legal and Accounting | 175,000 | 425,000 | 600,000 |
| Retail | - | 889,014 | 889,014 |
| Insurance | 19,327 | 2,229 | 21,556 |
| Miscellaneous Expenses | 228,937 | 378,937 | 607,874 |
| **Total Uses of Funds** | **$ 31,486,244** | **$ 5,764,808** | **$ 37,251,052** |

## Summary of Stabilized Returns at Sale/Refinance

| **2017** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Effective Gross Income | $ 3,174,369 | $ 458,494 | $ 3,632,862 |
| Expenses | $ 537,417 | $ 8,281 | $ 545,697 |
| **Net Operating Income** | **$ 2,636,952** | **$ 450,213** | **$ 3,087,165** |
| Less | | | |
| Reserves | $ 27,596 | $ 22,082 | $ 49,678 |
| Debt Service | $ 2,082,738 | - | $ 2,082,738 |
| Stabilized Net Cash Flow 2017 | **$ 526,618** | **$ 428,131** | **$ 954,749** |

| | | |
|---|---|---|
| **Net Sales Proceeds Before LEED Impact, Splits and Pref** | | **13,442,848** |
| **Impact of LEED Certification** | 3% hard costs | 871,221 |
| Avail pre WMATA share | | 12,571,627 |
| WMATA Share of Avail Profit | **0% avail profit** | - |
| Net Proceeds after WMATA share paid | | 12,571,627 |
| **Preferred Return** | **16% per year** | 12,166,261 |
| **Potential proceeds avail to Developers after pref paid** | | ~~1,276,587~~ |

should be .5M

400K

WMATA-INV 000847

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

## Summary Data

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Total Possible Project GSF | **4.50 FAR** | 135,414 |
| Total Buildable Residential + Retail GSF | | 135,414 |
| Retail GSF | | 14,000 |
| Retail NSF | 90% efficiency | 12,600 |
| Residential Gross SF | 100% | 121,414 |
| Residential Net SF | 83% efficiency | 100,774 |
| **Residential Net SF - Market** | **100%** | 100,774 |
| **Residential Net SF - Affordable** | 0% | 0 |
| Total No. of Residential Units | 950 SF avg | 106 |
| Market Rate Units | 100% | 106 |
| Affordable Units | 0% | 0 |
| Below Grade Parking (Resid Parking) | 550.0 SF | 31 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | 15 |
| Total Parking Spaces | | 46 |

**Program % Breakdown**

| | |
|---|---|
| Residential | 89.66% |
| Retail | 10.34% |

**Lease Payments**

| | | |
|---|---|---|
| WMATA - Year 1 of Stabilization | $ | 597,000 |

**Project Vacancy**

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

**% of Project Revenue**

| | |
|---|---|
| Residential | 92% |
| Retail | 8% |

**Residential Per SF revenues**

| | | |
|---|---|---|
| Market | $ | 3.00 |
| Affordability | $ | - |
| Loan Rate | | 8.00% |
| WMATA Annual Lease Payment | | 597,000 |
| Security Deposit | | 250,000 |
| Pre-Lease Payment | | 345,000 |

## Sources and Uses of Funds

| **Sources** | | **Residential** | **Retail** | **Total** |
|---|---|---|---|---|
| Loan | 75% LTC | $ 27,403,000 | $ - | $ 27,403,000 |
| Private Equity | | 3,529,367 | 5,644,282 | 9,173,648 |
| **Total Sources of Funds** | | **$ 30,932,367** | **$ 5,644,282** | **$ 36,576,648** |

| **Uses** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Land | $ 623,146 | $ 71,854 | $ 695,000 |
| Hard Costs | 26,401,303 | 2,639,390 | 29,040,693 |
| Transaction/Leasing Fees | 320,091 | 36,909 | 357,000 |
| Architectural/MEP, Structural Services | 952,856 | 252,333 | 1,205,189 |
| Marketing | 430,374 | 49,626 | 480,000 |
| General and Administrative | 757,415 | 837,585 | 1,595,000 |
| Financing Costs | 399,301 | 46,043 | 445,344 |
| Real Estate Taxes | 331,747 | 38,253 | 370,000 |
| Permit, Utility and Municipal Fees | 309,271 | 35,661 | 344,933 |
| Legal and Accounting | 175,000 | 425,000 | 600,000 |
| Retail | - | 846,560 | 846,560 |
| Insurance | 18,982 | 2,189 | 21,171 |
| Miscellaneous Expenses | 212,880 | 362,880 | 575,760 |
| **Total Uses of Funds** | **$ 30,932,367** | **$ 5,644,282** | **$ 36,576,648** |

## Summary of Stabilized Returns at Sale/Refinance

| **2017** | **Residential** | **Retail** | **Total** |
|---|---|---|---|
| Effective Gross Income | $ 4,179,580 | $ 386,941 | $ 4,566,521 |
| Expenses | $ 1,263,461 | $ 79,833 | $ 1,343,294 |
| **Net Operating Income** | **$ 2,916,119** | **$ 307,108** | **$ 3,223,227** |
| Less | | | |
| Reserves | $ 27,596 | $ 22,082 | $ 49,678 |
| Debt Service | $ 2,192,250 | - | $ 2,192,250 |
| Stabilized Net Cash Flow 2017 | **$ 696,273** | **$ 285,026** | **$ 981,299** |

| | | |
|---|---|---|
| **Net Sales Proceeds Before LEED Impact, Splits and Pref** | | **17,769,052** |
| **Impact of LEED Certification** | 3% hard costs | 871,221 |
| Avail pre WMATA share | | 16,897,831 |
| WMATA Share of Avail Profit | **7% avail profit** | 1,243,834 |
| Net Proceeds after WMATA share paid | | 15,653,997 |
| **Preferred Return** | **16% per yr** | 11,635,571 |
| **Potential proceeds avail to Developers after pref paid** | | 4,889,647 |

WMATA-INV 000848

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

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

**Financial Model**

**as of 8/21/08**

FOIA CONFIDENTIAL TREATMENT REQUESTED

TB = 29,792

## Summary Data

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Total Possible Project GSF | **6.00 FAR** | 178,752 |
| Total Buildable Residential + Retail GSF | | 178,752 |
| Retail GSF | | 14,000 |
| Retail NSF | 90% efficiency | 12,600 |
| Residential Gross SF | 100% | 164,752 |
| Residential Net SF | 83% efficiency | 136,744 |
| **Residential Net SF - Market** | **80%** | 109,395 |
| **Residential Net SF - Affordable** | **20%** | 27,349 |
| Total No. of Residential Units | 950 SF avg | 144 |
| Market Rate Units | 80% | 115 |
| Affordable Units | 20% | 29 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail/Share Parking) | | 15 |
| Total Parking Spaces | | 60 |

low ??

Smaller than high

### Program % Breakdown

| | |
|---|---|
| Residential | 92.17% |
| Retail | 7.83% |

### Lease Payments

| | | |
|---|---|---|
| WMATA - Year 1 of Stabilization | $ | 150,000 |

too low

### Project Vacancy

| | |
|---|---|
| Residential | 5% |
| Retail | 5% |

### % of Project Revenue

| | |
|---|---|
| Residential | 91% |
| Retail | 9% |

argue today

### Residential Per SF revenues

| | | |
|---|---|---|
| Market | $ | 2.70 |
| Affordable Units (at 50% of AMI) | $ | 1.10 |
| Loan Rate | | 7.40% |
| WMATA Annual Lease Payment - Year 1 | $ | 150,000 |
| Security Deposit | | 50,000 |
| Pre-Lease Payment | | 100,000 |

too low

too low for 8 years from now i.e. date to 2012

argue

too low

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

### Sources and Uses of Funds

| Sources | | Residential | Retail | Total |
|---|---|---|---|---|
| FHA Bonds | 79% LTC | $ 37,688,000 | $ - | $ 37,688,000 |
| LIHTC | | 2,426,863 | $ - | $ 2,426,863 |
| Private Equity | | 4,063,245 | 3,690,971 | 7,754,216 |
| **Total Sources of Funds** | | **$ 44,178,109** | **$ 3,690,971** | **$ 47,869,080** |

e mail to Tony Waddell or Ed Paulus

| Uses | Residential | Retail | Total |
|---|---|---|---|
| Land | $ 230,420 | $ 19,580 | $ 250,000 |
| Hard Costs | 35,860,207 | 2,192,546 | 38,052,754 |
| Transaction/Leasing Fees | 305,997 | 26,003 | 332,000 |
| Architectural/MEP, Structural Services | 1,455,506 | 123,683 | 1,579,189 |
| Marketing | 442,406 | 37,594 | 480,000 |
| General and Administrative | 1,377,910 | 217,090 | 1,595,000 |
| Financing Costs | 2,671,951 | 42,800 | 2,714,752 |
| Real Estate Taxes | 341,021 | 28,979 | 370,000 |
| Permit, Utility and Municipal Fees | 376,444 | 31,989 | 408,433 |
| Legal and Accounting | 460,840 | 39,160 | 500,000 |
| Retail | - | 875,853 | 875,853 |
| Insurance | 25,940 | 2,204 | 28,145 |
| Miscellaneous Expenses | 629,465 | 53,490 | 682,955 |
| **Total Uses of Funds** | **$ 44,178,109** | **$ 3,690,971** | **$ 47,869,080** |

### Summary of Stabilized Returns at Sale

| 2016 | Residential | Retail | Total |
|---|---|---|---|
| Effective Gross Income | $ 4,165,754 | $ 412,065 | $ 4,577,819 |
| Expenses | $ 1,036,012 | $ 20,244 | $ 1,056,256 |
| **Net Operating Income** | **$ 3,129,742** | **$ 391,821** | **$ 3,521,563** |
| Less | | | |
| Reserves | $ 36,709 | $ 21,224 | $ 57,933 |
| Debt Service | $ 2,788,584 | - | $ 2,788,584 |
| Stabilized Net Cash Flow 2016 | **$ 304,450** | **$ 370,597** | **$ 675,047** |

| | | |
|---|---|---|
| **Avail Proceeds before LEED, WMATA & Return to Equity Investor** | | 12,030,227 |
| **Impact of LEED Certification** | **0.0% hard costs** | - |
| Avail pre WMATA share | | 12,030,227 |
| WMATA Share of Avail Profit | **0% avail profit** | - |
| Net Proceeds after WMATA share paid | | 12,030,227 |
| **Preferred Return to Equity Investors** | **17% per year** | 9,969,031 |
| **Potential proceeds avail to Developers after pref paid** | | 2,061,196 |

vs $ 3.6 M before ?

1

(3)

| | PROJECT COSTS | | | | | Residential | Retail |
|---|---|---|---|---|---|---|---|
| 1 | **LAND COSTS** | | | | | | |
| | WMATA Parcels | | | | | | |
| | WMATA - Option Fee | | | 100,000.00 | | 92,167.92 | 7,832.08 |
| | WMATA - Security Deposit | | Don't meet Term Sheet | 50,000.00 | | 46,083.96 | 3,916.04 |
| | Pre-Development Lease Payments | | | 100,000.00 | | 92,167.92 | 7,832.08 |
| | **TOTAL LAND COSTS** | | | | **250,000.00** | **230,419.80** | **19,580.20** |
| 2 | **HARD COSTS** | | | | | | |
| | Residential Units | $185 | SF | 30,479,120.00 | | 30,479,120.00 | 0.00 |
| | Retail Space | $100 | SF | 1,400,000.00 | | 0.00 | 1,400,000.00 |
| | Below-grade parking (Residential) | $30,000 | per space | 1,350,000.00 | | 1,350,000.00 | 0 |
| | Below-grade parking (Retail) | $30,000 | per space | 450,000.00 | | 0.00 | 450,000.00 |
| | Infrastructure Costs | | | 500,000.00 | | 460,839.60 | 39,160.40 |
| | Index to start Q2/2010 | 4% | | 2,164,677.60 | | 1,995,138.31 | 169,539.29 |
| | Contingency | 5% | | 1,708,956.00 | | 1,575,109.20 | 133,846.80 |
| | **TOTAL HARD COSTS** | | | | **38,052,753.60** | **35,860,207.11** | **2,192,546.49** |
| | **SOFT COSTS** | | | | | | |
| 3 | **Transaction/Leasing Fees** | | | | | | |
| | Title Insurance - Lender's Policy | $0.60 | per $1000 of loan | 32,000.00 | | 29,493.73 | 2,506.27 |
| | Surveys | | | 20,000.00 | | 18,433.58 | 1,566.42 |
| | Legal - Term Sheet and Joint Development Agreement | | | 150,000.00 | | 138,251.88 | 11,748.12 |
| | Legal - Partnership Documents | | | 25,000.00 | | 23,041.98 | 1,958.02 |
| | Appraisal Fee | | | 30,000.00 | | 27,650.38 | 2,349.62 |
| | Geotechnical & Environmental | | | 75,000.00 | | 69,125.94 | 5,874.06 |
| | Total Transaction/Leasing Fees | | | | **332,000.00** | **305,997.49** | **26,002.51** |
| 4 | **Architectural/MEP, Structural Services** | | | | | | |
| | A/E Fees | 3.00% | hard costs | 1,141,582.61 | | 1,052,172.94 | 89,409.67 |
| | Structural Services | 1.00% | hard costs | 380,527.54 | | 350,724.31 | 29,803.22 |
| | Reimburseables | 5.00% | A/E fees | 57,079.13 | | 52,608.65 | 4,470.48 |
| | Total Architectural/MEP, Structural Services | | | | **1,579,189.27** | **1,455,505.90** | **123,683.37** |
| 5 | **Marketing** | | | | | | |
| | Marketing Center | | | 100,000.00 | | 92,167.92 | 7,832.08 |
| | Marketing Materials | | | 100,000.00 | | 92,167.92 | 7,832.08 |
| | Media (newspapers, etc.) | | | 100,000.00 | | 92,167.92 | 7,832.08 |
| | Signage | | | 50,000.00 | | 46,083.96 | 3,916.04 |
| | Special Events | | | 40,000.00 | | 36,867.17 | 3,132.83 |
| | Model | | | 75,000.00 | | 69,125.94 | 5,874.06 |
| | Website | | | 15,000.00 | | 13,825.19 | 1,174.81 |
| | Total Marketing | | | | **480,000.00** | **442,406.02** | **37,593.98** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 6 | **General and Administrative** | | | | | | |
| | Development Management | $30,000 mo. | 24 mos. | 720,000.00 | | 663,609.02 | 56,390.98 |
| | Project Management/Administration | $10,000 mo. | 30 mos. | 300,000.00 | | 276,503.76 | 23,496.24 |
| | Construction Management | $25,000 mo. | 18 mos. | 450,000.00 | | 414,755.64 | 35,244.36 |
| | Consulting Fees - Retail | | | 100,000.00 | | 0.00 | 100,000.00 |
| | Security | | | 25,000.00 | | 23,041.98 | 1,958.02 |
| | Total General and Administrative | | | | **1,595,000.00** | **1,377,910.40** | **217,089.60** |
| 7 | **Financing Costs** | | | | | | |
| | Construction Period Interest | | | 1,399,175.56 | | 1,399,175.56 | 0.00 |
| | DCHFA Application Fee | 0.10% | | 37,688.00 | | 37,688.00 | 0.00 |
| | DCHFA Construction Monitoring Fee | 0.40% | | 150,752.00 | | 150,752.00 | 0.00 |
| | DCHFA Financing Fee | 0.40% | | 150,752.00 | | 150,752.00 | 0.00 |
| | DCHFA Tax Credit Allocation Fee | 0.10% | | 37,688.00 | | 37,688.00 | 0.00 |
| | DCHFA Internal, External Legal & Consulting | | | 100,000.00 | | 100,000.00 | 0.00 |
| | Administrative Agent Fee | | | 150,000.00 | | 150,000.00 | 0.00 |
| | Credit Enhancement Fee | 0.25% | | 94,220.00 | | 94,220.00 | 0.00 |
| | Lender Inspection Fees | $2,000 mo. | 24 mos. | 48,000.00 | | 48,000.00 | 0.00 |
| | Transfer & Record Taxes (Construct Loan) | 1.45% | | 546,476.00 | | 503,675.56 | 42,800.44 |
| | Total Financing Costs | | | | **2,714,751.56** | **2,671,951.12** | **42,800.44** |
| 8 | **Real Estate Taxes** | | | | | | |
| | Land ($1.85 per $100) | 24 mos. | | 370,000.00 | | | |
| | Total Real Estate Taxes | | | | **370,000.00** | **341,021.30** | **28,978.70** |
| 9 | **Permit, Utility and Municipal Fees** | | | | | | |
| | Permits | 2% hard costs x 40% | | 273,432.96 | | 252,017.47 | 21,415.49 |
| | Water Connection Fee | | | 5,000.00 | | 4,608.40 | 391.60 |
| | Submetering | | | 20,000.00 | | 18,433.58 | 1,566.42 |
| | Tap/Connection Fees | | | 40,000.00 | | 36,867.17 | 3,132.83 |
| | Stormwater Management Fee | | | 20,000.00 | | 18,433.58 | 1,566.42 |
| | Sidewalk Bond | | | 50,000.00 | | 46,083.96 | 3,916.04 |
| | Total Permit, Utility and Municipal Fees | | | | **408,432.96** | **376,444.16** | **31,988.80** |
| 10 | **Legal and Accounting** | | | | | | |
| | Legal - Financing (General) | | | 100,000.00 | | 92,167.92 | 7,832.08 |
| | Legal - Zoning | | | 150,000.00 | | 138,251.88 | 11,748.12 |
| | Legal - General/Retail Leases, etc. | | | 150,000.00 | | 138,251.88 | 11,748.12 |
| | Accounting | | | 100,000.00 | | 92,167.92 | 7,832.08 |
| | Total Legal and Accounting: | | | | **500,000.00** | **460,839.60** | **39,160.40** |
| 11 | **Retail** | | | | | | |
| | Tenant Allowance | $50 per SF | | 630,000.00 | | 0.00 | 630,000.00 |
| | Commissions | 6.00% | | 245,852.75 | | 0.00 | 245,852.75 |
| | Total Retail | | | | **875,852.75** | **0.00** | **875,852.75** |

| | | | | | | |
|---|---|---|---|---|---|---|
| 12 | **Insurance** | | | | | |
| | Builder's Risk (Hard Costs) | $0.06 per $100 | 22,831.65 | | 21,043.46 | 1,788.19 |
| | Builder's Risk (Soft Costs) | $0.06 per $100 | 5,313.14 | | 4,897.01 | 416.13 |
| | Total Insurance | | | **28,144.79** | **25,940.47** | **2,204.32** |
| 13 | **Miscellaneous Expenses** | | | | | |
| | Lease-up Reserves | | -474,272.90 | | -437,127.47 | -37,145.43 |
| | Testing Expenses | | 150,000.00 | | 138,251.88 | 11,748.12 |
| | Third Party Inspections | | 100,000.00 | | 92,167.92 | 7,832.08 |
| | Misc Soft Costs & Contingencies | 5% soft costs | 432,954.92 | | 399,045.54 | 33,909.38 |
| | Total Miscellaneous Expenses | | | **208,682.02** | **629,465.34** | **53,489.58** |
| | **TOTAL SOFT COSTS** | | | **9,092,053.35** | **8,087,481.81** | **1,478,844.45** |
| | **TOTAL PROJECT COSTS** | | **47,394,806.95** | | **44,178,108.71** | **3,690,971.14** |

Residential Operating Statement

(4)

**SUMMARY**

| | | | | | |
|---|---|---|---|---|---|
| Market | | | 80% | | |
| # of Units | | | 115 | | |
| $ per SF | | $ | 2.70 | Monthly 08 dollars $ | 2.70 |
| Affordable | | | 20% | | |
| # of Units | | | 29 | | |
| $ per SF | | $ | 1.10 | Monthly 08 dollars $ | 1.10 |
| Parking | | | | | |
| # of spaces | | | 45 | | |
| $ per space | | $ | 150.00 | Monthly 08 dollars $ | 150.00 |

| **Income** | | | **Year 1** |
|---|---|---|---|
| Market Units | | $ | 3,544,409 |
| Affordable Units | | $ | 361,005 |
| Other Income | 2.00% | $ | 78,108 |
| Parking | | $ | 81,000 |
| Vacancy | 5.00% | $ | (203,226) |
| **Total Income** | | $ | 3,861,295 |

| **Expenses** | | | |
|---|---|---|---|
| WMATA Land Lease | | $ | 138,252 |
| Real Estate Taxes (Market) | $2,000 | $ | 230,306 |
| Real Estate Taxes (Affordable) | $1,000 | $ | 28,788 |
| Property Insurance | 1.00% | $ | 38,613 |
| Utilities | 2.00% | $ | 77,226 |
| Repairs and Maintenance | 2.00% | $ | 77,226 |
| Property Management | 6.00% | $ | 231,678 |
| Asset Management | 1.00% | $ | 38,613 |
| Advertising & Marketing | 1.00% | $ | 38,613 |
| Professional Fees | 1.00% | $ | 38,613 |
| General and Administrative | 1.00% | $ | 38,613 |
| **Total Expenses** | | $ | 976,540 |
| per unit $ | 6,784 | | |

| | | | |
|---|---|---|---|
| **NOI** | | $ | **2,884,755** |
| Reserves | $250 | $ | 35,985 |
| Cash Flow before Debt Service | | $ | 2,848,770 |
| Debt Service | | $ | 2,788,584 |

| | | |
|---|---|---|
| **Net Cash Flow Before Taxes** | **$** | **60,186** |

FOIA CONFIDENTIAL TREATMENT REQUESTED

Start in 2012

The Jazz @ Florida Avenue
Residential Proforma

| Year | % of Income | 1<br>2012 | 2<br>2013 | 3<br>2014 | 4<br>2015 | 5<br>2016 | 6<br>2017 | 7<br>2018 | 8<br>2019 | 9<br>2020 | 10<br>2021 | 11<br>2022 | 12<br>2023 | 13<br>2024 | 14<br>2025 | 15<br>2026 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Income** | % of Income | | | | | | | | | | | | | | | |
| Market Units | | $ 3,544,409 | $ 3,686,185 | $ 3,833,632 | $ 3,986,978 | $ 4,146,457 | $ 4,312,315 | $ 4,484,808 | $ 4,664,200 | $ 4,850,768 | $ 5,044,799 | $ 5,246,591 | $ 5,456,454 | $ 5,674,712 | $ 5,901,701 | $ 6,137,769 |
| Affordable Units | | $ 361,005 | 370,030 | 379,280 | 388,762 | 398,482 | 408,444 | 418,655 | 429,121 | 439,849 | 450,845 | 462,116 | 473,669 | 485,511 | 497,649 | 510,090 |
| Other Income | 3.00% | $ 78,108 | 81,233 | 84,482 | 87,861 | 91,376 | 95,031 | 98,832 | 102,785 | 106,897 | 111,172 | 115,619 | 120,244 | 125,054 | 130,056 | 135,258 |
| Parking | | $ 81,000 | 84,240 | 87,610 | 91,114 | 94,759 | 98,549 | 102,491 | 106,590 | 110,854 | 115,288 | 119,900 | 124,696 | 129,684 | 134,871 | 140,266 |
| Vacancy | 5.00% | (203,226) | (211,084) | (219,250) | (227,736) | (236,554) | (245,717) | (255,239) | (265,135) | (275,418) | (286,105) | (297,211) | (308,753) | (320,748) | (333,214) | (346,169) |
| Effective Gross Income | | $ 3,861,295 | $ 4,010,603 | $ 4,165,754 | $ 4,326,980 | $ 4,494,519 | $ 4,668,621 | $ 4,849,546 | $ 5,037,562 | $ 5,232,949 | $ 5,435,999 | $ 5,647,015 | $ 5,866,310 | $ 6,094,213 | $ 6,331,063 | $ 6,577,214 |
| **Operating Expenses** | Escalation | | | | | | | | | | | | | | | |
| WMATA Land Lease | 1.50% * | $ 138,252 | 140,326 | 142,431 | 144,567 | 146,736 | 148,937 | 151,171 | 153,438 | 155,740 | 158,076 | 162,818 | 167,703 | 172,734 | 177,916 | 183,253 |
| Real Estate Taxes (Market) | 3.00% | $ 230,306 | 237,215 | 244,332 | 251,662 | 259,211 | 266,988 | 274,997 | 283,247 | 291,745 | 300,497 | 309,512 | 318,797 | 328,361 | 338,212 | 348,358 |
| Real Esate Taxes (Afford) | 3.00% | $ 28,788 | 29,652 | 30,541 | 31,458 | 32,401 | 33,373 | 34,375 | 35,406 | 36,468 | 37,562 | 38,689 | 39,850 | 41,045 | 42,277 | 43,545 |
| Property Insurance | 3.00% | $ 38,613 | 39,771 | 40,964 | 42,193 | 43,459 | 44,763 | 46,106 | 47,489 | 48,914 | 50,381 | 51,893 | 53,449 | 55,053 | 56,704 | 58,406 |
| Utilities | 3.00% | $ 77,226 | 79,543 | 81,929 | 84,387 | 86,918 | 89,526 | 92,212 | 94,978 | 97,827 | 100,762 | 103,785 | 106,899 | 110,106 | 113,409 | 116,811 |
| Repairs and Maintenance | 3.00% | $ 77,226 | 79,543 | 81,929 | 84,387 | 86,918 | 89,526 | 92,212 | 94,978 | 97,827 | 100,762 | 103,785 | 106,899 | 110,106 | 113,409 | 116,811 |
| Property Management | 3.00% | $ 231,678 | 238,628 | 245,787 | 253,161 | 260,755 | 268,578 | 276,635 | 284,934 | 293,482 | 302,287 | 311,355 | 320,696 | 330,317 | 340,227 | 350,433 |
| Asset Management | 3.00% | $ 38,613 | 39,771 | 40,964 | 42,193 | 43,459 | 44,763 | 46,106 | 47,489 | 48,914 | 50,381 | 51,893 | 53,449 | 55,053 | 56,704 | 58,406 |
| Advertising & Marketing | 3.00% | $ 38,613 | 39,771 | 40,964 | 42,193 | 43,459 | 44,763 | 46,106 | 47,489 | 48,914 | 50,381 | 51,893 | 53,449 | 55,053 | 56,704 | 58,406 |
| Professional Fees | 3.00% | $ 38,613 | 39,771 | 40,964 | 42,193 | 43,459 | 44,763 | 46,106 | 47,489 | 48,914 | 50,381 | 51,893 | 53,449 | 55,053 | 56,704 | 58,406 |
| General and Administrative | 3.00% | $ 38,613 | 39,771 | 40,964 | 42,193 | 43,459 | 44,763 | 46,106 | 47,489 | 48,914 | 50,381 | 51,893 | 53,449 | 55,053 | 56,704 | 58,406 |
| | | 976,540 | 1,005,837 | 1,036,012 | 1,067,092 | 1,099,105 | 1,132,078 | 1,166,040 | 1,201,022 | 1,237,052 | 1,274,164 | 1,312,389 | 1,351,760 | 1,392,313 | 1,434,082 | 1,477,105 |
| **Net Operating Income** | | $ 2,884,755 | $ 3,004,766 | $ 3,129,742 | $ 3,259,887 | $ 3,395,414 | $ 3,536,543 | $ 3,683,505 | $ 3,836,540 | $ 3,995,897 | $ 4,161,836 | $ 4,334,626 | $ 4,514,550 | $ 4,701,900 | $ 4,896,980 | $ 5,100,109 |
| **Reserves** | | 35,985 | 36,345 | 36,709 | 37,076 | 37,446 | 37,821 | 38,199 | 38,581 | 38,967 | 39,357 | 39,750 | 40,148 | 40,549 | 40,955 | 41,364 |
| **Cash Flow Before Debt Service** | | 2,848,770 | 2,968,421 | 3,093,034 | 3,222,812 | 3,357,968 | 3,498,722 | 3,645,306 | 3,797,959 | 3,956,930 | 4,122,479 | 4,294,876 | 4,474,402 | 4,661,351 | 4,856,026 | 5,058,745 |
| **Total Annual Debt Service** | | 2,788,584 | 2,788,584 | 2,788,584 | 2,788,584 | 2,788,584 | 2,788,584 | 2,788,584 | 2,788,584 | 2,788,584 | 2,788,584 | 2,788,584 | 2,788,584 | 2,788,584 | 2,788,584 | 2,788,584 |
| **Before Tax Cash Flow** | | $ 60,186 | $ 179,837 | $ 304,450 | $ 434,228 | $ 569,384 | $ 710,138 | $ 856,722 | $ 1,009,375 | $ 1,168,346 | $ 1,333,895 | $ 1,506,292 | $ 1,685,818 | $ 1,872,767 | $ 2,067,442 | $ 2,270,161 |

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

WMATA-INV 000856

FOIA CONFIDENTIAL TREATMENT REQUESTED

**The Jazz @ Florida Avenue**
**Retail Proforma**

| **Assumptions** | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Rentable S.F. | 12,600 | | | | | | | | | | | |
| Market Space | 7,200 | | | | | | | | | | | |
| Affordable/Non-Profit Space | 5,400 | | | | | | | | | | | |
| Triple Net Lease | | | | | | | | | | | | |
| | **Per S.F.** | **Escalation** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **2020** | **2021** |
| **Operating Income** | | | | | | | | | | | | |
| Retail Tenants - Market | $30.00 | 3% | 216,000 | 222,480 | 229,154 | 236,029 | 243,110 | 250,403 | 257,915 | 265,653 | 273,622 | 281,831 |
| Retail Tenants - Affordable/Non-Profit | $10.00 | 2% | 54,000 | 55,080 | 56,182 | 57,305 | 58,451 | 59,620 | 60,813 | 62,029 | 63,270 | 64,535 |
| Parking | $50.00 | 2% | 9,000 | 9,180 | 9,364 | 9,551 | 9,742 | 9,937 | 10,135 | 10,338 | 10,545 | 10,756 |
| Less: General Vacancy | | 5% | (13,950) | (14,337) | (14,735) | (15,144) | (15,565) | (15,998) | (16,443) | (16,901) | (17,372) | (17,856) |
| Net Rental Income | | | 265,050 | 272,403 | 279,965 | 287,741 | 295,738 | 303,962 | 312,420 | 321,119 | 330,065 | 339,266 |
| Expense Recovery Income | 100% | | 132,300 | 136,269 | 140,357 | 144,568 | 148,905 | 153,372 | 157,973 | 162,712 | 167,594 | 172,621 |
| Total Operating Revenue | | | 397,350 | 408,672 | 420,322 | 432,309 | 444,643 | 457,334 | 470,393 | 483,831 | 497,659 | 511,887 |
| **Recoverable Expenses** | | | | | | | | | | | | |
| Pass-through expenses | $2.50 | 3.00% | 31,500 | 32,445 | 33,418 | 34,421 | 35,454 | 36,517 | 37,613 | 38,741 | 39,903 | 41,100 |
| Real Estate Taxes | $8.00 SF | | 100,800 | 103,824 | 106,939 | 110,147 | 113,451 | 116,855 | 120,360 | 123,971 | 127,690 | 131,521 |
| Total Operating Expenses | | | 132,300 | 136,269 | 140,357 | 144,568 | 148,905 | 153,372 | 157,973 | 162,712 | 167,594 | 172,621 |
| **Non-recoverable Expenses** | | | | | | | | | | | | |
| Non-recoverable WMATA Expenses | | 1.50% | 11,748 | 11,924 | 12,103 | 12,285 | 12,469 | 12,656 | 12,846 | 13,039 | 13,234 | 13,433 |
| Non-recoverable Ownership Expenses | | 2.00% | 7,500 | 7,650 | 7,803 | 7,959 | 8,118 | 8,281 | 8,446 | 8,615 | 8,787 | 8,963 |
| Total Expenses | | | 19,248 | 19,574 | 19,906 | 20,244 | 20,587 | 20,937 | 21,292 | 21,654 | 22,022 | 22,396 |
| **Net Operating Income** | | | 378,102 | 389,098 | 400,415 | 412,065 | 424,056 | 436,398 | 449,101 | 462,178 | 475,637 | 489,491 |
| Capital Reserves | | | 20,000 | 20,400 | 20,808 | 21,224 | 21,649 | 22,082 | 22,523 | 22,974 | 23,433 | 23,902 |
| **Before Tax Cash Flow** | | | $ 358,102 | $ 368,698 | $ 379,607 | $ 390,841 | $ 402,407 | $ 414,316 | $ 426,578 | $ 439,204 | $ 452,204 | $ 465,590 |

WMATA-INV 000857

FOIA CONFIDENTIAL TREATMENT REQUESTED

(6)

**The Jazz @ Florida Avenue**
**Retail Proforma**

**Assumptions**

| | |
|---|---|
| Rentable S.F. | 12,600 |
| Market Space | 7,200 |
| Affordable/Non-Profit Space | 5,400 |
| Triple Net Lease | |

| | Per S.F. | Escalation | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Operating Income** | | | | | | | | | | | | |
| Retail Tenants - Market | $30.00 | 3% | 216,000 | 222,480 | 229,154 | 236,029 | 243,110 | 250,403 | 257,915 | 265,653 | 273,622 | 281,831 |
| Retail Tenants - Affordable/Non-Profit | $10.00 | 2% | 54,000 | 55,080 | 56,182 | 57,305 | 58,451 | 59,620 | 60,813 | 62,029 | 63,270 | 64,535 |
| Parking | $50.00 | 2% | 9,000 | 9,180 | 9,364 | 9,551 | 9,742 | 9,937 | 10,135 | 10,338 | 10,545 | 10,756 |
| Less: General Vacancy | | 5% | (13,950) | (14,337) | (14,735) | (15,144) | (15,565) | (15,998) | (16,443) | (16,901) | (17,372) | (17,856) |
| Net Rental Income | | | 265,050 | 272,403 | 279,965 | 287,741 | 295,738 | 303,962 | 312,420 | 321,119 | 330,065 | 339,266 |
| Expense Recovery Income | 100% | | 132,300 | 136,269 | 140,357 | 144,568 | 148,905 | 153,372 | 157,973 | 162,712 | 167,594 | 172,621 |
| Total Operating Revenue | | | 397,350 | 408,672 | 420,322 | 432,309 | 444,643 | 457,334 | 470,393 | 483,831 | 497,659 | 511,887 |
| **Recoverable Expenses** | | | | | | | | | | | | |
| Pass-through expenses | $2.50 | 3.00% | 31,500 | 32,445 | 33,418 | 34,421 | 35,454 | 36,517 | 37,613 | 38,741 | 39,903 | 41,100 |
| Real Estate Taxes | $8.00 SF | | 100,800 | 103,824 | 106,939 | 110,147 | 113,451 | 116,855 | 120,360 | 123,971 | 127,690 | 131,521 |
| Total Operating Expenses | | | 132,300 | 136,269 | 140,357 | 144,568 | 148,905 | 153,372 | 157,973 | 162,712 | 167,594 | 172,621 |
| **Non-recoverable Expenses** | | | | | | | | | | | | |
| Non-recoverable WMATA Expenses | | 1.50% | 11,748 | 11,924 | 12,103 | 12,285 | 12,469 | 12,656 | 12,846 | 13,039 | 13,234 | 13,433 |
| Non-recoverable Ownership Expenses | | 2.00% | 7,500 | 7,650 | 7,803 | 7,959 | 8,118 | 8,281 | 8,446 | 8,615 | 8,787 | 8,963 |
| Total Expenses | | | 19,248 | 19,574 | 19,906 | 20,244 | 20,587 | 20,937 | 21,292 | 21,654 | 22,022 | 22,396 |
| **Net Operating Income** | | | 378,102 | 389,098 | 400,415 | 412,065 | 424,056 | 436,398 | 449,101 | 462,178 | 475,637 | 489,491 |
| Capital Reserves | | | 20,000 | 20,400 | 20,808 | 21,224 | 21,649 | 22,082 | 22,523 | 22,974 | 23,433 | 23,902 |
| **Before Tax Cash Flow** | | | $ 358,102 | $ 368,698 | $ 379,607 | $ 390,841 | $ 402,407 | $ 414,316 | $ 426,578 | $ 439,204 | $ 452,204 | $ 465,590 |

WMATA-INV 000858

FOIA CONFIDENTIAL TREATMENT REQUESTED

| | Loan | |
|---|---|---|
| ***Base Residential NOI (net of reserves)*** | 2,848,770 | |
| ***Base Retail NOI (net of reserves)*** | 358,102 | |
| | 3,206,872 | |
| | | |
| *DSCR* | 1.15 | |
| **Amount Available for Debt Service** | 2,788,584 | |
| | | |
| **Calculation of Loan Constant** | | |
| Amortization Term | 40 | |
| Loan Constant | 7.40% | seems high |
| | | |
| Max Supportable Mortgage | 37,688,000 | |
| | | |
| Bond Rate | 5.60% | yes / need to verify |
| DCHFA Fee | 0.40% | |
| Trustee Fee | 0.05% | |
| GNMA/Freddie Mac Fee | 0.25% | |
| Aggregate Rate | 6.30% | |
| | | |
| Loan Constant | $0.07 | |
| Mortgage Insurance Premium | 0.50% | |
| Calculation of Loan Constant | 7.40% | |

WMATA-INV 000859

## SUPPORTABLE DEBT CALCULATIONS

| | Loan |
|---|---|
| ***Base Residential NOI (net of reserves)*** | 2,848,770 |
| ***Base Retail NOI (net of reserves)*** | 358,102 |
| | 3,206,872 |
| | |
| *DSCR* | 1.15 |
| **Amount Available for Debt Service** | 2,788,584 |
| | |
| **Calculation of Loan Constant** | |
| Amortization Term | 40 |
| Loan Constant | 7.40% |
| | |
| Max Supportable Mortgage | 37,688,000 |
| | |
| Bond Rate | 5.60% |
| DCHFA Fee | 0.40% |
| Trustee Fee | 0.05% |
| GNMA/Freddie Mac Fee | 0.25% |
| Aggregate Rate | 6.30% |
| | |
| Loan Constant | $0.07 |
| Mortgage Insurance Premium | 0.50% |
| Calculation of Loan Constant | 7.40% |

IRR

IRR (8)

| NOI Projection | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|---|---|---|---|
| Net Operating Income | | | | $ 3,262,857 | $ 3,393,864 | $ 3,530,158 | $ 3,671,952 | $ 3,819,470 |
| Debt Service | $ 37,688,000 | | | $ 2,788,584 | $ 2,788,584 | $ 2,788,584 | $ 2,788,584 | $ 2,788,584 |
| Net Cash Flow | | | | $ 474,273 | $ 605,280 | $ 741,574 | $ 883,368 | $ 1,030,886 |

| IRR Calculation | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|---|---|---|---|
| Equity (Cash) | $ (1,938,554) | $ (5,815,662) | $ - | $ - | $ - | $ - | $ - | $ - |
| Net Cash Flow | - | | | 474,273 | 605,280 | 741,574 | 883,368 | 1,030,886 |
| Return of Equity (Sale) | | | | | | | | 7,279,943 |
| Net Sales Proceeds | | | | | | | | 12,030,227 |
| Preferred Return | | | | | | | | |
| Promote | | | | | | | | |
| Total Paid to All Equity | $ (1,938,554) | $ (5,815,662) | $ - | $ 474,273 | $ 605,280 | $ 741,574 | $ 883,368 | $ 20,341,056 |

| | |
|---|---|
| IRR | 20.16% |
| NPV @ 8% | 5,951,991 |

| Assumed Sale in 2016 | | Amount |
|---|---|---|
| NOI in 2016 | | 3,819,470 |
| Cap Value | 6.50% | 58,761,000 |
| Cost of Sale | 3.00% | (1,762,830) |
| Gross Sale Proceeds | | 56,998,170 |
| Loan Amount | | (37,688,000) |
| Net Sales Proceeds | | 19,310,170 |
| Return of Outstanding Equity | | (7,279,943) |
| **Net Sales Proceeds Before Pref and Splits** | | **12,030,227** |

| | | | |
|---|---|---|---|
| WMATA Share | | 0% sales proceeds | - |
| Net Proceeds after WMATA share paid | | | **12,030,227** |
| **Preferred Return** | 17% preferred return | 2009 equity | 3,034,155 |
| | 17% preferred return | 2010 equity | 6,934,875 |
| **Total Preferred Return** | | | **9,969,031** |
| **Available proceeds after pref paid** | | | **2,061,196** |

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

**LIHTC Calculation**

| **Qualifying Costs** | | **LIHTC** |
|---|---|---|
| Total Development Cost (Residential Portion) | $ | 44,178,109 |
| Less: | | |
| FF&E | | 150,000 |
| Parking | | 1,350,000 |
| Marketing | | 442,406 |
| Total Non-Qualifying Costs | $ | 1,942,406 |
| **Total Eligible Costs** | $ | 42,235,703 |

| **Valuation** | | |
|---|---|---|
| Total Eligible Costs (see above) | $ | 42,235,703 |
| x Factor ( LIHTC - High Cost Area Adjustment) | | 130% |
| Total Adjusted Basis | | 54,906,414 |
| x Applicable Fraction | | 20% |
| **Total Qualified Basis** | | **10,981,283** |
| x Annual Tax Rate | | 3.4% |
| Annual Credit | | 373,364 |
| Applicable Period (Years) | | 10 |
| Credit Amount | | 3,733,636 |
| x Equity Proceeds from Sale of Credits @ | | $0.65 |
| **Realized Value to Project** | $ | **2,426,863** |

Conservative
check Tony

9

WMATA-INV 000862

FOIA CONFIDENTIAL TREATMENT REQUESTED

**Closing 1:**

| FHA/GNMA Loan Balance | Month | Monthly Draw | Interest Earnings 2.50% | Interest Cost 6.30% | Net Interest |
|---|---|---|---|---|---|
| **18,844,000** | 0 | 200,000 | - | | |
| 18,644,000 | 1 | 500,000 | 39,258 | 98,931 | 59,673 |
| 18,144,000 | 2 | 750,000 | 38,842 | 98,931 | 60,089 |
| 17,394,000 | 3 | 1,000,000 | 37,800 | 98,931 | 61,131 |
| 16,394,000 | 4 | 1,500,000 | 36,238 | 98,931 | 62,694 |
| 14,894,000 | 5 | 2,482,333 | 34,154 | 98,931 | 64,777 |
| 12,411,667 | 6 | 2,482,333 | 31,029 | 98,931 | 67,902 |
| 9,929,333 | 7 | 2,482,333 | 25,858 | 98,931 | 73,073 |
| 7,447,000 | 8 | 2,482,333 | 20,686 | 98,931 | 78,245 |
| 4,964,667 | 9 | 2,482,333 | 15,515 | 98,931 | 83,416 |
| 2,482,333 | 10 | 2,482,333 | 10,343 | 98,931 | 88,588 |
| **TOTAL** | | **18,844,000** | **289,722** | **989,310** | **699,588** |

**Closing 2:**

| FHA/GNMA Loan Balance | Month | Monthly Draw | Interest Earnings 2.50% | Interest Cost 6.30% | Net Interest |
|---|---|---|---|---|---|
| **18,844,000** | 0 | 200,000 | - | | |
| 18,644,000 | 1 | 500,000 | 39,258 | 98,931 | 59,673 |
| 18,144,000 | 2 | 750,000 | 38,842 | 98,931 | 60,089 |
| 17,394,000 | 3 | 1,000,000 | 37,800 | 98,931 | 61,131 |
| 16,394,000 | 4 | 1,500,000 | 36,238 | 98,931 | 62,694 |
| 14,894,000 | 5 | 2,482,333 | 34,154 | 98,931 | 64,777 |
| 12,411,667 | 6 | 2,482,333 | 31,029 | 98,931 | 67,902 |
| 9,929,333 | 7 | 2,482,333 | 25,858 | 98,931 | 73,073 |
| 7,447,000 | 8 | 2,482,333 | 20,686 | 98,931 | 78,245 |
| 4,964,667 | 9 | 2,482,333 | 15,515 | 98,931 | 83,416 |
| 2,482,333 | 10 | 2,482,333 | 10,343 | 98,931 | 88,588 |
| **TOTAL** | | **18,844,000** | **289,722** | **989,310** | **699,588** |

# 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 000864

## 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 000865

**From:** Stephanie Farrell <sfarrell@tortigallas.com>
**To:** "'tbushnaq@wmata.com'" <tbushnaq@wmata.com>
**Date:** 7/30/2008 5:21:15 PM
**Subject:** The Jazz - Florida Avenue

Tariq,
Thank you for meeting with us last week regarding the Jazz at Florida Avenue project. We look forward to working with you. Below are our questions/ requests for information regarding the site.

Surveying/Civil,

1) WMATA horizontal and vertical control information, description of its locations and sketches.
2) Minimum of four WMATA control stations. Controls located around the vicinity of the project site, if possible, benchmarks within 800 feet to the project site.

Geotechnical/Environmental

1) Any existing geotechnical data including boring location sketches, soil type/water encountered depth, any existing utilities, etc.

Structural

1) Any available as built structural information at the location of the subject sites ( between 7 to 9 street)
2) Any available information for tunnel foundation and depth, foundation sizes and loading conditions, surcharge loads, etc.
3) Provide web-link for WMATA Adjacent Construction guidelines.
4) Confirmation of the depth of the tunnel below grade as well as any easements adjacent to the tunnel.

Please let me know if you have any questions.

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
www.tortigallas.com

**CC:** "'okarim@bannekerventures.com'" <okarim@bannekerventures.com>, "'abarrow@dcengineers4u.com'" <abarrow@dcengineers4u.com>, Sherief Elfar <selfar@tortigallas.com>, Ladislav Domen <ldomen@tortigallas.com>

Shaw/Howard Kick-off Meeting July 25, 2008

A. ~~DESIGN TEAM~~
Abdullahi will be the point of contact for the design team
Barrow

1. Confirm that ~~that~~ Rough upper ~~level~~ top of Vault of Structure is 29' below grade, 19' upper limit is top of easement WMATA would want

Tariq will check with Structural engineering

2. 8th St. Vent Shaft
Tariq to check exact locations

3. Tariq will give them a) link to Adj. Constr. Manual b) foundation constr. piling info c) as builts d) Design Criteria e) geotech +

4. Res. 4-5 stories over retail

5. Will have to go to BZA because plg for small parcel is under the nearby bldg.

6. Start design process in Sept
Do Geotech in August, get WMATA approval 1st

7. Owner hopes to get ~~[illegible]~~ constr. - Start in July - Sept ~~[illegible]~~ unless ~~[illegible]~~
zoning, other parcel issues

8. FTA approval - can it be faster tracked?
Marc + Roz to talk to Joel

9. Metropolis
a. Brain Cancer - Scott Mumik? - Don't dump
b.

10. Construction Experience

a. 809 6th St 30,000 sf
For Bundy Constr.
I was managed the construction + development
CM - was Bir Company

b. 1320 13 St. ~~[illegible]~~ Iron Bldg.
I was project mgr. for
Eichberg Construction 35,000 sf
25,000 sf
one level underground pkg.

**From:** "Omar A. Karim" <okarim@bannekerventures.com>
**To:** <rdoggett@wmata.com>
**Date:** 7/24/2008 12:35:45 PM
**Subject:** Howard-Shaw/Florida Avenue Kick-Off Meeting

HKS -
Mike Nicolaus

Ms. Doggett,

Below please find a draft of what we hope to discuss tomorrow:

I. Providing Executed Term Sheet & Option Fee

II. Overview of Project Schedule Aug, Sept, Oct

III. Right of Entry Permit

a. Comments

b. Insurance requirements

IV. Development Agreement and Lease

a. Draft

b. Negotiations

c. Major issues — Green Bldg Act of 2006 of DC
Leasing from an instrumentality of DC

d. Team Composition

V. Project Design

a. Development Plan None

b. Engineering Issues, etc. — 8th St Vent Shaft

VI. Other Issues

We plan on having someone from Torti Gallas and LEAD Engineering (civil and structural firm), in addition to our counsel from DLA Piper, be present tomorrow. Will someone from your design/engineering department be present

to answer general questions about design/engineering issues that may be raised? Also, will you have a draft of the JDA and lease to provide us or do you want to send it prior to the meeting? Finally, have you all had an opportunity to review our comments to the ROE permit?

Looking forward to seeing you tomorrow.

Omar

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

**From:** Marc E. Biondi
**To:** Joel R. Washington
**Date:** 6/30/2008 1:18:36 PM
**Subject:** Re: Fwd: Access to Shaw-Howard/Florida Avenue site to perform Alta/Topo Surveys

No.

An ROE would be appropriate. Whoever going to coordinate the permit should advise Mr. Karim of our new Insurance practices.

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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>>> Joel R. Washington 6/30/2008 1:16 PM >>>
Marc,

Do you see any reason we should not execute the Right-of-Entry permit for Banneker? As I understand past practices, we have allowed prospective developers access to property for surveys, borings, etc., please advise.

Joel

>>> "Omar A. Karim" <okarim@bannekerventures.com> 6/27/2008 10:38:24 AM >>>

Mr. Washington, While we wait for Rosalyn to return from out of the country, in order to stay on the schedule that we all discussed back in March, we would like to move forward with getting ALTA and Topo surveys done on the Shaw-Howard/Florida Avenue site. Would it be possible for us to execute the Right-of-Entry permit (a copy of which we have and are prepared to execute) so that this can happen next week? Thank you in advance. Omar Omar A. KarimBanneker Ventures, LLC700 12th Street, NW, Suite 700Washington, DC 20005(202) 667-4110 office(301) 523-1810 cellokarim@bannekerventures.com

**CC:** Mark K. Meister; Rosalyn Doggett

# Florida Avenue/Shaw-Howard Properties

Issue List

## 1. Joint Development Agreement vs. Lease

a. The term sheet indicates that the parties contemplated the former option. The term sheet states, "*The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement or the start of construction of the Project.*"

b. The Developer has since argued that the deal does not work unless they are allowed to lease the property right away.
   i. Probably need the lease to get financing;
   ii. Probably wants to get the rental income that the property generates through the flea market and valet weekend licenses

c. Though drafted with the intent of adhering to the term sheet, here are the issues to consider if we go with the lease immediately:
   i. The lease should allow for easy/effective cancellation during the entitlement process.
   ii. There was great concern on the WMATA Board that the developer does not have the financial wherewithal to complete this project;
   iii. The lease may need to be adjusted so that the pre-stabilization period payments reflect the earlier execution of the lease (i.e., more property rights being provided sooner)?

## 2. Right of Entry

a. A limited ROE to do environmental studies;
b. WMATA insurance department indicated that railroad insurance requirements could be waived so long as test borings do not go below 15 feet;
c. There is a potential conflict between weekend licensees and the developer:
   i. Developer would like to be named as an additional insured and to get full indemnity from the licensees. The developer is concerned that somebody attending the flea market/valet parking will either step in a testing hole or gets hurt by study equipment left on the property over the weekend;
   ii. WMATA engineers indicated that this testing could reasonably be accomplished on a Monday to Friday schedule. So, WMATA counsel has proposed limiting ROE to only cover between Monday and Friday. This would avoid conflict and eliminate need for indemnity/insurance;
d. WMATA counsel requested copies of required insurance policies from developer,

who indicated that we should have them sometime this week.

**Joint Development Agreement**

e. Residential over Retail with below-grade parking and "arts" space.
f. Drafted to cover all construction/development approvals and processes.
g. Concerns:
   i. Means/effectiveness of WMATA control if milestones are not met;
   ii. Special liability issue involving construction over existing tunnel;
   iii. WMATA facilities on property – ventilation shaft

3. **Lease**

a. 60 year lease of WMATA Property;
b. Drafted to work simultaneously with the JDA during the development process;

4. **Consideration:**

a. $100,000 Option fee was paid;
b. $250,000 Deposit to be returned upon Certificate of Occupancy;
c. Pre-stabilization period payments:
   i. $100,000 annually for the first 15 months;
   ii. $115,000 annually for the next 12 months;
   iii. $130,000 annually until closing (Earlier of Approvals or 45 months);
d. Rent:
   i. $597,000 base rent, escalating each year;
   ii. 10% Capital Event Participation Rent
   iii. Adjustment for increased density – not to lease

5. **Contingencies:**

a. Environmental Study
b. Financing
c. Failure to achieve approvals

## Doggett, Rosalyn

**From:** Doggett, Rosalyn
**Sent:** Wednesday, April 08, 2009 3:49 PM
**To:** Moneme, Emeka
**Subject:** RE: Bank of America CDC capacity to manage the Shaw-Howard/Florida Avenue Joint Venture Development

All of Mr. Perry's projects on the chart are complete. He is currently working on Parkside, a development of which the first component will be senior housing. He partners here with Alan Novak (Lano Development).

Projects Banneker Cited to demonstrate construction management experience
1.Walker Jones Education and Recreation Facility - in shorthand, Banneker is essentially apprenticing with Regan Associates, CM; Banneker has only one moderately experienced operative, Duane Oates, whereas a couple of others are inexperienced
2. Deanwood Community Center – Banneker will be the lead, with Regan in a supportive role
3.Northwest One- with William C. Smith; Banneker will get a future building to develop
4. The Yards- Pattern Shop Lofts- with Forest City; Banneker attends/assists at construction management meetings, took lead on permitting, govt. finance
5. Residences at Thayer Ave (Silver Spring)- a Banneker project, still in pre-development, 54 units
6. Omar Karim experience at two projects cited, with Bundy Development, not deep
In all cases above I spoke with representatives of the other firms cited.

BACDC most often partners with a nonprofit affordable housing developer. I cannot state with accuracy whether these partnerships always employ CM's to monitor their general contractors or handle construction directly through their gc. Maurice Perry does indicate that he will rely on Banneker for day-to-day development oversight, but will attend all weekly construction meetings, make all major decisions and sign all construction draws. He has confidence in his ability to manage the stick construction once the concrete podium is built. References affirm this.

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**From:** Moneme, Emeka
**Sent:** Wednesday, April 08, 2009 3:11 PM
**To:** Bottigheimer, Nat
**Cc:** Terry, Billy; Mohsberg, Sid; Doggett, Rosalyn
**Subject:** RE: Bank of America CDC capacity to manage the Shaw-Howard/Florida Avenue Joint Venture Development

The explanation below is fine. Can we be more specific about the reference review (how many were prospective? How many were with other leads?). I have some concerns about providing the reference information to the Board – the project experience and organizational chart is fine. Can we explain the management model that BoACDC uses? Do they have existing partnerships that they tap into, or do they select new CMs for each project?

Emeka

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**From:** Bottigheimer, Nat
**Sent:** Wednesday, April 08, 2009 3:03 PM
**To:** Moneme, Emeka
**Cc:** Terry, Billy; Mohsberg, Sid; Doggett, Rosalyn
**Subject:** FW: Bank of America CDC capacity to manage the Shaw-Howard/Florida Avenue Joint Venture Development

Emeka, fyi...Roz' email, attached, is responsive to the request that came in from Mr. Graham late yesterday related to this project.



FOIA CONFIDENTIAL TREATMENT REQUESTED 

**From:** Doggett, Rosalyn
**Sent:** Wednesday, April 08, 2009 2:43 PM
**To:** Requa, Jack; Bottigheimer, Nat
**Subject:** RE: Bank of America CDC capacity to manage the Shaw-Howard/Florida Avenue Joint Venture Development

Though I checked out each project reference that Banneker gave me for its firm with mixed results (in some cases the projects are prospective, in others there are lead firms that are more experienced), I relied principally on Maurice Perry's experience in new construction/housing development and the assurances of Bank of America. I have attached Mr. Perry's list of projects for which he wrote that he was project manager, list of references, and Mr. Perry's reporting structure. All the references indicated his ability to handle housing projects of this size and scope. In particular, I relied on Mr. Mohanna who said that Mr. Perry was responsible for managing the new construction California projects from pre-development through completion of construction and that he was diligent and careful, with excellent management skills. I further relied on Mr. Clerkin of BACDC who indicated that once the bank took on a project it was committed to seeing it through and would provide all necessary support for Mr. Perry.

Mr. Graham uses the term, "major mixed-use." This project is currently planned to have 104 units on the three separate WMATA parcels and will possibly combine the smallest WMATA site (3,800 sf) with an adjacent two parcels that will add another 25-30 units. Mr. Perry's experience encompasses new construction of this size. In our discussions with him, he noted his lack of experience in dealing with construction over a Metro tunnel and said, therefore, that he would have a construction manager at least through that stage. The retail component is just under 12,000 sf. It is likely that the team will have to use retail consultants to help scope out the ground floor retail; I did not ask about this component but do not think that it would be difficult for this team to find the consulting expertise.

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**From:** Requa, Jack
**Sent:** Wednesday, April 08, 2009 12:53 PM
**To:** Doggett, Rosalyn
**Subject:** FW: Bank of America CDC capacity to manage the Shaw-Howard/Florida Avenue Joint Venture Development

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**From:** Catoe, John B.
**Sent:** Wednesday, April 08, 2009 12:51 PM
**To:** Pant, Shiva K.; Bottigheimer, Nat; Requa, Jack; Francis, Gerald C.; Moneme, Emeka
**Cc:** Sequeira, Loyda; Chambliss, Leenda M.; Barr, Cassandra; Wallace, Maria A; Harris, Annette M.; Morgan, Monic; Ballard, Khalilah
**Subject:** FW: Bank of America CDC capacity to manage the Shaw-Howard/Florida Avenue Joint Venture Development

I don't believe that John Catoe saw this before he left town; in fact, I am sure of it since his flight left at 5 p.m.

Chairman Graham has made some specific requests before tomorrow's meeting.

Please advise who is handling this; perhaps someone needs to call Mr. Catoe on this.



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Can I assume that the responsibility for providing this information rests with PLJD?

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**From:** Jim Graham [mailto:Jim@grahamwone.com]
**Sent:** Tuesday, April 07, 2009 5:03 PM
**To:** Catoe, John B.
**Cc:** czimmerman@arlingtonva.us; Neil.Albert@dc.gov; mbrown@dccouncil.us; catherine.hudgins@fairfaxcounty.gov; jeff.mckay@fairfaxcounty.gov; agiancol@naco.org; ehewlett@shhpa.com; cz.arl@verizon.net; nomolos@verizon.net; peter.metro@verizon.net; gordon.linton@wageworks.com; wmeuille@wdeuille.com
**Subject:** RE: Bank of America CDC capacity to manage the Shaw-Howard/Florida Avenue Joint Venture Development

I have questions in response to your April 3, 2009 memo regarding the capacity of the Bank of America Community Development Corporation (BACDC) to manage the Shaw-Howard/Florida Avenue Joint Venture Development Project.

I would like to ensure that this joint development is managed by a team with a sufficient construction experience. My approval of the initial award was contingent upon participation of Metropolis Development because of this company's demonstrated experience delivering major, mixed-use construction projects.

I am requesting that WMATA staff explain the experience of BACDC in managing major mixed-use development projects through the construction process. I also would like for staff to include some examples of such development projects in their explanation.

Please contact me as soon as you receive this email. I would like to see these materials by the April 9, 2009 PDRE Committee meeting.

Bests, 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. 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 Transportation (including alcohol regulation). Main Committee Number: 202-724-8195. 1350 Pa. Ave., NW, #116, Washington, DC 20004.***

***Chairman and Voting Member, Board of Directors, WMATA/Metro.***

***Website:*** **www.grahamwone.com**



FOIA CONFIDENTIAL TREATMENT REQUESTED

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

This Amended and Restated Term Sheet, ("Term Sheet"), for a development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th Streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein. The previous joint development term sheet dated July 17, 2008 is superseded by this Term Sheet.

## 1. Parties

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

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

## 2. Definitive Agreement

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



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

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

a) a ground lease agreement (the "Lease") whereby WMATA will lease the Lease Property to the DEVELOPER for a single term of ninety-nine (99) years, with no renewal or option periods.
b) A conditions, covenants and reservations agreement ("CCRs"), to be recorded among the land records, which will: (i) protect WMATA's interests in its tunnel and associated elements and access thereto; and (ii) include transit oriented development covenants.
c) A co-tenancy agreement ("Co-Tenancy Agreement") between WMATA and DEVELOPER to be recorded among the land records after the CCRs which will control the operation and disposition of the Total Project after the Lease and any replacement lease provided to a lender have either expired or been irrevocably terminated.

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

**3. Property to Be Leased To DEVELOPER**

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

3.2 DEVELOPER will cause an preliminary ALTA survey and title commitment to be prepared within two (2) months of the effective date of the Definitive Agreement and the final ALTA survey (assuming a closed public alley) and title commitment no later than thirty (30) days before the Closing. The final ALTA survey shall be completed early enough for WMATA and DEVELOPER to agree upon the legal descriptions to exclude the existing WMATA tunnel and associated elements.



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## 4. Project

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

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

4.2 Assemblage.

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

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

c) Alley Closing. WMATA will consent to the alley closing prior to Closing, provided that when the portion of the public alley is closed, an easement among the owners will be recorded among the 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



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will become part of the Lease Property in red; the portion that will become part of the DEVELOPER Property is shown in green.

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



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applicable, and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

**6. Security Deposit**

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) 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.

## 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.

c) Monthly Rent Payment.

a. On the 60th anniversary of the Effective Date of the Lease, the DEVELOPER shall begin making monthly base rent payments to WMATA (the "Monthly Lease Payments"). The Monthly Lease Payments amount shall be at Fair Market Value as determined through the three-appraiser method described in the Lease. ~~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.~~



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b. Escalation Rate. The Monthly Lease Payments shall escalate annually at the rate of 3% per year.

c. Periodic Rent Revaluation. The Monthly Lease Payments shall be adjusted every ten years. The Monthly Lease Payments will be re-adjusted to then current Fair Market Value as established through the three-appraiser process described above. Monthly Lease Payments will never decrease from the then payable Monthly Lease Payments as a result of any Periodic Rent Revaluation.

d) 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.

e) 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,



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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.

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



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occupancy for the Total Project or while a HUD insured loan remains in place, the additional density Capitalized Lease Payment adjustment shall be as follows:

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

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

*NOTE: WMATA expects to adjust these amounts based on the relationship of the Capitalized Lease Payment for a period of 60 years to the fee simple land value.*

b) After Final Certificate of Occupancy: During the first 60 years of the term of the Lease, if HUD insurance no longer remains in place, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those in effect at receipt of the Final Certificate of Occupancy for the Project and for which no increase in Capitalized Lease Payment has been paid, such additional densities or unit totals will require DEVELOPER to pay additional Capitalized Lease Payment. The additional Capitalized Lease Payment payments will be determined through the three-appraiser method, to be defined in the Definitive Agreement and based on the then-remaining time until the 61st year of the term of the Lease. Since the resetting of the base rent in the 61st Lease year will be based on vacant land, there shall be no additional density adjustments after the 60th Lease year.

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



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

7.7 Force Majeure Delays: The maximum length of six hundred (600) days to Closing may be extended for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement. Such Force Majeure Delays shall be subject to an increase in the Capitalized Lease Payment, as provided in Section 7.5 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

**8. Conditions to Definitive Agreement Consummation**

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

8.1 Design Approvals: Within ten (10) days of execution of the Definitive Agreement and prior to any final submission to the District, DEVELOPER shall submit to WMATA for its approval a conceptual Total Project site plan in substantial conformance with Exhibit B, including building elevations and floor plans (the "WMATA-Approved Site Plan"). The design of the Total Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Lease Property. WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA within thirty (30) days of receipt of such submission by WMATA.



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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.



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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



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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



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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.



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## 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.



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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: _____



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|---|---|
| Filename: | WMATA Term Sheet for Lease of Shaw-Howard Florida Ave Sites (JWM Comments to Banneker 110409) |
| Directory: | C:\Documents and Settings\GGCCBO1\Local Settings\Temporary Internet Files\Content.Outlook\ISCWB6EN |
| Template: | C:\Documents and Settings\GGCCBO1\Application Data\Microsoft\Templates\Normal.dot |
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| Keywords: | |
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| Number of Characters: | 31,207 (approx.) |

Execution Copy

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

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

## 1. Parties

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

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

## 2. Definitive Agreement

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

## 3. Property to Be Leased by Developer

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



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**4. Project**

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

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

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

**5. Due Diligence**

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

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



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**6. Security Deposit**

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

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

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

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

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

**7. Consideration**

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

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement or forty-five (45) months after WMATA Board approval and execution of the



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Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent, for the first fifteen (15) months, will be $100,000 per year payable in advance in quarterly instalments of $25,000. Pre-stabilization Rent will increase to $115,000.00 per year for the next twelve (12) months. For the remaining Pre-stabilization Period, rent shall be $130,000.00 per year.

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

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

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

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

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project



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WMATA-INV 000897

land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

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

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

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

7.6 WMATA Improvements: intentionally omitted



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WMATA-INV 000898

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

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

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

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

7.11 Additional Density:

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

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



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**8. Conditions to Definitive Agreement Consummation**

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

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

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

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

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

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

8.6 Financing Contingency: Developer shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Project and as shall otherwise be reasonably satisfactory to Developer and WMATA.



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## 9. Special Considerations

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

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

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

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

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

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

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



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

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

9.7 Interim Improvements: intentionally omitted

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

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



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

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

DC?

**10. Indemnification**

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

**11. Insurance Requirements**

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



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**12. Non-Binding Intent**

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

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

Field Code Changed

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**
**REAL ESTATE PERMIT**

**THIS REAL ESTATE PERMIT** (the "**Permit**") is made and entered into this day of_____, 2008 (hereinafter "**Effective Date**"), by and between the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a body corporate and politic (hereinafter "**WMATA**") with principal offices at 600 Fifth Street, NW, Washington, DC 20001and **Banneker Ventures, LLC,** a District of Columbia limited liability company, with principal offices at 700 12th Street, NW, Washington, DC 20005 (hereinafter "**Permittee**"). Permittee and WMATA are sometimes referred to herein jointly as the "**Parties**" or individually as a "**Party**".

**WITNESSETH:**

**WHEREAS**, Permittee has requested permission from WMATA to enter upon WMATA property consisting of Lots 44 and 45 in Square 393 and Lots 18 and 31 in Square 416 in the District of Columbia (the "**Permitted Premises**"), as shown in Exhibit A which is attached hereto and made a part hereof, to perform work set forth in Section 3 of this permit.

**WHEREAS**, WMATA has agreed to allow Permittee and its contractor(s), subcontractor(s) and consultants (hereinafter "**Contractor**" and collectively with the Permittee, "**Permitted Parties**" or individually as a "**Permitted Party**") the right and privilege to enter upon and use the Permitted Premises to perform the above-referenced work upon the terms and conditions specifically set forth in this Permit

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Incorporation of Recitals**. The Recitals set forth above and attached Exhibits are incorporated herein by this reference and have the same force and effect as if fully hereinafter set forth.

2. **Permitted Access**. This Permit allows Permitted Parties and others acting on behalf of Permitted Parties to enter onto the Permitted Premises, provided that the conditions contained herein are met.

3. **Use of Permitted Premises**. In accordance with the terms of this Permit, WMATA grants unto Permitted Parties the right to perform the following work



10/16/09
WMATA

(**"Permitted Activities"**) on the Permitted Premises:

- Site survey
- Environmental investigative studies
- Other site investigative studies, including soil borings

all in accordance with the Term Sheet between the Parties dated July 28, 2008 ("Agreement").

4. **Permitted Entry Time.** During the Term, the Permitted Parties' right to enter the Permitted Premises and perform the Permitted Activities shall be restricted to the period between Monday at 6:00am and Friday at 3:00pm ("Permitted Entry Time"). Pursuant to Paragraph 26, the Permitted Parties have the limited right to store testing equipment, needed for the Permitted Activities, on Parcel 3 (Lots 18 and 31 in Square 416) from Friday at 3:00pm to Monday at 6:00am (the "Non-permitted Time").

**Deleted:** Description of Permitted Premises

**Deleted:** The Permitted Premises are identified in the first "Whereas" clause of this Permit

5. **Conditions on Use**.

a. Permitted Parties may only exercise this Permit upon WMATA review and approval of the proposed site investigative studies and schedule of proposed work. Prior to entering the Permitted Premises, Permitted Parties shall submit to WMATA's Office of Joint Development and Adjacent Construction for review and written approval, a description of the work to be undertaken, including detailed plans, as applicable, showing the location of the work, such as each soil boring, and a schedule of work (the "**Work Plan**").

b. Prior to each investigative study, Permittee shall submit to WMATA's Office of Joint Development and Adjacent Construction for review and approval at least seven (7) copies of the proposed work.

c. All work shall be planned and performed in accordance with the requirements of WMATA's Adjacent Construction Design Manual, Rev.2 ) or as further revised (the "**Manual**"). If certain requirements listed as the conditions in this Permit differ from those in the Manual, Permittee shall immediately contact WMATA's Supervisor of Field Projects or the Field Project Facilitator (see Subparagraph "h" below) for written clarification.

d. Unless waived in writing by WMATA, Permittee shall submit the Work Plan to WMATA's for review and written approval at least thirty (30) business days prior to the start of work, to ensure that WMATA operations are not disrupted.

e. Plans, operation sequences and equipment positioning plans must ensure adequate safety for the general public entering/exiting WMATA facilities by car, on foot and riding on WMATA trains and buses and must be approved by WMATA prior to the start of any work.



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f. Unless waived in writing by WMATA, WMATA will review and provide written comments or approval on design or investigative studies submittals to Permitted Parties within thirty (30) business days after receipt of the plans and schedules. If approval is denied, a re-submittal for approval with all comments resolved shall be made to WMATA. This action shall be repeated until WMATA conveys final written approval. No changes may be made to the approved Work Plan without the prior written approval of WMATA's Field Project Facilitator.

g. WMATA accepts no liability and waives none of its rights under this Permit solely by reason of its approval of any drawings or specifications.

h. Permitted Parties shall contact WMATA's Supervisor of Field Projects, Mr. William Milner of the Office of Joint Development and Adjacent Construction, telephone: 301-618-1001 (office) or 202- 253-7226 (cell) to schedule a pre-work meeting. This request shall be made at least ten (10) business days prior to any planned start of work on the Permitted Premises. At this meeting, Mr. Milner will designate WMATA's Field Project Facilitator and provide Permitted Parties with the requisite contact information for the Field Project Facilitator.

i. Upon written approval from WMATA, Permitted Parties may conduct the necessary exploration or tests to determine the location of WMATA's existing facilities.

j. Swinging a crane and suspended loads over WMATA property is strictly prohibited except with WMATA's written approval. If WMATA authorizes construction activities which involve swinging a crane and suspended loads over Metrorail facilities, such work shall be performed only during WMATA's non-revenue hours, currently the hours of 1:30 a.m. to 4:00 a.m., Monday to Friday and 4:30 a.m. to 6:00 a.m. on Saturday and Sunday (non-revenue hours are subject to change by WMATA, at its sole discretion, to reflect WMATA's operating requirements). Crane inspection paperwork must be submitted to WMATA's Field Project Facilitator. All construction equipment used in the work shall be oriented in accordance with the instructions of WMATA's Field Project Facilitator.

k. When support functions and electrical power outages are required, WMATA's Field Project Facilitator must be contacted at least ten (10) business days prior to the requested start of the respective work. The *General Orders and Track Rights System (GOTRS) Account Request Form* must be submitted to the WMATA Office of Joint Development and Adjacent Construction by Friday noon at least one week preceding the WMATA Operating Week, which begins Saturday morning at 12:01 a.m., to allow WMATA sufficient advance notice to schedule personnel and equipment and to adjust WMATA operations and maintenance to accommodate Permittee's request insofar as possible.



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l. Permitted Parties planning to work within twenty-five (25) feet of WMATA's operating tracks must undergo WMATA safety training. WMATA's Field Project Facilitator must be contacted at least ten (10) business days prior to the desired training date. The *Certification of Eligibility for WMATA Contractor Identification (ID) Card* form Section 1 (*Appendix B*), must be completed and submitted to WMATA's Field Project Facilitator prior to the class date.

m. Permitted Parties shall monitor or cause to be monitored the Metrorail structures and tracks during any construction or installation within WMATA's Zone of Influence, as that term is further defined and explained in WMATA's *Manual*, proximate to WMATA structures and interests. The monitoring and contingency plans must be approved by WMATA in writing prior to the start of the work. The monitoring plans must include threshold values and survey control data.

n. Protective fencing to be approved by WMATA shall be installed at the boundary of the areas with public access.

o. Temporary sidewalks or pedestrian ways which will be in use more than ten (10) days shall be constructed of four inch (4") thick Portland cement concrete or four inches of asphaltic concrete placed and finished by a machine.

p. All work within twenty-five (25) feet of WMATA's tracks must be done during non-revenue hours which are currently 1:30 a.m. to 4:00 a.m., Monday to Friday and 4:30 a.m. to 6:00 a.m. on Saturday and Sunday (non-revenue hours are subject to change by WMATA, at its sole discretion, to reflect WMATA's operating requirements). Work in this location may require a "red tag" power outage as determined by WMATA's Field Project Facilitator who must be contacted at least ten (10) business days prior to the requested start date to coordinate the power outage and escort.

q. Work within twenty-five (25) feet of WMATA tracks will require WMATA escorts from Metrorail Operations, and power outages may be required during pre-work surveys and inspections. *Track Access Request* forms must be submitted by Permitted Parties to WMATA's Field Project Facilitator ten (10) business days before the requested date of work.

r. All utilities must be located by Permitted Parties in advance of work by using WMATA As-Built Drawings and Miss Utility information and must be protected from any damage. Permitted Parties should be aware that WMATA As-Built Drawings may not reflect current site conditions and WMATA will not be responsible for any damage caused by such inaccuracies. Any excavation in the vicinity of WMATA or Potomac Electric



FOIA CONFIDENTIAL TREATMENT REQUESTED

Power Company power feeders to the Metrorail system and other underground utilities or within the work site shall be through hand excavation.

s. Flammable liquids shall not to be stored within twenty-five (25) feet horizontally or vertically, regardless of topographic or man-made barriers, of WMATA underground facilities, except in the tanks of automobiles. If a flammable liquid storage container of any kind is to be installed between twenty-five (25) and one hundred (100) feet of WMATA underground facilities, protective encasement of the storage container will be required in accordance with NFPA STD 130. Existing underground tanks located within one hundred (100) feet of WMATA facilities and scheduled to be abandoned are to be disposed of in accordance with Appendix C of NFPA STD 130. NFPA STD 130 should also be applied to the construction of new fuel tanks.

t. WMATA reserves the right to inspect the Permitted Premises at any time. Additionally, WMATA reserves the right to inspect, at reasonable times, the Permittee's activities for conformance with the approved work plan and OSHA safety requirements and to ensure that the operations of Metrorail are not impeded at any time. WMATA's designated representative(s) shall have full access to the Permitted Premises for the purpose of determining the safety of the operations and their impact on Metrorail operations, and such person(s) shall have the absolute authority to stop the work (until such time as the condition requiring stoppage is cured) if, in WMATA's sole opinion, Permitted Parties are working in a manner that is unsafe for WMATA operations, the work is not in full compliance with the approved Work Plan or is interfering with WMATA operations.

u. Other than as may be expressly provided to the contrary in the WMATA Joint Development Term Sheet for this transaction or any Definitive Agreement relating thereto, Permitted Parties accept the Permitted Premises and adjacent areas in an "as is" condition, including any possible concrete over pours, sheeting and shoring which remain in place, inaccurate location of utilities or portions of the facilities and similar conditions. It shall be Permitted Parties' responsibility to verify the actual location of existing facilities, structures and utilities on the site and provide WMATA with a copy. Permitted Parties agree that the existence of any unknown or inaccurately portrayed facility will not be the subject of a claim against WMATA.

v. Upon completion of tests, Permittee shall provide WMATA's Office of Joint Development and Adjacent Construction with a copy of all surveys, test information, including but not limited to Phase I and Phase II results, boring logs, test results, and all draft and final reports arising out of or relating to the tests.



FOIA CONFIDENTIAL TREATMENT REQUESTED

w. Permitted Parties shall not be released before the final acceptance of the site improvements/restoration by WMATA.

6. **Term of Permit**. This Permit commences on the Effective Date and terminates on the earlier of sixty (60) days after the effective date of the Joint Development Agreement or February 28, 2009 ("**Term**") unless terminated for cause as provided in **Paragraphs 10 and 25** herein.

7. **Extension Option**. The Parties may mutually agree in writing to extend the Term of this Permit. Permittee shall request an extension of the Term in writing, at least thirty (30) calendar days prior to the expiration of the Term.

8. **Payment by Permittee**. Not Applicable.

9. **Assignment**. This Permit is not assignable or transferable by Permittee in any way. The rights, privileges, duties and obligations extended to or assumed by Permittee are personal to Permittee, its officers, employees, agents and contractors only.

10. **Suspension/Termination**. WMATA may suspend this Permit, in whole or in part, at its sole option and discretion at any time, if any condition created by Permitted Parties on or about the Permitted Premises threatens the safety or security of the Permitted Premises, any WMATA operation or function, the public, or is in violation of any applicable laws, rules, regulations, policies, instruction or directions whether federal or local relating to this Permit and/or any Permitted Party's work hereunder. If Permitted Parties do not correct the condition which serves as the basis for WMATA's suspension decision within ten (10) calendar days following receipt of written notice of such condition from WMATA, then WMATA may terminate this Permit, in whole or in part, by notice to Permittee without any further opportunity to cure such condition. This Permit may also be terminated or revoked by WMATA, in whole or in part, at its sole option and discretion, at any time, if deemed necessary by WMATA for the purposes of safety, security, operational necessity or any overriding public requirement. Upon termination or earlier revocation of this Permit, all Permitted Parties shall remove their equipment and restore the Permitted Premises to the satisfaction of WMATA. Permittee may terminate this Permit at any time by providing ten (10) calendar days prior written notice to WMATA. All obligations and liabilities of Permitted Parties under this Permit shall survive the termination of this Permit pursuant to this Paragraph or the expiration of the Permit pursuant to **Paragraphs 6 and 7** above.

11. **Conduct of Work**. In the conduct of work undertaken herein, the Permitted Parties shall require all parties working on the Permitted Premises to exercise all normal and reasonable safety precautions. Permitted Parties shall maintain the Permitted Premises in a clean and presentable manner.



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12. **Employee and Public Safety**. Barricades, fences, signs, lanterns and other suitable devices necessary for employee and public safety shall be provided and adequately maintained by Permitted Parties at their sole cost and expense.

13. **Security**. Permitted Parties shall maintain the security of the work site to the satisfaction of WMATA during the entire period of use and occupancy under this Permit.

14. **Restoration**. Upon completion of all Permitted Activities, the expiration of the Term, or other termination of this Permit, Permitted Parties shall remove all of their equipment and restore the Permitted Premises to its previous condition or in accordance with pre-approved plans and specifications, and to WMATA's satisfaction.

15. **Responsibility for Licenses and Permits**. Permitted Parties shall be responsible for obtaining any necessary licenses and permits for the work permitted under this Permit including transportation and disposal of materials.

16. **Compliance with Orders and Directions of WMATA.** With respect to all work permitted under this Permit, Permitted Parties shall at all times conform with and abide by the reasonable orders and directions of WMATA officials or their duly authorized representatives, regardless of whether such orders and directions are oral or written. Nothing in this **Paragraph 16** shall be deemed to limit in any way WMATA's independent right under **Paragraph 10** above, to suspend or terminate this Permit.

17. **Non-Interference with WMATA Activities**. Pursuant to the terms of this Permit, Permitted Parties may only use the Permitted Premises in such manner and at such times as not to interfere with the use, construction, maintenance, repair and operations of WMATA.

18. **Damage to WMATA Property**. Permittee shall be responsible for, and must make good at its own expense, all damage to WMATA property caused in whole or in part by the acts or omissions of any Permitted Party and others acting on behalf of a Permitted Party, in carrying out the operations permitted under this Permit. Permittee shall ensure that such repair or replacement is carried out within fifteen (15) business days of Permittee's receipt of notice from WMATA except in the case of any emergency as determined by WMATA in its sole discretion, in which event Permittee's obligation of repair or replacement shall be immediate upon receipt of notice from WMATA.

19. **Utility Charges**. Permitted Parties at their sole cost and expense, shall pay all charges for any utilities used on the Permitted Premises during occupancy thereof when and as the same shall become due and payable. Permitted Parties are prohibited, without the prior written consent of WMATA (in its sole discretion) from making any connection to any utility line serving WMATA operations.



FOIA CONFIDENTIAL TREATMENT REQUESTED

**20. Indemnification.**

a. Permittee shall indemnify and save harmless WMATA, its directors, officers, employees and agents from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, including employees of Permittee or its Contractors, and for loss or damage to any property, occurring in connection with, or in any way arising out of (i) the Permitted Parties' use, occupancy and performance of the work permitted by this Permit and/or (ii) any acts in connection with activities to be performed under this Permit resulting in whole or in part from the acts, errors or omissions of Permittee or its Contractor, or any employee, agent or representative of Permittee or its Contractor. Nothing in the preceding sentence shall be deemed to relieve Permittee from ultimate liability for any obligation of Permittee under this Permit.

b. Permittee shall, and require its Contractor to, indemnify, defend and hold harmless WMATA its directors, officers, employees and agents against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including reasonable attorneys fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the Permitted Premises by Permitted Parties or anyone acting on their behalf.

c. If any action or proceeding relating to the indemnification required by this **Paragraph 20** is brought against WMATA, then upon written notice from WMATA to the indemnitor, indemnitor shall, at indemnitor's expense, resist or defend such action or proceeding by counsel approved by WMATA in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same.

d. Permittee understands and agrees that it is Permittee's, its Contractor and all Permitted Parties' responsibility to provide indemnification to WMATA pursuant to this **Paragraph 20**. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of insurance to fully fund any indemnification shall not relieve Permittee and other Permitted Parties of any obligation assumed under this indemnification.

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**21. Insurance.**



FOIA CONFIDENTIAL TREATMENT REQUESTED

a. It is Permittee's responsibility to ensure that Permittee, its Contractor and Permitted Parties have adequate and complete coverage as contemplated in this Permit. This responsibility is not waived, nor is any requirement to indemnify waived by WMATA's review and approval of any Policy.

b. WMATA is acknowledged and understood to be a third party beneficiary of any insurance policy carried by any Permitted Party.

c. As may be required in any insurance policy carried by any Permitted Party, this Permit is understood and agreed to be a written contract or an Insured Contract between that Permitted Party and WMATA.

d. Permittee understands and agrees that provision of a complete copy of the Policy or Policies which provide the below required insurance (as indicated by an "**x**" before said type of insurance), including a copy of any endorsement or exclusion thereto, for review and approval by WMATA is a prerequisite for entry onto WMATA property. It is the Permittee's responsibility to ensure adequate and complete coverage as contemplated in this agreement. This responsibility is not waived, nor is any requirement to indemnify waived, by WMATAs review and approval of any Policy.

e. Permittee understands and agrees that WMATA is a self-insured governmental entity and that the insurance and indemnification provided by any Permitted Party under the terms of this Permit shall be Primary. Permittee agrees that to the extent any endorsement contemplates issuance of a permit by a state or political subdivision, WMATA shall be considered a state or political subdivision issuing a permit for the purposes of those policies and endorsements.

f. Insurance Companies. Insurance companies providing the required coverages must be rated by A.M. Best or a comparable rating company and carry at least an "A" rating. All insurance shall be procured from insurance or indemnity companies acceptable to WMATA and licensed and authorized to conduct business in the jurisdiction where the work is to be performed. WMATA's approval or failure to disapprove the insurance shall not release Permitted Parties of full responsibility for liability for damage and accidents.

g. Changes in Insurance Coverage. The requisite insurance policies shall not be canceled, terminated or modified (except to increase the amount of coverage) without thirty (30) calendar days prior written notice from Permittee to WMATA's Office of Insurance, Room, 8D01, and Office of Station Area Planning and Asset Management, Room 5B, 600 Fifth Street, NW, Washington, DC 20001. All correspondence and insurance certificates must include the **joint development project name referenced in the Agreement**. If any required insurance policies should



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be canceled, terminated or modified so that the insurance is not in full force and effect, then WMATA can hold Permittee in default of this Permit. Under such circumstances, WMATA shall give Permittee a notice of default and after the expiration of the cure period prescribed in **Paragraph 25**, WMATA may terminate this Permit for an event of default or obtain insurance coverage equal to that required herein, the full cost of which shall be paid by Permittee to WMATA on demand.

h. Evidence of Insurance Coverage. Evidence of the requisite insurance policies in the form of the complete insurance policy including any endorsements and certificates of insurance stating work to be performed and joint development project name referenced in the Agreement shall be submitted to WMATA at least ten (10) business days prior to commencement of operations and from time to time at WMATA's request. Permitted Parties shall not be allowed to enter the Permitted Premises until the evidence of insurance has been received and approved in writing by WMATA. All evidence of insurance shall be sent to:

Office of Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

With a copy to:

Office of Insurance
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Room 8D01
Washington, DC 20001

I. Permittee shall require each Contractor, at all tiers, to provide evidence of insurance coverage specified herein (as indicated by an "**x**" before said type of insurance) and such evidence of coverage shall be provided to WMATA.

j. Any contract of insurance or indemnification naming WMATA, the United States of America, or any of the departments, agencies, administrators or authorities as an additional insured shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that WMATA or the United States of America, et al, are not liable in tort by virtue of the fact of being governmental instrumentalities or public or quasi-public bodies.



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k. Limits and Modification of Coverage. The limits of liability included herein are minimum limits. WMATA reserves the right to review or change these limits if the terms of the Permit or standards in the industry change. If requested by WMATA, Permittee shall require its Contractor to make any necessary adjustments in such limits or in the type of coverage to reflect then currently acceptable, commercially reasonable policy limits and types of coverage for similar uses and operations. Permittee's failure to cooperate with WMATA regarding this subparagraph shall constitute a Default in accordance with **Paragraph 25** of this Permit. During the term of this Permit and any extensions, except for such longer terms as may be required herein, Permittee shall have its Contractor provide or cause to be provided at least the types and amounts of insurance indicated below.

l. ☒ --- Worker's Compensation. An insurance policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, and if there is any exposure to personnel of any Permitted Party with the U. S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, Permittee will provide coverage for these exposures on an "if any basis" with limits not less than:

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

m. ☒ --- Commercial General Liability Insurance. A Commercial General Liability Insurance policy issued to and covering the liability for all work and operations under or in connection with this Permit and all obligations assumed by Permittee under this Permit. Coverage shall include Products Liability, Completed Operations and Contractual Liability Insurance in addition to coverage for explosion, collapse, and underground hazards, wherever required. The coverage under such an insurance policy or policies shall be maintained for three (3) years after the termination of this Permit and shall have at least the following limits:

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|---|---|
| Bodily Injury and Property Damage Liability: | $1,000,000 Each Occurrence; $2,000,000 Aggregate |
| Premises Medical Payments: | $5,000 |
| Fire Legal Liability (if applicable) | $1,000,000 |



FOIA CONFIDENTIAL TREATMENT REQUESTED

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| Personal Injury/Advertising | $1,000,000 or Combined Single Limit not less than $2,000,000 |

WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance on an appropriate endorsement.

If construction or demolition work is being performed within 50 feet of the center line of WMATA's railroad tracks, then an endorsement that removes the railroad exclusion from the definition of an "Insured Contract" shall be included.

n. ☒ --- Automobile Liability Insurance. A commercial auto insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing valid license plates appropriate for the circumstances for which the vehicles are being used. These vehicles should bear license plates applicable to the state laws for which the vehicle(s) are registered. Liability for contractor's mobile equipment is not subject to this coverage and therefore the aforementioned general liability insurance is required. Contract employees are not permitted to operate any vehicle owned by WMATA whether in commission of the contract or outside the same.

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The coverage under such an insurance policy or policies shall include mandatory Uninsured Motorist Coverage where applicable. Form MCS-90 as required by the Motor Carrier Act of 1980 shall also be included where applicable.

The coverage under such an insurance policy or policies shall have limits not less than:

| | |
|---|---|
| BODILY INJURY AND PROPERTY DAMAGE LIABILITY | $2,000,000 Combined Single Limit |
| Uninsured Motorist Coverage | Minimum Limit $50,000 |

WMATA must be included as an additional insured under the auto liability insurance coverage with respect to activities related to this Permit.

o. ☒ --- Railroad Protective Liability Insurance. A railroad protective liability insurance policy shall be required, prior to entry on the Permitted Premises, for work within 50 feet in any direction of the center-line of WMATA's operating railroad tracks. Surveying, and approved soil borings up to a depth of fifteen (15) feet, shall be excepted from this requirement. An insurance policy issued to WMATA as the named insured and covering the liability of all Permitted Parties for the work to be performed on, above, adjacent to or underneath WMATA's operating railroad property for any personal injuries or deaths or any damage to the property, equipment and facilities caused by the activities of any Permitted Party resulting from

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FOIA CONFIDENTIAL TREATMENT REQUESTED

performance of this project work. The coverage under such an insurance policy shall have a limit of liability not less than:

| | |
|---|---|
| BODILY INJURY AND PROPERTY DAMAGE LIABILITY | $5,000,000 per occurrence; $10,000,000 aggregate |

p. ☒ --- Contractor's Pollution Legal Liability Insurance. (Environmental Impairment Liability) Permittee shall require its Contractor to provide an insurance policy covering the liability of Permitted Parties during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and or asbestos abatement. The policy should also include coverage for bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental.

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Limits shall not be less than $3,000,000 Per Occurrence.

The policy form shall include an extended reporting period of at least three (3) years. WMATA shall be included as an additional insured.

q. ☒ --- Professional Errors and Omissions Liability Insurance. A separate insurance policy to pay on behalf of Permittee all costs Permittee's Contractor shall become legally obligated to pay as damages due to any claim caused by any negligent act, error or omission of any Permitted Party out of their acts or omissions in performance of their work under this Permit.

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Such insurance shall be maintained for five (5) years after the final acceptance of the work by either continuation of the policy every year or if coverage is moved to another carrier, the same prior acts retro date should be continued. If coverage is not renewed, an extended reporting period of five (5) years should be purchased and such coverage should be evidenced on the certificate of insurance. In addition, Permittee's Contractor should purchase unintentional errors and omissions and cross liability coverage by endorsement if not already provided.

| | |
|---|---|
| For Each Wrongful Act | $3,000,000 per occurrence; $3,000,000 aggregate |

r. ☒ --- Builder's Risk Insurance. (Required if Permittee is constructing a building adjacent to WMATA property.) An insurance policy covering all risk of physical damage to property under construction shall be procured. Coverage for damage to building materials to be installed may be written

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FOIA CONFIDENTIAL TREATMENT REQUESTED

separately or by endorsement to this policy; damage to Permittee's owned, leased or rented equipment may be written separately or by endorsement to this policy. Insurance shall be on an all-risk policy form including the perils of fire, extended coverage, theft, vandalism, certified acts of terrorism, malicious mischief, collapse and earthquake. Coverage limits shall be equal to the initial contract construction amount and any amendments to the contract which affect the project cost on a replacement cost basis.

22. **Non-Liability of WMATA**. WMATA shall have no liability for any injury or property damage whatsoever unless the injury or damage arises solely from WMATA's negligence. Neither the grant of this right of entry, nor any provision thereof, shall impose upon WMATA any new or additional duty or liability or enlarge any existing duty or liability of WMATA. Nothing in this Permit shall be deemed to waive WMATA's immunity as a sovereign entity.

23. **No Impairment of WMATA's Title**. This Permit constitutes a mere license, and nothing in this Permit and no action or inaction by WMATA shall be construed to mean that WMATA has granted Permittee or any other person or entity any legal or equitable estate in the Permitted Premises, or any right, power, or permission to do any act or make any agreement which may create, give rise to, or be the foundation for any right, title, interest, lien, charge, or other encumbrance upon the estate of WMATA in the Permitted Premises. In amplification and not in limitation of the foregoing, Permittee shall not allow any portion of the Permitted Premises to be used by any persons or entities, in such manner as would likely impair WMATA's title or interest in the Permitted Premises or would result in a claim of adverse use, adverse possession, prescription, dedication or other similar claims with respect to the Permitted Premises or any part thereof.

24. **Compliance With All Laws, Rules and Regulations**. Permitted Parties shall comply with all applicable laws, rules and regulations, policies, instructions and directives, whether Federal or Local, relating to this Permit and Permitted Parties' work hereunder. Should any Permitted Parties' work involve use of, or create materials considered to be hazardous waste which require special handling, Permittee shall ensure that disposal of waste and residue is made in accordance with applicable environmental laws and regulations including, but not limited to the Resource Conservation Recovery Act (RCRA), the Toxic Substances Control Act (TSCA) and where required, shall include preparation and filing of reports and travel manifest documents. WMATA shall be provided with copies of all such reports and documents.

25. **Default/Termination**. Permittee shall be deemed to be in default of this Permit if any Permitted Party shall fail to observe or perform any of the provisions, covenants, conditions, or agreements contained herein and such failure shall continue for a period of ten (10) calendar days after written notice is received from WMATA. If an event of default shall have occurred and be continuing, WMATA, at its option, may at once, or at any time thereafter, terminate this



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Permit by written notice to Permittee, whereupon this Permit shall end and all rights of Permitted Parties hereunder (but not their liabilities) shall expire and terminate. Upon such termination by WMATA, and without in any way limiting the remedies available to WMATA at law, in equity or under the terms of this Permit, Permittee shall at once remove all Permitted Parties their persons and equipment from the Permitted Premises, and restore the Permitted Premises in accordance with **Paragraph 14** above. WMATA may enter into or repossess the Permitted Premises either by force, by summary proceeding or otherwise. WMATA shall have no liability by reason of any such reentry, repossession or removal other than as set forth in **Paragraph 22** above. Nothing in this **Paragraph 25** shall be deemed to limit in any way WMATA's independent right under **Paragraph 10** above, to suspend or terminate this Permit.

**26.** **Licensees.** The Permittee acknowledges that WMATA licenses out part of the Permitted Premises for use by certain licensees (collectively, the "Licensees") during the Non-permitted Time. Each week, prior to the end of the Permitted Entry Time, the Permittee shall remove any equipment, trash, or any other items it brought on to the Permitted Premises and restore the Permitted Premises to its previous condition, to the satisfaction of WMATA. Notwithstanding the above, the Permittee may store its testing equipment (the "Stored Items") during the Non-permitted Time, pursuant to the terms of Paragraph 4. The Permittee solely assumes all risk and responsibility for the Stored Items.

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**27.** **Notices**. Notices given in connection with this Permit shall be in writing and shall be sent by (i) registered or certified mail, return receipt requested; (ii) hand delivery; or (iii) a nationally recognized overnight courier service for next business day delivery. Notices and other communications shall be deemed to have been given on the earlier of actual receipt or, in the case of overnight courier, on the first business day after delivery to such courier.

| If to WMATA: | If to Permittee: |
|---|---|
| Director | Omar A. Karim |
| Office of Station Area Planning | Banneker Ventures, LLC |
| and Asset Management | 700 12th Street, NW |
| 600 Fifth Street, NW | Washington, DC 2005 |
| Washington, DC 20001 | 202-667-4110 |

**28.** **Officials Not To Benefit**.

a. No member (i.e., Representative or Senator) of, or delegate to Congress, or any similar official, or resident commissioner, or any member of such person's family, shall be admitted to any share or part of this Permit, or to any benefit that may arise therefrom; but this provision shall not apply if this Permit is made with a corporation or other entity with which such official or family member has only a de minimis (in WMATA's sole opinion)

contractual or ownership interest. Permittee warrants, represents and agrees that as of the date of this Permit, no person described in this Subparagraph, nor any entity with which such person is affiliated, has any such interest in any Permitted Party. Permittee shall forthwith deliver written notice to WMATA of any breach of the foregoing warranty representation and agreement and shall make reasonable inquiries from time to time to determine whether any such breach has occurred.

b. No member, officer, or employee of WMATA or of a local public body during his/her tenure or one year thereafter shall have any interest, direct or indirect, in this Permit.

**29.** **Gratuities**. In connection with this Permit, or any amendments or modifications thereto, the giving of, or offering to give, gratuities (in the form of entertainment, gifts or otherwise) by a Permitted Party or any agent, representative, or other person deemed to be acting on behalf of a Permitted Party, or any contractor, subcontractor or supplier furnishing material to or performing work under this Permit, to any director, officer or employee of WMATA, or to any director, officer, employee of any of WMATA's agents, consultants or representatives, with an intent to secure an agreement or favorable treatment or the making of any determinations with respect to performance under this Permit is expressly forbidden. The terms of this Paragraph shall be strictly construed and enforced in the event of violation hereto.

**30.** **Governing Law**. This Permit shall be governed by the laws of the District of Columbia and, except that to the extent that District of Columbia law conflicts with the WMATA Compact, WMATA shall be governed by the WMATA Compact.

**31.** **Counterparts**. The Parties hereto agree that this Permit may be executed in one or more identical counterparts, each of which shall be deemed to be an original thereof, and shall be enforceable against each of the Parties hereto.

**32.** **Authority**. The Parties represent and warrant that they have the power and authority to enter into and perform their obligations under this Permit.

**33.** **Entire Agreement**. This Permit constitutes the entire agreement between the Parties. The Parties acknowledge that no representations or warranties have been made except as set forth herein. This Permit shall not be modified or amended in any manner except by an instrument in writing executed by the Parties as an amendment to this Permit.

**IN WITNESS WHEREOF**, the Parties have caused this Permit to be executed in two counterparts as of the date and year first written above.

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FOIA CONFIDENTIAL TREATMENT REQUESTED

**WITNESS OR ATTEST:**

_____

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

By: _____
, Director
Office of Station Area
Planning and Asset Management

**WITNESS OR ATTEST:**

_____

**Banneker Ventures LLC**

By:_____
Print Name:_____

Title:_____

Deleted: _



FOIA CONFIDENTIAL TREATMENT REQUESTED

# Florida Avenue/Shaw-Howard Properties

ROE Issue List

## 1. Right of Entry

a. *ROE*: a limited right of entry to do a survey and environmental studies;

b. *Term (paragraph 6)*: as currently written, the entry term is to begin immediately and run through the 60th day after execution of the JDA. The Term Sheet is unclear as to when this right to enter is supposed to begin.

c. *WMATA Approval (paragraph 5)*: prior to entering the property, the developer must submit a work plan, detailing the work to be performed on the property, for WMATA approval.

## 2. Weekend Licensees

a. *Licensees (paragraph 26)*: Lots 44 and 45 of the property is currently licensed to a flea market on the weekends. There is also a potential license with a valet parking enterprise, limited to lot 45.

b. *Conflict*: The developer has expressed concern that somebody using the property in connection with the flea market or the valet will get injured and then come after the developer. When asked what they were concerned about, the developer's attorney suggested that somebody could step in a testing hole or trip over equipment being stored on the property.

c. *Insurance / Indemnification*: due to the above concerns, the developer asked to get full indemnity from the Licensees for 1) all acts of the Licensee and 2) for all acts of the Permittee under the permit. The developer also asked to be added as an additional insured on the Licensees insurance policies on the property.

d. *Limited Time (paragraph 4)*: In an attempt to avoid the conflict and insurance and indemnification issues above, the ROE was drafted to limit the right to enter to weekdays when the Licensees will not be on the property. Consultation with WMATA engineers indicated that this testing could reasonably be accomplished on a Monday to Friday schedule. The developer has indicated that this may be agreeable.

e. *Storage (paragraph 4 and 26)*: We have offered to allow the developer to store any testing equipment, if necessary, on lots 18 and31 over the weekend. These lots are vacant and not subject to the weekend Licensees.

**3. Insurance**

a. *Insurance Approval (paragraph 21d)*: WMATA counsel requested copies of the required insurance policies from developer. The developer has indicated that we should have them sometime this week.

b. *Railroad insurance (paragraph 21o)*: This property is located above a heavy rail tunnel, and so any work on the property should be subject to the railroad insurance requirements of our standard ROE. The WMATA insurance department and WMATA engineers concurred that railroad insurance requirements could be waived so long as test borings do not go below 15 feet;

Banneker
Ventures
Draft
Sept. 8, 2009

Note: Text in brackets [] needs to be confirmed as correct.

# JOINT DEVELOPMENT AGREEMENT

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

*WMATA*

and

**THE JAZZ @ FLORIDA AVENUE, LLC**

*Developer*

Dated as of _____, 2009



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000924

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000925

EXHIBITS

A. DEFINITIONS/DEFINED TERMS
B. DESCRIPTIONS OF PROPERTY, FEE PROPERTY & JOINT PROPERTY
C. DESCRIPTIONS OF LEASE PREMISES, FEE PREMISES & JOINT PREMISES
D. WMATA'S RESERVED AREAS AND INTERESTS
E. LEASE
F. JOINT IMPROVEMENTS
G. RIGHT OF ENTRY AGREEMENT
H. JOINT PROJECT SCHEDULE
I. CONDITIONALLY APPROVED DEVELOPMENT PLAN
J. APPROVED DEVELOPMENT PLAN
K. FORM OF GUARANTY
L. COVENANTS, CONDITIONS AND RESTRICTIONS
M. COTENANTY AGREEMENT



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000926

# 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~~all of Lots 44 & 45 in Square 393 and Lot 31 in Square 416, comprising approximately ~~28,892~~[28,356.90] [1] square feet of land located ~~at~~ in the southwest corner of the intersection of 9th Street and Florida Avenue, N.W., and the southwest corner of the intersection of 8th Street and Florida Avenue~~ NW and 9th Street and Florida Avenue NW~~, N.W., respectively, in the District of Columbia~~; each as~~ (the "**Property**"), more particularly described in **Exhibit ~~A~~ B**, attached hereto and made a part hereof ~~(the "**Property**")~~.

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

**WHEREAS,** Developer is the contract purchaser of Lot 41 & A&T Lot 826 in Square 393 comprising approximately [7,720] square feet of land fronting on 9th Street, N.W. and located contiguous to Lot 4[ ] near the southwest corner of the intersection of 9th Street and Florida Avenue, N.W., in the District of Columbia (the "**Fee Property**"), more particularly described in **Exhibit B**. The Lease Premises and Fee Property are sometimes referred to collectively as the "**Joint Property**."

---

1. The D.C. Assessor lists the four lots as 28,892 square feet. The Developer's surveyor has reported the following square footages: Lot 31 – 15,944.97 square feet; Lot 44 – 3,784.45 square feet; and Lot 45 – 8,627.48 square feet; for a total of 28,356.90 square feet. The Surveyor also reported that Lot 18 in Square 416 was resubdivided into Lot 31 by WMATA in 1996 when Lots 12 through 18 were resubdivided into Lot 31. What is the evidence the four lots are 28,892 square feet other than the D.C. Assessor's records?



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000927

WHEREAS, WMATA and Developer have agreed to close the portion of the public alley in Square 393 contiguous to Lots 41, 44 & 45 and A&T Lot 826 and resubdivide such Lots and the portion of the closed public alley into a single, buildable lot of approximately [21,244] [2] square feet.

**WHEREAS,** Developer has agreed to construct a mixed-use, Transit-Oriented Development project on the ~~Lease Premises~~Joint Property on the terms and conditions set forth herein~~;~~.

**WHEREAS**, to address how the Joint Project will be owned, operated, financed and eventually sold after the expiration or termination of the Lease, WMATA and Developer will enter into a Cotenancy Agreement simultaneously with entering into the Lease.

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

## ARTICLE 1
## DEFINED TERMS

1.1 Capitalized terms in this ~~Lease~~Agreement shall have the meanings set forth in **Exhibit ~~—~~A**, attached hereto and incorporated herein.

## ARTICLE 2
## LEASE OF THE LEASE PREMISES AND DEVELOPMENT OF THE JOINT PROJECT

2.1 **Fundamental Agreement.** WMATA agrees to lease the Lease Premises to the Developer, and the Developer agrees to lease the Lease Premises from WMATA and develop the Lease Premises, as part of the Joint Premises, in accordance with the terms and conditions of this Agreement, by way of a ground lease agreement (the "**Lease**"), a copy of which is attached hereto as **Exhibit ~~———~~E**, and incorporated herein.

2.1.1 Such Lease and any and all development and construction rights granted under this Agreement shall be subject to any and all easements and other reserved rights reasonably required by WMATA in connection with its use, operation, access, maintenance, repair, servicing, replacement or removal of any Metro Facilities or with WMATA's operations and business generally. The scope and locations of such easements and rights are to be established in accordance with the terms and conditions of this Agreement, the Lease, and the Covenants, Conditions and Restrictions and shall include, without limitation, easements and reserved rights (whether at, above or below ground level) for (i) the construction, operation, maintenance, repair, replacement, removal or relocation of any and all existing tunnels and related facilities, (ii) all Metro Facilities (including, without

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2. Please confirm the combined square footage of Lots 41, 44 & 45 and A&T Lot 826 and the portion of the public alley to be closed.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000928

limitation, any replacement or interim facilities) which have piling structural support within the Property, (iii) any and all service facilities serving such tunnels or any Metro Facilities, (iv) underground power lines, (v) ventilation shafts, and (vi) horizontal and vertical support for all Metro Facilities in, on and about the Property, including, without limitation, structures, equipment or installations such as foundations, beams, columns, bracing and similar structural features which maintain vertical and horizontal support and are necessary for the maintenance, operation and protection of any and all Metro Facilities.

2.1.2 The Lease, the Covenants, Conditions and Restrictions, and other related agreements, will strictly reserve protections and approval rights, satisfactory to WMATA in its sole discretion, with respect to limits on loads and pressures which may impact or affect Metro Facilities, whether vertical or lateral, as provided in the WMATA Adjacent Construction Design Manual.

2.2 **Project, Fee Project and Total Project.** Developer will construct improvements on the Lease Premises (the "**Project**") and on the Fee Property (the "**Fee Project**") on the terms and conditions set forth in this Agreement, the Lease, and the other Transaction Documents. The Project and Fee Project are sometimes referred to collectively as the "**Joint Project**." The Joint Project will consist of:

2.2.1 *Developer Improvements.* The Developer's improvements on the Lease Premises (the "**Developer Improvements**") shall be ~~a minimum 130,014 FAR gross square feet,~~portion of the Joint Improvements including ~~not less than 104~~ dwelling units, ~~11,750 gross square feet of~~ retail ~~arts~~ space~~, plus~~ and associated residential and retail parking.

2.2.2 *Fee Improvements.* The Developer's improvements on the Fee Property (the "**Fee Improvements**") shall be portion of the Joint Improvements including dwelling units, retail space and associated residential and retail parking.

2.2.3 *Joint Improvements.* The Developer Improvements and Fee Improvements are sometimes referred to as the "**Joint Improvements**." The Joint Improvements shall include a Gross Floor Area of approximately 4.5 times the area of the Joint Property plus up to 0.36 times the area of the Joint Property for the affordable dwelling units under inclusionary zoning, divided between dwelling units and retail space, plus basements, elevator shafts, stairwells and other vertical penetrations, penthouses, attic space, interior balconies and mezzanines, underground parking, cellars and outside balconies to the extent they are not included in the calculation of FAR or Gross Floor Area. The Joint Project is expected to include approximately [132] rental apartment units, approximately [20,000] square feet of ground floor retail, and approximately [71] underground parking spaces in two buildings fronting on Florida Ave, NW, which will be separated by Eighth Street, N.W. For purposes of determining the FAR of the Property, WMATA hereby agrees to permit Developer to use the entire Property



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000929

for purposes of qualifying for and calculating the FAR of the Property. The use of the FAR Square Feet and other development rights attributable to any WMATA's Reserved Areas and Interests shall not be construed to be, or to constitute a lease, license or grant of any right to use or occupy the WMATA's Reserved Areas and Interests to the Developer.

~~2.2.2~~2.2.4 The ~~Developer~~Joint Improvements will include an affordable housing component consisting of twenty percent (20%) of the dwelling units~~ at fifty percent (50%) AMI~~.

~~2.2.3~~2.2.5 The ~~Developer~~Joint Improvements will be built in a single phase on the ~~Lease~~Joint Premises.

~~2.2.4~~2.2.6 No improvements will be constructed on the Lease Premises other than the Developer Improvements, unless approved in advance by WMATA.

2.3 **Pre-~~Stabilization~~Closing Period.**

2.3.1 The "**Pre-~~Stabilization~~Closing Period**" ~~shall commence~~is hereby defined to be that time period commencing upon the Effective Date and ~~continue until~~ending upon the ~~earlier of:~~Closing Date.[3]

~~2.3.1.1 92.5% Project Occupancy; or~~

~~2.3.1.2 Forty eight (48) months after the Effective Date [OPEN].~~

2.3.2 The Pre-~~Stabilization~~Closing Period shall entail the Total Project's design, government approval, FTA approval, Total Project financing, and achievement of all requirements for Closing, as defined herein.

2.4 **Ratification and Confirmation of WMATA's Retained Rights.** WMATA's fee simple interest in the Lease Premises shall be and always remain unsubordinated to any lien created by Developer. On the expiration or termination of the Lease (by lapse of time or otherwise), sole ownership of the Lease Premises subject to such Lease, and the right to possess and use the same, shall automatically pass to and be vested in WMATA. Likewise, Developer's, or any ~~tenant's~~subtenant's, ownership ~~in~~of improvements on the Lease Premises affixed to and part of the real property (including, but not limited to, Developer Improvements which are affixed to and part of the real property) that is the subject of the Lease shall also automatically terminate, and WMATA shall thereafter be the sole owner of such improvements.[4]

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3. This assumes the entire Base Rent for the 60-year Initial Term will be paid at Closing under a capitalized lease structure for the Initial Term.

4. The definition of Developer Improvements includes equipment which may or may not be fixtures. The additional language was inserted to recognize equipment which is not fixtures will not revert.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000930

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

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

2.6.1 Until the Final Completion, this Agreement shall be deemed to be in the nature of a personal services contract and Developer acknowledges that WMATA has entered into this ~~Lease~~Agreement on the basis of its trust and special confidence in Banneker Ventures, LLC, a District of Columbia limited liability company, and ~~Bank~~Banc of America Community Development Corporation, a North Carolina corporation (collectively, the **"Developer Members"**). Developer represents, warrants and covenants that the Developer Members have, and shall continue to maintain until ~~satisfaction of all Construction Related Obligations~~Final Completion, primary and substantial involvement in the Joint Project and performance of the obligations under this Agreement, including, without limitation, selection and maintenance of a Qualified Team, as provided below. Further, Developer represents, warrants and covenants that until ~~all obligations of Developer under this Agreement are fully satisfied~~Final Completion, Developer shall be under the Control of the Developer Members.

2.6.2 Developer represents, warrants and covenants that it has or shall obtain when needed, required or contemplated by this Agreement and thereafter shall continue to maintain until ~~satisfaction of all obligations under this Agreement~~ Final Completion a team of, as applicable, officers, directors, partners, members, employees, Consultants and contractors who, specifically and in the aggregate, clearly have the skills, experience, knowledge, and reputation requisite to perform and accomplish the intended objectives of this Agreement (~~each such team~~ a **"Qualified Team"**). In order to achieve and maintain the status of a Qualified Team, such Qualified Team shall have, without limitation, extensive skills, experience and knowledge and a generally recognized reputation specifically relating to development of the type, scope and complexity contemplated by this Agreement.

2.6.3 Developer represents, warrants and covenants that it has and shall have the capacity and experience to satisfy and shall satisfy the Approved Design and Construction Documents and the Joint Project Schedule, subject to delays beyond the reasonable control of Developer.

2.6.4 The above inducements and agreements are confirmed herein as material obligations of Developer.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000931

2.7 **WMATA's Operations Prior to Closing.** WMATA shall have at all times prior to the Closing the unrestricted right, but not the obligation to perform any work desired by WMATA on the Property determined by WMATA in its sole discretion to be necessary for the maintenance and operation of its ~~transit system and related~~Metro Facilities including, without limitation, any environmental testing studies, evaluations or remediation in, on or about the Property.

2.7.1 WMATA shall have at all times the unrestricted right to enter into new agreements or maintain existing agreements affecting the Property, which such agreements shall be terminated by WMATA prior to Closing.

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

## ARTICLE 3
## DEPOSIT AND PRE-~~STABILIZATION~~CLOSING PERIOD PAYMENTS

3.1 **Deposit.** Within two (2) Business Days of the Effective Date, Developer shall deliver a cash security deposit, in the amount of Two Hundred Fifty Thousand Dollars ($250,000), to WMATA to secure the Developer's performance hereunder (together with any interest earned thereon, the "**Deposit**"). Developer may convert the proposal security deposit to part of the Deposit, in the amount of $100,000, currently being held by WMATA, by giving WMATA Notice that the proposal security deposit should be converted to part of the Deposit.

3.1.1 The Deposit may be applied by WMATA in whole or in part to cure or remedy any breach or Default by Developer under this Agreement. No application of the Deposit to cure any breach or Default by Developer shall constitute a waiver of any breach or Default by Developer or an election of remedies. Within ~~ten~~twenty (~~10~~20) Business Days of receiving ~~written~~ Notice that WMATA has so applied the Deposit, in whole or in part as described herein, Developer shall deliver to WMATA, in immediately available funds, the amount necessary to return the Deposit to its original amount.

3.1.2 The Deposit, less any amounts previously applied pursuant to Section 3.1.1 and not replenished by Developer, shall be refunded to Developer within twenty (20) Business Days of WMATA's receipt of a copy of the final certificate of



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000932

occupancy for the residential portion of the Joint Project and a shell certificate of occupancy for the retail portion of the Joint Project. [5]

3.1.3 The Deposit shall not be applied to any payments due hereunder nor to any amounts due at Closing. However, the entire Deposit shall be forfeited and may be retained by WMATA as liquidated damages pursuant to the terms and conditions of Article 18 below, if Closing does not occur for any reason other than (i) WMATA's default; (ii) Developer's right to terminate pursuant to the terms of this Agreement; or (iii) non-satisfaction of a condition precedent to Developer's obligation to close as set forth in Section 10.1.

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

3.1.5 Notwithstanding any provision in this Agreement requiring a refund of the Deposit to Developer, (i) WMATA shall be entitled to retain and apply all or any portion of the Deposit to satisfy any accrued liabilities under Section 17.3 of this Agreement, but such application shall not be deemed to satisfy or extinguish Developer's liability under this Agreement or any of the Transaction Documents in excess of the amount so applied and shall not be deemed a cure or waiver of any Default by Developer or an election of remedies unless the amount so applied did in fact satisfy Developer's liability, and (ii) WMATA shall not be required to refund the Deposit or any portion thereof until and unless the ~~Developer's obligations under this Agreement~~conditions for its return have been fully and finally satisfied ~~and~~in accordance with Section 3.1.2 of this Agreement has been terminated under circumstances where the Deposit, less any accrued liabilities under Section 17.3, is to be returned to Developer.

3.1.6 If Developer has not converted the proposal security deposit to part of the Deposit, then within ten (10) Business Days of the receipt of the Deposit pursuant to this Section 3.1, WMATA shall return to the Developer the proposal security deposit, in the amount of $100,000.00, currently being held by WMATA. [6]

3.2 **Pre-~~Stabilization~~Closing Period Payments.** Pre-~~Stabilization~~Closing payments shall begin upon the Effective Date and continue throughout the Pre-~~Stabilization~~Closing Period, as consideration for WMATA granting the Developer the exclusive right to

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5. Why is the Deposit being held through the construction period? Once completion of the Joint Improvements is bonded and the Guaranty is delivered, the Deposit should be released.

6. Is any interest accruing on the proposal security deposit?



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000933

develop the Lease Premises pursuant to this Agreement (the "**Pre-~~Stabilization~~Closing Period Payments**").

3.2.1 Pre-~~Stabilization~~Closing Period Payments shall be due in the ~~annual amount of Two Hundred Thousand Dollars ($200,000.00).~~ following amounts: (a) $[50,000] for the first [18] months after the Effective Date; and (b) $[65,000] for the [19th] through the [30th] month after the Effective Date.[7] All Pre-~~Stabilization~~Closing Period Payments shall be paid in immediately available funds and, except for proration for partial quarters, shall be non-refundable. ~~[OPEN]~~

3.2.2 Pre-~~Stabilization~~Closing Period Payments shall be paid in equal quarterly installments of ~~$50,000.00,~~(a) $[8,334] each for the first [18] months, and (b) $12,500 each for the [19th] through the [30th] months; such quarterly installments being due each January 1st, April 1st, July 1st, and September 1st. ~~[OPEN]~~[8] If a quarterly installment straddles the [19th] or [31st] month, the amount will be pro-rated on a daily basis between the prior quarterly payment and the increased quarterly payment.

3.2.3 The Developer shall pay the first Pre-~~Stabilization~~Closing Period Payments to WMATA, on or before the Effective Date. If the Effective Date is not one of the quarterly due dates, the first Pre-~~Stabilization~~Closing Period Payment shall be pro-rated on a daily basis to cover the period beginning on the Effective Date ~~through~~up to the next quarterly due date. At the Closing, WMATA shall credit to the Developer's payment of base rent under the Lease any unused amount of the immediately prior quarterly payment of Pre-Closing Period Payments based on a daily pro-ration from the beginning of such quarter to the Closing Date.

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7. The amount of the Pre-Closing Period Payments is open. Developer assumed the Pre-Closing Period ends on the Closing Date when the entire Base Rent will be due.

8. The amount and time period for the Pre-Closing Period Payments is open.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000934

## ARTICLE 4
## RIGHT OF ENTRY; DUE DILIGENCE AND STUDY ~~PERIOD~~AND ACCESS PERIODS

4.1 **Right of Entry; Duration and Scope.** Prior to the execution of the Lease, Developer shall only enter and conduct activities in, on or about the Property subject to the terms of an express written Right of Entry agreement. WMATA and Developer entered into a Right of Entry agreement~~,~~ dated _____, 2009 (the "**ROE**"), a copy of which is attached hereto as **Exhibit ~~—~~G**.[9] Pursuant to the terms of the ROE, Developer and certain of its Consultants were granted a license, for a period ~~prescribed in~~ending on the ~~ROE~~Closing Date (the "~~Study~~**Access Period**"), to enter onto the Lease Premises to conduct certain studies, tests, examinations, analyses, inspections or investigations concerning the Lease Premises (collectively, "**Lease Premises Due Diligence**"). The period starting with the Effective Date and ending one hundred twenty (120) Days later is hereby defined as the "**Study Period**."

4.2 **Notice of Termination.** Should the results of the Lease Premises Due Diligence appear unsatisfactory to Developer for any reason as determined by Developer in its sole discretion during the Study Period, Developer shall have the right to terminate this Agreement by giving Notice (the "**Study Period Termination Notice**") to that effect to WMATA on or before 5:00 p.m. Eastern Time on the ~~sixtieth~~one hundred twentieth (~~60~~120th) Day after the Effective Date (the "**Study Period Termination Deadline**").[10]

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

4.2.2 Upon termination of this Agreement in accordance with the above provisions, WMATA shall ~~promptly~~ return the unapplied portion of the Deposit to Developer within fourteen (14) Days, subject to the terms of Article 3.

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.

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9. Is there a ROE? If not, the first sentence in Section 4.1 needs to be revised. How can the ROE specify a Study Period when the Effective Date has not been determined?

10. A Phase II Environmental Site Assessment has been recommended for a portion of the Property. Do we need to add an extension of the Study Period Termination Deadline for the Phase II Environmental Site Assessment and/or other environmental or geotechnical investigations? Since there will be substantial excavation for the Total Project, the risk of finding rock in the ground other than where the tunnel was excavated could be material.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000935

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

4.5 **No Mechanic's or Materialman's Liens.** Developer shall not permit any mechanic's or materialman's liens or any other liens to attach to the Property by reason of the performance of any ~~work or the purchase of any materials~~Lease Premises Due Diligence by Developer or any other Person related to or engaged by or on behalf of Developer, including, without limitation, in connection with any ~~studies, entries, surveys, tests, investigations, or any~~ construction or lienable non-construction activities actually ~~or allegedly~~ conducted by or for Developer. This Section 4.5 shall apply without limitation to matters arising and activities that are conducted during and after the expiration of any ROE up to the Closing Date and any such liens that may attach to the Property following the Closing~~.~~ Date for activities conducted prior to the Closing Date.[11] Should any such lien attach, Developer shall cause the same to be removed of record or bonded off within ~~ten~~twenty (~~10~~20) Business Days following the date of Developer learning of such attachment. If Developer fails to cause the same to be removed of record or bonded off within ~~ten~~twenty (~~10~~20) Business Days following the date of Developer learning of such attachment, WMATA may, but shall not be obligated to, do so at Developer's cost and expense and Developer shall pay or reimburse WMATA for the full amount thereof plus interest, accruing at the "Default Rate of Interest" (as that term is defined in the Lease), on demand. Excluding Lease Premises Due Diligence, nothing in this Section 4.5 shall be construed as conferring on Developer or any other Person any right to conduct construction or non-construction activities on the Property.

4.6 **Confidentiality.** All information made available by WMATA to Developer in accordance with this Agreement ~~or~~and information about the physical condition of the Property obtained by Developer in the course of its investigations (other than information that is already in the public domain) shall be treated as confidential information by Developer until the Closing, and, prior to the ~~lease of the Lease Premises by Developer~~Closing, Developer shall use its Commercially Reasonable Best Efforts to prevent its Consultants from divulging such information~~,~~ into the public domain, (i) except as may be required to comply with Laws, to any unrelated third parties, (ii) except as reasonably necessary, to third parties engaged or sought to be engaged by Developer for the limited purpose of analyzing and investigating such information for the purpose of consummating the transaction contemplated by this Agreement, including but not limited to Developer's ~~attorneys~~Consultants and representatives~~,~~ and prospective investors, tenants or subtenants, lenders~~ and engineers.~~, government agencies providing capital for the Joint Project and Consultants.

4.7 **No Liability of WMATA.** WMATA shall not be required to incur any liability, cost or expense or, to provide any information, data, reports, studies or the like in connection with Developer's activities under this Article 4 or the ROE. Developer

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11. The JDA covers mechanics' liens created prior to the Closing Date and the Lease covers mechanics' liens created after the Closing Date. There should be no gap and no overlap in these provisions.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000936

acknowledges and agrees that except as expressly set forth herein, WMATA shall have no duties, responsibilities or liabilities whatsoever in connection with the activities of the Developer to be conducted on or about the Lease Premises or the determinations to be made by Developer with respect thereto.

4.8 **No Detriment to Lease Premises.** Unless Developer obtains the prior express written approval of WMATA to allow any equipment, infrastructure or improvement installed on the Lease Premises to remain in place, Developer may be required, at the sole option of WMATA, to remove such equipment, infrastructure and improvements that has been installed on the Lease Premises by Developer at Developer's expense, within ten (10) Business Days ~~of~~ after the expiration of any applicable grace period after Developer's receipt of a Notice of a Default~~,~~ or the termination of this Agreement~~, or failure to consummate Closing~~. [12]

~~ARTICLE 5~~
~~TITLE~~

## ARTICLE 5
## TITLE

5.1 **Title**. During the Study Period, Developer ~~hereby~~ shall (a) update the Title Commitment, and (b) prepare an ALTA/ACSM Land Title Survey of the Joint Property (the "**Survey**"), separately depicting the Property and Fee Property, and including legal descriptions for the Property, any then-known WMATA's Reserved Areas and Interests, Fee Property and Joint Property with computations of land area and provide a copy of both to WMATAA with Developer's written approval of the Survey. Upon Developer approving such Survey and providing a copy of the updated Title Commitment to WMATA, Developer shall be deemed to have unconditionally ~~approves~~approved the Survey and legal description of the Property and ~~accepts~~accepted the state of WMATA's title ~~thereto~~to the Property as of the effective date of the updated Title Commitment, which such title shall be subject, however, in each case to: (i) the specific exceptions, reservations and conditions of this Agreement and the Lease; (ii) all applicable Laws and governmental rules and regulations including, but not limited to, the applicable, existing zoning ~~Ordinance~~ordinances; (iii) ~~those items listed as exceptions to title in the Title Commitment (the "~~the Permitted Exceptions~~")~~; (iv) the Covenants, Conditions, and Restrictions, and (v) encumbrances arising out of the actions or inactions of Developer or any person or entity acting on Developer's behalf. From and after the effective date of the updated Title Commitment until the Closing or the termination of this Agreement, WMATA shall not cause or permit the status of title to the Property to be changed, except in accordance with the provisions of this Agreement, without the Developer's prior written consent which shall not be unreasonably withheld, conditioned or delayed. WMATA shall pay those Impositions on the Property prior to the Closing Date which Developer is not obligated to pay under this Agreement. [13] Subject to the Permitted

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12. Failure to close by the Closing Date is already a Default. It doesn't need to be covered twice.
13. This ties into Section 18.1.3 where it is a WMATA Default to not pay these Impositions.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000937

Exceptions, if the state of the title to the Property changes between the effective date of the updated Title Commitment and the Closing Date or when Developer attempts to obtain a leasehold owners title insurance policy insuring Developer's leasehold estate in the Lease Premises, and such change was caused by or the responsibility of WMATA, and Developer is unable to obtain a leasehold owners title insurance policy reflecting the state of title shown in the updated Title Commitment (satisfied and modified as required by the preceding sentence), WMATA shall promptly, at its sole cost and expense, take those steps necessary to cure and correct the change in the status of title to the Property to the condition which existed on the Effective Date and satisfy the Title Insurer as Developer shall select to issue the leasehold owners title insurance policy, so that such change in the status of title to the Property caused by or the responsibility of WMATA is cured and corrected and the leasehold owners title insurance policy can be obtained; provided, however, that in no event shall WMATA be required to provide any indemnification, or any other agreement, undertaking, or affidavit in the nature thereof, without the express prior approval of its Board of Directors. Notwithstanding the foregoing or any other provision of this Agreement or the Lease, nothing in this Agreement or the Lease shall make WMATA responsible for clearing any and all: (a) objections relating to any Hazardous Material; or (b) covenants, conditions, restrictions, reservations and easements recorded among the land records of the District of Columbia prior to the update of the Title Commitment during the Study Period; or (c) covenants, conditions, restrictions, reservations and easements not caused by WMATA which were recorded among the land records of the District of Columbia after the update of the Title Commitment during the Study Period but prior to the Closing Date. Compared to the updated Title Commitment during the Study Period, Developer shall not be required or obligated to accept any adverse changes to the status of title to the Property differing from those which existed as of such update (unless such changes result from the act or omission of Developer or any of its contractors, subcontractors, business invitees, or Mortgagees), or any changes caused by Permitted Exceptions, nor shall WMATA be under any obligation to cure any of the changes described in this sentence unless they result from the act or omission of WMATA, or its contractors, subcontractors, secured lenders or business invitees.

## ARTICLE 6
## FINANCING

6.1 **Obligation to Diligently Pursue Financing and Equity Funding.** Developer shall expend Commercially Reasonable Best Efforts to obtain the funds required for the consummation of the Lease and development of the ~~Lease~~Joint Premises by the Closing Date in conformity with the terms hereof (the "**Lease Premises and Fee Property Financing**") including, without limitation, timely and expeditiously pursuing all steps necessary in respect thereto.

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000938

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

6.2.2 If Developer is not able to secure on or before the thirtieth (30th) Day preceding the Closing Date for the Lease Premises and Fee Property (the "**Financing Contingency Cut Off Date**") ~~a~~one or more written ~~commitment~~commitments from ~~an~~ Institutional ~~Lender~~Lenders for Lease Premises and Fee Property Financing, for which Developer believes it can satisfy all the conditions therein for Closing and funding, Developer shall give Notice to WMATA (the "**Financing Termination Notice**") on or before 5:00 p.m. Eastern Time on the applicable Financing Contingency Cut Off Date and shall state in such Financing Termination Notice whether Developer is terminating this Agreement on such basis.

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

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

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

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

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

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000939

6.4 [Intentionally deleted.][14]

~~6.4 **Loan Requirements.** Developer and Guarantor shall use Commercially Reasonable Best Efforts to cause each lender of Developer and Guarantor for any of the Lease Premises Financing and the holders of and beneficiaries and Developer and Guarantor shall undertake Commercially Reasonable Best Efforts to cause to be satisfied each of the following requirements (the "**Loan Covenants**").~~

~~6.4.1. Each lender of Developer and Guarantor, with respect to the Project, and the holders of and beneficiaries and secured parties (collectively "**Interest Holders**") under each mortgage, deed of trust, security agreement or similar agreement or instrument encumbering all or part of the Project shall provide written covenants and agree to WMATA's requirements as set forth in this Article 6.~~

~~6.4.2 In the event of their exercise of remedies under any loan or security documents, including, without limitation, a foreclosure of any interest of the Developer in the Lease Premises or Project, or any deed, assignment or other transfer of title in lieu thereof, payment of the proceeds of each of the Payment and Performance Bonds securing any and all of such Interest Holders shall be applied solely to costs and expenses for Final Completion of the Project in accordance with the Approved Development Plan and not to any~~

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14. Section 6.4 was deleted for the following reasons: (i) since WMATA will have been paid all Base Rent for the 60 years and will be economically protected from a delay in the completion of the Total Project, such Loan Covenants are not customary, appropriate or acceptable; (ii) no HUD/FHA loan program will agree to the Loan Covenants; (iii) we do not believe an Institutional Lender or rating agency for a commercial mortgage-backed security (CMBS) will agree to such Loan Covenants, which makes the Lease and transaction "unfinanceable;" (iv) the provision on Payment and Performance Bonds is inconsistent with the surety's rights and obligations under the Payment and Performance Bonds in that the Bonds assure performance of the construction contract not the Approved Development Plan and cover the AIA definition of substantial/final completion not WMATA's definition of Final Completion, the surety typically causes the work to be performed without running payments through the obligees, and proceeds of the Labor and Materials Payment Bond are for the laborers and materialmen not the Mortgagee, Developer or WMATA; also we have not previously seen a provision like this accepted by any Institutional Lender or rating agency for a CMBS and know that HUD/FHA will not permit WMATA to be an obligee on the Payment and Performance Bonds, so the HUD/FHA lender will never agree to this provision; (v) the provision on the application of insurance fails to recognize there are multiple types of insurance required under the leasehold Mortgage that cover risks other than a casualty loss and therefore conflicts with the use of the insurance proceeds, rent loss/business interruption insurance will be used to pay interest on indebtedness and again we have not previously seen a provision like this accepted by any Institutional Lender or rating agency for a CMBS and know that HUD/FHA lender will never agree to this provision; (vi) no HUD/FHA lender or Institutional Lender or rating agency for a CMBS will agree to WMATA controlling the application of proceeds from the Mortgagee's guarantees. if any; (vii) the priority of the Covenants, Conditions and Restrictions can be permanently achieved by recording order, which makes this provision unnecessary and invites greater scrutiny of the Covenants, Conditions and Restrictions by the Mortgagee; and (viii) since WMATA's Reserved Areas and Interests are set at the time of the loan closing, they will be excluded from the Lease Premises and neither the Developer nor any Mortgagee can encumber them which makes this provision unnecessary.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000940

~~indebtedness or other obligations that may otherwise be secured by such Payment and Performance Bonds until such Final Completion is achieved; and~~

~~6.4.3~~ ~~The proceeds of insurance under each mortgage, deed of trust, lien and other security agreement, assignment of collateral and similar instrument encumbering the Project for the benefit of any of such Interest Holders shall be applied solely to costs and expenses for Final Completion of the Project in accordance with the Approved Development Plan and not to any indebtedness or other obligations that may otherwise be secured thereby until such Final Completion is achieved; and~~

~~6.4.4~~ ~~The proceeds of each guarantee from a Guarantor securing the borrower's obligations to such Interest Holder (and the collateral securing each such guaranty) shall be applied solely to costs and expenses for Final Completion of the Project in accordance with the Approved Development Plan and not to any indebtedness or other obligations that may otherwise be secured by such guaranty (or collateral) until such Final Completion is achieved; and~~

~~6.4.5~~ ~~Each mortgage, deed of trust, lien and other security agreement, assignment of collateral and similar instrument encumbering the Lease Premises or the Project shall be subject and subordinate to the Covenants, Conditions and Restrictions. No mortgage, deed of trust, lien, security agreement, assignment of collateral or similar instrument encumbering the Lease Premises or the Project shall encumber any portion of WMATA's Reserved Areas and Interests.~~

## ARTICLE 7
## APPROVAL PERIOD

7.1 **Approval Period.** Developer shall be afforded a period within which to pursue the Approvals, which period (the "**Approval Period**") shall begin on the Effective Date and shall terminate upon the earlier of the Closing or ~~twenty~~[_____(~~20~~__)][15] months after the Effective Date, which deadline shall automatically extended by Schedule Extensions. Developer shall use Commercially Reasonable Best Efforts, to achieve the Approvals at the earliest possible time before the expiration of the Approval Period.

[15] When a critical path schedule is prepared with all the different Approval processes which must be first reviewed and approved by WMATA under the Submission Approval Procedure and then approved by the local government, it is not possible to complete the Approvals within the recommended 20 months. A longer period with allowances for delays caused by the Submission Approval Procedure and government delays needs to be agreed upon.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000941

7.2 **Developer's Rights to Pursue Approvals.** Subject to the terms and conditions of this Agreement, and contingent on the continuing timely and diligent performance by Developer ~~and Guarantor~~ [16] of ~~their~~its obligations under this Agreement and the Transaction Documents, WMATA hereby authorizes Developer to seek and secure the Approvals and to make all inquiries of and applications to the appropriate governmental authorities, in accordance with the procedures outlined in this Article 7 and the terms of this Agreement.

7.2.1 **Developer's Obligations to Pursue Approvals; WMATA Cooperation.** During and throughout the Approval Period, Developer shall use Commercially Reasonable Best Efforts to timely, expeditiously and diligently pursue all final and non-appealable Approvals that may be required to allow development of the ~~Lease~~Joint Premises and construction of the Joint Improvements thereon consistent in all respects with the Approved Development Plan, including, but not limited to, all of the Approvals necessary for the Joint Project. Developer shall have sole responsibility for seeking and obtaining all such final Approvals and for paying all costs and expenses relating thereto. In connection with Developer's efforts to obtain the Approvals, WMATA shall ~~lend reasonable cooperation and assistance to~~reasonably cooperate and assist Developer, but without any obligation of WMATA to incur out-of-pocket costs or expenses and without any obligation of WMATA to undertake any significant burden or usage of its personnel. WMATA agrees to consent to any Legal Authority approvals or licenses which allow uses of the Lease Premises or WMATA's Reserved Areas and Interests consistent with the Approved Development Plan and otherwise in accordance with this Agreement. At Developer's request, but without incurring any out-of-pocket costs or expenses or significant burden on personnel, WMATA shall join in or be the applicant under applications for rezoning, site plan, alley closing, subdivision, or other approvals, provided that such applications are in accordance with the Approved Development Plan and this Agreement. Notwithstanding the foregoing, upon completion of the Joint Improvements and upon Developer obtaining certificates of occupancy therefor, WMATA shall be solely responsible for all approvals and licenses pertaining solely to the WMATA's Reserved Areas and Interests and/or use and operation of the Metro Stations and any other Metro Facilities.

7.2.2 **Developer's Obligations Applicable to ~~Entire~~Joint Project.** Developer shall seek and secure the Approvals, including, any necessary rezoning of the ~~entire~~Joint Property~~.~~ and the Partial Alley Closing and Resubdivision.[17] Developer acknowledges that the Approvals may include, be based on or require one or more variances, predications or other governmental requirements and Developer agrees to accept all such variances, predications and governmental

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16. The Guarantor is not a party to the Agreement and the Approvals will be obtained before the Guaranty is executed.

17. This assumes WMATA's 1996 resubdivision creating Lot 31 in Square 416 included Lot 18.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000942

requirements to the extent the same are consistent with the Conditionally Approved Development Plan~~.~~— and do not impose an unreasonable economic burden on the Joint Project. Notwithstanding anything to the contrary, Developer shall not be authorized and WMATA shall not be required to approve or agree to variances, predications or other governmental requirements to the extent the same materially and adversely impact WMATA's Unconditional Approval Matters.

7.3 **Approval List**. Within ~~ten~~thirty (~~10~~30) Days from the Effective Date, Developer shall submit to WMATA a written report containing a listing of anticipated required Approvals, ~~a~~an estimated schedule for obtaining such Approvals, including, without limitation, any necessary rezoning under applicable jurisdictional zoning ordinances, a statement in Developer's reasonable business judgment of the anticipated period required to obtain such Approvals under the standards of diligence, timing and efforts and the Submission Approval Procedure required by this Agreement ~~and the bases for the Developer's judgment that the Approvals can be secured within such periods,~~ and the steps taken to such date and required in the future during the Approval Period to obtain such Approvals (the "**Approvals List**"). Developer may submit updates of the Approvals List to WMATA as work on obtaining the Approvals progresses and time periods become more certain.

7.4 **Approvals Termination Right.** If despite Developer's Commercially Reasonable Best Efforts to obtain the Approvals in accordance with the terms of this Agreement and the Conditionally Approved Development Plan, Developer has not obtained the Approvals in the Approvals List prior to the end of the Approval Period, Developer and WMATA shall each have the independent right to terminate this Agreement by giving Notice of such termination (the "**Approvals Termination Notice**") to the other party prior to the expiration of the Approval Period, subject only to survival of Developer liability under Section 17.3 and any other term which expressly survives the termination of this Agreement. If Developer or WMATA terminates pursuant to this Section 7.4, WMATA shall promptly deliver the Deposit to Developer, subject to the terms of Article 3.

7.5 **As-Built Drawings**. Developer hereby acknowledges that WMATA has delivered applicable drawings (hard copy and, if existing and available, in digital format (auto cad)) for the Metro Facilities on the Property.[18] Developer agrees that such drawings were provided for informational purposes only and without any representation or warranty whatsoever, including without limitation, regarding accuracy, completeness, compliance with laws or suitability for Developer's use and shall be subject to the disclaimers regarding WMATA Information.

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[18]. Can WMATA please confirm these have all been delivered to Developer?



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000943

7.6 **Submission of Proposed Applications for Approvals and Infrastructure Development.**

7.6.1 **Submissions.** Prior to submission, Developer shall provide to WMATA any and all proposed applications to be submitted for approval, to ~~the District of Columbia or any quasi-governmental~~any Legal Authority (each, a "**Submission**"), for WMATA's review and approval in conformity with the Submission Approval Procedure. Submissions shall include, but not be limited to, ~~1~~(i) any applications for the Approvals~~; 2~~, (ii) the development plans described under Section 7.8~~;~~, and ~~3~~(iii) any submissions to Legal Authorities that concern any infrastructure or other improvement proposed to be constructed by the Developer on any portion of the Lease Premises.

7.6.2 **Timing of Application for Approvals.** Within fifteen (15) Days after WMATA has approved such Submission, Developer shall make formal application to the ~~District of Columbia or the~~ appropriate ~~quasi-governmental~~Legal Authority.

7.6.3 **Compliance of Developer's Submissions~~. Each Submission by Developer:~~.** Unless expressly approved by WMATA in its discretion in writing, each Submission by Developer:

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

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

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

7.6.4 **Submission Approval Procedure.** The procedure described in this Section 7.6.4 is sometimes referred to as the "**Submission Approval Procedure.**" Within thirty (30) Days after receipt of a proposed Submission, together with all related and supporting materials, WMATA shall review the Submission and provide approval, or denial with reasonably detailed comments from all persons in WMATA who must review such Submission, in writing to Developer. In no event will WMATA's delay or failure to respond be deemed an approval of the Developer's Submissions.



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000944

7.6.4.1 WMATA's thirty (30) Day review deadline shall not begin to toll unless and until the Submission is complete and Developer reasonably believes it satisfies the requirements of this Agreement.

7.6.4.2 If approval is denied on the basis of any inconsistency with the requirements of this Agreement, Developer shall undertake Commercially Reasonable Best Efforts to submit to WMATA a revised Submission for approval that satisfies and cures each of the issues, objections or qualifications raised by WMATA within ~~thirty~~fifteen (~~30~~15) Days following the date Developer receives the written denial from WMATA. These actions shall be repeated, with ~~thirty~~fifteen (~~30~~15) Day deadlines for each party, until WMATA's approval is obtained or a period of one hundred twenty (120) Days plus Schedule Extensions from the initial submission of said Submission by Developer shall have passed without WMATA's approval having been obtained (the "**Submission Correction Deadline**").

7.6.4.3 If WMATA's approval of the Submissions, as revised has not been obtained by the Submission Correction Deadline, either Developer or WMATA shall have the right to terminate this Agreement by ~~written~~ Notice to the other, in which event, the then remaining amount of the Deposit, subject to the terms of Article 3, shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement.

7.7 **Limitation on Termination Rights.** Developer's rights to terminate under this Article 7 shall not apply to any ~~failure~~reasonable refusal by WMATA to approve a Submission or any changes thereto on the basis of any material and adverse inconsistency in such Submission with the requirements of this Agreement ~~of a Submission or any changes thereto~~ or on the basis of Developer's failure to undertake Commercially Reasonable Best Efforts to submit to WMATA for approval a Submission or make changes or corrections thereto that satisfy and cure the reasonable issues, objections or qualifications raised by WMATA. A delay in WMATA responding beyond the time periods provided in this Article 7 will give Developer a Schedule Extension under this Article 7.

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

7.8.1 **Proposed Development Plan.** Not later than ~~thirty~~[one hundred twenty (~~30~~120)] Days after the ~~Effective~~ date on which WMATA provides to Developer its detailed and written requirements for the WMATA's Reserved Areas and



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Interests (the "**Development Plan Submission Deadline**"),[19] Developer shall prepare in consultation with WMATA a detailed plan for the development of and construction of the Joint Project, including (i) the proposed locations and configurations of all of the Joint Improvements that will comprise the Joint Project; (ii) the applicable uses for such Joint Improvements; (iii) the number of square feet for each such Joint Improvement; and (iv) detailed descriptions and schematic drawings of all components of the Joint Project, including but not limited to all major architectural, civil, electrical, mechanical, and structural components of the Joint Project (the "**Proposed Development Plan**").[20] All aspects of the Proposed Development Plan, and any changes thereto, shall be subject to the review and approval of WMATA in its reasonable discretion, except those aspects materially and adversely affecting WMATA's Unconditional Approval Matters shall be subject to the review and approval of WMATA, in its sole and absolute discretion.

7.8.1.1 Developer shall consult WMATA prior to and during Developer's preparation of the Proposed Development Plan with respect to WMATA's detailed requirements for the ~~WMATA~~WMATA's Reserved Areas and Interests~~.~~—, which WMATA shall provide within fifteen (15) Days of the Effective Date.[21] Developer shall incorporate all of WMATA's requirements with respect thereto into the Proposed Development Plan.

7.8.1.2 As part of the Proposed Development Plan, Developer shall provide reasonable details of the proposed infrastructure construction, as the same pertain to (i) the Joint Project as a whole; and (ii) the preliminary scope, design and timing of the foregoing.

7.8.1.3 Developer shall cause the Proposed Development Plan to be consistent with and conform to this Agreement and the Transaction Documents, subject only to reasonable changes that WMATA may direct or approve in writing.

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19. There must be a deadline for providing WMATA's providing detailed information on its WMATA's Reserved Areas and Interests or the Development Plan Submission Date is not within Developer's control. Considering all the various issues that must be resolved to prepare the Proposed Development Plan, please consider it there should be any specific extensions of the Development Plan Submission Date for need time to resolve the partial alley closing, resubdivision and/or historic preservation issues.

20. The description of the Proposed Development Plan should be consistent with the beginning stage of the design process. If is intended to be the conceptual and schematic design, then that is what should be described. As written, it appears to require more detail than is typically provided in a "preliminary" plan.

21. Are there any WMATA's Reserved Areas and Interests other than the tunnel and possibly the fan room above the tunnel on the middle parcel? If there are no others, can the Agreement state that?



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7.8.1.4 The Proposed Development Plan shall be (i) substantially in accordance with applicable existing zoning ordinances (and applicable waivers thereto or variances therefrom) or shall provide details concerning proposed rezoning, (ii) consistent with the requirements and objectives of any applicable master plan, ~~and~~ (iii) consistent with the Partial Alley Closing and Resubdivision, (iv) consistent with any applicable historic preservation requirements, and (v) accompanied by reasonably detailed and, to the extent then practicable, objective information concerning their feasibility, including the feasibility of obtaining the proposed development objectives with the exercise of Commercially Reasonable Best Efforts to obtain same.

7.8.1.5 The Proposed Development Plan shall not be devised or designed in a manner that would disproportionately or inappropriately shift to the ~~WMATA~~WMATA's Reserved Areas and Interests or on any portion of the Property contemplated to be leased by Developer, any development costs, exactions or the requirements of any Laws affecting development or otherwise place any disproportionate burden on any such portion of the Property.

7.8.2 **WMATA Development Plan Approval Procedure.** WMATA shall review and approve or disapprove the Proposed Development Plan pursuant to the Submission Approval Procedure.

7.8.3 **Approved Development Plan.**

7.8.3.1 **Conditionally Approved Development Plan.** The Proposed Development Plan for the Joint Property, as approved by WMATA, is referred to herein as the "**Conditionally Approved Development Plan,**" a copy of which shall be attached hereto as **Exhibit ~~_____~~I**, and incorporated herein. The date, if any, on which WMATA gives Developer Notice that it has approved the Proposed Development Plan shall constitute the "**Conditionally Approved Development Plan Approval Date.**" After the Conditionally Approved Development Plan Approval Date, Developer shall not make changes to the Conditionally Approved Development Plan without WMATA's prior written approval.

7.8.3.2 **District of Columbia Zoning Approval.** Developer shall promptly submit the Conditionally Approved Development Plan and any necessary application for a rezoning, variance or other necessary action to the District of Columbia Office of Zoning and/or Board of Zoning Adjustment, as applicable and required, for approvals required to develop the Joint Project.



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7.8.3.3 **Final Approved Development Plan.** Upon final approval of the Conditionally Approved Development Plan and any associated application by the District of Columbia Office of Zoning and/or Board of Zoning Adjustment, as applicable and required, Developer shall promptly re-submit the Conditionally Approved Development Plan, along with any changes or additional requirements imposed by the District of Columbia Office of Zoning and/or Board of Zoning Adjustment, as applicable and required, to WMATA for WMATA's approval pursuant to the Submission Approval Procedure. Upon the subsequent WMATA approval, if any, the final approved development plan shall be referred to as herein as the "**Approved Development Plan**," a copy of which shall be attached hereto as **Exhibit J**, and incorporated herein. The date, if any, on which WMATA gives Developer Notice that it has approved the Approved Development Plan shall constitute the "**Development Plan Approval Date**."

7.8.4 **Changes to Approved Development Plan.** Developer shall not make material changes to the Approved Development Plan without WMATA's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, except such approvals that would materially and adversely affect WMATA's Unconditional Approval Matters in which case such approval may be granted or withheld in WMATA's sole and absolute discretion. A material change to the Approved Development Plan is one that would increase the density of the Joint Project above the amounts specified in Section 2.2.3 or decrease the number of affordable dwelling units below 20% of those in the Joint Project or materially reduce the planned quality of the Developer Improvements through a different construction method. WMATA shall have no right to make or require changes to the Approved Development Plan, except changes that materially and adversely affect WMATA's Unconditional Approval Matters in which case such changes may be required in WMATA's sole and absolute discretion.

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

7.8.6 **Limitations on WMATA's Right to Alter Lease Premises.** After the Development Plan Approval Date and for so long as Developer's rights under this Agreement and the Lease remain in full force and effect, WMATA shall not make any material alterations to the Lease Premises that would materially and adversely impact the feasibility, cost or completion date of the Joint Project as reflected in the Approved Development Plan, without Developer's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. The



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foregoing shall not apply to alterations that would materially and adversely affect WMATA's Unconditional Approval Matters in which case such alterations may be made in WMATA's sole and absolute discretion. The limitations in this Section 7.8.6 shall not prevent WMATA from implementing reasonable interim covenants, conditions and restrictions consistent with Section ~~11.10~~11.11. In the event that Developer believes that WMATA has made any such material alterations to the Lease Premises, Developer shall give ~~written~~ Notice of such objection to WMATA within ten (10) Business Days following Developer's discovery ~~or notice~~ of such alteration~~.~~ and WMATA shall give Notice to Developer within ten (10) Business Days of its receipt of Developer's Notice either that WMATA shall reverse such material alteration promptly or provide a detailed explanation on why such material alteration is permitted under this Agreement and/or the Lease. Developer shall receive a Schedule Extension for the delay caused by WMATA's creation of such material alterations unless they were coordinated with Developer from inception.

7.9 **WMATA Compact Public Hearing**. It is not anticipated that ~~this~~the Joint Project will require a WMATA Compact Public Hearing. If WMATA determines, in its sole discretion, that a WMATA Compact Public Hearing is required, Developer shall cooperate with WMATA in the preparation for and the conduct of such hearing and pay for all costs of the WMATA Compact Public Hearing, including making a deposit of all anticipated costs at least ninety (90) Days before said hearing~~.~~ , subject to the limitation and agreement that such costs and deposit imposed on Developer shall not exceed Ten Thousand and No/100 Dollars ($10,000.00) and shall be a credit against the base rent under the Lease. If WMATA does not send Notice that a WMATA Compact Public Hearing is required at least [twelve (12)] months before the Closing Date, Developer shall be entitled to a Schedule Extension for any delays caused by the WMATA Compact Public Hearing.

~~7.10~~ ~~**No Withdrawal of Rezoning Application; Substitution of Applicant, Use of Materials and Perfection of Right to Appeal.** Developer acknowledges and agrees that WMATA has and shall retain a property interest in any and all Approvals, any and all rights relating thereto and any applications and Submissions therefor. Developer shall not withdraw any application for any Approvals or other Submissions without the prior written consent of WMATA in its sole and absolute discretion, provided, however, that to the extent that Developer would have continuing liability under any such Approvals or Submissions, Developer shall have the unqualified right to withdraw the same upon the termination of this Agreement, unless following approval by the WMATA Board of Directors, WMATA executes and delivers to Developer an indemnity agreement in form and substance reasonably acceptable to WMATA and Developer pursuant to which WMATA shall indemnify and agree to defend and hold harmless Developer from and against all such continuing liabilities. Following any Default, termination of this Agreement or failure to consummate Closing all for reasons other than a WMATA Default hereunder, at the option of WMATA, exercisable by delivery of Notice to Developer, WMATA shall succeed to all right, title and interest of the Developer in all~~



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~~Approvals, applications and Submissions and shall have the unrestricted right, directly or through its designee, to intervene in and continue pursuit of any and all such Approvals, applications and Submissions without payment of any sums to Developer and without cost to WMATA. In furtherance of the foregoing, Developer shall execute and deliver to WMATA on demand by WMATA all such assignments and other documents as shall be reasonably requested by WMATA to effectuate the same; provided that, in circumstances other than those occasioned by a Developer Default, such assignments and other documents shall be on terms that are acceptable to Developer and WMATA and Developer's obligations to deliver the same shall be subject to WMATA's indemnification obligations, to the extent applicable, as set forth in this Section 7.10. All materials submitted in connection with any such Approvals, applications and Submissions upon delivery of such Notice shall become the property of WMATA and may be used by WMATA and any designee of WMATA in connection with any and all Approvals that may be sought by WMATA. Developer shall use Commercially Reasonable Best Efforts to take all such steps as may be required by applicable laws to perfect the right of Developer (and, by operation of this Section 7.10, WMATA or its designee) to appeal any adverse determination relating to the Approvals, applications and Submissions.~~

7.10 **No Withdrawal of Rezoning Application; Substitution of Applicant, Use of Materials and Perfection of Right to Appeal.** Developer acknowledges and agrees that, commencing on the Development Plan Approval Date, WMATA has and shall retain a property interest in any and all Approvals relating to the Property, any and all rights relating thereto and any applications and Submissions therefor. If this Agreement is terminated after the Development Plan Approval Date, Developer shall not withdraw any application for any Approvals or other Submissions without the prior written consent of WMATA in its sole and absolute discretion, provided, however, that to the extent that Developer would have continuing cost or liability under any such Approvals or Submissions, Developer shall have the unqualified right to withdraw the same upon the termination of this Agreement, unless following approval by the WMATA Board of Directors, WMATA executes and delivers to Developer within sixty (60) Days after the termination of this Agreement an indemnity agreement in form and substance reasonably acceptable to WMATA and Developer pursuant to which WMATA shall indemnify and agree to defend and hold harmless Developer from and against all such continuing costs and liabilities based on appropriated and available funding through WMATA's budgetary procedures. Following the Development Plan Approval Date and any Default by Developer, termination of this Agreement or failure to consummate Closing all for reasons other than a WMATA Default hereunder, at the option of WMATA, exercisable by delivery of Notice to Developer within ten (10) Business Days after WMATA's right to exercise such option, WMATA shall succeed to all right, title and interest of the Developer in all Approvals, applications and Submissions for the Property and, subject to the rights of design professionals and other third parties, shall have the unrestricted right, directly or through its designee, to intervene in and continue pursuit of any and all such Approvals, applications and Submissions for the Property without payment of any sums to Developer and without further cost to Developer. In furtherance of the foregoing,



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Developer shall execute and deliver to WMATA on demand by WMATA all such assignments and other documents as shall be reasonably requested by WMATA to effectuate the same; provided that, in circumstances other than those occasioned by a Developer Default, such assignments and other documents shall be on terms that are acceptable to Developer and WMATA and Developer's obligations to deliver the same shall be subject to WMATA's indemnification obligations, to the extent applicable, as set forth in this Section 7.10. All right, title and interest of the Developer in all materials submitted in connection with any such Approvals, applications and Submissions for the Property, subject to the rights of design professionals and other third parties, upon delivery of such Notice shall become the property of WMATA and may be used by WMATA and any designee of WMATA in connection with any and all Approvals that may be sought by WMATA. So long as this Agreement has not been terminated, Developer shall use Commercially Reasonable Best Efforts to take all such steps as may be required by applicable Laws to perfect the right of Developer (and, by operation of this Section 7.10, WMATA or its designee) to appeal any adverse determination relating to the Approvals, applications and Submissions for the Property.

7.11 **Joint Project Representatives~~.~~.** Each party hereby designates its Joint Project representative (respectively, the "**WMATA Joint Project Representative**" and the "**Developer Joint Project Representative**"), for purposes of coordinating the exchange of information and the processing of requests relevant to this Agreement. As of the Effective Date, (a) the WMATA Joint Project Representative shall be [_____], and (b) the Developer Joint Project Representative shall be ~~_____~~Omar A. Karim. Thereafter, ~~each party~~WMATA shall deliver to ~~the other~~Developer Notice of any change in the identity of ~~its~~ the WMATA Joint Project Representative and Developer shall deliver to WMATA Notice of any change in the identity of the Developer Joint Project Representative. The WMATA Joint Project Representative and the Developer Joint Project Representative shall keep ~~each other fully informed of all pending meetings, hearings and conferences with governmental agencies occurring in connection with all applications, Submissions and Approvals and the WMATA Project Representative and the Developer Project Representative, or their designees, shall have the right to attend any and all of the meetings pertaining to the same. Copies of all material communications delivered to or received by Developer or WMATA in connection with applications, Submissions and Approvals shall be promptly delivered to WMATA Project Representative or the Developer Project Representative, respectively. Nothing contained in this Section 7.11 shall be deemed to modify any obligation of the parties with respect to the delivery of Notices.~~each other fully informed of all pending and formally scheduled meetings, hearings and conferences with governmental agencies occurring in connection with all applications, Submissions and Approvals and the WMATA Joint Project Representative and the Developer Joint Project Representative, or their designees, shall have the right to attend any and all of the formally scheduled meetings pertaining solely to the same. Copies of all material written communications delivered to or received by Developer or WMATA in connection with applications, Submissions and Approvals shall be promptly delivered to WMATA Joint Project Representative or the Developer Joint Project



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Representative, respectively, by e-mail, facsimile or regular mail. Nothing contained in this Section 7.11 shall be deemed to modify any obligation of the parties with respect to the delivery of Notices.~~Extensions of Time for Developer's Performance.~~

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

7.12.1 Subject to ~~Subsection~~Section 7.12.2, if WMATA fails to approve or disapprove the Submissions by the deadlines expressly established under Article 7, and this Agreement is not terminated on that basis as permitted by the terms of this Agreement, the corresponding dates by which Developer has an obligation under ~~Article~~Articles 7, 8, 10 & 11 of this Agreement (but only to the extent that completion of an activity required to be performed by Developer is actually delayed beyond the dates established in this Agreement by such delays by WMATA) shall automatically be extended~~, on~~ by a ~~day for day basis, for the number of days of such~~Schedule Extension based on the delay caused by WMATA. Delays in Developer's performance caused solely by WMATA's failure to act in a timely fashion, after Developer's request, shall not constitute or permit a Default by Developer.

7.12.2 Developer's rights to extend under Section 7.12.1 shall not apply to any failure by WMATA to approve on the basis of any inconsistency with the requirements of this Agreement or on the basis of Developer's failure to undertake Commercially Reasonable Best Efforts to submit to WMATA for approval a ~~plan,~~ Submission~~, document or the like~~ or to make changes or corrections thereto that satisfy and cure the issues, objections or qualifications raised by WMATA.

## ARTICLE 8
## LEASE CLOSING

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

8.1.1 The Closing Date shall occur on or before ~~twenty~~[_____(~~20~~__)][22] months following the Effective Date (the "**Closing Date**"). Developer may elect to close prior to the Closing Date, but must give WMATA ~~sixty~~fifteen (~~60~~15) Days Notice.

8.1.2 Closing shall take place in the offices of Developer or Developer's attorneys or Title Insurer, if in the Washington, D.C. metropolitan area, or at such other place as the parties shall mutually agree.

22. In order to determine when the Developer can commit to a Closing Date, a critical path schedule needs to be prepared with WMATA's maximum time to review the Proposed Development Plan, the Approved Development Plan, any rezoning/variance applications, the public alley closing, the resubdivision, and all the applications and Submissions because WMATA's review and approval rights prevent a continuous pursuit of the Approvals. During the past five years, how many developers of similar joint development projects have met their original closing deadline? We are not aware of any.



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Developer agrees to conduct Closing through a pre-Closing escrow or other arrangement reasonably requested by WMATA to facilitate Closing mechanics and to reduce or eliminate the need for WMATA and its attorneys to be physically present at the Closing.

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

8.1.3.1 Closing costs shall be allocated between WMATA and Developer, as follows: (i) Developer shall be responsible for all applicable recordation, transfer and mortgage taxes and title insurance and escrow costs~~.~~; (ii) Developer shall pay for all costs associated with Developer's Lease Premises Due Diligence including any appraisals, environmental assessments and testing, architectural/engineering assessments and design, insurance and any and all Consultants, inspections, or reports of any kind, deemed necessary by Developer or Developer's lender; and WMATA shall in no way be liable for such costs, fees or expenses~~.~~; (iii) Developer and WMATA shall each be responsible for their own legal expenses~~.~~; (iv) WMATA shall be responsible for any costs to deliver a leasehold estate in the Lease Premises in the manner required in this Agreement and any Impositions which Developer is not obligated to pay; and (v) Developer shall pay for any and all other Closing costs not covered above. WMATA shall cooperate in recordation or certain of the Transaction Documents and execute appropriate tax exemption forms.

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

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



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impervious surface area billing charges assessed by the D.C. Water and Sewer Authority prior to the Closing Date.

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

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

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

8.2.1.1 The Lease in the form of **Exhibit** ~~_____~~E attached hereto, appropriately revised and completed in a manner consistent with the Approved Development Plan, public alley closing and resubdivision of a portion of the Property, and the required D.C. Real Property Transfer and Recordation Tax Form, both executed by WMATA.

8.2.1.2 The Covenants, Conditions and Restrictions in the form of **Exhibit** ~~_____~~L, attached hereto, appropriately revised and completed in a manner consistent with the Approved Development Plan, public alley closing and resubdivision of a portion of the Property and the required D.C. Real Property Transfer and Recordation Tax Form, both executed by WMATA.

8.2.1.3 A Closing statement executed by WMATA.



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8.2.1.4 A vendor's affidavit or at WMATA's option an indemnity, as applicable, in the customary form, but reasonably acceptable to WMATA and modified to provide accurate responses to WMATA's knowledge, and containing such exceptions as are appropriate, to enable the Title Insurer to issue ~~a~~ leasehold title insurance ~~policy~~policies, to be issued pursuant to the Title Commitment; provided that such affidavit does not subject WMATA to any greater liability, or impose any additional obligations on WMATA, other than as set forth in this Agreement.

8.2.1.5 An estoppel certificate to Developer's lender in accordance with Section 22.1 and an estoppel certificate to Developer's lender in accordance with Section [ ] of the Lease.

~~8.2.1.5~~8.2.1.6 Such other documents and instruments as may be reasonably required from WMATA to consummate the transaction contemplated by this Agreement subject to and in conformity with the terms and provisions hereof.

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

8.2.2.1 Deposit, Pre-~~Stabilization~~Closing Period Payments, the base rent due under the Lease, any other payments due under this Agreement and the Lease, and the adjustments or prorations required by this Agreement and the Lease.

8.2.2.2 The Lease in the form of **Exhibit** ~~_____~~**E** hereto, appropriately revised and completed in a manner consistent with the Approved Development Plan, public alley closing and resubdivision of a portion of the Property, and the required D.C. Real Property Transfer and Recordation Tax Form, both executed by Developer.

8.2.2.3 The Covenants, Conditions and Restrictions in the form of **Exhibit** ~~_____~~**L**, attached hereto, appropriately revised and completed in a manner consistent with the Approved Development Plan, public alley closing and resubdivision of a portion of the Property and the required D.C. Real Property Transfer and Recordation Tax Form, both executed by the Developer.

8.2.2.4 A Closing statement executed by Developer.



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8.2.2.5 Executed copies of all bonds, insurance policies or certificates therefor, and ~~Guaranties~~the Guaranty required under the Lease.

~~8.2.2.6~~ ~~The Approved Development Plan.~~

~~8.2.2.7~~8.2.2.6 Reasonable evidence of final approval by the appropriate ~~governmental or quasi-governmental~~Legal Authority of all Approvals on the Approvals List.

~~8.2.2.8~~8.2.2.7 The Joint Project Schedule.

~~8.2.2.9~~8.2.2.8 The Approved Design and Construction Documents to the extent they have not been previously delivered to WMATA.

~~8.2.2.10~~8.2.2.9 Copies of the Developer's articles of organization, operating agreement, and certificate of good standing or existence.

~~8.2.2.11~~8.2.2.10 Such other instruments, documents or certificates as are required to be delivered by Developer to WMATA in accordance with any of the provisions of this Agreement.

## ARTICLE 9
## REPRESENTATIONS, WARRANTIES AND COVENANTS

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

9.1.1 WMATA is a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of D.C. Board of Commissioners adopted November 15, 1966; validly existing and in good standing, if the concept of "good standing" is applicable, under the laws of the United States, Maryland and Virginia, and is authorized to conduct the business in which it is now engaged.

9.1.2 WMATA has the full corporate power and authority to lease the Lease Premises and to execute the documents to be executed by WMATA and has taken, as applicable, all corporate or equivalent entity actions required for the execution and delivery of this Agreement and prior to Closing will have taken, as applicable, all corporate or equivalent entity actions required for the consummation of the transactions contemplated by this Agreement. The parties executing this Agreement on behalf of WMATA have full power and authority to bind WMATA to the obligations of WMATA set forth herein.



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The terms and conditions of this Agreement do not conflict with, cause a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement to which WMATA is a party or by which WMATA or the Property is otherwise bound or any applicable Law or any order of any court or Legal Authority with proper jurisdiction over WMATA. WMATA has not made any other agreement for the sale or lease of, or given any other person the right to purchase or lease, all or any part of any of the ~~Lease Premises;~~Property.

9.1.3 WMATA owns fee simple, marketable title to the Property, subject to Permitted Encumbrances and other matters of record and existing site conditions~~;~~.

9.1.4 Following Closing, there will be no adverse or other parties in possession of or with the right to use the Lease Premises~~;~~.

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

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

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

9.1.8 To WMATA's knowledge, there are no special taxes or assessments to be levied against the Property other than the impervious area charges and impervious surface area billing charges proposed by the D.C. Water and Sewer Authority.

9.1.9 WMATA is exempt from all federal, state and local taxation.

9.1.10 WMATA represents that the WMATA Joint Project Representative is an individual to whom material facts relevant to the matters covered by the



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representations and warranties of WMATA that are set forth in this Agreement would be reported in the ordinary course of business.

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

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

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

9.5 **Information Concerning Zoning and Code Requirements.** Developer acknowledges and agrees that no representation has been made and no responsibility is assumed by



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WMATA with respect to current and future applicable zoning or building code requirements; the Lease ~~Premises's~~Premises' compliance with any other laws, rules, ordinances or regulations; or the Lease ~~Premises's~~Premises' financial earning capacity or expense history.

9.6 **Survival Period.** WMATA and Developer agree that those representations contained in Section 9.1 shall survive Closing for a period of one (1) year (that is, any proceeding based on the breach of a representation contained in Section 9.1 ~~that survives Closing~~ must be commenced within one (1) year subsequent to the Closing Date~~ of such representation~~). In the event that WMATA breaches any representation contained in Section 9.1 and Developer had actual knowledge of such breach prior to the ~~applicable~~ Closing Date, Developer shall be deemed to have waived any right of recovery with respect to such actual knowledge of a WMATA breach of a representation and WMATA shall not have any liability in connection therewith.

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

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

9.8.1 The Jazz @ Florida Avenue, LLC is a District of Columbia limited liability company duly formed, validly existing and in good standing, if the concept of "good standing" is applicable, under the laws of the District of Columbia.

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

9.8.3 No pending or, to the knowledge of Developer, threatened litigation exists that, if determined adversely, would restrain the consummation of the



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transactions contemplated by this Agreement or would declare illegal, invalid or non-binding any of Developer's obligations or covenants to WMATA.

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

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

9.8.6 Developer represents that prior to the Effective Date it has investigated the current zoning status of the Property and its consistency with the contemplated requirements, uses and densities set forth herein and that, to Developer's actual knowledge and based on such investigation, ~~such~~any necessary rezoning or variance is feasible, subject to the Partial Alley Closing and Resubdivision, historic preservation on the Fee Property, and customary issues in any land entitlement matter. WMATA has made no representations to Developer regarding zoning matters relating to the Project and Developer waives any and all claims to the effect that such representations have been made.

9.8.7 Developer represents that, to Developer's actual knowledge, obtaining the Approvals with such uses and densities described in this Agreement and the Lease is reasonably feasible under current and reasonably foreseeable future market, legal, and regulatory ~~and political~~ conditions~~ and that, to Developer's actual knowledge, there are not currently any substantial impediments to achievement of the objectives of this Agreement and the Lease~~.

9.8.8 Developer represents and warrants that it has ~~undertaken~~commenced and will continue during the Access Period all due diligence and ~~has reviewed~~will review and ~~conducted~~conduct such independent analyses, studies, reports, investigations and inspections as it deems appropriate in connection with the



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Lease Premises and the Joint Project that Developer in its judgment has determined to its satisfaction to be required or desirable, (including, without limitation, relating to the value of the Lease Premises, the suitability, physical or environmental condition of the Lease Premises, compliance or lack of compliance of the Lease Premises with any state, federal, county or local law, ordinance, order, permit or regulation, the feasibility of the Joint Project, market conditions, projected development cost requirements, profits, taxes, rents, demand for rental space or any other attribute of or matter relating to the Lease Premises or the Joint Project).

9.8.9 Developer represents that the Developer Joint Project Representative is an individual to whom material facts relevant to the matters covered by the representations and warranties of Developer that are set forth in this Agreement would be reported in the ordinary course of business.

9.9 **Survival Period.** WMATA and Developer agree that those representations contained in Section 9.8 shall survive Closing for a period of one (1) year (that is, any proceeding based on the breach of a representation contained in Section 9.8 must be commenced within one (1) year subsequent to the Closing Date). In the event that Developer breaches any representation contained in Section 9.8 and WMATA had actual knowledge of such breach prior to the Closing Date, WMATA shall be deemed to have waived any right of recovery with respect to such actual knowledge of a Developer breach of a representation and Developer shall not have any liability in connection therewith under this Agreement.

~~9.9~~9.10 For purposes of this Agreement, the term "knowledge" as it relates to Developer shall mean and refer to only the actual knowledge of the Developer Joint Project Representative and shall not be construed to refer to the knowledge of any other officer, director, manager, member, agent, employee or representative of Developer, or any affiliate of Developer, or to impose upon such Developer Joint Project Representative any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such Developer Joint Project Representative any individual personal liability, which WMATA hereby waives. ~~Developer represents that the Developer Project Representative is an individual to whom material facts relevant to the matters covered by the representations and warranties of Developer that are set forth in this Agreement would be reported in the ordinary course of business.~~



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## ARTICLE 10
## CONDITIONS PRECEDENT TO CLOSING

10.1 **Developer's Conditions.** Without limiting any of Developer's rights elsewhere provided for in this Agreement, Developer's obligation to close under this Agreement shall be subject to and conditioned upon the fulfillment (or written waiver by Developer) of each and all of the following conditions precedent:

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

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

10.1.3 Developer shall not have exercised any right to terminate this Agreement;

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

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

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

10.1.7 All written notices that have been received by WMATA of any ~~governmental~~Legal Authority having jurisdiction over WMATA and the Lease Premises of any violation of the Lease Premises of any applicable Laws that do not constitute Permitted Exceptions and that remain pending and uncured, shall have been complied with by WMATA in all material respects or WMATA shall have ~~caused~~cured them sufficiently to cause the Title Insurer to remove ~~or insure over~~ them from the updated Title Commitment;

10.1.8 FTA Project Approval has been obtained by WMATA and evidence thereof provided to Developer;

10.1.9 Any required WMATA Compact Public Hearing shall have been held and the WMATA Board of Directors shall have approved the results of such WMATA Compact Public Hearing without any changes to the Approved Development Plan and Approved Drawings and Specifications unless



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approved in writing by Developer, such approval not to be unreasonably withheld, conditioned or delayed.

10.1.10 The Partial Alley Closing and Resubdivision shall have been completed.

~~10.1.8~~10.1.11 There exists no condition, that constitutes a material and adverse change to the environmental condition existing on ~~the expiration~~ date of ~~the Study Period~~Developer's last environmental assessment of the Lease Premises before the Study Period Termination Deadline that is the subject of the Closing which condition could not have been discovered ~~during~~prior to the Study Period Termination Deadline with the exercise of commercially reasonable diligence and thorough investigation, review and testing, including, without limitation, pursuant to a Phase I environmental site assessments of the Lease Premises and any further testing as would be properly recommended by any Phase I environmental site assessment. A "material and adverse change" in this Section 10.1.11 shall not include any event, condition, change, conflict, litigation or proceeding, which was caused directly or indirectly by Developer, its Consultants or any of its or their affiliates or any of its or their agents, contractors, representatives or others associated with them, including, without limitation, in connection with activities on or about the Property.

~~10.1.9~~10.1.12 Notwithstanding anything to the contrary, there are no other conditions on Developer's obligation to Close except as expressly set forth above.

10.2 **WMATA's Conditions.** Without limiting any of WMATA's rights elsewhere provided for in this Agreement, WMATA's obligation to consummate a Closing under this Agreement shall be subject to and conditioned upon the fulfillment (or written waiver by WMATA) of each and all of the following conditions precedent:

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

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

10.2.3 Developer shall have made payment of the Deposit, Pre-~~Stabilization~~Closing Period Payments, base rent under the Lease, and all other payments required to be made by Developer prior to or simultaneously with the Closing in accordance with the terms and conditions of this Agreement and the Lease, as applicable, shall have made~~ delivery or payment and satisfaction in full of any and all then accrued and outstanding Guaranty obligations~~; [23]

[23]. There cannot be any accrued payment obligations under the Guaranty which is only a completion guaranty.



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

10.2.5 Developer shall have obtained ~~adequate~~the Lease Premises and Fee Property Financing~~ for the Project~~, subject to all of the requirements set forth in Article 6;

10.2.6 Developer has at the time of Closing a Qualified Team~~ bound in writing to perform the obligations under this Agreement~~; [24]

~~10.2.7 All Interest Holders shall be bound to WMATA under the Loan Covenants;~~

~~10.2.8~~10.2.7 Full copies of all insurance policies required by the Lease or certificates of insurance if insurance policies have not been issued, each such policy or certificate evidencing satisfactory coverage beginning on the Closing Date, shall have been delivered to WMATA and approved by WMATA;

~~10.2.9~~10.2.8 Developer shall have obtained all of the Approvals for the Joint Project required as of the Closing Date;

~~10.2.10~~10.2.9 There shall have occurred no Change of Control of Developer without WMATA's written approval;

~~10.2.11~~10.2.10 Developer shall have delivered copies of the Payment and Performance Bond to WMATA and approved by WMATA~~;~~ with the originals of the Payment and Performance Bond being delivered to the first-lien Mortgagee; provided, however, if the first-lien Mortgage is a Federally-Insured Loan, then WMATA shall not be a co-obligee of or have approval rights over the Payment and Performance Bond;

~~10.2.12~~10.2.11 Developer shall have delivered the Guaranty to WMATA and such Guaranty shall be in full force and effect and not subject to any breach or default or circumstances, which with Notice or the lapse of time could constitute a breach or default thereunder; and

~~10.2.13~~10.2.12 There shall not exist any Default under this Agreement by Developer or circumstances, which with Notice or the lapse of time could constitute a Default by Developer under this Agreement.

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

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24. WMATA does not control who makes up the Qualified Team, only that one is maintained by Developer.



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

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

[25]

## ARTICLE 11
## DEVELOPMENT RIGHTS AND OBLIGATIONS

11.1 **Joint Project Schedule.** Developer, within fifteen (15) Business Days following the ~~Development Plan Approval Date~~later of the receipt of Notice of WMATA's approval of the Approved Design and Construction Documents or the completion of the Partial Alley Closing and Resubdivision, whichever is later, shall prepare and submit to WMATA a project schedule for the Joint Project in compliance with the following requirements ("**Joint Project Schedule**"). The Joint Project Schedule shall be subject to WMATA's approval within thirty (30) Days of submission, not to be unreasonably withheld, conditioned or delayed, but WMATA's approval shall not give rise to any liability of or waiver by WMATA or otherwise prejudice WMATA's rights under this Agreement. The Joint Project Schedule shall provide for the ~~expeditious preparation, completion and submission by Developer of the Design and Construction Documents and the expeditious~~diligent and practical execution of all work required for the ~~applicable component of the~~substantial completion of the Joint Project. The Joint Project Schedule shall set forth the estimated time for performance and the projected dates for commencement and completion of each significant aspect of the construction work on the Joint Project~~.~~, subject ~~only~~ to ~~Force Majeure and delays caused solely by WMATA, (but only to the extent that completion of an activity required to be performed by Developer is actually delayed beyond the dates established in the~~completion of the prior significant aspects within the projected time period.[26] The Joint Project Schedule ~~by WMATA),~~

[25] Former Section 10.4 did not belong in Article 10. It has been moved to Section 23.22.

[26] If all the Base Rent is paid under the Lease at the Closing, neither the Developer nor its lender will permit the delay in completion of the Joint Project to be a Default under the Lease or this Agreement. WMATA



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~~Developer shall achieve Substantial Completion and Final Completion not later than the dates shown or prescribed in the~~may be extended by the mutual consent of both parties, and shall be extended by Force Majeure or by Schedule Extension. Delays in the Joint Project Schedule~~. The timely completion of the Project subject to and in conformity with the terms and provisions of this Agreement is of the essence in this Agreement and by execution of Project Schedule, Developer confirms that the dates established for Substantial Completion and Final Completion provides a reasonable period for completion of the Project.~~solely due to WMATA's failure to act in a timely fashion, after Developer's request, or Force Majeure or Schedule Extension shall not constitute or permit a Default by Developer.

11.2 **Design and Construction Documents Preparation.** Not later than promptly following the Development Plan Approval Date and the completion of the Partial Alley Closing and Resubdivision, Developer, at its sole cost and expense, shall prepare all Design and Construction Documents and applications for all Approvals that Developer requires to construct the Joint Project. Developer shall continue such preparation and make all submissions and corrections required herein using Commercially Reasonable Best Efforts. The Design and Construction Documents shall be consistent in all material respects with the Approved Development Plan. The Design and Construction Documents shall be subject to review and approval by WMATA. In addition to all other requirements, the Design and Construction Documents shall include (1) a written description of the physical impact that such construction is reasonably anticipated to have on the Metro Facilities (during construction and after Final Completion)~~;~~, and (2) the submittal must list all penetrations and planned modifications to or ~~in the vicinity~~within [_____ (__)] feet of any portion of the Metro Facilities as provided in the WMATA Adjacent Construction Manual.

11.3 **Compliance with WMATA's Standards and all Legal Requirements.** The Design and Construction Documents shall comply in all circumstances to the ~~current versions of the~~ WMATA Adjacent Construction Manual~~ and the WMATA Design Criteria.~~.[27] Developer shall comply with and give all notices required by all laws, ordinances, rules, regulations or building codes and statutes bearing on performance of the work relating to the Project. If Developer knows that portions of the Design and Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules, regulations, or WMATA Adjacent Construction Manual~~ or WMATA Design Criteria~~, Developer shall promptly notify WMATA in writing thereof and effect corrections to rectify such circumstances in a manner reasonably satisfactory to WMATA (at the sole cost and expense of Developer) before commencing any work at variance with such laws, statutes, ordinances, building codes, rules , regulations, or WMATA Adjacent Construction Manual~~ or WMATA Design Criteria~~.

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will be economically protected by a commencement of notional Percentage Rent if there is a material delay in the completion of the Joint Project.

27. For purposes of the Design and Construction Document, all Approvals and construction through Final Completion, the definition of WMATA Adjacent Construction Manual shall be fixed at the version which exists on the Effective Date.



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11.4 **Submission to and Approval by WMATA of Design and Construction Documents.** Within [thirty (30)] Business Days ~~of the Development Plan~~following the later of the receipt of Notice of WMATA's approval ~~Date~~of the Approved Design and Construction Documents or the completion of the Partial Alley Closing and Resubdivision, and prior to the formal submission of any Design and Construction Documents to any ~~governmental~~Legal Authority for Approvals, Developer shall submit the Design and Construction Documents to WMATA for WMATA's review and approval pursuant to Section 11.8 and the ~~Submissions~~Submission Approval Procedure. [28]

11.5 **WMATA Approval of Design and Construction Documents.** WMATA shall have the right to approve or disapprove (and if disapproved, WMATA shall state its objections with reasonable specificity), and to require changes to the Design and Construction Documents, as determined by WMATA in its sole discretion, that relate to WMATA's Unconditional Approval Matters, provided, however, that WMATA's review, approval and changes shall not extend to purely aesthetic considerations, interior layout and design, allocations among residential, retail or parking space and similar issues and WMATA shall reasonably consent to components of the Design and Construction Documents that are consistent, in all respects with the Approved Development Plan. Developer shall promptly incorporate WMATA's Unconditional Approval Matters and all design modifications required to comply with WMATA's other reasonable requirements into the Design and Construction Documents. The Design and Construction Documents as finally approved by WMATA shall constitute the "**Approved Design and Construction Documents**~~"~~."

11.6 **Partial Closing of the Public Alley in Square 393 and Resubdivision of the Portion of the Property in Square 393 and Fee Property into a Single Lot.** Promptly after receipt of Notice of the Conditionally Approved Development Plan Approval Date, Developer, at its cost, shall use its Best Commercially Reasonable Business Efforts to achieve the Partial Alley Closing and Resubdivision. Upon the Partial Alley Closing and Resubdivision, if requested to do so by WMATA, Developer, at its cost, shall use its Best Commercially Reasonable Business Efforts to create two lots separately recognized by the D.C. Office of Tax and Revenue for assessment and taxation purposes, one being the portion of the Property in Square 393 and the other being the Fee Property in order to clarify to the D.C Office of Tax and Revenue the portion of the Joint Property owned by WMATA. WMATA shall cooperate with Developer's efforts to accomplish the Partial Alley Closing and Resubdivision and creation of assessment and taxation lots. All applications, plats and drawings for the Partial Alley Closing and Resubdivision and creation of assessment and taxation lots in Square 393 shall be approved by WMATA under the Submission Approval Procedure. Such cooperation shall include, but not be limited to, execution of all documents reasonably necessary or desirable to be executed by WMATA and appearance at all hearings and proceedings necessary or desirable to be

[28] Can Developer submit partially completed but approved Design and Construction Documents to Local Authorities if necessary to start the Approvals process? If not, the Approval Period in Section 7.1 and Closing Date in Section 8.1.1 should be sufficiently lengthened to allow for the extra time to go through a sequential approval process rather than a concurrent approval process.



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attended by WMATA, all as reasonably requested by Developer, but without significant cost to WMATA or significant burden on its personnel.

~~11.6~~11.7 **Easements for the ~~WMATA~~WMATA's Reserved Areas and Interests.** Upon WMATA's approval of the Design and Construction Documents in accordance with the terms and provisions of this Agreement and the completion of the Partial Alley Closing and Resubdivision, Developer and WMATA shall create and reserve, perpetual exclusive and non-exclusive easements in favor of WMATA for the maintenance, operation, repair, use, replacement and general protection of the ~~WMATA~~WMATA's Reserved Areas and Interests, together with any other related or appurtenant rights reasonably required by WMATA (including, without limitation, for ingress and egress). Such perpetual exclusive and non-exclusive easements in favor of WMATA (the "**Reserved Areas and Interests Easements**") shall be part of the Covenants, Conditions and Restrictions to be recorded against the Property and shall be independently enforceable by WMATA. The Reserved Areas and Interests Easements shall be amended upon substantial completion to reflect any ~~change orders~~ changes to the Design and Construction Documents approved by WMATA during the performance of construction of the Joint Project. To the extent any of the ~~WMATA~~WMATA's Reserved Areas and Interests are not structurally independent of any of Developer's Improvements, including, without limitation, foundations, beams, columns, bracing or similar features maintaining vertical and horizontal support, as detailed in the Approved ~~Development Plan~~Design and Construction Documents, the Reserved Areas and Interests Easements shall also (i) include perpetual easements in favor of WMATA for the vertical and horizontal support of such ~~WMATA~~WMATA's Reserved Areas and Interests and for the use of the shared portions of the ~~WMATA~~WMATA's Reserved Areas and Interests, and (ii) set forth provisions concerning Developer's operation and maintenance of any shared components of the ~~WMATA~~WMATA's Reserved Areas and Interests which Developer is specifically obligated to operate and maintain, at Developer's sole cost and expense. [29] Developer shall covenant to not allow any interference with the use and enjoyment of the ~~WMATA~~WMATA's Reserved Areas and Interests by WMATA, its agents, employees, contractors, subcontractors, invitees and passengers to the extent Developer has access to and controls such WMATA's Reserved Areas and Interests. In addition, the Reserved Areas and Interests Easements shall impose upon Developer certain insurance requirements for the Developer Improvements constructed within the WMATA's Reserved Areas and Interests (including a waiver of subrogation and insured claims), indemnities for Developer's acts, restoration obligations in the event of a casualty caused by Developer, and limitations on Developer's ability to modify or alter any ~~WMATA~~WMATA's Reserved Areas and Interests without the prior, written consent of WMATA, in its sole and absolute discretion. The Reserved Areas and Interests Easements shall be in form and substance acceptable to WMATA, in WMATA's reasonable discretion, and shall be reasonably acceptable to Developer and Developer's lender.

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[29]. Is there a possibility of sharing components in the WMATA's Reserved Areas and Interests? If so, this needs to be considered in the design process.



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~~11.7~~11.8 **Progress Submissions.** Updated Design and Construction Documents shall also be submitted to WMATA representing approximately 35%, 65% and 100% completion of the ~~Project~~Design and Construction Documents.[30]

~~11.7.1~~11.8.1 WMATA shall review and provide the Developer with written notification of its approval or disapproval of these submissions pursuant to the ~~Submissions~~Submission Approval Procedure.

~~11.7.2~~11.8.2 If WMATA gives Notice disapproving such a resubmission and requires one or more further re-submissions after a prior resubmission, the procedures specified in this Section ~~11.7~~11.8 shall continue to be applied until WMATA has approved the latest resubmission.

~~11.8~~11.9 **Failure to Submit.** Developer's failure to make the submissions required under this Article 11 shall constitute an Event of Default after the applicable Notice and failure to cure within the applicable grace period.

~~11.9~~11.10 **Disclaimer of Liability.** WMATA accepts no liability and waives none of its rights under this Agreement or the Lease solely by reason of its approval of any drawings or specifications, nor shall its approval be construed to be a warranty thereof.

~~11.10~~11.11 **Covenants, Conditions, and Restrictions.** A condition precedent to Developer's rights to develop and construct improvements on the Lease Premises shall be the creation and recordation of covenants, conditions, and restrictions. After WMATA's approval of the Approved Design and Construction Documents and prior to commencement of any construction, Developer shall prepare and deliver to WMATA proposed covenants, conditions and restrictions to be recorded against the Property.[31] WMATA shall review and approve pursuant to the ~~Submissions~~Submission Approval Procedure, which approval shall not be unreasonably withheld, conditioned or delayed. In the event that Developer shall fail to prepare and deliver such proposed covenants, conditions and restrictions to WMATA ~~or shall fail to record approved covenants, conditions, and restrictions against the Property~~ by the dates for such preparation, delivery or approval set forth in this Agreement or the Joint Project Schedule or shall fail to record approved Covenants, Conditions and Restrictions against the Property on the Closing Date, WMATA shall have the right to prepare and record interim covenants, conditions and restrictions that may be reasonably required by WMATA, not inconsistent with the terms of this Agreement. The proposed covenants, conditions and restrictions prepared by Developer (and any interim covenants, conditions and restrictions) shall (i) contain such terms, covenants, conditions and restrictions as shall be reasonably required or requested by WMATA, not inconsistent with the terms of this Agreement, to protect WMATA's

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30. Should this Section 11.8 be moved into Section 11.6? We assume it was a scrivener's error to require updated Design and Construction Documents during actual construction since that would be an unreasonable burden on the Developer.

31. Is this procedure being followed or is WMATA preparing Covenants, Conditions and Restrictions now?



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interests in and operations at the ~~Property,~~WMATA's Reserved Areas and Interests,[32] including, without limitation, protections, easements, obligations and restrictions for the benefit of WMATA relating to the Metro Facilities (whether or not integrated into Developer Improvements to be constructed by Developer) and WMATA's Reserved Areas and Interests and any potential adverse impacts on ~~WMATA's transit operations~~Metro Facilities, and[33] (ii~~) shall require and limit construction on and use of the Property to the uses and improvements specified or to be determined in accordance with this Agreement and the Approved Development Plan, except only as approved by WMATA in its sole and absolute discretion and (iii~~) shall contain provisions for easements for the use, operation, maintenance, repair, replacement and general protection of the Metro Facilities and[34] ~~(iv) shall reaffirm all covenants and restrictions contained in this Agreement and the Lease and (v~~iii) shall be consistent with requirements imposed by the District of Columbia, and (iv) shall expressly "run with the land" and be binding on the owner and lessees of the Property only during the time of their actual ownership or tenancy. Subject to satisfaction of the requirements of the immediately preceding sentence, the covenants, conditions and restrictions as may be further amended or supplemented by WMATA and Developer shall be subject to the approval of WMATA, Developer and Developer's lender, such approval not to be unreasonably withheld, conditioned or delayed. The covenants, conditions and restrictions as finally and mutually approved and executed by WMATA and Developer (the **"Covenants, Conditions and Restrictions"**), shall thereafter be deemed to comprise a part of the Approved Development Plan, shall be recorded against the Property at the expense of Developer and shall be senior to all other matters of record~~.~~ created after their recordation.[35] Subject to such applicable requirements of the District of Columbia, WMATA, with the joinder of Developer and Developer's first-lien Mortgagee, shall have the right from time to time to reasonably amend the Covenants, Conditions and Restrictions (and to record the amended Covenants, Conditions and Restrictions against the Property), without limitation, to reflect the scope, characteristics and actual locations of as-built Developer Improvements, WMATA's Reserved Areas and Interests, and the Metro Facilities, provided that, Developer and Developer's first-lien Mortgagee shall have the right to review and pre-approve each such proposed amendment to the Covenants, Conditions and Restrictions so required by WMATA, such approval not to be unreasonably withheld, conditioned or delayed. Subject to the terms of this Section 11.11, Developer and ~~each of the Interest Holders~~WMATA shall each reasonably cooperate with ~~WMATA~~the other in connection with such amendments and recordation

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32. WMATA has no interests in or operations at the Lease Property that are not fully addressed in the Lease and should be addressed there if there are issues. Since the WMATA Reserved Areas and Interest at the Property are expressly excluded from the Lease Premises, that is an appropriate subject for the Covenants, Conditions and Restrictions.

33. Any limitations on uses of the Lease Premises or Developer Improvements belongs in the Lease, not in a separate document. WMATA doesn't need redundant limitations.

34. This Agreement will terminate on Final Completion and should not be continued beyond that. The Lease speaks for itself and doesn't need to be repeated in the Covenants, Conditions and Restrictions.

35. The Covenants, Conditions and Restrictions cannot be recorded until the Lease has been recorded. Otherwise, the Developer's joinder in them is without an interest in the Lease Premises.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000970

and provide all such other reasonable further assurances relating thereto as shall be reasonably requested by WMATA or Developer.

11.12 **Cotenancy Agreement**. In order to facilitate the continued operation of the Joint Project after the expiration or termination of the Lease, WMATA and Developer shall enter into that certain Cotenancy Agreement (the "**Cotenancy Agreement**") in the form of **Exhibit M** hereto, which will be recorded among the land records of the District of Columbia after the Lease and Covenants, Conditions and Restrictions but before any Mortgage encumbering any portion of the Joint Property so the Cotenancy Agreement is senior in priority to all Mortgages encumbering any portion of the Joint Property. The Cotenancy Agreement shall "run with the land" and be binding on WMATA and Developer and their respective successors as the owners of the Joint Project only during their actual periods of ownership.

11.12.1 The Cotenancy Agreement shall not control the joint ownership of the Joint Project until the Lease has expired or been terminated, except for the restrictions and mutual right of first offer provisions in Section 11.12.7. If the Lease or a new lease is terminated and a lender obtains a new lease, the Cotenancy Agreement shall not control the joint ownership of the Joint Project until such new lease expires or is terminated without a new lease.

11.12.2 Upon the expiration or final termination of the Lease and any successor lease, the Cotenancy Agreement shall control the joint ownership, operation, leasing, insuring, financing, disposition and all other ownership activities concerning the Joint Project, which excludes the WMATA's Reserved Areas and Interests. For all purposes after the expiration or final termination of the Lease and any successor lease, WMATA shall own in fee simple the WMATA Percentage of the Joint Project and Developer shall own in fee simple the Developer Percentage of the Joint Project. All major or material decisions concerning the collective interests in the Joint Project shall be made by unanimous vote.

11.12.3 The Developer and WMATA shall jointly select and hire a professional real estate management company to lease, manage and operate the Joint Project under a management agreement with not more than an initial three-year term and annual renewals thereafter if WMATA and Developer agree to extend the management agreement. The manager shall lease, operate, maintain, insure, refurbish and improve the Joint Project in a manner consistent with the customs and practices in the District of Columbia for mixed-use, Transit-Oriented Development projects with similar quality and location. All receipts and funds shall be kept in segregated accounts without comingling. The manager shall provide sufficient information to WMATA and Developer for each to file any tax returns they are obligated to file.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000971

11.12.4 The Joint Project shall be operated in a manner to maintain conservative levels of operating and capital improvement reserves so the there is never a need for WMATA or the Developer to invest additional funds into the Joint Project. This will require reserves to be maintained at higher levels than a private owner would typically maintain. Reserves will be conservatively invested. WMATA and Developer shall each have full access to all books and records maintained by the manager and applicable to the Joint Project.

11.12.5 To the extent either WMATA or Developer can avoid some ordinary or capital expense or obtain a higher rent or other income from its portion of the Joint Project due to its being tax-exempt or having some other status which justifies a benefit only on its portion of the Joint Project, then such benefit shall be allocated solely to the cotenant who produced it. Subject to adjustments for the preceding sentence, the net proceeds from the operation of the Joint Project after the payment of all expenses and funding of all reserves will be distributed monthly with the WMATA Percentage thereof being paid to WMATA and the Developer Percentage thereof being paid to Developer.

11.12.6 Any financing of the Joint Project shall require the joint approval and joinder of both WMATA and Developer in their sole discretion. WMATA and Developer shall be entitled to separately finance their undivided interest in the Joint Project on a basis which is absolutely and unconditionally subordinate to the lien, operation and effect of the Cotenancy Agreement.

11.12.7 Neither WMATA nor Developer may sell, convey or master lease less than all their entire interest in the Joint Project. If either WMATA or Developer desire to sell their entire undivided interest in the Joint Project at anytime after the Closing Date, the selling cotenant must first offer its entire interest to the other cotenant for a minimum period of sixty (60) Days at a price and on terms the offeror plans to offer the public. If the offeree does not accept the offer within such sixty (60) Day period, then the offeror shall have a period of nine (9) months to sell its entire interest at a price and on terms not less favorable to the offeror than those offered to the offeree. If the offeror desires to sell its entire interest in the Joint Project at a price or on terms less favorable than those previously offered to the offeree, then the offeror shall again offer its entire interest in the Joint Project to the other cotenant on such reduced price and/or terms, including the right to match any contract the offeror has entered into, for a minimum period of thirty (30) Days. If the offeree does not accept the revised offer within such thirty (30) Day period and match any contract the offeror has entered into, then the offeror shall have a period of five (5) months to sell its entire interest in the Joint Project at a price and on terms not less favorable to the offeror than those re-offered to the offeree. Any sale, conveyance or master lease of either WMATA's or Developer's entire undivided interest in the Joint Project shall be made expressly subject and subordinate to the Cotenancy Agreement.



FOIA CONFIDENTIAL TREATMENT REQUESTED

11.12.8 If there is a sale or disposition of the entire Joint Project in a single transaction, WMATA shall be paid the WMATA Percentage of the net sales proceeds and Developer shall be paid the Developer Percentage of the net sales proceeds. A full or partial condemnation shall be deal with in the Cotenancy Agreement and the WMATA Percentage and Developer Percentage readjusted on an equitable basis after any partial condemnation.

11.12.9 Without creating a partnership or joint venture, the Cotenancy Agreement shall address all the joint ownership, operation, leasing, insuring, financing, disposition and all other ownership activities concerning the Joint Project.

~~11.11~~11.13 **Guaranty**. Guarantor shall guarantee~~: (1)~~ the prompt commencement and Final Completion of ~~the~~ construction of the ~~Project by the Final Completion Date in accordance with the Project Schedule and the Approved Development Plan, (2) the prompt commencement and Final Completion of construction of the~~Joint Project as and when required under the terms of this Agreement~~ of all improvements and infrastructure that are required to be constructed by Developer under the terms of any and all of~~, the Lease~~, this Agreement~~, the Approved Development Plan, the Approved Design and Construction Documents, and the Approvals (including, without limitation, site plan and building permit requirements)~~, (3) the removal, as and when required under the terms of this Agreement, of all improvements and infrastructure as required by this Agreement, (4) the remediation of all Hazardous Materials to the extent required by any and all of this Agreement, by applicable environmental Law or by any court or other governmental authority having jurisdiction, (5) the full and timely payment and performance of all obligations relating to the construction and development of the improvements in connection with the construction of the Project, that are to be constructed, paid for or provided by or at the expense of Developer under the terms of this Agreement and the Lease, and (6) the full and timely payment and performance of all other obligations of Developer under this Agreement and the Lease~~. All such obligations shall be evidenced and governed by the Guaranty, which shall be delivered to WMATA on the ~~Effective~~Closing Date~~ concurrently with the execution and delivery of this Agreement~~. Nothing contained in this Section ~~11.11~~11.13 shall be deemed to constitute a release or diminution of liability of Developer or any other surety in respect of any obligation or liability under this Agreement, the Lease, or any of the Transaction Documents.

~~11.12~~11.14 **Payment ~~Bond,~~and Performance Bond~~, and Restoration Bond~~.**

~~11.12.1~~11.14.1 Developer shall furnish a separate Payment~~,~~ and Performance~~, and restoration bonds~~ Bond covering faithful performance ~~of all contracts for construction of the~~by the general contractor of the construction contract for the Joint Project~~ and payment of obligations arising thereunder, respectively, which bonds~~, which Payment and Performance Bond shall be issued by a surety authorized to transact business in the District of Columbia and acceptable to WMATA in its reasonable discretion, as follows.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000973

~~11.12.1.1~~11.14.1.1 A labor and materials payment bond in a penal sum equal to one hundred percent (100%) of the "contract price"~~ of the Developer Improvements as reflected in the Approved Design and Construction Documents. Such bond~~for the Joint Improvements in the construction contract between the Developer and general contractor. Such labor and materials payment bond runs to the laborers and materialmen who provide labor and materials for the Joint Improvements and, if permitted by the surety, may ~~be in the form of~~also have a dual obligee ~~bond,~~rider naming ~~both~~ the ~~Project lender~~Developer, the first-lien leasehold Mortgagee and WMATA as obligees thereof~~. The~~; provided, however, the first-lien leasehold Mortgagee advancing the funds for construction shall have decision control over actions taken against the surety under such bond. Any proceeds of such bond received by Developer or WMATA shall be applied ~~to Final Completion of the Project.~~in accordance with the terms of such bond, *i.e.*, to pay for labor and materials for the Joint Improvements.

~~11.12.1.2~~11.14.1.2 A performance bond in a penal sum equal to one hundred percent (100%) of the "contract price"~~ of~~ for the Joint Improvements in the construction contract between the Developer ~~Improvements as reflected in the Approved Design and Construction Documents~~and general contractor. Such performance bond runs to the Developer, as owner, and may ~~be in the form of~~also have a dual obligee ~~bond,~~rider naming ~~both~~ the ~~Project lender~~Developer, the first-lien leasehold Mortgagee and WMATA as obligees thereof~~. The~~; provided, however, the first-lien leasehold Mortgagee advancing the funds for construction shall have decision control over actions taken against the surety under such bond. Any proceeds of such bond received by Developer or WMATA shall be applied ~~to Final~~in accordance with the terms of such bond, *i.e.*, to pay for completion of the ~~Project~~Joint Improvements in accordance with the construction contract. [36]

~~11.12.1.3 A restoration bond in a penal sum equal to one hundred percent (100%) of the "Contract Price" to restore the Lease Premises back to the condition it was in on the Effective Date. Such bond~~

[36] Under a performance bond, the surety has several options on how to cure the contractor's default under the construction contract. Typically, the surety does not pay money to the Developer (owner) or lender, but causes the general contractor to perform or brings in a replacement general contractor and pays the contractor directly for any amount required in excess of the payments owed by the Developer under the construction contract. WMATA's provisions don't follow the precise purpose of these bonds and what the lender providing the funds for the Joint Improvements is going to let WMATA do.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000974

~~may not be in the form of a dual obligee bond and shall name WMATA as the principal and sole obligee. The restoration bond shall be in a form approved by WMATA pursuant to the Submissions Approval Procedure. The restoration bond may be released upon written approval of WMATA, in its reasonable discretion, which shall be given upon Developer's completion of all below ground construction activity.~~

~~11.12.2~~11.14.2 Developer shall deliver the required ~~bonds to WMATA at least thirty (30) Days prior to~~Payment and Performance Bond at the Closing. [37]

~~11.12.3~~11.14.3 The Developer shall require any attorney-in-fact who executes the required ~~bonds~~Payment and Performance Bond on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

~~11.12.4~~11.14.4 Such ~~bonds~~Payment and Performance Bond shall comply with the other terms and conditions of this Agreement and the Lease for the benefit of WMATA and Developer, including, without limitation, ~~regarding the application and disposition of payments thereunder.~~the fact that if the first-lien Mortgage is a Federally-Insured Loan, HUD will not permit WMATA to have any interest in or control over the Payment and Performance Bond. If the entire base rent under the Lease is paid at the Closing, then the first-lien leasehold Mortgagee shall determine what interest in and control over the Payment and Performance Bond that WMATA shall have, if any.

~~11.12.5~~11.14.5 ~~Each of such bonds shall include among their provisions for payment or performance that the obligations of the surety shall be unconditionally activated upon any determination by WMATA of a Default under this Agreement, the Lease, or any of the Transaction Documents and that WMATA shall be given notice~~To the extent required in the Lease, the first-lien leasehold Mortgagee shall send WMATA copies of any notice of default ~~by Developer~~ under ~~the construction contract(s) or construction loan documents~~such Mortgage. [38]

~~11.13~~11.15 **Signage.** The existence, content and location of all signs proposed to be placed and on the exterior of the Property by Developer, or its contractors, ~~and any and all signage~~ that in any way relates or refers to WMATA or Metro Facilities shall be subject

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37. You can't get the Payment and Performance Bond until there is a signed construction contract. The Developer doesn't sign the construction contract until the Closing and/or the contractor will not incur the bond premium until the Closing. Therefore, the Payment and Performance Bond is always delivered at the Closing and not before.

38. The deleted language on activating the surety's obligation under the Payment and Performance Bond was inconsistent with what the Payment and Performance Bond does, which is insure the general contractor's performance under the construction contract so long as the Developer makes all required payments under such construction contract. No default by Developer under this Agreement, the Lease or any of the Transaction Documents is covered by the Payment and Performance Bond.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000975

to prior written approval by WMATA in its discretion. The existence, content and location of all signs proposed to be placed on the Property by WMATA or its agents, ~~and any and all signage that in any way relate, refer to, or provide directions to Developer Improvements~~ shall be subject to prior written approval by Developer in its discretion.

~~11.14~~11.16 **Davis-Bacon Requirements**. Developer shall comply with the "Davis-Bacon Act," 40 U.S.C. §276a, et seq. and with Section 64 of WMATA Compact and the "Fair Labor Standards Act," 29 U.S.C.A. §201, et seq. (1978) as amended in connection with all construction activities relating in whole or in part to the WMATA's Reserved Areas and Interests on the Property.

## ARTICLE 12
## RESERVED~~.~~

## ARTICLE 13
## TRANSIT ORIENTED DEVELOPMENT; FTA PROJECT APPROVAL; MISCELLANEOUS REQUIREMENTS

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

13.2 **FTA Project Approval**. WMATA and Developer acknowledge that the Project or Joint Project is subject to approval by the FTA ("**FTA Project Approval**"). WMATA will apply for FTA Project Approval within thirty (30) Days following the Effective Date. WMATA will provide evidence of receipt of FTA Project Approval to Developer promptly after it is received. If Developer does not receive evidence of FTA Project



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Approval within [_____ ( )][39] months, then Developer shall be entitled to a Schedule Extension for any further delay in receiving the FTA Project Approval. In the event FTA Project Approval is denied, and all possible appeals exhausted, this Agreement will terminate and expire as of the date of such denial, the full amount of the Deposit, subject to the terms of Article 3 shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement.

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

13.4 **Americans with Disabilities Act**. All Developer Improvements constructed by Developer on the Lease Premises shall comply with ~~Title~~Titles II and III of the Americans with Disabilities Act, 42 U.S.C.~~,~~ §12101, *et seq.*, as amended~~,~~ ("**ADA**") and any regulations promulgated thereunder, to the extent applicable. If as a result of such Developer Improvements, or any subsequent alteration, addition or modification thereto, ADA-related improvements to the Metro ~~Station~~Stations or any Metro Facilities are required, Developer shall be solely responsible for the cost of all such ADA-related improvements and shall pay or reimburse WMATA for ~~all such~~the costs ~~on demand.~~thereof within thirty (30) Days after Notice thereof and demand for payment. Developer shall not be liable for ADA-related improvements to the Metro Stations if: (a) the requirements for such ADA-related improvements predate the date of completion of Developer Improvements and would have been required to be made to the Metro Stations or Metro Facilities regardless of Developer Improvements; or (b) WMATA is implementing such ADA-related improvements at WMATA facilities in general as part of its system-wide improvements or alterations.

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

13.6 **Hazardous Materials and Explosives**. Developer shall not cause or permit any explosives or other Hazardous Materials ~~or equipment~~ to be used, generated, stored or disposed of, on or about, from or adjacent to the Property~~.~~, except in compliance with

[39] Developer must receive evidence of FTA Project Approval before it can make any binding commitments for debt or equity. These commitments sometimes require significant up-front deposits that are forfeited if the Joint Project doesn't go forward without fault by the proposed lender or investor.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000977

applicable Laws, including Environmental Laws. To the extent the use, generation, storage or disposal of Hazardous Materials is permitted under applicable Laws, including Environmental Laws, then Developer shall exercise the highest reasonable standards prevailing in the industry for the storage and use of such substances or materials, consistent with normal construction practices.

13.7 **Noise and Vibrations.** No claims shall be made by Developer against WMATA arising from usual noise or vibration caused from WMATA's normal transportation related operation of the Metro ~~Station~~Stations or any Metro Facilities. ~~A provision to this effect shall be included in all Subleases delivered pursuant to this Agreement.~~[40]

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

13.9 **Developer Responsibility for ~~Taxes~~Impositions; Acknowledgment of WMATA's Tax Exempt Status.** Developer acknowledges that WMATA is a tax exempt entity and agrees that WMATA shall not be responsible for the payment of any taxes or Impositions relating to this Agreement or the transactions contemplated by this Agreement or the other Transaction Documents. Between the Effective Date and the Closing Date, any and all taxes and other Impositions resulting solely from any and all activities of Developer shall be ~~their~~Developer's sole responsibility and obligation and not that of WMATA. The Lease shall provide that from and after the Closing Date, Developer (and not WMATA) shall be responsible for the payment of any and all taxes, Impositions, and other government fees relating to the Lease Premises, including, without limitation, real estate taxes and impervious surface fees. [41]

13.10 **Officials Not To Benefit.**

13.10.1 No member (*i.e.*, Representative or Senator) of, or delegate to, Congress, or any similar official, or any member of such person's family, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not apply if this Agreement is made with a corporation or other entity with which such official or family member has only a *de minimis* (in WMATA's sole opinion) contractual or ownership interest. Developer ~~or any Consultant~~ [42] warrants, represents, and agrees that as of the date of this Agreement, no Person described in the first sentence of this ~~subparagraph~~Section 13.10.1, nor any entity with which such Person is

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[40]. The following provision belongs in the Lease, not in this Agreement: "A provision to this effect shall be included in all Subleases delivered pursuant to this Agreement [sic, Lease]."

[41]. This sentence belongs in the Lease, not in this Agreement.

[42]. The Consultants are not a party to this Agreement and cannot make a representation.



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affiliated, has any such interest in Developer or, to Developer's actual knowledge, any Consultant. Developer ~~or any Consultant~~ shall forthwith deliver ~~written~~ Notice to WMATA of any breach of the foregoing warranty, representation, and agreement, and shall make reasonable inquiries from time to time to determine whether any such breach has occurred.

13.10.2 No member, officer, or employee of WMATA or of a ~~local~~District of Columbia public body during his/her tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement.

13.11 **Gratuities**. In connection with this Agreement, or any amendments or modifications thereto, the giving of, or offering to give, gratuities (in the form of any gift, favor, entertainment, hospitality, transportation, loan or other tangible item or any intangible benefit for which the recipient did not pay fair market value and which is not offered to the public generally) by the Developer or any Consultant, or any agent, representative, or other person deemed to be acting on behalf of the Developer or any Consultant, or any contractor, subcontractor or supplier furnishing material to or performing work under this Agreement, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any director, officer or employee of WMATA, or to any director, officer, employee or agent of any of WMATA's agents, consultants or representatives, with a view toward securing an agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to performance under this Agreement or any agreement that will be negotiated, is expressly forbidden. In the event of a violation of this paragraph, WMATA shall have the right to terminate this Agreement by Notice to the Developer, in which event, the then remaining amount of the Deposit, subject to the terms of Article 3, shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement. The terms of this ~~paragraph~~Section 13.11 shall be strictly construed and enforced in the event of violation ~~hereto~~of such terms.

## ARTICLE 14
## ASSIGNMENT OF AGREEMENT

14.1 **Assignment**

14.1.1 Prior to Final Completion ~~of the Project~~, this Agreement shall not be assignable by the Developer ~~or the Guarantor~~. [43]

[43]. The Guarantor isn't a party to the Agreement and holds no interest in it to assign.



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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.~~ [44] No assignment of this Agreement shall relieve or release Developer or Guarantor from any of their respective obligations under this Agreement or the Guaranty, as applicable~~,~~ and without limitation. Prior to Final Completion, WMATA shall not be required to consent to any assignment that would adversely affect WMATA's rights, expectations and requirements under this Agreement.

14.1.3 All assignments (in addition to requiring the consent of WMATA) shall be made expressly subject to the terms, guarantees, covenants and conditions of this Agreement and the Transaction Documents and shall require among other things:

14.1.3.1 That the assignment shall not be binding on WMATA until a duly executed copy of the assignment is delivered to WMATA. The assignment shall designate the name of the assignee and the address to which all Notices required by this Agreement shall be sent; and

14.1.3.2 That the assignee shall assume all rights and obligations of Developer ~~or Guarantor, as applicable,~~ under this Agreement and the other Transaction Documents, as applicable.

14.1.3.3 Such assignment of this Agreement by Developer shall not (a) relieve Developer ~~or Guarantor~~ of any liabilities and obligations under this Agreement or any of the other Transaction Documents~~;~~, or (b) relieve Guarantor of any liabilities and obligations under the Guaranty, or (c) impair or adverse affect the rights of WMATA under this Agreement or any agreement, undertaking or security related to or contemplated by this Agreement ~~or the Transaction Documents~~.

14.2 **Change of Control.**

14.2.1 There shall be no Change of Control in either the Developer or the Guarantor prior to ~~the~~ Final Completion ~~of the Project~~.

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[44]. We have provided the Agreement and Guaranty terminate upon Final Completion. Therefore, the Lease, not this Agreement, will control the Developer's assignment rights and obligations after Final Completion.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000980

14.2.2 ~~After Final Completion, there shall be~~ [45] No Change of Control ~~in the~~shall relieve or release Developer~~,~~ or Guarantor from any of their respective obligations under this Agreement or the Guaranty, as applicable and without ~~WMATA's prior written approval, in WMATA's sole discretion.~~limitation. Prior to Final Completion, WMATA shall not be required to consent to any Change ~~in~~of Control that would materially and adversely affect WMATA's rights, expectations and requirements under this Agreement.

## ARTICLE 15
## RESERVED

[46]

## ~~FORFEITURE OF DEVELOPMENT RIGHTS~~

~~In addition to all other rights and remedies of WMATA, if Developer fails to secure the Approvals on or before expiration of the Approval Period or if WMATA's right to terminate arises under this Agreement, at WMATA's election, in its sole and absolute judgment, Developer shall forfeit the right to lease or develop the Lease Premises. Nothing in this Article shall impair or diminish the scope or exercise of WMATA's remedies for any Default.~~

## ARTICLE 16
## BROKERAGE

WMATA and Developer each represents and warrants to the other that it has not dealt with or utilized the services of any real estate broker, sales person or finder in connection with this Agreement.

## ARTICLE 17
## POSSESSION AND DUTY OF CARE

17.1 **Possession.** Exclusive possession of the Lease Premises shall be delivered to Developer at Closing by WMATA, pursuant to the terms of the Lease (except as contemplated by the Permitted Exceptions or otherwise expressly set forth in the Lease); provided, however, that nothing in this Section 17.1 shall diminish or impair the rights of WMATA set forth in this Agreement or the other Transaction Documents. Except only for Developer's license during the ~~Study~~Access Period as set forth in and limited by the terms of Article 4, nothing in this Agreement and no action or failure to act by WMATA, shall constitute a grant by WMATA to Developer or any Consultant or any other Person of (or acquiescence regarding) any legal or equitable estate in or to the Property or any part thereof or of any license, right, power, or permit, right of entry, interest, lien, charge,

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[45] We have provided the Agreement and Guaranty terminate upon Final Completion. Therefore, the Lease, not this Agreement, will control any Change in Control after Final Completion.

[46] WMATA's remedies for a Default are covered in Article 18 and include certain Notice and grace provisions. It only creates the possibility of conflicting provisions to repeat part of them here.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000981

or other encumbrance on the Property or WMATA's right, title or interest therein prior to the Closing Date. Developer and each Consultant shall not suffer or permit any portion of the Property to be used by any Person, so as to threaten, burden, diminish, adversely affect or impair WMATA's rights, title or interest in the Property and ~~each~~ Developer ~~and Consultant~~ shall indemnify, defend (with attorneys approved by WMATA) and hold WMATA harmless against any and all damage, losses, costs and expenses (including, without limitation, attorneys' fees and costs) arising out of any breach of this ~~subsection. To the extent that possession of the Lease Premises shall not be delivered to Developer at Closing, vacant (except for as contemplated by the Permitted Exceptions or otherwise expressly set forth in this Agreement), all lessees, tenants and occupants, and all holdover tenants shall be and become tenants by sufferance of Developer, provided, however, that nothing in this Section 17.1 shall diminish or impair the rights of WMATA set forth in this Agreement or the other Transaction Documents.~~Section 17.1.

17.2 **Duty of Care and Reporting.**

17.2.1 Developer and each Consultant by exercising any right or license, pursuant to Article 4 under this Agreement, to enter onto the Lease Premises and to conduct activities relating thereto for any purpose, acknowledges that WMATA's Metro Facilities occupy portions of the Property and are located on, under, or about the Property, such that Developer and each Consultant shall be held to a duty of special and utmost care not to damage, interfere with or adversely affect in any way such Metro Facilities or any ancillary equipment or facilities which are part of the Metro Facilities. Without limiting the foregoing, Developer and each Consultant while on or adjacent to the Property shall protect the Metro Facilities, including, without limitation, any and all adjacent right-of-way areas on the Property from any and all falling objects caused by Developer or such Consultant, as applicable. It shall be the responsibility of Developer to inform each Consultant of the requirements of this ~~subsection~~Section 17.2.1. However, at the request of WMATA, Developer and each Consultant shall be required to deliver to WMATA a written acknowledgment of the foregoing, but failure of WMATA to request the same shall not excuse noncompliance with the terms of this ~~subsection~~Section 17.2.1.

17.2.2 Developer and each Consultant shall, prior to conducting any work or other activity within the confines of any tunnel or any adjacent right-of-way which is above or adjacent to the third rail or any other significant electrical facilities (*e.g.*, traction stations), first attend and complete, to WMATA's satisfaction, a safety class conducted by WMATA's Safety and Fire Protection Branch.

17.2.3 Developer and each Consultant shall only enter and conduct activities in, on or about the Property subject to the terms of an express written ~~Right of Entry~~ROE, as described in Article 4, and in such manner and at such times so as not to interfere with WMATA's use, construction, maintenance, repair or



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operations ~~thereof~~of Metro Facilities. If access to any track areas is required, such access shall be limited to only one (1) track at a time.

17.3 **Indemnification.** Developer shall indemnify, defend (with attorneys selected by Developer, subject to WMATA's approval, not to be unreasonably withheld, conditioned or delayed, and retained at Developer's expense) and hold WMATA harmless from any and all claims, damages, actions, losses, costs, expenses (including, without limitation legal fees and expenses) and liabilities of whatsoever nature or kind that may arise in connection with any and all actions taken by Developer, its Consultants and its and their employees, agents and invitees in, on, about or in connection with the Property or their performance of this Agreement and the ~~related Transaction Documents,~~ROE,[47] including, without limitation, any and all surveys, tests, investigations, construction and other activities.

17.4 **Survival.** Except as otherwise expressly provided in this Article 17, the requirements of this Article 17 shall not be limited to the ~~Study~~Access Period, shall survive Closing ~~and shall run with the land and shall be deemed a part of and shall be incorporated within~~[48] until Final Completion. The Covenants, Conditions and Restrictions may contain similar provisions.[49]

## ARTICLE 18
## DEFAULTS AND REMEDIES

18.1 WMATA's Default. The following shall constitute a "**Default**" by WMATA under this Agreement:

18.1.1 If WMATA refuses to consummate ~~a~~the Closing as required under the terms of this Agreement; or

18.1.2 If WMATA makes any material and adverse misrepresentation under Section 9.1 of this Agreement or any of the other Transaction Documents; or

18.1.3 If following the Study Period ~~and the Approval Period~~Termination Deadline, WMATA fails to pay when due and payable any Impositions it is legally required to pay in respect of the ~~Lease Premises~~Property and any such failure is not cured within ~~thirty~~ten (~~30~~10) Business Days after receipt of Notice (or such additional period as may be otherwise ~~provided under this Agreement or~~ agreed to by the parties to effect such cure, so long as WMATA timely commences such cure and thereafter diligently prosecutes such cure to completion~~)~~, and such ~~non-payment prevents the consummation of the~~

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47. This Agreement covers the due diligence for and construction of the Developer Improvements. The Lease will contain a separate indemnification. They do not need to be repeated, which may cause conflicts.

48. The concept of "running with the land" is typically limited to recorded documents.

49. This Agreement terminates at Final Completion. The Covenants, Conditions and Restrictions can separately address certain issues from Article 17.



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~~Closing or completion of construction of the~~extension of time does not materially adversely affect Developer's Approvals, financing or equity contributions for the Joint Project); [50] or

18.1.4 If WMATA fails to perform any material agreement or covenant required to be performed by WMATA under the terms of this Agreement and any such failure is not cured within thirty (30) Business Days after receipt of Notice (or such additional period as may be otherwise ~~provided under this Agreement or~~ agreed to by the parties to effect such cure, so long as WMATA timely commences such cure and thereafter diligently prosecutes such cure to completion~~), and such refusal prevents the consummation of the Closing or completion of construction of the Project~~. [51]

18.1.5 Notwithstanding anything to the contrary, (i) WMATA shall not be in Default for any failure or non-satisfaction of a condition precedent to Developer's obligation to consummate Closing, and (ii) the foregoing shall not diminish WMATA's right to adjourn or postpone a Closing as provided in this Agreement~~.~~, so long as such postponement does not jeopardize Developer's Approvals, financing commitment or equity contribution commitment. [52]

18.2 **Developer's Remedies**. If WMATA shall be in Default under this Agreement, and, if Developer is not otherwise in Default hereunder, Developer, in addition to any other rights and remedies available to it at law or in equity (including, without limitation, the right to require specific performance) shall be entitled to terminate this Agreement and to receive a refund of the then remaining Deposit, which shall be promptly refunded to Developer by WMATA (except to the extent of WMATA's entitlement to retain same under the terms of this Agreement), or~~, with the prior written consent of WMATA,~~ proceed to cure WMATA's Default and offset the cost of such cure against the payment of base rent under the Lease if the cure occurs prior to the Closing or against the payment of any other rent due under the Lease if the cure occurs after the Closing.

18.3 **Developer's Default.**

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7.1.1 [50]. This is an unreasonable risk for the Developer to take, even though there is a very small possibility of unpaid Impositions. Any loan commitment or equity commitment will have a deadline for the Closing and a prohibition on stopping construction or not proceeding with all development activities beyond construction. WMATA should not be permitted to delay the Closing or jeopardize the Developers financing or equity contributions because WMATA wants to pick a fight with D.C. over an Imposition. For that reason, the grace period was reduced to ten Business Days.

[51]. WMATA is in Default whether or not it stops the Closing or construction. Those are not appropriate conditions to relieve WMATA of its obligations under this Agreement.

[52]. Please identify any right in this Agreement for WMATA to adjourn or postpone closing. Such a right will jeopardize Developer's financing commitment and any equity commitment and possibly jeopardize the Approvals.



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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, and such failure continues for ten (10) Business days after Developer's receipt of Notice from WMATA; or

18.3.1.2 If Developer fails to comply with or adhere to any material obligations under Article 3 or Section 4.5 and such failure is not cured within ~~five~~ten (~~5~~10) Business Days after receipt of Notice from WMATA~~ or if Developer fails to comply with Section 4.5~~; or

18.3.1.3 If Developer fails to comply with or adhere to any material obligations under ~~any~~ Article 14 (Assignment of Agreement) and such failure is not cured within ~~five~~ten (~~5~~10) Business Days after receipt of Notice from WMATA; or

18.3.1.4 If Developer fails to comply with or adhere to any material obligations under Section 2.6.2 (maintaining Qualified Team) and such failure is not cured within twenty (20) Business Days after receipt of Notice from WMATA; or

18.3.1.5 If Developer fails to undertake Commercially Reasonable Best Efforts as and when required by the terms of this Agreement and such failure is not cured within ~~five~~ten (~~5~~10) Business Days after receipt of Notice from WMATA; or

18.3.1.6 If Developer fails to comply with or adhere to any material obligations under Article 11 in accordance with any deadlines set forth therein, ~~or,~~ as ~~to any obligation for which no deadline has been set in such Article 11~~the same may be extended,[53] within twenty (20) Business Days after receipt of Notice from WMATA; or

18.3.1.7 If Guarantor shall breach any material covenant of Guarantor contained in the Guaranty, or any other Transaction Document to which Guarantor is a party~~ or by which Guarantor is bound~~, if

[53] The deleted language would permit WMATA to create an artificial deadline where none exists in Article 11. We believe WMATA has provided deadlines as to all material actions Developer is obligated to perform in Article 11 and the delete language is unnecessary and inappropriate.



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any, and such breach continues after Guarantor's receipt of Notice beyond the expiration of any applicable notice and cure period specified in the Guaranty or such other Transaction Document which shall not be less than ten (10) Business Days under any circumstances; or

18.3.1.8 If Developer makes any material and adverse misrepresentation in this Agreement or any of the other Transaction Documents, or if Guarantor makes any material and adverse misrepresentation in the Guaranty, or if any of them make any material and adverse misrepresentation in any other material Submission to WMATA; or

~~18.3.1.9~~ ~~If Developer or Guarantor make any material misrepresentation to any governmental authority for or in connection with the transactions contemplated by this Agreement; or~~

~~18.3.1.10~~ 18.3.1.9 If Developer or Guarantor files a voluntary petition in bankruptcy, or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future applicable federal or state bankruptcy or insolvency law, or Developer or Guarantor seeks or consents to, or acquiesces, in the appointment of any trustee, receiver or liquidator of such Developer or Guarantor, or of all or any substantial part of its or their assets, or of the ownership interests of Developer ~~or Guarantor~~ under this Agreement~~.~~; or

~~18.3.1.11~~18.3.1.10 If there occurs the filing of a petition by or against Developer or Guarantor: (i) in any bankruptcy or other insolvency proceeding with respect to Developer or Guarantor; (ii) seeking any relief under any state or federal debtor relief law with respect to Developer or Guarantor; (iii) for the appointment of a liquidator or receiver for all or substantially all of ~~Developer~~Developer's or Guarantor's property or for Developer's interest in this Agreement; or (iv) for the reorganization of Developer or Guarantor or for a material and adverse modification of Developer's or Guarantor's capital structure and Developer or Guarantor, as the case may be, fails to have the proceedings initiated by such petition stayed or dismissed within sixty (60) Days after the filing thereof; or

~~18.3.1.12~~18.3.1.11 If Developer shall breach any other material covenant of Developer contained in this Agreement, any of the



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Transaction Documents, or in any ~~right of entry agreement~~ROE between Developer and WMATA or fail to perform any other material obligation and such failure is not cured within ~~twenty~~thirty (~~20~~30) Business Days after receipt of Notice.

18.4 **WMATA's Remedies.**

18.4.1 WMATA shall be entitled to exercise the following remedies in connection with a Default by Developer under this Agreement:

18.4.1.1 If Developer shall be in Default under this Agreement prior to the consummation of the Closing contemplated by this Agreement, WMATA shall have the right to terminate this Agreement by Notice to Developer and the full amount of the Deposit then held by WMATA pursuant to the terms of this Agreement shall be retained by WMATA as liquidated damages for such Default as WMATA's sole and exclusive remedy hereunder, other than pursuant to Section 17.3 and pursuant to the terms of this Agreement that expressly survive any termination of this Agreement.

18.4.1.2 If Developer shall be in Default under this Agreement after consummation of Closing, then WMATA shall have all rights and remedies available to it under this Agreement, the Transaction Documents, at law or in equity (including, without limitation, the full amount of the Deposit then held by WMATA pursuant to the terms of this Agreement, the right to require specific performance~~, and~~ or to terminate this Agreement) as to such Default.

18.4.2 The parties agree that it would be impracticable and extremely difficult to ascertain the actual damages suffered by WMATA as a result of Developer's Default hereunder, and that, under the circumstances existing as of the Effective Date, the liquidated damages to the extent provided for in Section 18.4.1 represent a reasonable estimate of the damages that WMATA would incur as a result of such Default by Developer. The parties acknowledge and stipulate that payment of such liquidated damages is not intended as a forfeiture or penalty. The parties hereby waive any and all rights to contest the validity of these liquidated damages provisions, including, but not limited to the defense that there is or may be an adequate remedy at law.

18.4.3 The payment of liquidated damages as provided in Section 18.4.1 shall not extinguish or otherwise affect any other of Developer's post-Closing liabilities or WMATA's remedies in respect thereof specified in this Agreement, or WMATA's right to payments and performance under the Guaranty.



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18.4.4 All remedies of WMATA under this Agreement and under applicable Laws shall be cumulative, unless otherwise expressly provided to the contrary in this Agreement.

## ARTICLE 19
## RISK OF LOSS OR CASUALTY

The risk of loss or damage to the Property by fire or other casualty until Closing is assumed by WMATA. Developer shall have no right to terminate this Agreement on account thereof, so long as such fire or other casualty does not extend the Closing Date and exclusive possession of the Lease Premises is delivered to Developer at Closing. WMATA shall not, in any event, be obligated to effect any repair, replacement or restoration.

## ARTICLE 20
## EMINENT DOMAIN

20.1 **Total Taking**. If prior to the Closing, there should be a Taking of the entire Lease Premises, such Taking shall be deemed to have caused this Agreement to terminate and expire as of the date of such Taking, the full amount of the Deposit, subject to the terms of Article 3 shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement. ~~Each~~Any Taking contemplated by this ~~subsection~~Section 20.1 shall be deemed to be and shall be referred to in this Agreement as a "**Total Taking**~~".~~."

20.2 **Partial Taking.**

20.2.1 If, prior to the Closing, there should be a Taking of less than the entirety of the Lease Premises, and in Developer's reasonable opinion the remaining portions of the Lease Premises cannot ~~reasonably~~ be adequately developed in the context of the exercise by Developer of Commercially Reasonable Best Efforts to do so as a project of commercially reasonable usefulness, design, construction, and economic feasibility consistent with all the requirements in this Agreement and the other Transaction Documents, then Developer or WMATA shall have the right to terminate this Agreement as to the Lease Premises that is not the subject of such Partial Taking, as applicable, upon Notice to the other within ninety (90) Days after the date of the Partial Taking of the Lease Premises Such Notice shall state the date of termination, which shall not be later than the date of the Taking~~.~~, whereupon the full amount of the Deposit, subject to the terms of Article 3 shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement.



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20.2.2 **Reserved.**

20.2.3 If prior to the Closing, a Partial Taking occurs and neither WMATA nor the Developer exercises its right to terminate this Agreement in conformity with the terms of this Section 20.2, WMATA shall be entitled to continue to hold the Deposit and to otherwise deal with the same in conformity with the provisions of this Agreement, except that WMATA and Developer shall make reasonable changes to this Agreement and the other Transaction Documents to recognize the reduction in the Lease Premises and adjust all the provisions thereof for such reduction. Developer shall pay the revised rent for the applicable portion of the Lease Premises that is not affected by such Partial Taking without reduction.

20.2.4 Each Taking contemplated by this ~~subsection~~Section 20.2 shall be deemed to be and shall be referred to in this Agreement as a "**Partial Taking**~~"~~."

20.2.5 **Date of Taking**. For the purposes of this Article 20, the date of the Taking shall be the date on which title to such portion of the Property vests in the ~~condemnor~~condemner.

20.3 **Condemnation Proceeds.** All condemnation proceeds and any and all awards and payments in respect of a Total Taking or Partial Taking (all such proceeds, awards and payments collectively the "**Condemnation Proceeds**") shall vest in WMATA. Developer hereby irrevocably assigns to WMATA any and all of its rights in all Condemnation Proceeds.

## ARTICLE 21
## DISPUTE RESOLUTION

21.1 **Alternative Dispute Resolution Mechanisms**. In the event of a dispute between the parties (including, without limitation, any claim by one party against the other party) with respect to any matter arising under this Agreement~~ or any of the Transaction Documents~~, the party raising a dispute or claim (the "**Aggrieved Party**") shall give the other party ~~written~~ Notice specifying the nature of the dispute and the monetary amount involved, if any (the "**Dispute Notice**"). For a period of ~~fifteen~~twelve (~~15~~12) Business Days after receipt of the Dispute Notice, the ~~parties'~~WMATA Joint Project ~~Representatives~~Representative and the Developer Joint Project Representative shall proceed diligently and in good faith in an effort to resolve the dispute to their mutual satisfaction. If the parties fail to resolve the dispute prior to the expiration of the ~~fifteen~~twelve (~~15~~12)-Business Day period, then upon the written request of the Aggrieved Party to the other party and the other party's written agreement to participate in further non-binding alternative dispute resolution mechanisms (the "**Alternative Dispute Notice**"), the following provisions with respect to non-binding, alternative resolution of the dispute shall govern:



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21.1.1 If the Dispute Notice specifies a monetary amount less than $500,000, then (a) within three (3) Business Days after receipt of the Alternative Dispute Notice, each party shall appoint a representative (meeting the qualifications of Section 21.1.3); provided that, if a party shall fail to timely appoint its representative, the other party may appoint such representative; (b) within three (3) Business Days after their collective selection, the two (2) representatives selected shall select a third (3rd) representative (meeting such standards); and, (c) the three representatives (the "**Dispute Review Panel**") shall meet within three (3) Business Days after their collective appointment (or at such reasonable time thereafter as a majority of the Dispute Review Panel may agree upon) to decide the disputed issue. The disputed issue shall be resolved, by not less than a majority vote of the Dispute Review Panel, within thirty (30) Days after the date of the selection of the third representative. Fees of, and expenses incurred by, the representative of a party in connection with the dispute resolution shall be borne by such party, and of the third (3rd) representative, equally by both parties.

21.1.2 If the Dispute Notice (a) does not specify a monetary amount, or (b) specifies that the matter in dispute cannot be reduced to monetary terms, or (c) specifies a monetary amount equal to or greater than $500,000, or if the parties do not elect to be bound by the decision and award of the Dispute Review Panel after agreeing to the Alternative Dispute Notice, the Aggrieved Party shall file a demand with the American Arbitration Association (the "AAA") in Washington, D.C. ~~simultaneously with delivering~~within five (5) Business Days after the later of agreement on the Alternative Dispute Notice ~~to the other party~~or receipt of the decision of the Dispute Review Panel. Such arbitration shall be conducted in Washington, D.C. in accordance with the applicable rules of the American Arbitration Association (the "**AAA Rules**"). The arbitrator(s) shall be selected in accordance with the AAA Rules from the roll maintained by the American Arbitration Association in Washington, D.C., and shall be sworn faithfully and fairly to determine the dispute in question. Fees of, and expenses incurred by, the arbitrators in connection with the dispute resolution shall be borne equally by both parties.

21.1.3 The representatives or arbitrators selected in accordance with ~~this~~ Section 21.1.2 shall not be related by blood, marriage or professional affiliation to the parties or the principals of the parties, and must be professionals or persons with at least ten (10) years' experience in the substantive area in which the dispute has arisen.

~~21.2 **Discovery**. Notwithstanding any provision in the AAA Rules to the contrary, in any arbitration proceeding, the parties each, prior to the arbitration hearing, shall be entitled to take limited discovery in the form of the right to request documents, the right to serve not more than thirty (30) interrogatories and the right to take not more than four (4) depositions, with respect to each other party and may, in addition, for good cause shown,~~



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~~be permitted additional discovery in the discretion of the arbitrators; and (c) at the arbitration hearing, shall be entitled to present evidence and to cross-examine witnesses.~~

21.2 **Reserved.** [54]

21.3 **Binding Effect.** The decision and award of the Dispute Review Panel or the arbitration panel, as the case may be, shall be non-binding and shall only be enforceable against either party in any court of competent jurisdiction pursuant to a separate agreement to make such decision binding, which agreement shall be in each party's sole and absolute discretion. For that reason, both parties must affirmatively agree in the Alternative Dispute Notice to participate in any arbitration or neither party will be obligated to do so.

## ARTICLE 22
## CERTIFICATES BY WMATA AND DEVELOPER

22.1 **Certificate by WMATA.** WMATA agrees, upon not less than twenty (20) Days' prior Notice from Developer, to execute, acknowledge and deliver a written statement to Developer or to any actual or prospective holder of a Mortgage, securities rating agencies, auditors, purchasers or investors as Developer may specify, which: (1) certifies that this Agreement is unmodified and in full force and effect (or if modified that this Agreement is in full force and effect as modified and states the modifications); (2) states to the best knowledge of WMATA whether Developer is in default in keeping, observing and performing any of the terms of this Agreement, and, if in default, specifies each such default of which WMATA has knowledge; (3) certifies to the best knowledge of WMATA as to the existence of any offsets, counterclaims or defenses to this Agreement on the part of Developer or WMATA; and (4) sets forth any other matters which reasonably may be requested except as to proprietary or confidential information. Any such statement delivered pursuant to this Section 22.1 may be relied upon by any prospective assignee of Developer's interest in this Agreement, any existing or prospective securities rating agency, auditor, existing or prospective holder of a Mortgage or investor providing financing or funds to Developer for the Joint Project, or to any other prospective holder of a Mortgage or investor for the Joint Project, but reliance on such certificate may not extend to any default of Developer as to which WMATA shall have no actual knowledge.

22.2 **Certificate by Developer.** Developer agrees, upon not less than twenty (20) Days' prior Notice from WMATA, to execute, acknowledge and deliver to WMATA or any person, entity, or agency designated by WMATA, a written statement which: (1) certifies that this Agreement is unmodified and in full force and effect (or if modified, that this Agreement is in full force and effect as modified and states the modifications); (2) states to the best knowledge of Developer whether WMATA is in default in keeping, observing and performing any of the terms of this Agreement and, if in default, specifies each such default of which Developer has knowledge; (3) certifies to the best knowledge of Developer as to the existence of any offsets, counterclaims or defenses to this Agreement

[54] If WMATA wants to follow the AAA Rules, then follow the AAA Rules on discovery as well.



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on the part of Developer or WMATA; and (4) sets forth any other matters which reasonably may be requested except as to proprietary or confidential information. Any such statement delivered pursuant to this Section 22.2 may be relied upon by WMATA or any prospective purchaser of the fee of the Property, any mortgagee to WMATA and any auditor or governmental agency, but reliance on such certificate may not extend to any default of WMATA as to which Developer shall have no actual knowledge.

## ARTICLE 23
## MISCELLANEOUS

~~22.1~~23.1 **Recitals, Exhibits and Schedules.** All Recitals, Exhibits and Schedules annexed hereto from time-to-time are incorporated herein and made a part of this Agreement for all purposes.

~~22.2~~23.2 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of WMATA and Developer, and their respective successors, heirs and permitted assigns.

~~22.3~~23.3 **Captions.** The captions, headings and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

~~22.4~~23.4 **Number And Gender Of Words.** Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

~~22.5~~23.5 **Notices.**

~~22.5.1~~23.5.1 All notices, demands, requests and other communications required pursuant to or in connection with the provisions of this Agreement ("**Notice**") shall be in writing and shall be deemed to have been properly given or served for all purposes (i) if sent by Federal Express or other nationally recognized overnight carrier for next Business Day delivery, on the actual date of delivery by such carrier, or (ii) if personally delivered, on the actual date of delivery or (iii) if sent by certified mail, return receipt requested postage prepaid, on the Fifth (5th) Business Day following the date of mailing addressed as follows:

If to Developer: The Jazz @ Florida Avenue
Attn: Mr. Omar A. Karim
c/o Banneker Ventures, LLC
729 15th Street, N.W., Suite 400
Washington, D.C. 20005
Phone: (202) 393-5460

And with a copy to: Banc of America Community



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Development Corporation

Attn: Mr. Maurice Perry
730 15th Street, N.W., Eighth Floor
Washington, D.C. 20005
Phone: (202) 442-7526

If to WMATA: Washington Metropolitan Avenue Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001
Attn: Director of Station Area Planning and Asset Management
Phone: (202-) 962-2616
Fax: (202) [ - ]

And with a copy to: Washington Metropolitan Avenue Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001
Attn: Carol O'Keeffe
Phone: [(202) [ - ]
Fax: [(202) [ - ]~~Phone:~~ _____
~~Fax:~~ _____

~~22.5.2~~23.5.2 Any of the parties may designate a change of address ~~by Notice~~for themselves or any other Person receiving Notice and designate additional Persons who are to receive copies of all Notices by sending Notice thereof in writing to ~~the~~all other ~~parties~~Persons who have been designated to receive Notice in conformity with this Section 23.5. Whenever in this Agreement the giving of Notice by mail or otherwise is required, the giving of such Notice may be waived in writing by the person or persons entitled to receive such Notice.

~~22.6~~23.6 **Governing Law and Venue**. The laws of the District of Columbia shall exclusively govern the validity, construction, enforcement and interpretation of this Agreement, unless otherwise specified herein, except for the conflict of laws provisions thereof. All claims, disputes and other matters in question arising out of or relating to this Agreement, or the breach thereof, shall be decided by proceedings instituted and litigated in the United States District Court for the District of Columbia, and the parties hereto expressly consent to the venue and jurisdiction of such court.



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~~22.7~~23.7 **Entirety and Amendments.** This Agreement ~~embodies~~and the other Transaction Document embody the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Property and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

~~22.8~~23.8 **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable. The Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

~~22.9~~23.9 **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is deemed an original for all purposes and all such counterparts shall, collectively, constitute one Agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

~~22.10~~23.10 **Further Acts.** In addition to the acts and deeds recited herein and contemplated to be performed, executed or delivered by WMATA and Developer, WMATA and Developer agree to perform, execute or deliver or cause to be performed, executed or delivered any and all such further acts, deeds and assurances as may be reasonably necessary or appropriate to consummate the transactions contemplated in this Agreement.

~~22.11~~23.11 **Disadvantaged Business Enterprises; Non-Discrimination Obligation.** Developer acknowledges that WMATA may implement a minority business enterprise program and agrees to follow WMATA's guidelines and policies that apply to the Project. In addition, Developer agrees that it will not discriminate on the basis of race, color, national origin, sex, or any other unlawful basis in the award and performance of contracts or subcontracts.

~~22.12~~23.12 **Sovereign Immunity; Anti Deficiency Clause.** Subject to the provisions of this Section ~~22.12~~23.12, WMATA shall be liable for its contractual obligations to Developer under this Agreement in accordance with the law of the District of Columbia (including rules on conflict of laws) and the WMATA Compact. Except to the limited and specific extent set forth in the preceding sentence, nothing in this Agreement, any other related document or circumstance shall in any way waive or be deemed or construed to waive any immunity of WMATA with respect to this Agreement, whether such immunity arises under the WMATA Compact, the Constitution of the United States or any amendment thereto, any statute or regulation of the District of Columbia, the State of Maryland, the Commonwealth of Virginia, common or decisional law, or otherwise. Developer agrees that all obligations of WMATA under this Agreement that directly or indirectly require, or may require, WMATA's expenditure of any of its funds are, and shall be, subject to



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000994

the appropriation and availability of funding through WMATA's normal and customary budgetary procedures.

~~22.13~~23.13 **Construction.** No provision of this Agreement shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Agreement; both parties, being represented by counsel, having fully participated in the negotiation of the terms of this Agreement.

~~22.14~~23.14 **Confidentiality.** Other than information that is in the public domain, Developer shall not disclose the terms and conditions contained in this Agreement and shall keep the same confidential, provided that Developer may disclose the terms and conditions of this Agreement (i) as required by Law; (ii) to consummate and/or enforce the terms of this Agreement, or any development activity, subleasing, financing or equity funding relating thereto; or (iii) to Developer's or WMATA's actual and prospective lenders, attorneys, accountants, equity providers, tenants, subtenants, licensees, Consultants and the like. Any information provided by WMATA to Developer under the terms of this Agreement is for informational purposes only. In providing such information to Developer, WMATA makes no representation or warranty, express, written, oral, statutory or implied, and all such representations and warranties are hereby expressly excluded. Developer shall not in any way be entitled to rely upon the accuracy of such information. ~~Such information is also confidential and Developer shall be prohibited from making it public to any other person or entity, other than Developer's agents and legal representatives,~~Other than information that is in the public domain, such information shall be kept confidential without WMATA's prior written authorization to disclose, which may be granted or denied in WMATA's sole discretion~~.~~, provided that Developer may disclose such information (i) as required by Law; (ii) to consummate and/or enforce the terms of this Agreement, or any development activity, subleasing, financing or equity funding relating thereto; or (iii) to Developer's or WMATA's actual and prospective lenders, attorneys, accountants, equity providers, tenants, subtenants, licensees, Consultants and the like.

~~22.15~~23.15 **Time Of The Essence.** The parties agree that time is of the essence under this Agreement.

~~22.16~~23.16 **Cumulative Remedies and Waiver.** Except as otherwise provided in this Agreement, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any right or power or be construed as a waiver thereof, but any such right and power may be exercised from time to time and as often as deemed expedient. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000995

~~22.17~~ ~~**Litigation Expenses.** In the event either party hereto commences litigation against the other to enforce its rights hereunder, the prevailing party in such litigation shall be entitled to recover from the other party its reasonable attorneys' fees and expenses incidental to such litigation.~~

23.17 [55] **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, or of mortgagee and mortgagor, or of partnership, or of joint venture, or of any association or agency between WMATA and Developer, the sole relationship between these parties being that of parties contracting as to certain rights and obligations with respect to the Property. Except as otherwise expressly provided by specific terms and provisions of this Agreement, neither party shall have the power to bind or obligate the other party.

23.18 **Recordation of Agreement.** Neither this Agreement nor any memorandum thereof (or other document containing any of its terms as an exhibit thereto) shall be recorded without the prior written consent of WMATA in its sole and absolute discretion.

~~22.18~~23.19 **Time Periods.** Should the last Day of a time period fall on a Saturday, Sunday, Federal holiday or legal holiday in the District of Columbia, Virginia or Maryland, the next Business Day thereafter shall be considered the end of the time period.

~~22.19~~23.20 **Third Parties.** There shall be no third party beneficiaries of this Agreement, and no third party may rely on or assert that any provision or statement herein contained is an admission of any party hereto.

23.21 **Effect of Force Majeure.** In computation of any period of time provided for in this Agreement or by applicable Law, the day of the act or event from which such period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until the end of the next Business Day. Any Force Majeure which results in a delay in the performance or completion of any action or matter by a party shall extend the time, by the Schedule Extension, for performance and/or completion of any action or matter under this Agreement; provided that the party seeking to extend such time shall have notified the other of the occurrence and Schedule Extension within a reasonable time, considering the circumstances and extent of such Force Majeure and the nature of and time requirement for such performance or completion.

23.22 **Termination of this Agreement**. This Agreement shall automatically terminate upon the achievement of Final Completion. Upon any termination of this Agreement, WMATA and Developer shall promptly execute and deliver to each other a memorandum of termination of this Agreement or instruct the escrow agent holding the Memorandum of Termination under Section 23.23 to release such Memorandum of Termination to

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55. The section on Litigation Expenses was deleted because it is not enforceable against WMATA per the last sentence of Section 23.12.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000996

WMATA and Developer. Notwithstanding anything to the contrary, WMATA's failure prior to the termination of this Agreement to assert a claim for indemnity or other liabilities under this Agreement which expressly continue beyond the termination of this Agreement shall not preclude or otherwise limit WMATA's right to make such a claim or otherwise limit WMATA's right to amend, alter or supplement any claim that has been made by WMATA prior to termination or constitute a waiver or an admission of any kind with respect to such indemnity or other liability which expressly continues beyond the termination of this Agreement.

~~22.20~~23.23 **Memorandum of Termination.** Upon any termination of this Agreement, WMATA shall have the right to record a Memorandum of Termination of this Agreement if this Agreement has been recorded, notwithstanding the prohibition in Section 23.18. Developer and WMATA shall execute and deliver to ~~WMATA~~a mutually-acceptable escrow agent[56] under written escrow instructions on the Effective Date in recordable form two counterparts of a memorandum of termination, which will be released from escrow when this Agreement is terminated. WMATA is authorized to record its counterpart of the memorandum of termination following the occurrence of any termination. If Developer recorded this Agreement in violation of Section 23.18, then Developer shall pay any and all recording fees and charges to record the memorandum of termination and in respect of said items and shall indemnify WMATA for its costs of ~~enforcing this provision~~causing such recordation. The provisions of this Section ~~22.20~~23.23 shall survive any termination of this Agreement.

[End of this Page; Signatures on Next Page]

[56]. If a memorandum of termination is signed by Developer and delivered to WMATA on the Effective Date, WMATA has the power to terminate the Agreement at any time and the Agreement may be terminated as a matter of Law because WMATA holds an executed and delivered memorandum of termination. If a memorandum of termination is going to be signed on the Effective Date, it should be signed by both parties and delivered to an escrow agent under written instructions on when to release it from escrow.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000997

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement under seal as their free act and deed for the uses and purposes herein contained as of the date first set forth above.

WMATA:

**Washington Metropolitan Area Transit Authority**

By:_____ **[SEAL]**

Printed: _____

Title: _____

Developer:

**[Developer]**

By:_____ **[SEAL]**

Printed: _____

Title: _____

[_____]

By:_____ **[SEAL]**

Printed: _____

Title: _____



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 000998

~~EXHIBITS~~

~~A. DEFINITIONS~~
~~B. PROPERTY DESCRIPTION~~
~~C. LEASE PREMISES~~
~~D. WMATA RESERVED AREAS AND INTERESTS~~
~~E. LEASE~~
~~F. DEVELOPER IMPROVEMENTS~~
~~G. RIGHT OF ENTRY PERMIT~~
~~H. PROJECT SCHEDULE~~
~~I. PROPOSED DEVELOPMENT PLAN~~
~~J. APPROVED DEVELOPMENT PLAN~~
~~K. FORM OF GUARANTY~~
~~L. COVENANTS, CONDITIONS AND RESTRICTIONS~~



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 000999

| Summary Report:<br>Litera Change-Pro ML WIX 6.5.0.104 Document Comparison done on 9/7/2009 1:08:29 AM | |
|---|---|
| **Style Name:** Default Style | |
| **Original Filename:** | |
| **Original DMS:**dm://WINSTON/4178271/1 | |
| **Modified Filename:** | |
| **Modified DMS:** dm://WINSTON/4178271/2 | |
| **Changes:** | |
| Add | 1010 |
| ~~Delete~~ | 608 |
| ~~Move From~~ | 50 |
| Move To | 50 |
| Table Insert | 47 |
| ~~Table Delete~~ | 30 |
| Embedded Graphics (Visio, ChemDraw, Images etc.) | 0 |
| Embedded Excel | 0 |
| **Total Changes:** | 1795 |

Banneker
Ventures
Draft
Sept. 8, 2009

Exhibit A

~~JDA~~ Definitions/Defined Terms

1.1 Capitalized Terms in the Joint Development Agreement shall have the meanings set forth in this Exhibit A to Article 1.

1.1.1 **"AAA"** shall have the meaning set forth in Section 21.1.2.

1.1.2 **"~~ADA~~AAA Rules"** shall have the meaning set forth in Section ~~13.4~~21.1.2.

1.1.3 **"~~Aggrieved Party~~Access Period"** shall have the meaning set forth in Section ~~21.1~~4.1.

1.1.4 **"ADA"** shall have the meaning set forth in Section 13.4.

~~1.1.4~~1.1.5 **"Affiliate"** means with respect to any Person, any other Person directly or indirectly controlling (including but not limited to, all trustees, partners, members, directors and officers of such Person), controlled by or under direct or indirect common control with such Person.

1.1.6 **"Aggrieved Party"** shall have the meaning set forth in Section 21.1.

~~1.1.5~~1.1.7 **"Agreement"** means this Joint Development Agreement by and between WMATA and Developer.

~~1.1.6~~1.1.8 **"ALTA"** means the American Land Title Association.

~~1.1.7~~1.1.9 **"Alternate Dispute Notice"** shall have the meaning set forth in Section 21.1.

~~1.1.8~~1.1.10 **"Approval Period"** shall have the meaning set forth in Section 7.1.

~~1.1.9~~1.1.11 "**Approvals**" means all variances, special exceptions, special use permits, preliminary plans, site plan approvals, platting or replatting approvals, rezoning approvals, subdivision approvals, assessment and taxation lot approvals, engineering permits, building permits, or other similar approvals necessary for the development and construction of the Joint Project on the Lease Premises and Fee Premises in conformity with the terms of the Approved Development Plan.

Alley Closing

~~1.1.10~~1.1.12 "**Approvals List**" shall have the meaning set forth in Section 7.3.

~~1.1.11~~1.1.13 **"Approvals Termination Notice"** shall have the meaning set forth in Section 7.4.

~~1.1.12~~1.1.14 **"Approved Design and Construction Documents"** shall have the meaning set forth in Section 11.5.



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001001

~~1.1.13~~1.1.15 **"Approved Development Plan"** shall have the meaning set forth in Section ~~7.6.3.3~~7.8.3.3.

~~1.1.14~~1.1.16 **"Business Day"** means any day other than a Saturday or Sunday or Federal holiday or legal holiday in the District of Columbia.

~~1.1.15~~1.1.17 **"Change of Control"** means, subject to the exclusions in the next sentence: (a) the sale or transfer, in a single transaction or a series of related or unrelated transactions in any 12-month period, of beneficial ownership of ~~either~~a majority of (i) the membership interests in Developer, (ii) the membership interests of the members of the Developer, or (iii) the combined voting power of Developer's outstanding membership interests or ~~securities~~capital stock, as the case may be, entitled to vote generally in the election of managers or directors who control Developer, as the case may be; (b) the merger or consolidation of Developer with or into any other entity which did not previously hold an interest in Developer; or (c) any sale, or a series of related sales or conveyances within any 12-month period, to any Person ~~or entity~~ of all or substantially all of Developer's assets. Any sale or transfer of membership interests or capital stock occasioned solely by a change in form of business association, method or status of ownership, such as a conversion from one type of entity to another or a change in the tax status, or solely to obtain debt or equity for the Developer, or the requirements of a lender or government sponsored financing program, *e.g.*, tax credits, tax increment financing (TIF), payment in lieu of taxes (PILOT), etc. or a transfer to (1) a member of the immediate family of the transferor (*i.e.*, parents, siblings, children, grandchildren and other lineal descendants of the transferor or a sibling or the spouse of the transferor or any such other family member) or (2) a trust for the benefit of, or an entity controlled by, the transferor and/or one or more immediate family members of the transferor (unless the purpose of such transfer or change is to circumvent the Change of Control provisions of this Agreement) or by a change in personnel in the ordinary course of business, *e.g.*, by reason of death, permanent disability, retirement, promotion, demotion, termination, new hire and the like, or by divorce or legal separation or transfers between Persons who are the owner(s) of a direct or indirect ownership interest in Developer immediately prior to the transfer or a foreclosure event, or a transfer of equity interests in a Person resulting from trading in the stock or securities of that Person, if that Person is an entity whose stock or securities are traded publicly on a national stock exchange or are traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services, shall be disregarded for the purpose of clause (a) of the preceding sentence.

Limit During Construction?

Examples of other managers + ~~Developers~~ Directors?

Why? Disregard?

~~1.1.16~~1.1.18 **"Closing"** means the consummation of the Lease, and any related transactions contemplated by this Agreement, in accordance with the terms and conditions of this Agreement.

~~1.1.17~~1.1.19 **"Closing Date"** means the date on which the Closing of the ~~conveyance of~~granting of the leasehold estate in the Lease Premises is ~~held~~completed under Article 8 of this ~~JDA~~ Agreement.



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001002

Defining definition w/ the definition

~~1.1.18~~1.1.20 **"Commercially Reasonable Best Efforts"** means the diligent and timely satisfaction of the following standards in the context of the Developer Responsibilities: (i) undertaking all commercially reasonable actions (including, without limitation, payment and performance obligations) that would usually and customarily be undertaken or performed by a diligent and experienced real estate landlord, tenant, developer and construction manager in performance of the terms of this Agreement; and (ii) undertaking such additional commercially reasonable actions as are appropriate in the context of unanticipated or unusual events, circumstances or obstacles to lawfully achieve the Developer Responsibilities.

1.1.21 "**Condemnation Proceeds**" shall have the meaning set forth in Section 20.3.

~~1.1.19~~1.1.22 **"Conditionally Approved Development Plan"** shall have the meaning set forth in Section ~~7.6.3.1~~7.8.3.1.

1.1.23 "**Conditionally Approved Development Plan Approval Date**" shall have the meaning set forth in Section 7.8.3.1.

~~1.1.20~~1.1.24 **"Consultants"** means all agents, consultants, contractors, engineers, surveyors, attorneys and employees retained by Developer for or in connection with the transaction contemplated by this Agreement.

~~1.1.21~~1.1.25 **"Continuing Transit Orientation"** shall have the meaning set forth in Section ~~**Error! Reference source not found**~~13.1.~~.~~

~~1.1.22~~1.1.26 **"Control"**, **"Controlled"** or **"Controlling"** means the power of a Person, directly or indirectly, to direct or cause the direction of the disposition of property, management and policies of another Person, whether through ownership of voting securities, by contract or otherwise.

1.1.27 **"Cotenancy Agreement"** means the agreement between WMATA and Developer in the form of **Exhibit M** which will control the continued ownership, operation and disposition of the Lease Premises, Fee Premises and all Joint Improvements after the expiration or termination of the Lease. The Cotenancy Agreement may be a separate agreement ~~or part of the Covenants, Conditions and Restrictions~~.

~~1.1.23~~1.1.28 **"Covenants, Conditions and Restrictions"** shall have the meaning set forth in Section ~~11.10~~11.11 and be in the form attached hereto as Exhibit _____~~, and incorporated herein~~L.

~~1.1.24~~1.1.29 **"Day"** shall mean calendar days, unless otherwise specified.

~~1.1.25~~1.1.30 **"Default"** shall have the ~~meaning~~meanings set forth in Article 18.

~~1.1.26~~1.1.31 **"Deposit"** shall have the meaning set forth in Section 3.1.

~~1.1.27~~1.1.32 **"Design and Construction Documents"** means the complete set of design documents and working drawings and specifications for the work to be designed and



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001003

constructed under the conditions of this Agreement and the Lease, including all documents to be submitted to the appropriate governmental authorities in order to construct the Joint Project. The Design and Construction Documents shall also include, but not be limited to, the site plan as well as architectural, structural, civil, electrical, mechanical, sheeting and shoring, excavation and utility drawings associated with the Project. The Design and Construction Documents shall also describe any provisions for the maintenance of traffic.

1.1.33 **"Developer"** means The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company.

~~1.1.28~~1.1.34 **"Developer Improvements"** means all buildings, portions of buildings, site amenities, decks, parking, and other structures of whatever kind on the Lease Premises, and all equipment and fixtures therein and any replacements, additions, and substitutes of, to and for the same.

1.1.35 **"Developer Joint Project Representative"** shall have the meaning set forth in Section 7.11.

1.1.36 **"Developer Members"** shall have the meaning set forth in Section 2.6.1.

~~1.1.29~~1.1.37 **"Developer Responsibilities"** means and includes any and all: requirements, endeavors, objectives, conditions that are required or reasonably contemplated under the terms of this Agreement (and steps relating to any and all of the foregoing, including, without limitation, filing applications; making appearances; providing information, documents, studies and other materials; satisfying all requirements of applicable governmental authorities and those exactions that would reasonably be satisfied by a diligent and experienced real estate landlord, tenant, developer and ~~construction~~ manager of a general contractor in the context of a lease, development and construction project similar to the Joint Project; procuring and maintaining competent professional support, oversight and management, and timely making all payments).

1.1.38 **"Developer Percentage"** means twenty-one percent 21%, which is the undivided portion of the Joint Project owned by Developer in fee simple for purposes of allocating all economic benefits and burdens for the Joint Project.

~~1.1.30~~1.1.39 **"Development Plan Approval Date"** shall have the meaning set forth in Section 7.8.3.3.

~~1.1.31~~1.1.40 **"Development Plan Submission Deadline"** shall have the meaning set forth in Section 7.8.1.

~~1.1.32~~1.1.41 "**Dispute Notice**" shall have the meaning set forth in Section 21.1.

~~1.1.33~~1.1.42 "**Dispute Review Panel**" shall have the meaning set forth in Section 21.1.1.



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001004

~~1.1.34~~1.1.43 **"Effective Date"** shall mean the first date stated in the first paragraph of this Agreement.

~~1.1.35~~1.1.44 **"Environmental Laws"** means any and all environmental or health and safety-related laws, regulations, rules, ordinances, orders or determination of any ~~governmental or~~ judicial or Legal Authority at the federal, state, or local level, to the extent applicable to WMATA, Developer or the Property, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.*

ok: Administrative Decisions →

1.1.45 **"Extraordinary Governmental Delay"** means additional delays in the rezoning, entitlement and permitting process only beyond normal processing time, which additional delays were caused by the action or inaction of a Legal Authority. For example, the loss of documents submitted to the Legal Authority or the imposition of a moratorium or restriction by a Legal Authority could be the cause of an Extraordinary Governmental Delay but the submission of inadequate documents by the Developer or normal processing time cannot be the cause of an Extraordinary Governmental Delay.

This is a Developer Risk, not a LL Risk

~~1.1.36~~1.1.46 **"FAR"** means a ratio, the numerator of which is the Gross Floor Area of all buildings on a lot expressed in square footage and the denominator of which is the gross area of that lot expressed in square footage.

~~1.1.37~~1.1.47 **"FAR Square Feet"** means the maximum Gross Floor Area permitted to be developed on a lot consistent with maximum FAR limits within an applicable zoning classification or pursuant to an applicable Approval, waiver, variance or the like.

1.1.48 **"Federally-Insured Loan"** means any loan secured by a Mortgage, the repayment of which is insured by HUD or its successors and shall include a note or Mortgage initially insured by HUD that is subsequently held by HUD or its successors. A Federally-Insured Loan shall be in effect for so long as Developer remains indebted under such loan, or any permitted refinance of such loan which is held or insured by HUD, and such loan shall be deemed to be "in effect" in the event of a refinance during the period between filing a release of a satisfied, refinanced Mortgage and the filing of the new Mortgage evidencing the lien held or insured by HUD from the permitted refinance.

- Can this be more Specific Ex. 30 yrs Limit?
- It imposes so many Limits

1.1.49 **"Fee Improvements"** means all buildings, portions of buildings, site amenities, decks, parking, and other structures of whatever kind on the Fee Premises, and all equipment and fixtures therein and any replacements, additions, and substitutes of, to and for the same.

1.1.50 **"Fee Premises"** means the Fee Property depicted and more fully described in **Exhibit C** as the "Fee Premises" (including all benefits and appurtenances thereto that are included with the meaning of the term "Fee Property" as used herein), that is owned by Developer.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001005

1.1.51 **"Fee Project"** shall have the meaning set forth in Section 2.2.

1.1.52 **"Fee Property"** means all of Lot 41 & A&T Lot 0826 in Square 393 comprising approximately 7,720 square feet of land in the District of Columbia, more particularly described in **Exhibit B**, including without limitation, any right, title and interest of WMATA, if any, in and to (i) any strips and gores adjacent to the Property and any land lying in the bed of any street, road, public alley, or avenue opened or proposed, in front of or adjoining the Fee Property, to the center line thereof; and (ii) all of the easements, rights, privileges, and appurtenances belonging or in any way appertaining to the Fee Property.

why?

~~1.1.38~~1.1.53 "**Final Completion**" means the proper and full completion of the Joint Project, *i.e.*, the Joint Improvements have been completed and paid for, subject to retainage for completion of tenant improvements in the retail portion of the Joint Improvements, one or more final and unconditional certificates of occupancy have been received for the residential portion of the Joint Improvements, if required, and one or more final shell certificates of occupancy have been received for the retail portion of the Joint Improvements, if required, and the Mortgagee holding the first lien encumbrance on the Joint Improvements certifies to WMATA that it is holding sufficient funds to pay for the completion of the tenant improvements in the retail portion of the Joint Improvements and will disburse such funds therefor as the work is completed. Final Completion shall include, but not be limited to, satisfactory operation of all equipment and systems, completion or correction of all punch list items, issuance of all required approvals and certificates by any governmental or quasi-governmental authorities with jurisdiction over the Joint Project (including final and unconditional certificates of occupancy) except with respect to unoccupied retail space, delivery of all required as-built plans and specifications, removal of all rubbish, tools, scaffolding and surplus materials from the Joint Project site~~,~~ except for the construction of tenant improvements in retail space, and correction of all property damage that is the responsibility of the Developer to WMATA pursuant to the Approved Design and Construction Documents. Final Completion shall be evidenced by a Certificate of Substantial Completion from the architect for the Joint Project on the AIA Form G704 and a Certificate of Final Completion from the Developer and Developer's general contractor. [1]

what about commercial?

Give up Approvals
want EGI

WMATA Approval

~~1.1.39~~1.1.54 **"Final Completion Date"** means the date established in ~~**Exhibit**~~ the Joint Project Schedule for Final Completion of the ~~entire~~Joint Project as the same may be extended pursuant to the express terms and provisions of this Agreement or the Lease.

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

1.1.56 **"Financing Termination Notice"** shall have the meaning set forth in Section 6.2.2.

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[1]. The AIA does not have a form for final completion.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001006

~~1.1.40~~1.1.57 **"Force Majeure"** means ~~any of the following occurrences that do not, in whole or in part, arise out of a Default of Developer and could not reasonably have been anticipated or mitigated and are not related to financial incapacity or related delays of Developer: a strike, civil riot, war, invasion, fire or other casualty, unavailability of~~acts of God, flood, fire, Taking, enemy action, strikes, lockouts, labor difficulties, explosions, sabotage, accidents, riots, civil commotions, acts of war or terrorism, results of any warfare or warlike conditions in this or any foreign country, fire and casualty, legal requirements, Extraordinary Governmental Delay, shortages or inability or delays in obtaining labor or materials or equipment, energy shortage, adverse weather conditions, ~~which occurrences delay or prevent performance by Developer of a post-Closing construction obligation hereunder~~or causes beyond the reasonable control of WMATA or Developer, any of which results in such entity's inability or delay to perform or satisfy any obligations under this Agreement or the Lease; provided, however, Developer's lack of funds or unavailability of financing or failure to timely commence operations or pursue its obligations under this Agreement shall not be deemed to be a cause beyond the control of Developer. In the event of a Force Majeure, the Person affected thereby shall be entitled to an increase in the time for performance ~~equal to the number of days, or portions thereof, that completion of the activity beyond the dates established in this Agreement is actually delayed by such Force Majeure. Force Majeure shall not include delays due to government activity, inactivity, failure to timely respond, or omission.~~based on a Schedule Extension.

~~1.1.41~~1.1.58 **"FTA"** means the Federal Transit Administration of the United States Department of Transportation.

~~1.1.42~~1.1.59 **"FTA Project Approval"** shall have the meaning set forth in Section 13.2.

~~1.1.43~~1.1.60 **"Gross Floor Area"** means the sum expressed in square feet of the gross horizontal areas of the several floors of all buildings on a lot, measured ~~from the exterior faces of exterior walls and from the center lines of walls separating two buildings~~in accordance with the methodology under applicable Laws, including, but only to the extent included in the calculation of FAR or Gross Floor Area under applicable Laws, basements, elevator shafts~~and~~, stairwells and other vertical penetrations, penthouses, attic space, interior balconies and mezzanines, underground parking, cellars and outside balconies.

~~1.1.44~~1.1.61 **"Guarantor"** means ~~_____~~Banc of America Community Development Corporation, a North Carolina corporation, or another Person approved by WMATA. At the time of the Closing, the value of the Guarantor's net worth must ~~be greater than three~~exceed one hundred percent (~~3~~100%) ~~times the value~~ of the ~~Project~~hard costs of the Joint Improvements.

~~1.1.45~~1.1.62 **"Guaranty"** means ~~those~~that certain ~~Guaranties~~Guaranty, in the form attached as **Exhibit ~~I~~K**, that shall be executed and delivered by ~~Guarantors~~Guarantor.



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001007

~~1.1.46~~1.1.63 **"Hazardous Materials"** means any and all substances, materials or wastes that are or become regulated by any local ~~governmental~~Legal Authority, any state having jurisdiction over the Property or the United States Government or otherwise pose a material threat to human health, safety or the environment. Without limiting the generality of the foregoing, the term "Hazardous Materials" includes, without limitation, any and all materials, substances and wastes that are: (a) defined as a "hazardous waste", "hazardous material", "hazardous substance", "extremely hazardous waste" or "restricted hazardous waste" under any provision of local, state or federal law~~,~~; or (b) petroleum~~,~~; or (c) asbestos~~,~~; or (d) polychlorinated biphenyls~~,~~; or (e) radioactive materials~~,~~; or (f) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317)~~,~~; or (g) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act~~,~~ (42 U.S.C. § 6903)~~,~~; or (h) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601).

1.1.64 **"HUD"** means the United States Department of Housing and Urban Development (or any successor thereto), acting by and through the Federal Housing Commissioner (or any successor thereto).

1.1.65 **"Imposition(s)"** means all taxes, assessments, impervious surface fees, sewer rents, water meter and water charges, vault charges, excise taxes, levies, license and permit fees, charges for public utilities and all other charges and governmental impositions, general and special, ordinary and extraordinary, unforeseen and foreseen, of any and every kind and nature, including, without limitation, all real estate taxes and leasehold taxes, that with respect to any time during the term of this Agreement may be assessed, levied, confirmed, imposed upon, or become due and payable or become a lien on any or all of the Property, the Metro Facilities, or any part of any or all of the foregoing, or any appurtenance to any or all of the foregoing.

~~1.1.47~~1.1.66 **"Institutional Lender"** means ~~any of the following Persons, that is not an Affiliate of Developer or Guarantor, provided, that such entity has assets equal to at least U.S. $500,000,000~~collectively: (~~i~~a) ~~any~~a bank~~, savings institution~~, trust company~~ or national banking association, or any wholly owned subsidiary of any thereof, acting for its own account or in a fiduciary capacity, (ii) any charitable foundation, (iii) any~~, insurance company, ~~(iv) any pension, retirement or profit sharing trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisers Act of 1940, as amended, is acting as trustee or agent, (v) any~~credit union, savings bank, pension, welfare or retirement fund or system, charitable foundation, investment company, as defined in the Investment Company Act of 1940, as amended, ~~(vi) any~~ college or university, ~~(vii) any government, any public employees, pension or retirement system any other governmental agency supervising the investment of public funds or (viii) any~~ real estate investment trust (~~"REIT")~~.or umbrella partnership or other entity of which a public real estate investment trust is the majority owner), public limited partnership, federal or state agency regularly making or guaranteeing mortgage loans,



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investment bank, subsidiary of a Fortune 500 company (such as AT&T Capital Corporation or General Electric Capital Corporation), real estate mortgage investment conduit or securitization trust; (b) a trustee or issuer of collateralized mortgage obligations or similar investment entity (provided that such trustee, issuer or other entity is publicly traded or is sponsored by an entity that otherwise constitutes an Institutional Lender); (c) any entity of any kind actively engaged in commercial real estate financing and having total assets (on the date when its Mortgage is executed and delivered, or on the date of such Mortgagee's acquisition of its Mortgage by assignment from the previous Mortgagee) of at least $100,000,000; or (d) a corporation, other entity or joint venture that is a wholly-owned subsidiary or combination of any one or more of the foregoing entities (including, without limitation, any of the foregoing when acting as trustee for other lender(s) or investor(s), whether or not such other lender(s) or investor(s) are themselves Institutional Lenders). The fact that a particular entity (or any affiliate of such entity) is a partner, member or other investor in Developer shall not preclude such entity from being an Institutional Lender and a Mortgagee (entitled to all Mortgagee protections contained in the Lease), provided that: (i) the loan and Mortgage are *bona fide*; and (ii) at the time such entity becomes a Mortgagee, no Default by Developer exists, unless such Default is simultaneously cured.

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

1.1.68 **"Joint Improvements"** means all buildings, portions of buildings, site amenities, decks, parking, and other structures of whatever kind on the Joint Premises, and all equipment and fixtures therein and any replacements, additions, and substitutes of, to and for the same.

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

~~1.1.48~~1.1.70 **"~~Interest Holders~~Joint Project"** shall have the meaning set forth in Section ~~6.3.1~~2.2.

1.1.71 **"Joint Project Schedule"** shall have the meaning set forth in Section 11.1.

1.1.72 **"Joint Property"** means all of those certain tracts of land comprising approximately [_____] square feet of land in the District of Columbia, more particularly described in **Exhibit B**, including without limitation, any right, title and interest of WMATA or Developer, as applicable, if any, in and to (i) any strips and gores adjacent to the Joint Property and any land lying in the bed of any street, road, public alley, or avenue opened or proposed, in front of or adjoining the Joint Property, to the



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center line thereof; and (ii) all of the easements, rights, privileges, and appurtenances belonging or in any way appertaining to the Joint Property.

~~1.1.49~~1.1.73 **"Laws"** means any federal, state or local constitutions, statutes, codes, ordinances, regulations, judicial or administrative requirements, rules, orders, judgments, decrees, injunctions, decisions or other rules of law.

1.1.74 **"Lease"** shall have the meaning set forth in Section 2.1.

~~1.1.50~~1.1.75 **"Lease Premises"** means ~~a~~that portion of the Property, less and except WMATA's Reserved Areas and Interests, depicted and more fully described in **Exhibit ~~_____~~C** as the "Lease Premises" (including all benefits and appurtenances thereto that are included with the meaning of the term "Property" as used herein), that shall be leased by WMATA to Developer subject to and in accordance with the terms of the Lease.

~~1.1.51~~1.1.76 **"Lease Premises and Fee Property Financing"** shall have the meaning set forth in Section ~~**Error! Reference source not found**~~6.1.~~.~~

~~1.1.52~~1.1.77 **"~~Loan Covenants~~Lease Premises Due Diligence"** shall have the meaning set forth in Section ~~6.4~~4.1.

1.1.78 **"Legal Authority"** means any governmental or quasi-governmental authority, or local Board of Fire Underwriters having jurisdiction over the Lease Premises or Fee Property, but not WMATA.

~~1.1.53~~1.1.79 **"Metro Facilities"** means all improvements, structures, infrastructure components, tangible property and areas required in the judgment of WMATA, for the use, operation, access, maintenance, repair, servicing, replacement or removal of any and all of the following: structures and supports, any and all access, parking, operation and service facilities and areas relating to WMATA's operations or activities, including, without limitation, rail stations (including, without limitation, the Metro Stations), tunnels, rails, tracks, bus stations, bus transfer areas, employee trailers, supervisor kiosks, employee bathrooms, electric substations, conduits and lines, ~~pedestrian traffic,~~ waiting and shelter areas, facilities serving persons with disabilities, cooling towers, chiller plants, vent and fan shafts, bicycle rack and locker areas, and all other associated facilities notwithstanding that the foregoing may have been constructed by or at the expense of Developer. After the submission of the Proposed Development Plan and upon the written request of either party, WMATA and Developer shall identify the Metro Facilities on the Property and thereafter "Metro Facilities" shall mean only those facilities identified as Metro Facilities on the Approved Development Plan.

~~1.1.54~~1.1.80 **"Metro Stations"** means WMATA's Shaw Howard U transit station.

1.1.81 **"Mortgage"** means an outstanding mortgage, deed of trust or collateral assignment of the Lease, collateral assignment of subleases, rent and profits, or similar security agreement or security encumbrance on the Lease and the leasehold interest of



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Developer created under the Lease and the fee interest of Developer in the Fee Project. The term shall also include a trust indenture under which the Lease shall have been mortgaged and/or any instruments required in connection with a sale-leaseback transaction and mortgages of more than or less than all of the leasehold and fee interests of Developer.

1.1.82 **Mortgagee** means the beneficiary of and/or party secured under a Mortgage, and its successors or assigns, so long as such entity is an Institutional Lender.

~~1.1.55~~1.1.83 **"Notice"** shall have the meaning set forth in Section ~~**Error! Reference source not found**~~23.5.~~.~~

1.1.84 **"Partial Alley Closing and Resubdivision"** means the partial closing of that portion of the public alley in Square 393 contiguous to the Property and Fee Property and the resubdivision of the portion of the Property in Square 393 and Fee Property, including the closed portions of the public alley which escheat to WMATA and Developer, into a single, buildable lot in Square 393.

~~1.1.56~~1.1.85 **"Partial Taking"** shall have the meaning set forth in Section ~~**Error! Reference source not found**~~20.2.4.~~.~~

~~1.1.57~~1.1.86 **"Payment and Performance Bond"** means the labor and materials payment~~,~~ bond and the performance~~, and restoration bonds~~ bond required to be provided for the benefit of the Developer, the first-lien Mortgagee and WMATA in connection with ~~development and~~the construction of the ~~Project,~~Joint Improvements contemplated by this Agreement, the Lease, and the Approved Development Plan. The applicable Payment and Performance Bond shall be released by WMATA upon final completion of the ~~Project~~construction of the Joint Improvements under the bonded construction contract.

~~1.1.58~~1.1.87 **"Permitted Exceptions"** means those title exceptions or conditions, listed as specific (not general) exceptions to title insurance coverage in Schedule B – Part 1 of the Title Commitment, permitted to encumber the Developer's ~~title to~~leasehold estate in the ~~Property~~Lease Premises in accordance with the provisions of Article 5.

~~1.1.59~~1.1.88 **"Person"** means any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association or any other legal entity, or any federal, state, county or municipal government, or any bureau, department or agency thereof, and any fiduciary acting in such capacity on behalf of any of the foregoing.

~~1.1.60~~1.1.89 **"~~Project~~Pre-Closing Period"** shall have the meaning set forth in Section ~~2.2~~2.3.1.

~~1.1.61~~1.1.90 **"~~Project Representatives~~Pre-Closing Period Payments"** shall have the meaning set forth in Section ~~7.11~~3.2.

~~1.1.62~~1.1.91 **"Project ~~Schedule~~"** shall have the meaning set forth in Section ~~11.1~~2.2.



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~~1.1.63~~1.1.92 **"Property"** means all of ~~those certain tracts of land~~ Lots 44 & 45 in Square 393 and Lot 31 in Square 416, comprising approximately ~~28,292~~[28,356.90] [2] square feet of land located in the southwest corner of the intersection of 9th Street and Florida Avenue, N.W., and the southwest corner of the intersection of 8th Street and Florida Avenue, N.W., respectively, in the District of Columbia, more particularly described in **Exhibit** ~~____, attached hereto and made a part hereof~~**B**, including without limitation, any right, title and interest of WMATA, if any, in and to (i) any strips and gores adjacent to the Property and any land lying in the bed of any street, road, public alley, or avenue opened or proposed, in front of or adjoining the Property, to the center line thereof; and (ii) all of the easements, rights, privileges, and appurtenances belonging or in any way appertaining to the Property.

~~1.1.64~~1.1.93 **"Proposed Development Plan"** shall have the meaning set forth in Section 7.8.1.

~~1.1.65~~1.1.94 **"Proration Period"** shall have the meaning set forth in Section 8.1.4.

~~1.1.66~~1.1.95 **"Qualified Team"** shall have the meaning set forth in Section 2.6.2.

1.1.96 **"Reserved Areas and Interests Easements"** shall have the meaning set forth in Section 11.7.

~~1.1.67~~1.1.97 **"ROE"** shall have the meaning set forth in ~~Article 4~~Section 4.1.

1.1.98 **"Schedule Extension"** means the amount of time necessary to compensate for the delay caused by WMATA's failure to act in a timely fashion or Force Majeure delays. For example, if such a delay causes Developer to miss a planned filing date which results in a one day-for-one day delay, then the Schedule 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 Schedule Extension shall be measured in a period equal to the next available "time window" with respect to that filing date. Whenever there is an extension of an Approvals List, Joint Project Schedule or deadline, all subsequent items on the Approvals List, Joint Project Schedule and deadlines, including Pre-Closing Period Payments and Base Rent, due to WMATA under this Agreement and the Lease shall be extended using the same criteria, *i.e.*, either a one day-for-one day or time window-to-next available time window.

~~1.1.68~~1.1.99 **"Study Period"** shall have the meaning set forth in Section 4.1.

1.1.100 **"Study Period Termination Deadline"** shall have the meaning set forth in Section 4.2.

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2. The D.C. Assessor lists the four lots as 28,892 square feet. The Developer's surveyor has reported the following square footages: Lot 31 – 15,944.97 square feet; Lot 44 – 3,784.45 square feet; and Lot 45 – 8,627.48 square feet; for a total of 28,356.90 square feet. The Surveyor also reported that Lot 18 in Square 416 was resubdivided into Lot 31 by WMATA in 1996 when Lots 12 through 18 were resubdivided into Lot 31. What is the evidence the four lots are 28,892 square feet other than the D.C. Assessor's records?



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~~1.1.69~~1.1.101 **"Study Period Termination Notice"** shall have the meaning set forth in Section 4.2.

~~1.1.70~~1.1.102 **"Submission"** shall have the meaning set forth in Section 7.6.1.

~~1.1.71~~1.1.103 **"Submission Approval Procedure"** shall have the meaning set forth in Section 7.6.4.

~~1.1.72~~1.1.104 **"Submission Correction Deadline"** shall have the meaning set forth in Section 7.6.4.2.

~~1.1.73~~ ~~**"Substantial Completion"** means that the WMATA Improvements have been completed in all material aspects, subject to the completion of a mutually agreed upon punch list of items to be completed (the "Punch List"), in accordance with the Approved Design and Construction Documents, and that (1) all access, safety, security, structural, mechanical, communications, and electrical systems to be installed by the Developer are functional and ready and fit for their intended purpose and (2) all Approvals from the applicable government agencies necessary for the use of the WMATA Improvements have been obtained.~~

1.1.105 **"Survey"** shall have the meaning set forth in Section 5.1.

~~1.1.74~~1.1.106 **"Taking"** means the permanent or temporary act of condemnation, exercise of power of eminent domain or sale or other conveyance in lieu thereof for any public or quasi-public purpose by any Legal Authority by the exercise of the right of condemnation or eminent domain, or by agreement among WMATA, Developer and such Legal Authority and includes a Partial Taking ~~and~~or a Total Taking, but shall not include any exactions, dedications, fees, use restrictions and the like associated with the Approvals or any grants, concessions, transfers or undertakings for public purposes that may be necessary for the development of the Joint Property and required by the Approvals.

~~1.1.75~~1.1.107 **"Title Commitment"** shall mean ~~a~~that certain commitment for leasehold title insurance for the Lease Premises ~~("Title Commitment")~~, but covering the Property, effectively dated _____, 2009, issued by Title Insurer on the most recent standard ~~American Land Title Association ("~~ALTA~~")~~ policy form, together with legible copies of all recorded instruments identified as exceptions. Upon the Developer's submission to WMATA of the update to the Title Commitment, such update shall be deemed part of the Title Commitment.

~~1.1.76~~1.1.108 **"Title Insurer"** means a national title insurance company licensed to do business in the jurisdiction in which the Joint Property is located.

~~1.1.77~~1.1.109 **"Total Taking"** shall have the meaning set forth in Section 20.1.

~~1.1.78~~1.1.110 **"Transaction Documents"** means this Agreement, the Lease, the ROE until the Closing Date, any and all separate right of entry agreements until the Closing Date,



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the Covenants, Conditions and Restrictions, the Cotenancy Agreement, the Guaranty and the Payment and Performance Bonds.

~~1.1.79~~1.1.111 **"Transit-Oriented Development"** shall have the meaning set forth in Section 13.1.

~~1.1.80~~1.1.112 **"WMATA"** means the Washington Metropolitan Area Transit Authority, a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of D.C. Board of Commissioners adopted November 15, 1966, having a principal business address at 600 Fifth Street, NW, Washington, DC 20001. In connection with provisions requiring indemnification of WMATA or providing for the exculpation of WMATA, such term shall also include WMATA's officers, directors, employees, ~~contractors,~~ attorneys~~,~~ ~~consultants~~, representatives, agents, ~~successors,~~ assigns~~, predecessors in interest~~ and successors-in-interest.

~~1.1.81~~1.1.113 **"WMATA Adjacent Construction Manual"** means WMATA's Adjacent Construction Design Manual, Revision 3, dated December 2008, as amended or revised from time to time~~.~~, except that with respect to the Approvals, the Approved Development Plan and the Approved Design and Construction Documents, the applicable version of the WMATA Adjacent Construction Manual shall be the version in effect on the Effective Date without subsequent amendments or revisions.

~~1.1.82~~1.1.114 "**WMATA Compact**" means the Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as same may be amended.

~~1.1.83~~ ~~**"WMATA Design Criteria"** means the construction requirements as set forth in WMATA's Design Criteria (Release 9), Design Drawings (Release 9), and Technical Specifications (Release 8), and any amendment or revision thereto.~~

1.1.115 **"WMATA Compact Public Hearing"** means any and all WMATA Compact public hearings conducted by or at the request of WMATA which are required at any time for approval of the construction of Metro Facilities in connection with the Joint Project.

~~1.1.84~~1.1.116 **"WMATA Information"** shall have the meaning set forth in Section 9.3.

1.1.117 **"WMATA Joint Project Representative"** shall have the meaning set forth in Section 7.11.

1.1.118 **"WMATA Percentage"** means seventy-nine percent (79%), which is the undivided portion of the Joint Project which will revert to WMATA upon the expiration or termination of the Lease and, subject to WMATA's obligation to provide a new lease to a Mortgagee after a termination of the Lease for a Default by the Developer, thereafter owned by WMATA in fee simple for purposes of allocating all economic benefits and burdens for the Joint Project.



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~~1.1.85~~1.1.119 **"WMATA's Reserved Areas and Interests"** means and includes all Property areas and improvements ~~of~~on or within the Property required, in the sole judgment of WMATA, for the exclusive or non-exclusive use, operation, access, maintenance, repair, servicing, replacement or removal of any Metro Facilities that are reasonably capable of being segregated from other Property areas and improvements ~~of~~on or within the Property, including, without limitation and as applicable, the Metro Stations, all other Metro Facilities including the entire underground tunnel that are not integrated into ~~improvements to be constructed by~~the Developer~~,~~ Improvements; being those ~~additional~~ areas designated as "WMATA's Reserved Areas and Interests" in **Exhibit ~~_____~~D** and those additional areas that are or may be designated as "WMATA's Reserved Areas and Interests" in the Approved Development Plan.

~~1.1.86~~1.1.120 **"WMATA's Unconditional Approval Matters"** means any and all matters that in the sole and unreviewable judgment of WMATA (such standard to apply in all circumstances without expressly so stating in an applicable context) would have ~~an~~a material and adverse impact on any or all of the following: ~~(i) the schedule for performance of Developer's obligations as set forth in this Agreement, (ii) the scope of Developer's obligations set forth in this Agreement (iii)~~ the functionality, efficiency, safety, operation, maintenance, legal compliance, cost or profitability of Metro Facilities or WMATA's ~~business,~~ operations~~ or activities,~~; (~~iv~~ii) WMATA's transit customers~~,~~ access to Metro Facilities; (~~v~~iii) the Metro ~~Station, (vi) the Metro Facilities, (vii~~Stations; (iv) WMATA's Reserved Areas and Interests~~,~~; or (~~ix~~v) ingress or egress relating to any of the foregoing.



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| Summary Report:<br>Litera Change-Pro ML WIX 6.5.0.104 Document Comparison done on 9/7/2009 1:06:27 AM | |
|---|---|
| **Style Name:** Default Style | |
| **Original Filename:** | |
| **Original DMS:**dm://WINSTON/4178303/1 | |
| **Modified Filename:** | |
| **Modified DMS:** dm://WINSTON/4178303/2 | |
| **Changes:** | |
| Add | 270 |
| ~~Delete~~ | 198 |
| ~~Move From~~ | 3 |
| Move To | 3 |
| Table Insert | 0 |
| ~~Table Delete~~ | 0 |
| Embedded Graphics (Visio, ChemDraw, Images etc.) | 0 |
| Embedded Excel | 0 |
| **Total Changes:** | 474 |

WMATA: 7/24/09

Lease Definitions

1.1 Capitalized terms in this Lease shall have the meanings set forth herein below.

1.1.1 "**AAA Rules**" shall have the meaning set forth in Section 24.1.2.

1.1.2 "**ADA**" shall have the meaning set forth in Section 8.6.

1.1.3 "**Adjusted Gross Capital Event Proceeds**" shall have the meaning set forth in Section 5.5.2.

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

1.1.5 "**Aggrieved Party**" shall have the meaning set forth in Section 24.1.

1.1.6 "**Agreement**" means this Lease by and between WMATA and Developer.

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

1.1.8 "**Alternative Dispute Notice**" shall have the meaning set forth in Section 24.1 of the Lease.

1.1.9 "**Approvals**" means all variances, special exceptions, special use permits, preliminary plans, site plan approvals, platting or replatting approvals, rezoning approvals, subdivision approvals, engineering permits, building permits, or other similar approvals necessary for the development and construction of the Project on the Lease Premises in conformity with the terms of the Approved Development Plan.

1.1.10 "**Approvals List**" shall have the meaning set forth in Section 7.3 of the JDA.

1.1.11 **"Approved Design and Construction Documents"** shall mean the Design and Construction Documents approved by WMATA pursuant to Section 11.5 of the JDA, and attached hereto as Exhibit _____, and incorporated herein.

1.1.12 "**Approved Development Plan**" shall mean the Approved Development Plan for the Lease Premises, approved by WMATA pursuant to Section 7.6.3.3 of the JDA, and attached hereto as Exhibit _____, and incorporated herein.

1.1.13 "**Base Rent**" shall have the meaning set forth in Section 5.3 of the Lease.

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

1.1.15 "**Capital Event**" means any and all of the following, whether effected in a single transaction or a series of related transactions: (a) any sale, assignment,

refinancing, transfer, conveyance, syndication, exchange, hypothecation, or other transaction having an effect similar to any of the foregoing including, without limitation any Taking (a "Transfer") of all or any part of or interest in the Lease Premises, this Agreement, or any Developer Improvements; (b) the Transfer of all or any portion of the interest in this Agreement by Developer or; (c) any Transfer of any ownership interests of Developer; and (d) any other transaction by Developer with respect to its interest in or to the Lease Premises or any Developer Improvements that would be characterized as a capital event under generally accepted accounting principles.

1.1.16 "**Capital Event Participation Rent**" shall have the meaning set forth in Section 5.5.

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

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

1.1.19 "**Condemnation Costs**" shall have the meaning set forth in Section 23.4.

1.1.20 "**Construction Related Obligations**" shall have the meaning set forth in Section 6.2.

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

1.1.22 "**Consumer Price Index**" shall mean the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index - (CPI-U) Wash.-Balt., DC-MD-VA-WV All Items Nov. 1996=100.

1.1.23 "**Continuing Transit Orientation**" shall have the meaning set forth in Section 8.3.

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

1.1.25 **"Covenants, Conditions and Restrictions"** shall mean the covenants, conditions, and restrictions created pursuant to Section 11.10 of the JDA, a copy of which is attached hereto as Exhibit _____, and incorporated herein.

1.1.26 **"CPI-U Adjustment"** means a change in the particular dollar amount referred to, measured by the cumulative change in the Consumer Price Index for All Urban Consumers for the Washington-Baltimore region from January 1, 2008 ("Base CPI-U") to January 1 of the Calendar Year for which such dollar amount is to be determined ("Current CPI-U"). If the Current CPI-U has increased from the Base CPI-U, such dollar amount shall be increased, but not decreased, in the same proportion as such increase in the Consumer Price Index. If the manner in which the Consumer Price Index is determined by the Bureau of Labor Statistics shall be substantially revised, including, without limitation, a change in the base index year, such adjustment shall be made by the parties in such revised index as would produce results equivalent, as nearly as possible, to those which would have been obtained if such manner of determining the Consumer Price Index had not been so revised. If the Consumer Price Index shall become unavailable to the public because publication is discontinued, or otherwise, or if equivalent data is not readily available to enable the parties to make the calculations referred to herein, then the parties shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar in the combined Washington, D.C. greater metropolitan area, published by another governmental agency, or if no such index shall be available, then a comparable index published by a major bank or other financial institution, or a university, or a recognized financial publication.

1.1.27 **"Cure Actions"** shall have the meaning set forth in Section 18.3.

1.1.28 **"Day or day"** means a calendar day except when stated to be "Business Day".

1.1.29 **"Default"** shall have the meaning set forth in Article 19.

1.1.30 **"Default Rate of Interest"** shall mean (i) four percent (4%) per annum above the prime rate of interest as published in the *Wall Street Journal*; or (ii) the highest rate that is at the time lawful in the District of Columbia, whichever is lower. If the prime rate of interest is no longer available, WMATA will choose a new index that is based upon comparable information.

1.1.31 **"Density or Densities"** shall have the meaning set forth in Section 3.1.

1.1.32 **"Density Adjustment Rent"** shall have the meaning set forth in Section ____.

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

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

1.1.35 **"Developer"** shall mean The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company formed _____, and their permitted successors or assigns.

1.1.36 **"Developer Members"** shall mean _____, as managing member and _____% owner and _____, as member and _____% owner.

1.1.37 **"Developer Improvements"** means all buildings, portions of buildings, site amenities, decks, parking, and other structures of whatever kind on the Lease Premises, and all equipment and fixtures therein and any replacements, additions, and substitutes of, to and for the same.

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

1.1.39 **"Development Plan Approval Date"** shall have the meaning set forth in Section 7.8.3.3 of the JDA.

1.1.40 **"Dispute Notice"** shall have the meaning set forth in Section 24.1.

1.1.41 **"Dispute Review Panel"** shall have the meaning set forth in Section 24.1.1.

1.1.42 **"Effective Date"** shall be _____.

1.1.43 **"Effective Gross Income"** shall mean all income, revenues and receipts of any kind, and the value of any other benefit in lieu of rental or other payments determined on a cash basis, in each case directly or indirectly received by or allowed to Developer from or by any sources in any way, manner or respect relating to the use or occupancy of any or all of the Leased Property or the operation thereof, including, without limitation all deposits or prepayments of rent in the nature of security which are forfeited to Developer (except to the extent used to repair damages caused by any Subtenant), all rent insurance proceeds or business interruption insurance proceeds and cancellation premiums for any such insurance (net of the cost of collecting the same), concession and license income, income from telephones, vending machines and other devices and services and income from on-site parking arrangements.

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

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

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

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

1.1.48 **"Final Completion"** means the proper and full completion of the entire Project, including, but not limited to, satisfactory operation of all equipment and systems, completion or correction of all Punch List items, issuance of all required approvals and certificates by any governmental or quasi-governmental authorities with jurisdiction over the Project (including final and unconditional certificates of occupancy), delivery of all required as-built plans and specifications, removal of all rubbish, tools, scaffolding and surplus materials from the Project site(s), correction of all property damage that is the responsibility of the Developer to WMATA pursuant to the Approved Design and Construction Documents.

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

1.1.50 "**Financial Statement**" shall have the meaning set forth in Section 5.10.

1.1.51 "**First Leasehold Mortgage**" shall have the meaning set forth in Section 18.2.

1.1.52 "**First Leasehold Mortgagee**" shall have the meaning set forth in Section 18.2.

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

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

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

1.1.56 **"Guarantor"** means _____. The value of the Guarantor's net worth must be greater than three (3) times the value of the Project.

1.1.57 "**Guaranty**" means those certain Guaranties to be executed by the Guarantor, a copy of which is attached hereto as Exhibit _____, and incorporated herein.

1.1.58 "**Hazardous Materials**" means any and all substances, materials or wastes that are or become regulated by any local governmental authority, any state having jurisdiction over the Lease Premises or the United States Government or otherwise pose a material threat to human health, safety or the environment. Without limiting the generality of the foregoing, the term "Hazardous Materials" includes, without limitation, any and all materials, substances and wastes that are: (a) defined as a "hazardous waste", "hazardous material", "hazardous substance", "extremely hazardous waste" or "restricted hazardous waste" under any provision of local, state or federal law, or (b) petroleum, or (c) asbestos, or (d) polychlorinated biphenyls, or (e) radioactive materials, or

(f) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), or (g) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, (42 U.S.C. § 6903), or (h) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601).

1.1.59 "**Impositions**" means all taxes, assessments, impervious surface fees, sewer rents, water meter and water charges, vault charges, excise taxes, levies, license and permit fees, charges for public utilities and all other charges and governmental impositions, general and special, ordinary and extraordinary, unforeseen and foreseen, of any and every kind and nature, including, without limitation, all real estate taxes and leasehold taxes, that with respect to any time during the Term of this Agreement may be assessed, levied, confirmed, imposed upon, or become due and payable or become a lien on any or all of the Developer Improvements, the Lease Premises, the Metro Facilities (to the extent of any interest therein established in favor of Developer under this Agreement), or any part of any or all of the foregoing, or any appurtenance to any or all of the foregoing.

1.1.60 "**Improvements**" means all buildings, portions of buildings, site amenities, decks, parking, and other structures of whatever kind on the Lease Premises, and all equipment and fixtures therein and any replacements, additions and substitutes of, to and for the same.

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

1.1.62 "**Insurance Obligors**" shall have the meaning set forth in Section 10.1.

1.1.63 "**JDA**" shall mean that certain Joint Development Agreement executed on or about _____, 2009, a copy of which is attached hereto, and incorporated herein, as Exhibit _____.

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

1.1.65 "**Lease Obligations**" shall have the meaning set forth in Section 6.1.

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

1.1.67 "**Leasehold Mortgage**" shall mean a mortgage or deed of trust or similar security interest on Developer's rights and interests under this Agreement, including Developer's interest in the Developer Improvements, securing Developer's obligations to a Leasehold Mortgagee, including, without limitation, a trust indenture under which this Agreement shall have been mortgaged or similarly pledged, any ancillary instruments required by the Leasehold Mortgagee, any instruments required in connection with a sale-leaseback transaction, and any mortgage of less than all of the leasehold.

1.1.68 "**Leasehold Mortgagee**" shall mean an Institutional Lender or other lender approved by WMATA that is the mortgagee, grantee, party secured, or beneficiary under any Leasehold Mortgage and the successors and assigns of such mortgagee, grantee, party secured, or beneficiary, and shall be deemed to include the trustee under any such Leasehold Mortgage and the successors and assigns of such trustee.

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

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

1.1.71 "**Notice**" shall have the meaning set forth in Section 29.5.

1.1.72 "**Nullification Notice**" shall have the meaning set forth in Section 18.3.

1.1.73 "**Occupant**" means any Person occupying or proposing to occupy any portion of the Lease Premises under any lease, Sublease, license, sublicense, occupancy agreement or otherwise.

1.1.74 "**Partial Taking**" shall have the meaning set forth in Section 23.2.

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

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

1.1.77 "**Pre-Stabilization Period**" shall mean the period commencing on _____ (the effective date of the JDA) and continuing until the Project achieves 92.5% project occupancy or 45 months after the commencement of the Pre-Stabilization Period, whichever is earlier. [OPEN]

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

1.1.79 **"Project Schedule"** shall mean the schedule made and approved pursuant to the terms of the JDA, a copy of which is attached hereto as Exhibit _____, and incorporated herein.

1.1.80 "**Property**" means all of those certain tracts of land comprising approximately 28,292 square feet of land in the District of Columbia, more particularly described in Exhibit _____, attached hereto and made a part hereof, including without limitation, any right, title and interest of WMATA, if any, in and to (i) any strips and gores adjacent to the Property and any land lying in the bed of any street, road, or avenue opened or proposed, in front of or adjoining the Property, to the center line thereof; and (ii) all of the easements, rights, privileges, and appurtenances belonging or in any way appertaining to the Property.

1.1.81 "**Qualified Team**" shall have the meaning set forth in Section 2.2.2.

1.1.82 "**Reconstruction Activity(ies)**" shall have the meaning set forth in Section 16.1.

1.1.83 "**Rent**" shall have the meaning set forth in Article 6.

1.1.84 "**Repair**" shall have the meaning set forth in Section 20.1.

1.1.85 "**Scope of Work**" shall mean the agreement attached hereto as Exhibit _____, outlining the specific requirements of an appraisal to determine Fair Market Value under this Lease.

1.1.86 "**Secure**" shall have the meaning set forth in Section 20.1.

1.1.87 "**Sublease**" means any lease of any or all of the Lease Premises and/or Developer Improvements, including a lease, license or other similar agreement, entered into by Developer with another party for the use or occupancy by such other party of space on or within the Lease Premises and/or Developer Improvements.

1.1.88 "**Senior Leasehold Mortgagee**" means the Leasehold Mortgagee holding the most senior lien against Developer's interest in the Lease Premises under this Agreement, or in connection with construction of Base Developer Improvements, if there is no such lien, then the entity providing equity or debt financing for such construction.

1.1.89 "**Subleasehold Mortgage**" means a mortgage or deed of trust or other similar security agreement given or made on a Sublease and the interest of a Subtenant thereunder, including Subtenant's interest in the Developer Improvements, and shall be deemed to include a trust indenture under which the Sublease shall have been mortgaged or similarly pledged. The term "Subleasehold Mortgage" shall also include any ancillary instruments required by the Subleasehold Mortgagee, any instruments required in connection with a sale-lease back transaction, and any mortgage of less than all of the subleasehold.

1.1.90 "**Subleasehold Mortgagee**" means the mortgagee, grantee, party secured, or beneficiary under any Subleasehold Mortgage and the successors and assigns of such mortgagee, grantee, party secured, or beneficiary, and shall be deemed to include the trustee under any such Subleasehold Mortgage and the successors and assigns of such trustee.

1.1.91 **"Substantial Completion"** means for the Lease Premises, the last to occur of both (1) the date Developer procures all certificates, permits, approvals, and consents with respect to the Project, required under applicable law for the occupancy and use of the Project and (2) the date when the Project is sufficiently complete in accordance with the Approved Design and Construction Documents to allow complete occupancy and utilization of such Project, for its indicated purpose. If for any reason, WMATA and the Developer cannot, in good faith, agree on whether the Project has achieved Substantial Completion, then the matter shall be handled pursuant to the dispute resolution method set forth in Article 24 below.

1.1.92 "**Subtenant**" means the tenant or licensee under any Sublease.

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

1.1.94 "**Temporary Taking**" shall have the meaning set forth in Section 23.6.

1.1.95 "**Term**" means the Term as set forth in Section 2.4.

1.1.96 "**Title Commitment**" shall have the meaning set forth in Section 22.2.

1.1.97 "**Title Policy**" shall have the meaning set forth in Section 22.2.

1.1.98 "**Total Taking**" shall have the meaning set forth in Section 23.1.

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

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

1.1.101 "**WMATA**" means the Washington Metropolitan Area Transit Authority, a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of D.C. Board of Commissioners adopted November 15, 1966, having a principal business address at 600 Fifth Street, NW, Washington, DC 20001.

1.1.102 "**WMATA Adjacent Construction Manual**" means WMATA's Adjacent Construction Design Manual, Revision 3, dated December 2008, as amended from time to time.

1.1.103 "**WMATA Compact**" means the Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as same may be amended.

1.1.104 "**WMATA Design Criteria**" means the construction requirements as set forth in WMATA's Design Criteria (Release 9), Design Drawings (Release 9), and Technical Specifications (Release 8), and any amendment or revision thereto.

1.1.105 "**WMATA's Reserved Areas and Interests**" means and includes all land areas and improvements of, or within, the Lease Premises, required, in the judgment of WMATA reasonably exercised, for the exclusive use, operation,

access, maintenance, repair, servicing, replacement or removal of any Metro Facilities. WMATA's Reserved Areas and Interests shall be those areas designated in Exhibit _____, attached hereto and incorporated herein, and those additional areas that WMATA may designate as "WMATA's Reserved Areas and Interests" as required from time to time.

1.1.106 **"WMATA's Unconditional Approval Matters"** means any and all matters that in the sole and unreviewable judgment of WMATA (such standard to apply in all circumstances without expressly so stating in an applicable context) would have an adverse impact on any or all of the following: (i) the functionality, efficiency, safety, operation, maintenance, legal compliance, cost or profitability of WMATA's business, operations or activities, (ii) WMATA's transit customers, (iii) the Metro Station, (iv) the Metro Facilities, (v) WMATA's Reserved Areas and Interests, (vi) ingress or egress relating to any of the foregoing.

1.1.107 "**Zoning Ordinance**" shall have the meaning set forth in Section 3.3.

Sent 8/21
To Developer

# COVENANTS, CONDITIONS AND RESERVATIONS AGREEMENT

By and between

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

and

**THE JAZZ @ FLORIDA AVENUE, LLC**

**DATED _____, 2009**



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001029

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001031

## COVENANTS, CONDITIONS AND RESERVATIONS AGREEMENT

THIS COVENANTS, CONDITIONS AND RESERVATIONS AGREEMENT (this "**Agreement**") is made and entered into as of _____, 2009, by and between WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, a regional body, corporate and politic, ("**WMATA**") and The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company ("**Tenant**").

## RECITALS:

A. By a ground lease, executed on _____ (the "**Lease**"), and recorded on the same date hereof immediately following the recording of this Agreement, WMATA conveyed a leasehold interest in certain parts (the "**Lease Premises**") of that certain real property comprising approximately 28,892 square feet located in the northwest quadrant of the District of Columbia, more particularly described as Lots 44 and 45 of Square 393 and Lots 18 and 31 of Square 416 (the "**Property**") to Tenant.

B. Pursuant to a Joint Development Agreement between WMATA and Tenant dated _____, as a condition of the lease of the Property by WMATA to Tenant, Tenant agreed to grant WMATA certain easement rights in and to the Property and to record, or cause to have recorded, certain covenants against the Property.

C. Tenant intends to build, or cause to have built, a mixed-use development project consisting of dwelling units, commercial space, and below-grade parking (the "**Project**") on the Property.

D. WMATA intends to operate, underneath parts of the Lease Premises, a mass transit subway system, which shall include an underground tunnel; vent shafts; and rights of ingress and egress thereto.

E. The parties, being all the entities with a legal or beneficial interest in and to the Property, as applicable, intend that the covenants, easements, charges and liens established by this Agreement shall be covenants running with the land and shall extend to, inure to the benefit of, and be binding upon WMATA and Tenant and all parties' legal representatives, heirs, successors and assigns, unless expressly set forth to the contrary herein.

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter set forth, the Recitals, which are a substantive part of this Agreement, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, WMATA and Tenant agree that the Lease Premises is, and shall be, held, transferred, leased, developed, improved, demolished, conveyed, occupied and used subject to the easements, covenants, conditions, charges and liens as hereinafter specifically set forth.

## ARTICLE I

## DEFINITIONS

Section 1.1 General Interpretive Principles. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other gender; (ii) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; (iii) references herein to sections, subsections, paragraphs and other subdivisions without reference to a document are to designated sections, subsections, paragraphs and other subdivisions of this Agreement; (iv) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision; (v) the word "including" means "including, but not limited to"; and (vi) a reference herein to an Exhibit without a reference to a document is to the designated Exhibit attached to this Agreement and incorporated herein by reference.

Section 1.2 General Definitions. As used in this Agreement the following words and phrases shall have the meanings indicated:

**"Adjacent Construction Manual"** means WMATA's Adjacent Construction Design Manual, Revision 3, dated December 2008, as amended. In the event WMATA no longer publishes or uses its own such criteria, then the term shall refer generally to accepted construction industry standards for construction on, over or near subway transit facilities reasonably comparable to the WMATA Facilities.

**"Agreement"** means this Agreement, as amended, supplemented or restated from time to time.

**"Approvals"** means all certificates, variances, special exceptions, special use permits, preliminary plans, site plan approvals, platting or replatting approvals, rezoning approvals, subdivision approvals, engineering permits, building permits, or other similar approvals necessary for the development and construction of the Project and any subsequent Construction Activities on the Lease Premises in conformity with the terms of the Lease and this Agreement.

**"Business Day"** means any day other than a Saturday, Sunday or a day on which national banks in Washington, D.C. are not open for business.

**"Commercially Reasonable Best Efforts"** means the diligent and timely satisfaction of undertaking all actions that would usually and customarily be undertaken or performed by a diligent and experienced real estate developer, landlord, tenant, and contractor.

**"Compact"** means the Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as same may be amended from time to time.

**"Construction Activities"** means any new construction, remodeling, installation, structural repairs, alteration and other similar construction activities or related work on the Lease Premises, by any Person.



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**"Default Interest Rate"** means the lesser of: (i) four percent (4%) per annum in excess of the "Prime Rate," and (ii) the highest lawful rate. The "Prime Rate" shall be the prime or reference rate of interest as published in the *Wall Street Journal* from time to time, or its successor. If there shall be no such announced rate of such bank or its successor, then the "Prime Rate" shall be such equivalent rate as is charged from time to time by major money center banks.

**"Design and Construction Documents"** means any and all design and construction plans, drawings or specifications, including those included in the "design phase" and the "construction phase," respectively, of, and for, Construction Activities and any Maintenance or other construction work to be performed on the Lease Premises.

**"District"** means the District of Columbia.

**"Effective Date"** means the date of recordation of this Agreement.

**"Final Completion"** means the proper and full completion of the Project pursuant to the terms of the Lease, including, but not limited to, issuance of all required Approvals by any authorities with jurisdiction over the Project, satisfactory operation of all equipment and systems related thereto, completion or correction of all punch list items, removal of all rubbish, tools, scaffolding and surplus materials from the Property, correction of all property damage that is the responsibility of Tenant to cure and delivery of all required as-built plans and specifications.

**"Governmental Authorities"** means any board, bureau, commission, department or body of any municipal, county, state or federal governmental unit or subdivision thereof, having or acquiring jurisdiction over the Lease Premises, or the use and improvement thereof.

**"Impositions"** means all real estate taxes, assessments, sewer rents, water meter and water charges, vault charges, excise taxes, levies, impervious surface fees, license and permit fees, charges for public utilities and all other charges or taxes of whatsoever kind and nature levied or assessed with respect to real property or improvements thereon.

"**Insurance Obligors**" shall mean the Tenant and any party required to procure and maintain an insurance policy under the Lease and/or this Agreement.

**"Land Records"** means the land records of the District of Columbia.

**"Laws"** means all laws, statutes, ordinances, orders, rules, regulations and requirements of all Governmental Authorities applicable to the Property.

**"Maintain" or "Maintaining"** means to clean, refurbish, repair, replace or rebuild, as the context may allow or require, to maintain landscaping and grading, and to keep in place the insurance required to be maintained in effect under the terms of this Agreement.

**"Maintenance"** means and includes cleaning, refurbishing, repair (whether ordinary or extraordinary), and restoration or replacement, including, without limitation, as a result of design defects, construction defects, wear and tear (other than of a cosmetic nature), or damage by fire,



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casualty or condemnation, and the maintenance in effect of the insurance required pursuant to the terms of this Agreement.

**"Metro Station"** means WMATA's Shaw-Howard U Metrorail station, including all WMATA Facilities in connection therewith.

**"Tenant"** means The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company, and its successors and assigns.

**"Tenant Improvements"** means all buildings, portions of buildings, site amenities, decks, parking, and other structures of whatever kind on the Lease Premises, and all equipment and fixtures therein and any replacements, additions and substitutes of, to and for the same.

**"Person"** means a natural person, an estate, a trust, a partnership, a limited liability company, a corporation and any other form of business or legal association or entity.

**"WMATA Easement Areas"** means, collectively, those portions of the Property in which Tenant granted WMATA easement rights by this Agreement, including those described in Article II of this Agreement.

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

## ARTICLE II

## WMATA'S PERMANENT EASEMENTS

[THE FOLLOWING SECTIONS AND THE EASEMENTS REFERENCED THEREIN SHALL BE REVISED AS APPROPRIATE PRIOR TO EXECUTION AS NECESSARY TO ACCOMMODATE THE APPROVED DESIGN OF THE IMPROVEMENTS TO BE CONSTRUCTED BY TENANT]

Section 2.1 Grant of Vent Shaft Surface Easements to WMATA. Tenant hereby grants to WMATA perpetual, irrevocable, assignable and exclusive easements and rights-of-way (the "**Vent Shaft Surface Easements**") in, upon, over and across an area on the surface of the Lease Premises, as more particularly described in "**Exhibit ____**" attached hereto and made a part hereof, for access to and from and for the location, operation, repair, maintenance, construction, reconstruction, replacement and modification of the existing Metrorail transit vent



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shaft and related facilities (collectively, the "**Vent Shaft Facilities**"), and any service facilities serving the Vent Shaft Facilities, it being understood that (1) the Vent Shaft Surface Easements include, without limitation, the perpetual right to the free and unrestricted flow of air in and out of the openings of the Vent Shaft Facilities; and (2) notwithstanding WMATA's exclusive rights with respect to the Vent Shaft Surface Easements, such easement area may be traversed from time to time by pedestrians, but not by any motorized or non-motorized vehicles or machinery unless (a) operated by WMATA or (b) required by The Americans With Disabilities Act.

Section 2.2 Grant of Vent Shaft Underground Easements to WMATA. Tenant hereby grants to WMATA perpetual, irrevocable, assignable and exclusive easements and rights-of-way under and through an area beneath the surface of the Lease Premises, as more particularly described in "**Exhibit** _____" attached hereto and made a part hereof, for access to and from and for the location, operation, maintenance, repair, construction, reconstruction, replacement and modification of the Vent Shaft Facilities.

Section 2.3 Grant of Tunnel Easement to WMATA. Tenant hereby grants to WMATA a perpetual, assignable and exclusive underground easement and right-of-way ("**Tunnel Easement**") in, upon, under and across that portion of the Lease Premises as more particularly described in **Exhibit** _____ for the Maintenance, construction and reconstruction of the WMATA Facilities now or hereafter located under the Lease Premises, including the tunnels, station areas, service areas, vent shafts, entryways and utility lines, and any structural support for such facilities.

Section 2.4 Revision of Easement Grants. If any changes have been made to the WMATA Facilities, then within thirty (30) days after Final Completion of the Project, Tenant shall deliver to WMATA as-built surveys and legal descriptions depicting and describing the WMATA Easement Areas based on the as-built locations of the Project. It is the intention of the parties that WMATA shall retain such easement rights, by location, size and nature, so as to allow WMATA, in its reasonable discretion, good and sufficient property rights to exclusively control, possess, operate, and protect the WMATA Facilities. Upon approval by the parties, the updated legal descriptions of the easements granted herein shall, at no cost to WMATA, be substituted for those referenced in **Exhibits** ___ through ____, inclusive, and an appropriate amendment to, or restatement of, this Agreement shall be recorded in the Land Records to provide notice of the locations of all permanent easements granted herein.

## ARTICLE III

## TENANT'S COVENANTS

Section 3.1 Continuing Transit Orientation. Tenant covenants that the Lease Premises upon which the Tenant Improvements are located will have a "continuing transit orientation" as such is defined in the Lease.

Section 3.2 Tenant's Indemnification of WMATA Tenant shall indemnify, defend (with attorneys reasonably acceptable to WMATA and retained at Tenant's expense) and hold WMATA harmless from any and all claims, damages, actions, losses, costs, expenses (including, without limitation any reasonable third party legal fees and expenses) and liabilities of



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whatsoever nature or kind that may arise in connection with any and all actions taken by Tenant, its subtenants, agents, consultants, contractors, engineers, surveyors, attorneys and employees and its and their employees, agents, and invitees in, on, about or in connection with the Project, including claims for personal injury or death of any person or persons, including employees of the Tenant or its contractors, and for loss or damage to any property.

Section 3.3 Construction Covenant. To protect the WMATA Facilities, Tenant covenants not to engage in, or allow others to engage in, Construction Activities after Final Completion unless it first (i) gets written authorization from WMATA; and (ii) complies with all terms of the Lease and this Agreement.

Section 3.4 Construction Activities Insurance Covenant. Tenant covenants that it shall cause Tenant, contractors, and subcontractors to maintain, at their own cost and expense, primary insurance coverage, pursuant to the terms and requirements of Article 10 of the Lease, during all Construction Activities.

## ARTICLE IV

## WMATA APPROVAL OF CONSTRUCTION ACTIVITIES

Section 4.1 Acknowledgement. Tenant hereby acknowledges that the Tenant Improvements and any subsequent Construction Activities are to be built over and around the WMATA Easement Areas and the WMATA Facilities, which include a below-ground mass transit system, the continuous operation of which is critical not only to WMATA, but to governments, businesses and individuals throughout the Washington, D.C. metropolitan area.

Section 4.2 WMATA's Review Rights. Prior to engaging in, or allowing another to engage in, any Construction Activities, of any nature, on the Lease Premises, Tenant must obtain WMATA's prior written approval. WMATA shall have the right to review and 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 for the Construction Activities, as determined by WMATA in its sole discretion, provided, however, that WMATA's review, approval and requested changes shall extend only to those matters that could, in WMATA's sole discretion, (a) adversely affect the WMATA Facilities or WMATA's transit operations or (b) fall within the scope of the Adjacent Construction Manual.

Section 4.3 WMATA's Review Procedure. Tenant shall provide not fewer than seven (7) copies of Design and Construction Documents for any such work to WMATA for review. WMATA shall have thirty (30) days to review and approve, or disapprove, the anticipated work. WMATA's right to disapprove work shall be limited to a determination by WMATA that the planned work adversely affects the WMATA Facilities or WMATA's transit operations. In the event WMATA rejects the Design and Construction Documents, WMATA shall include in such rejection the nature of WMATA's objections or qualifications, as the case may be.

Section 4.4 WMATA's Standards and Legal Requirements. The Design and Construction Documents shall comply with the Adjacent Construction Manual. In addition, Tenant shall comply with and give all notices required by all Laws. If Tenant knows that



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portions of the Design and Construction Documents are at variance with the Adjacent Construction Manual or Laws, Tenant shall promptly notify WMATA in writing thereof and effect corrections in a manner reasonably satisfactory to WMATA.

Section 4.5 Inspections. WMATA shall have the right from time to time, to enter the Lease Premises to inspect the progress of Construction Activities being performed by, or on behalf of, Tenant for the sole purpose of determining whether such work is being undertaken in conformance with the Design and Construction Documents approved by WMATA, so as not to adversely affect WMATA Facilities or WMATA's operations. All such entries onto the Lease Premises, shall occur during construction working hours (and Tenant shall have the right to have a representative accompany WMATA's representative at such inspection), except in the event of an emergency requiring immediate access, in which case WMATA will have immediate right of access to the Lease Premises.

Section 4.6 Insurance and Indemnification. WMATA may condition its approval of Construction Activities upon the Tenant's agreement to indemnify WMATA against loss or damage caused to the WMATA Facilities or WMATA's operations arising out of the Construction Activities and upon the Tenant's agreement to provide insurance, with coverages and policy limits reasonably determined, on a case by case basis, in light of the scope and nature of the Construction Activities.

## ARTICLE V

## INTERFERENCE WITH WMATA OPERATIONS

Section 5.1 Interference with WMATA's Easement Areas or Transit Operations. In the event of damage to or destruction of any portion of the Tenant Improvements that creates a condition which interferes with WMATA's use of the WMATA Easement Areas or with WMATA's transit operations, whether such damage or destruction be by fire or any other cause, similar or dissimilar, insured or uninsured, the Tenant will restore, repair, replace or rebuild, at a minimum, the portion of the Tenant Improvements so damaged at the cost of Tenant, but only to the extent necessary to remedy the interference with WMATA's use of the WMATA Easement Areas or with WMATA's transit operations caused by such damage. Tenant understands that WMATA will suffer material damages if damage or destruction to the Tenant Improvements interferes with WMATA's use of the WMATA Easement Areas or WMATA's transit operations and Tenant agrees to immediately remove any condition so interfering with WMATA's easement rights or operations. If such damage is not expeditiously corrected by Tenant, then WMATA may, upon reasonable advance written notice to Tenant, undertake such restoration, repair, replacement or rebuilding of such damage as may be necessary to remedy the interference with WMATA's use of the WMATA Easement Areas or with WMATA's transit operations caused by such damage, at Tenant's sole cost and expense and Tenant will reimburse WMATA for the cost thereof plus Default Interest.



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## ARTICLE VI

## REMEDIES

Section 6.1 Failure of Performance. If a party to this Agreement fails to perform any of its duties or obligations provided under this Agreement (the "Defaulting Party"), the other parties (the "Non-Defaulting Party"), may, at any time, give a written notice to the Defaulting Party setting forth the specific failures to comply with this Agreement. If those failures are not corrected within ten (10) days after the date of delivery of the notice, then, upon the expiration of such ten (10) days, the Non-Defaulting Party shall have the right to correct the failures, including the right to enter upon the Defaulting Party's property to correct the failures, and the Defaulting Party shall pay the costs thereof on demand. The Defaulting Party shall, within ten (10) days of written demand by the Non-Defaulting Party, accompanied by appropriate supporting documentation, reimburse the Non-Defaulting Party for all reasonable costs and expenses incurred pursuant to this Section, including reasonable attorneys' fees and wages, benefits and overhead allocable to the time expended by any employee of the Non-Defaulting Party in taking such actions.

Section 6.2 Other Remedies. Subject to the terms of Section 9.1, above, if at any time a party shall fail to perform any covenant or agreement required to be performed by it pursuant to this Agreement, or if a party shall do or threaten to do anything in violation of this Agreement, then the other party, after expiration of any applicable cure periods provided for in this Agreement, shall have, in addition to those remedies expressly set forth herein, all rights and remedies at law or in equity, including, but not limited to, the right to specific enforcement of such covenant or agreement or the right to enjoin such violation or threatened violation, and the right to obtain a judgment and enforce a judgment to the extent provided by law.

Section 6.3 No Waiver of Rights. The remedies provided in this Article VI are in addition to any remedies available elsewhere in this Agreement or under applicable Laws. The failure of any party to enforce any right or remedy set forth in this Agreement shall not constitute a waiver of the right of such party to enforce such right or remedy in the future. All rights and remedies granted herein shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same again or from exercising such other rights or remedies as may be granted to such party by this Agreement.

## ARTICLE VII

## NOTICE

Section 7.1 Giving of Notice.

(a) All notices, demands, requests and other communications required pursuant to or in connection with the provisions of this ~~Lease~~ Agreement ("Notice") shall be in writing and shall be deemed to have been properly given or served for all purposes (i) if sent by Federal Express or other nationally recognized overnight carrier for next business day delivery, on the actual date of delivery by such carrier, or (ii) if personally delivered, on the actual date of



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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 Tenant: | The Jazz @ Florida Avenue, LLC<br>c/o Banneker Ventures, LLC<br>_____<br>_____ |
| With a copy to: | _____<br>_____<br>_____ |
| If to WMATA: | Washington Metropolitan Avenue<br>Transit Authority<br>600 Fifth Street, NW<br>Washington, D.C. 20001<br>Attn: Director, Office of Station Area Planning and Asset Management |
| And with a copy to: | Washington Metropolitan Avenue Transit Authority<br>600 Fifth Street, NW<br>Washington, D.C. 20001<br>Attn: General Counsel |

## ARTICLE VIII

## MISCELLANEOUS PROVISIONS

Section 8.1 Captions of No Effect. The captions set forth in this Agreement are intended for ease of reference only and shall have no force or effect in the interpretation of this Agreement.

Section 8.2 Runs With the Land. This Agreement, and the grant of easements by Tenant, and the mutual covenants of the parties as set forth herein, are made for the benefit of and shall burden both parties and their respective successors and assigns, and shall operate as covenants running with the Property and the Lease Premises.

Section 8.3 Easements Benefit Tenants, etc. Any easement or right of entry created or established in this Agreement for the benefit of any party shall be for the benefit not only of such party but also for the benefit of any ground lessee, tenant, or subtenant and also for the benefit of any licensees, invitees, employees, agents and contractors of such party, ground lessee, tenant, or subtenant whom such party or ground lessee shall permit to use such easement or right of entry.



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Section 8.4 Severability. If any provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 8.5 Governing Law. This Agreement shall be construed and governed in accordance with the laws of the District of Columbia, but excluding its conflicts of laws provisions.

Section 8.6 Successors and Assigns. Whether or not specific reference is made to successors and assigns in each term or provision of this Agreement, all of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 8.7 Amendments. This Agreement and any of the easements or rights of entry created or established in this Agreement shall not be amended, changed, modified or cancelled without the written agreement of all of the parties hereto.

Section 8.8 Confirmation. The parties mutually covenant and agree that upon the request, from time to time, of any other party hereto or any mortgagee that they shall execute, deliver and record, at the sole cost and expense of the requesting party, among the Land Records such documents as may be reasonably necessary or appropriate to confirm all of the easements, covenants, and reservations and exceptions set forth in this Agreement.

Section 8.9 Counterparts. This Agreement may be signed in several counterparts, each of which shall be deemed an original.

Section 8.10. No Third Party Beneficiaries. Unless expressly stated otherwise, this Agreement is not intended to give or confer any benefits, rights, privileges, claims or remedies to any person or entity as a third party beneficiary. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the burdened property to the general public or for the general public or for any public purpose whatsoever, except where the easements provided for herein are expressly for the benefit of the general public.

Section 8.11 Disputes. All legal proceedings and actions shall be subject to Section 80 and 81 of the Compact.

Section 8.12 Execution, Recordation, and Recordation Costs. This Agreement shall be effective upon execution by both parties. Tenant shall record this Agreement among the Land Records, and the land records of any other jurisdiction in which such recordation may be required by law. All recordation and transfer taxes and fees, and any similar costs, if any, shall be paid exclusively by Tenant.

Section 8.13 Sovereign Immunity, Anti-Deficiency Clause. In accordance with Section 80 of the Compact, WMATA is liable for its contractual obligations set forth in this Agreement, and breaches thereof. All obligations of WMATA under this Agreement that directly or indirectly require the expenditure by WMATA of any of its funds are subject to



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appropriation by WMATA's Board of Directors and availability of funding through WMATA's budgetary procedures. Nothing herein excuses or creates a defense for performance by WMATA.

Section 8.14 Estoppel Certificates. WMATA agrees, upon not less than ten (10) Business Days' prior notice from Tenant to WMATA at or after the recordation of this Agreement, to execute, acknowledge and deliver a written statement to Tenant, or to any of its actual or prospective lenders, security rating agencies, auditors, purchasers, investors or as Tenant may specify or to any governmental entity (if required by such governmental entity) which: (1) certifies that this Agreement is unmodified and in full force and effect (or if modified, that this Agreement is in full force and effect as modified and states the modifications); (2) states to the best knowledge of WMATA whether Tenant is in default in keeping, observing and performing any of the terms of this Agreement, and, if in default, specifies each such default of which WMATA has knowledge; (3) certifies to the best knowledge of WMATA as to the existence of any offsets, counterclaims or defenses to this Agreement on the part of 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 may be relied upon by any prospective assignee of the interest of Tenant in this Agreement, and any existing or prospective securities rating agency, auditor, or lender or investor providing financing or funds to Tenant, but reliance on such certificate may not extend to any default of Tenant as to which WMATA shall have no actual knowledge. Tenant agrees, upon not less than ten (10) Business Days' prior notice from WMATA at or after the recordation of this Agreement, to execute, acknowledge and deliver to WMATA and/or to any person, entity, or governmental agency (if required by such governmental agency) designated by WMATA, a written statement which: (a) certifies that this Agreement is unmodified and in full force and effect (or if modified, that this Agreement is in full force and effect as modified and states the modifications); (b) states to the best knowledge of Tenant whether WMATA is in default in keeping, observing and performing any of the terms of this Agreement and, if in default, specifies each such default of which Tenant has knowledge; (c) certifies to the best knowledge of Tenant as to the existence of any offsets, counterclaims or defenses to this Agreement on the part of WMATA, and (d) 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 may be relied upon by WMATA, by any prospective successor to WMATA's interest in the WMATA Easement Areas or any part thereof, and by any governmental agency, but reliance on such certificate may not extend to any default of WMATA as to which Tenant shall have no actual knowledge.

Section 8.15 Time of the Essence. Time is of the essence with respect to all provisions of this Agreement.

Section 8.16 Noise and Vibrations. Tenant waives all right to make any claims against WMATA arising from noise or vibration caused from WMATA's normal transportation-related operation of the Station. Tenant shall include a provision to this effect in all subleases, licenses, space occupancy agreements, and similar documents with respect to the Project, unless such provision is contrary to and non-waiveable under Applicable Law.



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Section 8.17 Priority. This Agreement and the easement and other rights granted by Tenant to WMATA as well as the rights excepted and reserved by Tenant shall be superior to all leases, conveyances, transfers, assignments, contracts, mortgages, deeds of trust and other encumbrances and documents recorded or entered into hereafter in any way affecting any part of the Property and the Lease Premises, as applicable. Any party foreclosing any such mortgage, deed of trust, lien or encumbrance, and any party acquiring title to or any interest in any part of the Property and the Lease Premises as a result thereof shall acquire and hold such title or interest expressly subject to the provisions of this Agreement.

Section 8.18 Disclaimer of Liability. By inspecting, having the right to inspect, or requiring the correction of any plans, construction or other matters relating to the Project or this Agreement, WMATA accepts no liability for any defects, flaws or mistakes, and waives none of its legal rights. No inspection conducted by WMATA as to any matter related to the Project or this Agreement may be construed to be a warranty, guarantee, or assurance of the adequacy of the plans for or construction of the Project. Any inspections or other review arising out of this Agreement is for WMATA's sole benefit, and is for no other person's benefit, including Tenant's.

Section 8.19 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Agreement shall entitle any person to cancel, rescind, or otherwise terminate this Agreement, and such limitations shall not affect in any manner any of the other rights or remedies which the parties may have by reason of any breach of this Agreement.

Section 8.20 No Partnership. Neither this Agreement nor any acts of the parties shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between or among them.

[SIGNATURE PAGES TO FOLLOW]



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**IN WITNESS WHEREOF**, the Parties have entered into this Agreement intending that it become effective on the date it is recorded among the land records.

**WMATA:**

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

By:_____
Name:
Title: Contracting Officer

Washington, District of Columbia

I the undersigned, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that _____, who is personally well known (or satisfactorily proven) to me to be the Contracting Officer of the Washington Metropolitan Area Transit Authority, and being authorized to do so, executed the foregoing instrument for the purposes contained therein.

Witness my hand and official seal this _____ day of _____, 2009.

_____
Notary Public



FOIA CONFIDENTIAL TREATMENT REQUESTED

**TENANT:**

**The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company**

**By: Banneker Ventures, LLC, a District of Columbia limited liability company**

**Its: Managing Member**

By:_____

Omar Karim, President

Washington, District of Columbia

I the undersigned, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that _____ , who is personally well known (or satisfactorily proven) to me to be the President of Banneker Ventures, LLC, and being authorized to do so, executed the foregoing instrument for the purposes contained therein.

Witness my hand and official seal this _____ day of _____, 2009.

_____

Notary Public

**UNCONDITIONAL CONSTRUCTION COMPLETION**

**GUARANTY AGREEMENT**

THIS UNCONDITIONAL CONSTRUCTION COMPLETION GUARANTY ("Guaranty"), made as of the _____ day of _____, 2009 ("Effective Date"), by BANC OF AMERICA COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation ("Guarantor"), to and for the benefit of WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324, Maryland Acts of General Assembly, Chapter 869-1965, Virginia Acts of Assembly, Chapter 2-1966, and Resolution of D.C. Board of Commissioners adopted November 15, 1966 ("WMATA").

WHEREAS, The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company ("Developer"), has entered into a certain Lease Agreement with WMATA ("Lease"), of even date herewith, pursuant to which Developer has agreed, among other things, to construct and develop the Project upon the conditions and terms set forth therein; and

WHEREAS, as a condition precedent to the execution of the Lease, Guarantor must execute and deliver this Guaranty of completion of the development and construction of the Project pursuant to the terms of the Lease; and

WHEREAS, Guarantor is the managing member of the Developer and, having a financial interest in the Developer and the Project, has agreed to execute, acknowledge, and deliver this Guaranty; and

NOW THEREFORE, in consideration of the foregoing, the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Guarantor hereby undertakes, guarantees, covenants and agrees as follows:

1. **Completion of Project.** The Guarantor hereby absolutely and unconditionally guarantees to WMATA the following:

   a. The due and punctual Final Completion of the Project in accordance with the Approved Design and Construction Drawings upon the terms and conditions set forth in the Lease and the Transaction Documents; and

   b. The full and prompt payment and performance of all liabilities, obligations, covenants, agreements, and responsibilities of the Developer under the Joint Development Agreement, the Lease, and all of the Transaction Documents during the Term of this Guaranty.

**Deleted:** For Value Received, and to induce XXXXXX, a XXXXX limited liability limited partnership (the "*Limited Partner*") to become XXXXXXXX a limited partnership formed under the laws of the District of Columbia (the "*Partnership*"), by entering into a First Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement") and to induce the Partnership to obtain financing for the construction of a one hundred and thirty four (134) unit residential project in twelve (12) buildings located on one site in Washington, D.C. (the "*Project*"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and BANC OF AMERICA COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation, (the "*Guarantor*"), as of XXXXX, hereby undertake, guarantee, and agree as follows:¶
1. .

**Deleted:** Construction



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2. **Acknowledge and Consent.**

a. The Guarantor hereby unconditionally acknowledges and consents to the terms, covenants, and conditions of the Lease, the Joint Development Agreement, the Approved Design and Construction Drawings, the Project Schedule, and the Transaction Documents; and

b. Guarantor's obligations hereunder shall not be diminished by any errors or omissions of any contractor, architect, subcontractor, material supplier, consultant, attorney, government agency, or any agent or employee of them in the supervision or performance of work on the Project, it being understood that such risk is assumed by the Guarantor.

3. **Continuing Guaranty.** It is expressly understood and agreed that this is a current and continuing guaranty and that the obligations of Guarantor hereunder shall be absolute under any and all circumstances, without regard to the validity, regularity, modification, or enforceability of the Lease, the Joint Development Agreement, the Transaction Documents, any Project finance documents, any partnership agreements, or any other instruments executed in connection with the same.

4. **Certain Waivers.**

a. To the extent permitted by law, Guarantor hereby waives notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, and any and all notices of nonpayment, non-performance, and non-observance, and other proof, and notice of demand; and

b. Guarantor hereby waives any right to require WMATA to proceed against or exhaust its recourse against Developer or to pursue any other remedy in its power before being entitled to performance from Guarantor or before proceeding against Guarantor. Guarantor hereby waives any defense based upon an election of remedies by WMATA which destroys or otherwise impairs the subrogation rights of Guarantor or the right of Guarantor to proceed against Developer or others for reimbursement, or both; and

c. Guarantor hereby waives all suretyship defenses and defenses in the nature thereof; and

d. Guarantor hereby waives any defense that may arise by reason of (i) the incapacity, lack of authority, death or disability of Developer or Guarantor; (ii) the revocation or repudiation hereof by Guarantor, or the revocation or repudiation hereof by Developer, of Developer's obligations under the Lease or any other instruments executed in connection therewith; or (iii) the failure of WMATA to file or enforce a claim against the estate (either in administration, bankruptcy, or any other proceeding) of Developer or Guarantor; and

**Deleted:** <#>the due and punctual construction (the "*Work*") of the Project in accordance with the terms and requirements of the Partnership Agreement (including the payment of Development Advances by the General Partner under Section 5.13 of the Partnership Agreement), the Loan Documents and the Project Documents, free and clear of any liens or claims of liens (except for the liens specifically permitted by the Partnership Agreement, the Loan Documents and the Project Documents), in the manner and within the time necessary to comply with all of the terms, covenants and conditions of the Partnership Agreement, the Loan Documents and the Project Documents, including all future amendments thereto; and ¶
**<#>Should the cost of completion of the Work exceed the amounts available therefor in loan proceeds and Partnership funds, or should any liens be filed against the Partnership Property or the Project (except for liens specifically permitted by the Partnership Agreement, the Loan Documents and the Project Documents) prior to completion of or in connection with the Work, Guarantor hereby absolutely and unconditionally guarantees the prompt, absolute, and unconditional payment of such sums necessary to complete the Work and discharge such liens. All sums due and payable hereunder by Guarantor shall be payable on demand of the Partnership. Any amounts paid by Guarantor shall not be refundable to Guarantor, but shall be treated as a payment to the Partnership in consideration for the Guarantor's receipt of the Development Fee.¶**
2. .

**Deleted:** are joint and several and

**Deleted:** Partnership Agreement, the Loan Documents, the Project Documents

**Deleted:** therewith

**Deleted:** 3. .

**Deleted:** .



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e. Guarantor hereby waives the defense of statute of limitations in any action hereunder; and

f. Guarantor hereby waives any defense based upon any taking, modification, or release of any collateral or guaranties, or any failure to perfect any security interest in, or the taking of, or failure to take any other action with respect to any collateral securing payment or performance hereunder; and

g. Guarantor hereby waives any rights or defenses based upon an offset by Guarantor against any obligation now or hereafter owed to Guarantor by Developer, it being the intention hereof that Guarantor shall remain liable, to the extent set forth herein, until the full performance of the obligations hereunder.

5. **Defenses Not Valid.** Guarantor further agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected, or impaired by any of the following:

a. By reason of the assertion by the Developer of any rights or remedies under or with respect to the Lease, or any other instruments executed in connection therewith, against any Person obligated thereunder; or

b. By reason of any failure to exercise, or delay in exercising, any such right or remedy or any right or remedy hereunder or in respect to this Guaranty; or

c. By reason of the adjudication in bankruptcy of this Guaranty or any guarantor hereunder, any Person obligated under the Lease or any other instruments executed in connection therewith, or the filing of a petition for any relief under any federal, state, or local bankruptcy law by any such Person.

6. **Reimbursement of Expenses.** Guarantor agrees that, in the event this Guaranty is placed in the hands of one or more attorneys for enforcement, collection, collection through legal proceedings affecting creditors' rights, or any other proceedings whatsoever in connection with this Guaranty, or any collateral subject hereto, then Guarantor shall reimburse WMATA on demand for all expenses incurred in enforcing this Guaranty, including reasonable attorneys' fees, costs, and expenses, (whether or not suit is brought hereon) and all such expenses incurred in connection with any trial, appeal, arbitration, or bankruptcy proceedings.

7. **Default.** If Guarantor shall fail or refuse to perform or continue performance of all of Guarantor's obligations under this Guaranty, then WMATA shall, at its sole option, have the right to take, or cause, all necessary action to complete the work described in Section 1 above and to discharge any liens filed against the Project or the Lease Premises and to take any other actions necessary or advisable to cure the Guarantor's default hereunder, either before or after the exercise of any other remedy.

**Deleted:** Partnership or any Partner thereof

**Deleted:** Partnership Agreement

**Deleted:** .

**Deleted:** Partnership Agreement

**Deleted:** <#>**Effect of Certain Assignments, Etc.** Guarantor further covenants that this Guaranty shall remain and continue in full force and effect as to any assignment, modification, extension, or renewal of the Loan Documents, the Project Documents or the release or exchange of any property covered by the Loan Documents or other collateral for any of the Loans, and notwithstanding any amendment of the Partnership Agreement or transfer of the Interest of any Partner thereunder, and that indulgences or forbearance may be granted under any or all of such documents, all of which may be made, done, or suffered without notice to or further consent of the Guarantor.¶
<#>**Enforcement.** Guarantor hereby agrees that this is a guaranty of payment, not collection, and that this Guaranty may be enforced by the Partnership or any Partner thereof against Guarantor without first resorting to or exhausting any other right or remedy; *provided, however,* that nothing herein contained shall prevent the Partnership or any Partner from suing to enforce the provisions of the Partnership Agreement or from exercising any rights thereunder.¶

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**Deleted:** will

**Deleted:** the Partnership and the Partners seeking such enforcement

**Deleted:** the Partnership and/or the Partners thereof

**Deleted:** their

**Deleted:** Work in accordance with the terms of the Partnership Agreement, the Loan Documents,

**Deleted:** the Project Documents

**Deleted:** land underlying the Project



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001048

The amounts of any and all expenditures and advances so made by WMATA shall be due and payable by Guarantor immediately upon the incurring or advancement thereof and, if not then paid, shall bear interest at four percent (4%) above the prime rate then in effect in *The Wall Street Journal*.

8. **Term.** Except as provided herein, this Guaranty shall terminate three (3) months after the last to occur of the following:

a. A final certificate of occupancy is issued for the Project following the completion of construction of the Project in accordance with the Approved Design and Construction Documents;

b. Final payment is made under the construction contracts, and the contractor acknowledges in writing that the contractor and all subcontractors have been paid in full and have no further claims under the construction contracts; and

c. The statutory period within which the contractor and any subcontractors under the construction contracts may file liens against the Project has expired; and

d. Final Completion of the Project.

Notwithstanding the foregoing, at any time within three (3) months after the termination of this Guaranty as provided in this Paragraph 8, WMATA may give written notice (the "***Guaranty Notice***") to Guarantor of any outstanding or disputed amount due to WMATA or any third party that relates to the Joint Development Agreement, the Lease, the Transaction Documents, or construction of the Project and may reserve its rights hereunder with respect to such outstanding amount. In the event WMATA gives such Guaranty Notice to the Guarantor, this Guaranty shall survive to the extent of the matters described in such Guaranty Notice and until such matters have been fully paid or resolved to the satisfaction of WMATA. In the event this Guaranty is extended beyond the term by such Guaranty Notice, this Guaranty shall not terminate until such time that WMATA provides Notice of satisfaction of the matters described in the Guaranty Notice.

9. **Assignment**. This Guaranty shall not be assignable by Guarantor without WMATA's prior written approval.

10. **Notices.** All notices, demands, requests and other communications required pursuant to or in connection with the provisions of this Guaranty ("Notice") shall be in writing and shall be deemed to have been properly given or served for all purposes (i) if sent by Federal Express or other nationally recognized overnight carrier for next business day delivery, on the actual date of delivery by such carrier, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified mail, return receipt requested postage prepaid, on the Fifth (5th) Business Day following the date of mailing addressed as follows,

a. *Notices to Guarantor shall be sent to*:

**Deleted:** the Partnership or any Partner

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**Deleted:** Loan Documents and Project Documents

**Deleted:** Partnership Property or the

**Deleted:** Loan Conversion

**Deleted:** 9

**Deleted:** the Partnership or any Partner thereof

**Deleted:** the Partnership or any Partner thereof

**Deleted:** the Partnership and the Partners that gave such notice

**Deleted:** A

**Deleted:** ll notices to the parties hereto shall be given in the manner and (where applicable) to the addresses specified on Exhibit A-6 to the Partnership Agreement, as the same may be amended from time to time by Notice to the parties hereto. Notices to the Partnership shall be sent in care of the General Partner of the Partnership with a copy to the Limited Partner



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001049

Banc of America Community Development Corporation
730 Fifteenth Street, N.W.
Washington, DC 20005-1099
Attn: Maryann Dillon, Senior Vice President
Tel: (202) 624-5160;
Fax: (202) 624-5166

b. *Notices to WMATA shall be sent to:*

Washington Metropolitan Avenue Transit Authority
Attn: Director of Station Area Planning and Asset Management
600 Fifth Street, NW
Washington, D.C. 20001
Phone: 202-962-2616
Fax:

11. **Intended Beneficiary.** No person other than WMATA, or its successors and/or assigns, may directly or indirectly rely upon or enforce the provisions of the Agreement, whether as a third party beneficiary or otherwise.

12. **Binding Agreement; Burden and Benefit.** This Guaranty and each covenant and agreement contained herein shall be binding upon Guarantor, its permitted successors and assigns, and shall inure to the benefit of WMATA, and its successors and assigns.

13. **Authority.** Guarantor represents and warrants to WMATA the following:

a. The Person executing and delivering this Guaranty on Guarantor's behalf is duly authorized to so act; and

b. The Guarantor has the power and authority to enter into this Guaranty; and

c. All action required to authorize Guarantor to enter into this Guaranty has been duly taken.

14. **Entire Agreement.** This Guaranty constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior such agreements and understandings, both written and oral. This Guaranty may not be modified or amended except by a written instrument signed by WMATA and Guarantor.

15. **Severability of Provisions.** If any provision of this Guaranty is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable. The Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Guaranty and the remaining provisions of this Guaranty shall remain in full force and effect and shall not

**Deleted:** The parties intend that the Limited Partner of the Partnership be a third party beneficiary of this Agreement and that the Limited Partner, in such capacity, may enforce the Guarantor's obligations hereunder.

**Deleted:** person

**Deleted:** the Limited Partner and the Partnership

**Deleted:** **Partnership Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Partnership Agreement.¶

**Deleted:** the Partnership, the Partners thereof,

**Deleted:** their respective

**Deleted:** Each provision of this Guaranty shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of this Guaranty is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Guaranty that are valid.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001050

be affected by the illegal, invalid or unenforceable provision or by its severance from this Guaranty.

16. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Guaranty shall not operate or be construed to be a waiver of any subsequent breach.

17. **Defined Terms.** Except as expressly provided herein, terms used in this Guaranty with initial capital letters shall have the meanings set forth in the Lease.

Deleted: Agreement

Deleted: Partnership Agreement

18. **Governing Law.** This Guaranty shall be governed, construed, and interpreted as to validity and enforcement and in all other respects in accordance with the laws of the District of Columbia and cannot be modified, amended, or terminated orally.

19. **Headings.** All headings in this Guaranty are for convenience of reference only and are not intended to qualify the meaning of any provision of this Guaranty.

Deleted: <#>**Binding Agreement.** This Agreement shall be binding on the parties hereto, and their heirs, executors, personal representatives, successors and assigns.¶

20. **Terminology.** All personal pronouns used in this Guaranty, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

21. **Counterparts.** This Guaranty may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

22. **Guaranty of Payment.** Notwithstanding any other provision of this Guaranty:

Deleted: Agreement

a. This Guaranty constitutes a guaranty of payment, not solely a guaranty of collection; and

Deleted: <#>¶ (i) t

Deleted: Agreement

b. This Guaranty agreement is primary and not conditional.

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Deleted: guaranty in this A

**[SIGNATURES BEGIN ON THE FOLLOWING PAGE ]**



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001051

IN WITNESS WHEREOF, Guarantor has duly executed this Unconditional Construction Completion Guaranty Agreement as of the date first above written.

BANC OF AMERICA COMMUNITY
DEVELOPMENT CORPORATION,
Guarantor

_____ By:_____
Name:_____
Title:_____



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001052

11/17/2008

Printable Results

**Criteria Searched:**

Square: **393** Lot: **44**

Type(s): **ALL**

Page **1** of **1**

We found 6 records. Displaying 1 through 6.

Print | Close Window

| Square | Lot | Grantor | Grantee | Document # | Filing Date | Book Type | Instrument Type | Roll Frame |
|---|---|---|---|---|---|---|---|---|
| **0393** | 0044 | COAD M | LEE R | 7600011427 | 1/1/1976 | LAND | DEED | |
| **0393** | 0044 | BD FOR CONDEMNATION | LEE R | 7600028068 | 1/1/1976 | LAND | MISC | |
| **0393** | 0044 | BD FOR CONDEMNATION | | 7700009723 | 1/1/1977 | LAND | RELEASE | |
| **0393** | 0044 | THACKER G | OAKVIEW PROPERTIES,INC | 7700013645 | 1/1/1977 | LAND | RELEASE | |
| **0393** | 0044 | THACKER G | OAKVIEW PROPERTIES,INC | 7700013646 | 1/1/1977 | LAND | RELEASE | |
| **0393** | 0044 | NAT BANK OF WASH | HOPKINS J | 7800002038 | 1/1/1978 | LAND | RELEASE | |

Page **1** of **1**

Jump to page: Go



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001053

11/17/2008 Printable Results

**Criteria Searched:**

Square: **393** Lot: **45**

Type(s): **ALL**

Page **1** of **1** We found 1 records. Displaying 1 through 1. Print Close Window

| Square | Lot | Grantor | Grantee | Document # | Filing Date | Book Type | Instrument Type | Roll Frame |
|---|---|---|---|---|---|---|---|---|
| **0393** | 0045 | JONES E | VAUGHN R | 7400012842 | 1/1/1974 | LAND | RELEASE | |

Page **1** of **1** Jump to page: Go



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001054

**Bank of America**

Community Development Banking

March 6, 2009

Mr. Omar A. Karim
Banneker Ventures, LLC
700 12th Street NW, Suite 700
Washington, DC 2005

RE: The Jazz @ Florida Avenue
Washington, DC

Dear Omar:

I am writing to confirm the interest of Banc of America Community Development Corporation ("BACDC") in working with Banneker Ventures, LLC ("BVLLC") or an affiliate of Banneker Ventures, LLC ("Banneker") to become a Co-Developer of and provide direct equity investment into the proposed development known as The Jazz @ Florida Avenue, situated along the 700 and 800 blocks of Florida Avenue in Northwest, Washington, DC. We have been working with you through refinements to the development program and further due diligence and we retain a high level of interest in structuring a partnership that allows for BACDC to become a partner and provide equity investment for gap funding as well as other technical and financial support for the project.

We understand that the proposed development program is a mixed-use community consisting of 153,770 gross square foot of residential and retail space. A total of 20% of the units will be affordable to persons who earn 60% of the area median income. Total development costs for this project are approximately $40,124,371 and BACDC would have interest in providing gap funding via a direct equity investment through a partnership agreement with BVLLC or an affiliate. We intend to work closely with our colleagues at Bank of America to provide a complete financing package that could potentially include both debt and equity syndication, if needed.

Banc of America CDC is the nation's first and most productive Bank-owned community development corporation. We have a broad range of experience on projects similar to The Jazz @ Florida Avenue and in creative equity partnerships. We look forward to working with you on this project and providing support for the continued revitalization of this historic neighborhood.

Sincerely,

Maurice Perry
Vice President
Banc of America CDC

730 15th Street NW, 8th Floor, Washington, DC 20005

Recycled Paper

## Montague, Joshua W.

**From:** Doggett, Rosalyn
**nt:** Friday, March 06, 2009 4:20 PM
**To:** Montague, Joshua W.
**Subject:** FW: Banc of AmericaBACDC LOI
**Attachments:** Banc of America LOI - Jazz @ Florida Avenue.pdf

**Importance:** High

-----Original Message-----
From: Bottigheimer, Nat
Sent: Friday, March 06, 2009 4:04 PM
To: Doggett, Rosalyn
Cc: Washington, Joel R.
Subject: FW: Banc of AmericaBACDC LOI
Importance: High

Roz...fyi

-----Original Message-----
From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Friday, March 06, 2009 3:00 PM
To: Moneme, Emeka
Cc: Maurice' 'Perry; 'Tiwana Hicks'; Bottigheimer, Nat
Subject: Banc of AmericaBACDC LOI
Importance: High

Emeka,

As promised, attached please find a copy of the LOI between Banc of America CDC and Banneker Ventures in connection with the Jazz @ Florida Avenue project. Will call you to follow-up.

Omar .

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

-----Original Message-----
From: Perry, Maurice [mailto:maurice.perry@bankofamerica.com]
Sent: Friday, March 06, 2009 2:47 PM
To: okarim@bannekerventures.com
: thicks
Subject: BACDC LOI

Omar,



FOIA CONFIDENTIAL TREATMENT REQUESTED 

Please see the attached. I'll send you the original letter as well.

Thanks.
Maurice



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Montague, Joshua W.

**From:** Maurice Perry [maurice.perry@bankofamerica.com]
**Sent:** Tuesday, March 17, 2009 3:36 PM
**To:** Doggett, Rosalyn
**Cc:** Omar A. Karim; Montague, Joshua W.; Washington, Joel R.
**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 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 today. 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.

Looking 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 knowledge. We can hopefully discuss the other items later today after we go through the development partnership structure/capabilities but the % affordable is basic to the pro forma/business deal.

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Monday, March 16, 2009 7:20 PM



FOIA CONFIDENTIAL TREATMENT REQUESTED 

**To:** Doggett, Rosalyn; Washington, Joel R.
**Cc:** 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
rim@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001060

## Montague, Joshua W.

**From:** Doggett, Rosalyn
**Sent:** Tuesday, July 07, 2009 5:43 PM
**To:** thicks
**Cc:** Montague, Joshua W.; eric.smart@bolansmart.com
**Subject:** RE: The Jazz Economic Terms (as of June 23, 2009)

Tiwanna, this will confirm receipt of the e-mail. I will respond on items 1,5 and 11 as soon as possible and want to put on the record that some of the items where you seem to indicate agreement in items 9 and 10, for example, are not accurate, e.g. escalation %'s and % of land value for rental.

---

**From:** thicks [mailto:thicks@bannekerventures.com]
**Sent:** Monday, July 06, 2009 6:41 PM
**To:** Doggett, Rosalyn
**Cc:** Maurice' 'Perry; arashid@bannekerventures.com; okarim@bannekerventures.com; eric.smart@bolansmart.com; Moneme, Emeka; Montague, Joshua W.; Meister, Mark K.; Bottigheimer, Nat
**Subject:** FW: The Jazz Economic Terms (as of June 23, 2009)
**Importance:** High

Mrs. Doggett,
We are following up with regards to items #1, 5, and 11 below. Please advise us as to the status of each. Thanks kindly.
Tiwana

**Tiwana Z. Hicks**

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

Office: (202) 393-5460

Fax: (202) 347-9047

Cell: (202) 486-1863

thicks@bannekerventures.com

---

**From:** thicks [mailto:thicks@bannekerventures.com]
**Sent:** Thursday, June 25, 2009 1:51 PM
**To:** 'Doggett, Rosalyn'
**Cc:** 'jwmontague@wmata.com'; 'MMeister@wmata.com'; 'eric.smart@bolansmart.com'; 'nbottigheimer@wmata.com'; 'emoneme@wmata.com'; 'okarim@bannekerventures.com'; 'Perry, Maurice'; 'arashid@bannekerventures.com'
**Subject:** The Jazz Economic Terms (as of June 23, 2009)
**Importance:** High

Mrs. Doggett,
As a follow-up to our conference call on June 23, 2009, below please find a status update for each item in red font.

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



FOIA CONFIDENTIAL TREATMENT REQUESTED 

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 moderate-income (between 51% and 80% of Metropolitan Statistical Area Median). We will satisfy this requirement with the Project's 20% affordable component.

9. TERM – We will agree to a 99 year lease term with the land being revalued as if vacant after 60 years. After 60 years, the base lease rate will be 5% of the land value. Also, after the first 60 years, we could agree to pay an annual escalation of 1.5%. Following the first 99 years, we would like an option to extend for an additional 99 years under the same terms of the final 39 terms of the initial lease.

10. BASE RENT – See response to #9 above. Developer agrees to WMATA's offer of 99 year lease with the land being revalued after 60 years and Developer paying 5% of the land value in lease payments.

11. CAPITAL EVENTS – We agree that WMATA participates in 10% of capital event proceeds following: (a) repayment of all debt (including any subordinated debt provided by a government agency), (b) repayment of principal of member loans/non-tax credit equity, (c) payment of 20% return on member loans/non-tax credit equity; and (d) payment of transaction costs. Parties in agreement with (a), (b) and (d). WMATA to provide any comments to (c) by July 2, 2009.

Please confirm receipt of this email. We look forward to speaking with you soon. Thanks.
Tiwana

**Tiwana Z. Hicks**

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

Office: (202) 393-5460

Fax: (202) 347-9047

Cell: (202) 486-1863



FOIA CONFIDENTIAL TREATMENT REQUESTED

**Montague, Joshua W.**

**From:** Omar Karim [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 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



FOIA CONFIDENTIAL TREATMENT REQUESTED

**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

---

**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.



FOIA CONFIDENTIAL TREATMENT REQUESTED 

7. STABILIZATION – Please explain how the results of the outside appraisal will affect Stabilization? Has the new appraisal been ordered? Does the appraisal company have experience doing appraisals that include affordable housing? When do you expect to have the results of the new appraisal? Pursuant to WMATA, issue remains contingent upon results of Appraisal.

8. AFFORDABLE HOUSING – We are in agreement to delete "minimum". 20% is fine. We are in the process of reviewing the IZ regulations. Based on our preliminary review of the IZ regulations, the regulations will apply to our development. Moreover, we will be required to set aside 8% of the residential gross floor area for eligible moderate-income (between 51% and 80% of Metropolitan Statistical Area Median). We will satisfy this requirement with the Project's 20% affordable component.

9. TERM – We will agree to a 99 year lease term with the land being revalued as if vacant after 60 years. After 60 years, the base lease rate will be 5% of the land value. Also, after the first 60 years, we could agree to pay an annual escalation of 1.5%. Following the first 99 years, we would like an option to extend for an additional 99 years under the same terms of the final 39 terms of the initial lease.

10. BASE RENT – See response to #9 above. Developer agrees to WMATA's offer of 99 year lease with the land being revalued after 60 years and Developer paying 5% of the land value in lease payments.

11. CAPITAL EVENTS – We agree that WMATA participates in 10% of capital event proceeds following: (a) repayment of all debt (including any subordinated debt provided by a government agency), (b) repayment of principal of member loans/non-tax credit equity, (c) payment of 20% return on member loans/non-tax credit equity; and (d) payment of transaction costs. Parties in agreement with (a), (b) and (d). WMATA to provide any comments to (c) by July 2, 2009.

Please confirm receipt of this email. We look forward to speaking with you soon. Thanks.
Tiwana

**Tiwana Z. Hicks**
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
Office: (202) 393-5460
Fax: (202) 347-9047
Cell: (202) 486-1863
thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Montague, Joshua W.

**From:** thicks [thicks@bannekerventures.com]
**Sent:** Monday, July 06, 2009 6:41 PM
**To:** Doggett, Rosalyn
**Cc:** Maurice' 'Perry; arashid@bannekerventures.com; okarim@bannekerventures.com; eric.smart@bolansmart.com; Montague, Joshua W.; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
**Subject:** FW: The Jazz Economic Terms (as of June 23, 2009)

**Importance:** High

Mrs. Doggett,
We are following up with regards to items #1, 5, and 11 below. Please advise us as to the status of each. Thanks kindly.
Tiwana

**Tiwana Z. Hicks**

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

Office: (202) 393-5460

Fax: (202) 347-9047

Cell: (202) 486-1863

thicks@bannekerventures.com

---

**From:** thicks [mailto:thicks@bannekerventures.com]
**Sent:** Thursday, June 25, 2009 1:51 PM
**To:** 'Doggett, Rosalyn'
**Cc:** 'jwmontague@wmata.com'; 'MMeister@wmata.com'; 'eric.smart@bolansmart.com'; 'nbottigheimer@wmata.com'; 'emoneme@wmata.com'; 'okarim@bannekerventures.com'; 'Perry, Maurice'; 'arashid@bannekerventures.com'
**Subject:** The Jazz Economic Terms (as of June 23, 2009)
**Importance:** High

Mrs. Doggett,
As a follow-up to our conference call on June 23, 2009, below please find a status update for each item in red font.

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.



FOIA CONFIDENTIAL TREATMENT REQUESTED 

3. CHANGE OF CONTROL – We agree that there shall be no Change of Control prior to execution of the Lease Agreement. After execution of the Lease Agreement there shall be no Change of Control without WMATA's prior written approval, which shall not be unreasonably withheld. Parties are in agreement. Issue resolved.
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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.
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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.
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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 001067

**Montague, Joshua W.**

**From:** Tiwana Hicks [thicks@bannekerventures.com]
**Sent:** Monday, August 17, 2009 5:51 PM
**To:** Montague, Joshua W.; Doggett, Rosalyn
**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;
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

## Montague, Joshua W.

**From:** Doggett, Rosalyn
**Sent:** Tuesday, August 18, 2009 5:07 PM
**To:** Tiwana Hicks
**Cc:** Meister, Mark K.; Maurice' 'Perry; Moneme, Emeka; 'Omar A. Karim'; Montague, Joshua W.; Bushnaq, Tariq; Medina, Ed
**Subject:** FW: As-builts for Jazz @ Florida Avenue
**Attachments:** 1E0012 M-0613.pdf; 1E0012 M-0613.pdf; Plan and Profile Drawings.pdf

Attached are mechanical drawings, which show a small portion of a fan room above the tunnel in the northeast corner of the middle parcel. That area would need to be reserved as well. Its exact dimensions can plotted against the property line when you complete the survey.

---

**From:** Ghanta, Venkata
**Sent:** Tuesday, August 18, 2009 4:39 PM
**To:** Doggett, Rosalyn
**Cc:** Bushnaq, Tariq
**Subject:** As-builts for Jazz @ Florida Avenue

Roz,
Please see the attached mechanical as-built drawings for Jazz@ Florida Avenue JD project.

Thanks..
Venkata

enkata S. Ghanta
Joint/Adjacent Construction Engineer
WMATA Office of Joint Development and Adjacent Construction (JDAC)
3500 Pennsy Drive, Room C106
Landover, MD 20785

301-618-7737 Line
202-962-1573 Line
301-583-3006 Fax
vghanta@wmata.com
Visit the JDAC web page at
http://www.wmata.com/business/joint_development_opportunities/adjacent_construction_information.cfm



FOIA CONFIDENTIAL TREATMENT REQUESTED 

## Montague, Joshua W.

**From:** Tiwana Hicks [thicks@bannekerventures.com]
**nt:** Wednesday, August 19, 2009 10:35 AM
**.o:** 'Maurice Perry'; okarim@bannekerventures.com; Montague, Joshua W.; Medina, Ed; Moneme, Emeka; Marshall, Malcolm; Meister, Mark K.; Doggett, Rosalyn; 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
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:** Doggett, Rosalyn [mailto:RDoggett@wmata.com]
**nt:** Wednesday, August 19, 2009 7:59 AM
**.o:** 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
(301) 523-1810 cell
arim@bannekerventures.com

---



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>; 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.

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**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

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.



FOIA CONFIDENTIAL TREATMENT REQUESTED 

## Montague, Joshua W.

**From:** Doggett, Rosalyn
**nt:** Thursday, August 20, 2009 9:05 AM
**.o:** Meister, Mark K.; Moneme, Emeka
**Cc:** Montague, Joshua W.
**Subject:** RE: The Jazz - JDA and Lease Items

No, it is not. We have communicated it many times and have been told there would be an answer but have received none to date.

---

**From:** Meister, Mark K.
**Sent:** Thursday, August 20, 2009 8:51 AM
**To:** Moneme, Emeka
**Cc:** Doggett, Rosalyn
**Subject:** RE: The Jazz - JDA and Lease Items

Emeka,

By copy of this email, I am asking Roz to respond.

Mark

---

**From:** Moneme, Emeka
**Sent:** Thursday, August 20, 2009 8:25 AM
**To:** Meister, Mark K.
**bject:** Fw: The Jazz - JDA and Lease Items

Mark,

Is this the first time that we are communicating this concern/requirement?

---

**From**: Montague, Joshua W.
**To**: 'Tiwana Hicks'
**Cc**: 'Maurice' 'Perry' ; Moneme, Emeka; Meister, Mark K.; Doggett, Rosalyn; Omar A. Karim
**Sent**: Thu Aug 20 08:21:10 2009
**Subject**: RE: The Jazz - JDA and Lease Items
Tiwana,

First, the draft of the CCRs should be ready sometime today. The Scope of Work agreement should be ready shortly thereafter.

But, it is important to note that these draft agreements (as well as the Lease, JDA, etc.) are incomplete without addressing the adjacent parcels. All documents have been drafted as if you are not building on the adjacent parcels. It is essential that we get on the same page with this issue before we go any further.

What is the status of the financial/default/etc. terms that you are proposing regarding the adjacent parcels?

ou are proposing terms that WMATA is going to accept, then this will have a major impact on the Scope of Work, the CCRs, the Lease, JDA, etc.



FOIA CONFIDENTIAL TREATMENT REQUESTED 

Please let us know the status as soon as possible.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message.

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Tuesday, August 18, 2009 5:52 PM
**To:** 'Tiwana Hicks'; Montague, Joshua W.; Doggett, Rosalyn
**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

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FOIA CONFIDENTIAL TREATMENT REQUESTED 

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

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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;
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We expect to provide you with comments to the JDA and Ground Lease by Friday, August 28th. Thanks kindly.

Tiwana

Tiwana Z. Hicks
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F: (202) 393-5462
C: (202) 486-1863
thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001074

## Montague, Joshua W.

**From:** Tiwana Hicks [thicks@bannekerventures.com]
**nt:** Thursday, August 20, 2009 6:10 PM
**:** Montague, Joshua W.
**Cc:** 'Maurice' 'Perry'; 'Omar A. Karim'; John' 'Hagner; Moneme, Emeka; Meister, Mark K.; Doggett, Rosalyn
**Subject:** RE: The Jazz - JDA and Lease Items

Josh,

We have recently engaged John Hagner of Womble Carlyle Sandridge & Rice to review and negotiate both the JDA and Ground Lease. John has been fully apprised of the issues with respect to the adjacent parcels and he will be addressing those items in our comments to the JDA and Ground Lease. We expect to have those drafts prepared and sent to you by the end of next week. Thanks.

Tiwana

---

**From:** Montague, Joshua W. [mailto:jwmontague@wmata.com]
**Sent:** Thursday, August 20, 2009 7:21 AM
**To:** 'Tiwana Hicks'
**Cc:** 'Maurice' 'Perry'; Moneme, Emeka; Meister, Mark K.; Doggett, Rosalyn; Omar A. Karim
**Subject:** RE: The Jazz - JDA and Lease Items

Tiwana,

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What is the status of the financial/default/etc. terms that you are proposing regarding the adjacent parcels?

If you are proposing terms that WMATA is going to accept, then this will have a major impact on the Scope of Work, the CCRs, the Lease, JDA, etc.

Please let us know the status as soon as possible.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001075

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---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Tuesday, August 18, 2009 5:52 PM
**To:** 'Tiwana Hicks'; Montague, Joshua W.; Doggett, Rosalyn
**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.



FOIA CONFIDENTIAL TREATMENT REQUESTED 

**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;
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
(202) 486-1863
hicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Montague, Joshua W.

**From:** Maurice Perry [maurice.perry@bankofamerica.com]
**Sent:** Monday, August 24, 2009 4:25 PM
**To:** Montague, Joshua W.; Doggett, Rosalyn
**Cc:** thicks@bannekerventures.com; eric.smart@bolansmart.com; Meister, Mark K.
**Subject:** RE: BACDC Financials

Ms. Doggett,

Ms. Pesta is on vacation this week; I'll discuss your request with her next week and get back with you then.

Maurice

---

**From:** Doggett, Rosalyn [mailto:RDoggett@wmata.com]
**Sent:** Friday, August 21, 2009 11:53 AM
**To:** Perry, Maurice; Montague, Joshua W.
**Cc:** thicks@bannekerventures.com; eric.smart@bolansmart.com; Meister, Mark K.
**Subject:** RE: BACDC Financials

Maurice I am trying to see how we can get to accepting Ms. Pesta's self certification of "Shareholder's Equity." Especially since she guardedly says that BANA or BAC, above BANA, is not liable for BACDC obligations. I am thinking that if, since BACDC does not have separate financial reports, that we have BANA's independent auditor confirm in writing Ms Pesta's statement about shareholder equity and characterize the equity (cash, ownership interest in projects, accounts receivable, etc.) . Perhaps Ms. Pesta could do a balance sheet and the auditor could confirm it. Please let me know your thoughts.

---

**From:** Maurice Perry [mailto:maurice.perry@bankofamerica.com]
**Sent:** Thursday, June 25, 2009 2:16 PM
**To:** Doggett, Rosalyn
**Cc:** thicks@bannekerventures.com; eric.smart@bolansmart.com
**Subject:** BACDC Financials

Ms. Doggett,

As requested, please find attached supplementary financial data on Banc of America CDC.

Should you require additional information please give me a call to discuss.

Thanks.
Maurice Perry
Banc of America CDC

---

**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,



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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 moderate-income (between 51% and 80% of Metropolitan Statistical Area Median). We will satisfy this requirement with the Project's 20% affordable component.
9. TERM – We will agree to a 99 year lease term with the land being revalued as if vacant after 60 years. After 60 years, the base lease rate will be 5% of the land value. Also, after the first 60 years, we could agree to pay an annual escalation of 1.5%. Following the first 99 years, we would like an option to extend for an additional 99 years under the same terms of the final 39 terms of the initial lease.
10. BASE RENT – See response to #9 above. Developer agrees to WMATA's offer of 99 year lease with the land being revalued after 60 years and Developer paying 5% of the land value in lease payments.
11. CAPITAL EVENTS – We agree that WMATA participates in 10% of capital event proceeds following: (a) repayment of all debt (including any subordinated debt provided by a government agency), (b) repayment of principal of member loans/non-tax credit equity, (c) payment of 20% return on member loans/non-tax credit equity; and (d) payment of transaction costs. Parties in agreement with (a), (b) and (d). WMATA to provide any comments to (c) by July 2, 2009.

Please confirm receipt of this email. We look forward to speaking with you soon. Thanks.
Tiwana

**Tiwana Z. Hicks**

Banneker Ventures, LLC



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Montague, Joshua W.

**From:** Doggett, Rosalyn
**nt:** Tuesday, September 01, 2009 3:03 PM
**.o:** Tiwana Hicks; Meister, Mark K.; Montague, Joshua W.
**Cc:** okarim@bannekerventures.com; John' 'Hagner
**Subject:** RE: The Jazz - JDA and Lease Items

I sent you an e-mail on 8/18 in answer to question #1.

On question #2, our surveyor has just confirmed that Lot 18 was combined with Lot 31. He is going to have his staff compute the lot area tomorrow morning to make certain that the square footage shown is correct. I will let you know.

---

**From:** Tiwana Hicks [mailto:thicks@bannekerventures.com]
**Sent:** Tuesday, September 01, 2009 1:39 AM
**To:** Doggett, Rosalyn
**Cc:** okarim@bannekerventures.com; John' 'Hagner
**Subject:** RE: The Jazz - JDA and Lease Items

Mrs. Doggett,
Was a determination made with respect to the 8th Street fan shaft (point 2 below) and whether it requires a reservation? Will any additional mechanical drawings of the shaft configuration be provided to us? Also, is there any update on the Square 416 parcels? Thanks.
Tiwana

Tiwana Z. Hicks
ıneker Ventures, LLC
/29 15th Street, NW, Suite 400
Washington, D.C. 20005
T: (202) 393-5460
F: (202) 393-5462
C: (202) 486-1863
thicks@bannekerventures.com

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**From:** Doggett, Rosalyn [mailto:RDoggett@wmata.com]
**Sent:** Tuesday, August 18, 2009 10:57 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.



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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;
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**
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F: (202) 393-5462
C: (202) 486-1863
thicks@bannekerventures.com



FOIA CONFIDENTIAL TREATMENT REQUESTED 

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Wednesday, September 09, 2009 5:21 PM
**To:** Meister, Mark K.
**Cc:** Maurice' 'Perry; aives@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Doggett, Rosalyn; John' 'Hagner; Moneme, Emeka; Marshall, Malcolm; Bottigheimer, Nat
**Subject:** RE: Shaw-Howard/Florida Avenue Appraisal

**Importance:** High

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 your 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.

Capital Event Participation
Any equity or member loans to receive a 20% return prior to WMATA receiving its 10% of net proceeds. Member loans or 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

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
karim@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
x: 202-962-2396
Email: mmeister@wmata.com

---

**From:** Omar Karim [mailto:okarim@bannekerventures.com]
**Sent:** 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,

I will 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,



FOIA CONFIDENTIAL TREATMENT REQUESTED

Any word on the update appraisal results?

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

**Montague, Joshua W.**

| | |
|---|---|
| **From:** | John Hagner [JHagner@wcsr.com] |
| **Sent:** | Friday, October 16, 2009 7:16 PM |
| **To:** | Omar A. Karim; Montague, Joshua W.; Doggett, Rosalyn |
| **Cc:** | Maurice' 'Perry; 'Anthony Ives'; 'Tiwana Hicks'; Yohance S. Fuller; Goldin, Steven |
| **Subject:** | RE: WMATA Term Sheet for Sale of Shaw-Howard U/Florida Avenue Sites |
| **Attachments:** | RE: WMATA Term Sheet for Sale of Shaw-Howard U/Florida Avenue Sites ; FW: Florida Avenue - Guaranty; WINSTON-#4219577-v1D-WMATA_Term_Sheet_for_Sale_of_Shaw-Howard_U-Florida_Ave_Site.DOC; WINSTON-#4219577-v1C&1D-WMATA_Term_Sheet_for_Sale_of_Shaw-Howard_U-Florida_Ave_Site.DOC |

Josh: Attached are a revised Term Sheet and a "redline" of the changes from the version sent to you by my below e-mail at 12:41p today. My comments to your various comments follow in all caps after my name in brackets. In addition, there are two changes to Section 7.8 that were made at Mr. Karim's direction.

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:** Friday, October 16, 2009 1:18 PM
**To:** Hagner, John; Omar A. Karim; Doggett, Rosalyn
**Cc:** Maurice' 'Perry; 'Anthony Ives'; 'Tiwana Hicks'; Yohance S. Fuller; Goldin, Steven
**Subject:** RE: WMATA Term Sheet for Sale of Shaw-Howard U/Florida Avenue Sites

Here are our comments to the draft of the Term Sheet.

1. Exhibits: please provide Exhibits A and B. We will provide the ROE for Exhibit C.***[Hagner, John]*** AGREED, SUBJECT TO OUR REVIEW AND CONCURRENCE ON THE ROE. PER YOUR EARLIER E-MAIL, WE'LL LOOK AT THE PRIOR DRAFT AND CURRENT FORM AND GIVE COMMENTS. DOES THAT HAVE TO BE ATTACHED TO THE BOARD COPY?

2. Footnote 2: please remove this footnote.***[Hagner, John]*** DONE.

3. Section 6.4: The definition of "Completion of the Total Project" should include the following:

    a. Correction of any damage to WMATA property; and

    b. Satisfaction of all requirements of the WMATA's Adjacent Construction Manual.***[Hagner, John]*** BOTH WERE ADDED.

4. Section 7.7: In the last sentence, "Purchase" is misspelled.***[Hagner, John]*** CORRECTED.

5. Section 9.5: Per our meeting last night: in the second to last sentence, please remove everything after *"(collectively, "WMATA Design and Construction Standards")."****[Hagner, John]*** THIS DELETION WAS NOT MADE FOR THE REASONS EXPLAINED IN THE ATTACHED E-MAIL SENT AT 4:57 PM TODAY.



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6. Section 9.8(e): WMATA does not agree with the Developer on this issue. WMATA believes this is a reasonable request for the following reasons:

   a. WMATA needs protection which exceeds just the construction of the project. WMATA needs protection of the payments, covenants, and indemnifications under the Definitive Agreement.

   b. The Guarantor requirement was listed in the original Joint Development Solicitation.

   c. The Guarantor is a partner in the Developer that will be entering into the Definitive Agreement, and so WMATA does not understand which terms of the Definitive Agreement that the Guarantor will object to.

   d. WMATA sent the Guarantor a draft of the Guaranty Agreement on 8/11/09. Said draft included a guarantee of the "full and prompt payment and performance of all liabilities, obligations, covenants, agreements, and responsibilities of the Developer under the Joint Development Agreement, the Lease, and all of the Transaction Documents during the Term of this Guaranty." No objection has been made until now.***[Hagner, John]*** PLEASE REVIEW THE ATTACHED E-MAIL FROM MAURICE PERRY AT BANC OF AMERICA COMMUNITY DEVELOPMENT CORPORATION TO YOU DATED SEPTEMBER 30, 2009. IT IS CLEAR FROM SUCH E-MAIL THAT THE GUARANTOR HAD NOT REVIEWED OR ACCEPTED WMATA'S PROPOSED CHANGES TO THE FORM OF GUARANTY OFFERED BY THE GUARANTOR. ALSO, ON SEPTEMBER 8, 2009, OMAR KARIM SUBMITTED REVISIONS TO THE JOINT DEVELOPMENT AGREEMENT AND DEFINITIONS WHICH DESCRIBED THE GUARANTY AS FOLLOWS: "**Guaranty**. Guarantor shall guarantee the prompt commencement and Final Completion of construction of the Joint Project as and when required under the terms of this Agreement, the Lease, the Approved Development Plan, the Approved Design and Construction Documents, and the Approvals (including, without limitation, site plan and building permit requirements)." WE RESPECTFULLY BELIEVED SUCH COMMUNICATIONS MADE IT CLEAR THAT THE DEVELOPER AND GUARANTOR HAD NOT ACCEPTED OR AGREED WITH WMATA'S POSITION ON THE GUARANTY. THEREFORE, WE HAVE LEFT SECTION 9.8 AS ORIGINALLY SUBMITTED BY DEVELOPER.

7. Section 11: Our office of Risk is going to require the following insurance policies during construction activities at the requirements previously described in the Lease draft:

   a. Railroad Protection***[Hagner, John]*** THIS REQUIREMENT WAS ALREADY IN THE TERM SHEET.

   b. Commercial General Liability***[Hagner, John]*** WE HAVE ADDED THIS REQUIREMENT TO THE TERM SHEET ON THE BASIS OF WMATA BEING ADDED AS AN "ADDITIONAL INSURED."

8. Section 12: This should 60 days, rather than 150.***[Hagner, John]*** WE ASSUMED THE 150 DAYS WAS NOT THE TIME PERIOD TO FINISH THE DEFINITIVE AGREEMENT BUT HOW LONG THE TERM SHEET WOULD BE VALID BEFORE HAVING TO BE EXTENDED BY THE WMATA BOARD. SINCE THERE HAVE BEEN SUBSTANTIAL DELAYS IN GETTING TO DEFINITIVE DOCUMENTS AND THE WMATA BOARD HAS ALREADY EXTENDED THE TERM SHEET MULTIPLE TIMES, WE RESPECTFULLY REQUEST THE 150 DAYS BE RETAINED TO ALLOW FOR WMATA DELAYS IN GETTING THINGS DONE.

Please feel free to call me to discuss any issues.



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:** John Hagner [mailto:JHagner@wcsr.com]
**Sent:** Friday, October 16, 2009 12:41 PM
**To:** Omar A. Karim; Montague, Joshua W.; Doggett, Rosalyn
**Cc:** Maurice' 'Perry; 'Anthony Ives'; 'Tiwana Hicks'; Yohance S. Fuller; Goldin, Steven
**Subject:** RE: WMATA Term Sheet for Sale of Shaw-Howard U/Florida Avenue Sites

If it will save Josh or Roz some time, attached is a "clean" version of the Term Sheet submitted with the below e-mail. I had the redlining taken out to create a "clean" version. If there are some residual "redlining" changes, they are Track Changes from a prior draft. You can eliminate them by going into Track Changes and select "FINAL" on how to show the document.

John

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**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 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,



FOIA CONFIDENTIAL TREATMENT REQUESTED 

Attached please find the revised Term Sheet. The only change made to the document was the deletion of Section 9.8 (e). 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
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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001088

**Montague, Joshua W.**

| | |
|---|---|
| **From:** | John Hagner [JHagner@wcsr.com] |
| **Sent:** | Friday, October 16, 2009 4:57 PM |
| **To:** | Omar A. Karim; Montague, Joshua W.; Doggett, Rosalyn |
| **Cc:** | Maurice' 'Perry; 'Anthony Ives'; 'Tiwana Hicks'; Yohance S. Fuller; Goldin, Steven |
| **Subject:** | RE: WMATA Term Sheet for Sale of Shaw-Howard U/Florida Avenue Sites |

At the request of Yohance Fuller, below is the full text of the original Section 9.5 as submitted by the Developer:

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 and adversely affect WMATA's operations. The design and construction plans for the 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.

The language in yellow is what WMATA proposes to delete. The reasons the Developer objects to such deletion are as follows:

1. The Developer must prepare its final plans and specifications for the improvements shortly after signing the Definitive Agreement. How can final plans and specifications be prepared if the design standards can be changed at any time up until the buildings are complete? That doesn't work from a practical standpoint of getting WMATA's approval of the plans and specifications, then processing them with the D.C. Government for the building permit, and then constructing the buildings.

2. No lender can underwrite the risk of changing the foundation of the buildings once the plans and specifications have been prepared, reviewed and approved by the D.C. Government. It is an unknown cost which could make the project unable to be financed.

3. The purchase price for the land was determined in part by deducting the additional cost of constructing partially on top of WMATA's tunnel. If WMATA can unilaterally at any time change the scope and requirements of such construction, will WMATA adjust and rebate a portion of the Purchase Price to cover such additional cost?

. The proposed solution to set the WMATA Design and Construction Standards for the initial improvements only (and not for subsequent changes, renovations, etc.) has been accepted by WMATA on other projects.



FOIA CONFIDENTIAL TREATMENT REQUESTED

This is not the Developer's only response. It is limited to Section 9.5 per Yohance Fuller's instruction.

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:** Friday, October 16, 2009 1:18 PM
**To:** Hagner, John; Omar A. Karim; Doggett, Rosalyn
**Cc:** Maurice' 'Perry; 'Anthony Ives'; 'Tiwana Hicks'; Yohance S. Fuller; Goldin, Steven
**Subject:** RE: WMATA Term Sheet for Sale of Shaw-Howard U/Florida Avenue Sites

Here are our comments to the draft of the Term Sheet.

1. Exhibits: please provide Exhibits A and B. We will provide the ROE for Exhibit C.
2. Footnote 2: please remove this footnote.
3. Section 6.4: The definition of "Completion of the Total Project" should include the following:
    a. Correction of any damage to WMATA property; and
    b. Satisfaction of all requirements of the WMATA's Adjacent Construction Manual.
4. Section 7.7: In the last sentence, "Purchase" is misspelled.
5. Section 9.5: Per our meeting last night: in the second to last sentence, please remove everything after *"(collectively, "WMATA Design and Construction Standards")."*
6. Section 9.8(e): WMATA does not agree with the Developer on this issue. WMATA believes this is a reasonable request for the following reasons:
    a. WMATA needs protection which exceeds just the construction of the project. WMATA needs protection of the payments, covenants, and indemnifications under the Definitive Agreement.
    b. The Guarantor requirement was listed in the original Joint Development Solicitation.
    c. The Guarantor is a partner in the Developer that will be entering into the Definitive Agreement, and so WMATA does not understand which terms of the Definitive Agreement that the Guarantor will object to.
    d. WMATA sent the Guarantor a draft of the Guaranty Agreement on 8/11/09. Said draft included a guarantee of the "full and prompt payment and performance of all liabilities, obligations, covenants, agreements, and responsibilities of the Developer under the Joint Development Agreement, the Lease, and all of the Transaction Documents during the Term of this Guaranty." No objection has been made until now.
7. Section 11: Our office of Risk is going to require the following insurance policies during construction activities at the requirements previously described in the Lease draft:



FOIA CONFIDENTIAL TREATMENT REQUESTED 

## Montague, Joshua W.

**From:** Maurice Perry [maurice.perry@bankofamerica.com]
**Sent:** Tuesday, October 20, 2009 10:22 AM
**To:** Omar A. Karim
**Cc:** thicks@bannekerventures.com; Neil.Albert@dc.gov; Yohance S. Fuller; Montague, Joshua W.; JHagner@wcsr.com; Moneme, Emeka; Bottigheimer, Nat; Doggett, Rosalyn; Goldin, Steven
**Subject:** RE: Jazz @ Florida -- Follow Up

Josh,

As a wholly owned subsidiary of a bank BACDC can not provide an open-ended indemnification. The language in the previously provided guarantee represents the fullest extent of an indemnification BACDC can offer.

Maurice

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Tuesday, October 20, 2009 9:49 AM
**To:** 'Montague, Joshua W.'; 'Yohance S. Fuller'; 'Moneme, Emeka'; 'Bottigheimer, Nat'; 'Goldin, Steven'
**Cc:** thicks@bannekerventures.com; Neil.Albert@dc.gov; JHagner@wcsr.com; 'Doggett, Rosalyn'; Perry, Maurice
**Subject:** RE: Jazz @ Florida -- Follow Up
**Importance:** High

Josh,

1. I am awaiting Maurice to get back into the office to answer this question. However, I cannot imagine that a bank would allow an open-ended indemnification to be put on its books. Further, I can speak for the partnership in stating that we will not be pushed into including additional liabilities that WMATA does not require developers of other projects, and as such, we (BOACDC or BV) would not agree to taking on this non-standard additional indemnification.

2. Yes, under the HUD guidelines, the indemnifications provided by the Jazz will be limited to surplus cash? The restrictions that HUD requires for this type of project are standard practice for HUD deals which WMATA has signed off on previously. Since WMATA will be getting its cash in full up front, we do not see any issues that WMATA should be concerned about.

Omar

---

**From:** Montague, Joshua W. [mailto:jwmontague@wmata.com]
**Sent:** Tuesday, October 20, 2009 8:45 AM
**To:** Omar A. Karim; Yohance S. Fuller; Moneme, Emeka; Bottigheimer, Nat; Goldin, Steven
**Cc:** thicks@bannekerventures.com; Neil.Albert@dc.gov; JHagner@wcsr.com; Doggett, Rosalyn
**Subject:** RE: Jazz @ Florida -- Follow Up

Omar,

Can we get some clarification on two of the issues relating to the indemnifications:

1. Does BOACDC's status as a wholly owned subsidiary of a bank legally prevent it from taking on the indemnification requested? Are there any other legal reasons why BOACDC would be prohibited from agreeing to this?



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2. Will the indemnifications provided by the Jazz @ Florida Avenue, LLC (the Developer) under the Definitive Agreement be limited by its lender to "surplus cash"? Will the lender put any other restrictions on these indemnifications?

Please let me know as soon as you get a chance.

Thanks,

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Monday, October 19, 2009 5:33 PM
**To:** Yohance S. Fuller; Moneme, Emeka; Bottigheimer, Nat; Goldin, Steven
**Cc:** thicks@bannekerventures.com; Neil.Albert@dc.gov; Montague, Joshua W.; JHagner@wcsr.com
**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.

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
**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

---

**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
W 202.538.1278 | F 202.535.1224 | yohance.fuller@dc.gov



FOIA CONFIDENTIAL TREATMENT REQUESTED 

## Montague, Joshua W.

**From:** Montague, Joshua W.
**Sent:** Tuesday, October 20, 2009 12:22 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

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:
      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



FOIA CONFIDENTIAL TREATMENT REQUESTED

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]
**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 provide that type of guarantee. Moreover, this request is beyond what WMATA has required of other developers.



FOIA CONFIDENTIAL TREATMENT REQUESTED 

**The Jazz @ Florida Avenue Development Project**
**Developer Staff Payroll**
**In connection with change of deal from Lease to Sale**

| Staff Person | Salary Pay Period (September 09) | Salary Pay Period (October 09) | Description of Work Performed |
|---|---|---|---|
| T. Hicks – Development Manager | $ 7,500.00 | $ 7,500.00 | Attend meetings with Banc of America ("BoA") and WMATA; review of WMATA appraisal of sites under a sale scenario; supervise and engage independent appraiser to review WMATA's appraisal; review and participate in negotiation of economic terms of deal under a sale scenario; order, coordinate and review title search results in connection with sale; conference calls and meetings with attorneys to discuss sale scenario versus lease; spent significant time updating the project's financial model to change deal from long-term lease to sale; met with and negotiated terms of equity investment with investors as a result of change from lease to sale; update project schedule to reflect sale; met with entire project team to discuss impact of sale scenario on deal. |
| A. Ives – Chief Financial Officer | $ 9,166.66 | $ 9,166.66 | Update financial model; attend meetings with BoA and WMATA; analyzed updated appraisal results from WMATA appraiser; confer with independent appraiser; conference calls and meetings with attorneys; review and negotiate economic terms of deal under a sale scenario wit WMATA; participated in multiple meetings with project's various debt and equity investors to discuss impact that purchase of WMATA sites would have on project versus a long-term lease; led discussions with structuring investment of equity into project with investors as a result of purchase versus lease. |
| O. Karim – Principal | $ 12,500.00 | $ 12,500.00 | Attend meetings with BoA and WMATA to discuss change of deal from lease to sale; participated in multiple calls with WMATA staff to change Term Sheet from lease to sale structure; review of WMATA appraisal; led negotiations of economic terms of deal under a sale scenario; prepare correspondences to WMATA regarding change of deal from lease to sale; led multiple discussions with debt and equity investors as a result of change in deal structure; coordinated multiple calls with legal team to discuss impact of change of structure on deal; worked on financial model changing structure from lease to sale. |
| **Total Salaries** | **$ 29,166.66** | **$ 29,166.66** | **$29,166.66** |
| Time Allocated to Jazz | 50% | 50% | |
| **Total Salaries Allocated to Jazz (in connection with change of deal from sale to lease)** | **$14,583.33** | **$14,583.33** | |

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Montague, Joshua W.

**From:** Jonathon (COUNCIL) Kass [JKass@DCCOUNCIL.US]
**nt:** Thursday, October 22, 2009 4:06 PM
**o:** Maurice"Perry; 'Omar A. Karim'; Yohance S. Fuller; Montague, Joshua W.; John' 'Hagner; Marshall, Malcolm; Doggett, Rosalyn; Goldin, Steven
**Cc:** O'Keeffe, Carol B.; Moneme, Emeka; Catoe, John B.; Bottigheimer, Nat; Pant, Shiva K.
**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
Committee: www.dccouncil.us/publicworksandtransportation

---

**From:** Goldin, Steven [mailto:sgoldin@wmata.com]
**Sent:** Thursday, October 22, 2009 3:20 PM
**To:** Goldin, Steven; 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; Kass, Jonathon (COUNCIL); Fuller, Yohance (DMPED); Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
**Cc:** Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat
**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

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.

The lease will be as it was when a lease was first discussed (prior to my arrival): a capitalized payment at closing, an annual % participation in net operating income and a % participation upon various capital events (refinance, sale, etc). My understanding is that the participations had been 1.5% and 10% respectively.

By way of this e-mail, I am asking the following actions to be taken:

Omar: Please advise whether you as the developer are in agreement

Maurice: Please advise whether Bank of America CDC is in agreement

Jonathon: Please confirm that Chairman Graham is in agreement

Yohance: Please Confirm that Mr. Albert is in agreement

Roz/Malcolm: Please call Richard Harps and explain that we need the updated appraisal in hand by 10/30. Please initiate a new BAIS.

Josh/John: Please revise the term sheet to reflect the lease and discuss the co-tenancy agreement

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616



FOIA CONFIDENTIAL TREATMENT REQUESTED

**Montague, Joshua W.**

| | |
|---|---|
| **From:** | John Hagner [JHagner@wcsr.com] |
| **ent:** | Thursday, November 05, 2009 2:16 AM |
| **To:** | aives@bannekerventures.com; okarim@bannekerventures.com; thicks@bannekerventures.com; Montague, Joshua W.; O'Keeffe, Carol B.; Bottigheimer, Nat |
| **Cc:** | Yohance S. Fuller; jkass@dccouncil.us; Marshall, Malcolm; Meister, Mark K.; Doggett, Rosalyn; Goldin, Steven |
| **Subject:** | RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites |

Nat: Thanks for your response. Notwithstanding the late hour, I feel compelled to respond tonight while this is fresh in everyone's thinking. This is not my best response because of fatigue at this hour. I'll try to be brief and to the point.

One of the reasons I made my earlier response is for the first time since working on multiple WMATA joint development projects since 2003, I have access to the Appraisal from Harps & Harps and the Rent Calculation from Integra Realty Resources. My arguments are based on statements in the October 30, 2009 Rent Calculation you provided.

Before responding to the specific statements, let me first offer an observation on WMATA's return on its land. In my experience, institutional investors consider their "total return" on their investments, not just their net income. Total return on land for a tax-exempt landlord from a ground lease has three components: (1) the rent (or net operating income) from the leasing of the land; plus (2) the appreciation (or depreciation) in the value of the land over the term of the lease, assuming the tenant does not have a fixed-price purchase option for the land (which the Developer does not have); plus (3) the discounted present value of the improvements which revert to the landlord upon the expiration of the lease. In the District of Columbia, commercial land has not depreciated over any long period of time since the British burned the Capitol in 1814. None of your comments acknowledge that WMATA receives the entire appreciation in the value of the land over the term of the lease and the value of the reverted improvements as part of its "return" on the land. Even if WMATA considers such appreciation an "unrealized gain" on its land, it is still a gain that institutional investors recognize. WMATA could realize and monetize such gain through a financing transaction if it chose to do so

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.

'ere 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 land-owner, comparable but slightly below the long-term average increase in value until the next reset. The language we've provided is intended to keep us at rent levels close to market value for each year of the remaining 39 years of the lease without giving away the game, as your proposals would appear to have us do.***[Hagner, John]*** BASED ON MY EASONS PROVIDED ABOVE, I RESPECTFULLY DISAGREE WITH YOUR ANALYSIS. THE APPRAISERS CONSIDER THESE FACTORS IN SETTING THE FAIR MARKET RENT.

Other premises:



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At Twinbrook, we negotiated a lease with JBG with precisely the terms we proposed.***[Hagner, John]*** DID JBG HAVE THE BENEFIT OF REVIEWING THE APPRIASAL AND RENT CALCULATION SO IT KNEW HOW WMATA DETERMINED THE RENT? IF IT DID NOT, IT MAY NOT HAVE KNOWN HOW WMATA DETERMINED THE RENT. IF IT DID, THEN, ASSUMING ALL OTHER ECONOMIC TERMS OF JBG'S LEASE WERE SIMILAR TO THE DEVELOPER'S, JBG ACCEPTED WHAT WE ARE OBJECTING TO.

Long-term leases are finance-able at terms less than 99 years.***[Hagner, John]*** TRUE, BUT IN MY EXPERIENCE, THEY CANNOT BE FINANCED WITH UNLIMITED INCREASES IN THE RENT EVERY TEN YEARS.

If you have a concern about lender certainty and project finance-ability, as you suggest you do, we are open to proposals that do not systematically erode Metro's ability to realize the value of its land over the period 60-99. We're open to a capitalization of future rent at year 60 for the period 60-99, and we're open to rent levels re-set every decade to be constant for the decade, but if rent levels are reset to be constant for a decade for the purpose of certainty, then they should be set above market for the first five years of the decade with the expectation that they'd be below market the second half. Maybe you have other thoughts.***[Hagner, John]*** PLEASE SEE MY PROPOSALS ABOVE.

Until we hear a counter that protects our value in a market-rate setting from years 60-99, the proposal we've made is our final proposal.

Respectfully,

Nat

---

**From:** John Hagner [mailto:JHagner@wcsr.com]
**Sent:** Wednesday, November 04, 2009 6:24 PM
**To:** O'Keeffe, Carol B.; Montague, Joshua W.
**Cc:** Anthony (Tony) James Ives(aives@bannekerventures.com); Omar A. Karim Esquire (okarim@bannekerventures.com); Tiwana Z. HicksEsquire (thicks@bannekerventures.com)
**Subject:** RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

Carol and Josh: Let me share my response to the final change mandated by WMATA. The effects of this change are as follows:

1. WMATA will charge more than the Fair Rental Value of the Lease Property after the 61st lease year. If the Monthly Lease Payments are based on Fair Rental Value, then the 3% escalation either has to be considered in setting the Monthly Lease Payments or the escalation is an above-market imposition on the DEVELOPER. When the Fair Rental Value is determined by the three appraisers, their determination is for a period of years. WMATA is not recognizing that fact and holding the Monthly Lease Payments to the Fair Rental Value during the time period determined by the three appraisers.

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



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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

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.

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**From:** O'Keeffe, Carol B.
**Sent:** Wednesday, November 04, 2009 5:43 PM
**To:** John Hagner
**Cc:** Montague, Joshua W.
**Subject:** RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

John, Josh is sending a revision that puts in a different reset that Nat will accept; he had not agreed to 99 years and is only willing to go forward with the reset provisions that Josh will send. We have spoken with Mr. Karim who seems to have accepted it, but this is an impossible way to do a deal. I know that you are not causing it.



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**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. "Redline...#157; of the Amended and Restated Term Sheet against the version that we provided to WMATA on 'ovember 2, 2009 at 6:20p.

The revised language on Capital Events was taken from the term sheet for Rhode Island Ave., and the concept of adjusting the base rent for additional density stops after the first 60 years because the re-appraisal will be based on the Leased Property as if vacant, thereby assuming the maximum density has been constructed on the land.

Please contact me with any questions or comments.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

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## Montague, Joshua W.

**From:** Omar A. Karim [okarim@bannekerventures.com]
**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
**Attachments:** WMATA Amended Term Sheet for Lease of Florida Ave Sites (Developer comments as of 3-16-10).doc

**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.

Can 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.



FOIA CONFIDENTIAL TREATMENT REQUESTED 

Sincerely,

Josh Montague

sistant General Counsel
..ashington 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

Josh,

Thanks for the term sheet. Can you forward this as a redline to the last version. Would make it much easier for 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>
**Subject:** RE: Florida Avenue - Term Sheet

nar 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,

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, 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.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001108

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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## Montague, Joshua W.

**From:** Goldin, Steven
**Sent:** Sunday, March 14, 2010 6:15 PM
**To:** Bottigheimer, Nat; Doggett, Rosalyn; Montague, Joshua W.
**Subject:** Re: Florida Avenue

When we met with Omar about a week and a half ago, my recollection is he admitted that BoA was no longer involved. That is why we talked about language in the JDA that talked about a partner equal or better to BoA in terms of financial strength.
Roz and Josh: did you hear the same thing I did? I recall us telling him this was the weak link in the Board Memorandum.
Steve

---

**From:** Bottigheimer, Nat
**To:** Goldin, Steven; Doggett, Rosalyn
**Sent:** Sun Mar 14 18:06:54 2010
**Subject:** Fw: Florida Avenue

Need info on this ASAP

---

**From:** Pant, Shiva K.
**To:** Bottigheimer, Nat
**Sent:** Sun Mar 14 15:32:43 2010
**Subject:** Fw: Florida Avenue
Nat--has the developer indicated if and when he would give us information regarding a developer partner? Have we had any conversations with him regarding this missing piece?

Thx

Shiva

Shiva K. Pant
Chief of Staff
Office of the General Manager
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Direct: 202-962-1721
Cell: 202-744-7587
Spant@wmata.com

---

**From:** Fuller, Yohance (EOM)
**To:** Pant, Shiva K.; Catoe, John B.; Bottigheimer, Nat; O'Keeffe, Carol B.; Green, Jennifer A.
**Cc:** Neil.Albert@dc.gov
**Sent:** Sun Mar 14 13:14:22 2010
**Subject:** RE: Florida Avenue
Can we get a status update on the questions posted below?

---

**From:** Fuller, Yohance (EOM)
**Sent:** Friday, March 12, 2010 7:59 PM
**To:** 'Pant, Shiva K.'; Catoe, John B.; Bottigheimer, Nat; O'Keeffe, Carol B.; Green, Jennifer A.
**Cc:** Albert, Neil (EOM)



FOIA CONFIDENTIAL TREATMENT REQUESTED

**Subject:** RE: Florida Avenue
**Importance:** High

Shiva et al.,

Thanks for sharing the memo in a timely manner, however there are some areas of concern – particularly the bullet point that communicates the absence of a development partner. This is exactly why it was requested that the information first be reviewed.

Unless there is a correspondence (i.e., letter, email, etc.), the bullet point should be removed from the memorandum prior to the distribution to any board members. The appropriate due diligence was neither engaged nor confirmed and must be corrected immediately. Please advise as to what corrective measures are being taken by WMATA before this memo is shared with Board members. Please provide this information to Board member Albert ASAP as this information, or lack thereof is critical to the continuation of this project.

Regards,

Yohance

---

**From:** Pant, Shiva K. [mailto:SPant@wmata.com]
**Sent:** Friday, March 12, 2010 6:52 PM
**To:** Fuller, Yohance (EOM)
**Cc:** Catoe, John B.; Bottigheimer, Nat; O'Keeffe, Carol B.; Pant, Shiva K.; Green, Jennifer A.
**Subject:** Florida Avenue

Hi Yohance:

As per the request of Mr. Albert to the GM, attached is the final draft of the memorandum that the GM had requested from Nat. This provides an update on the Florida Avenue proposal. The points outlined in this memorandum will be presented in Executive Session.

The power point presentation will not be as detailed as in such transactions, the terms under negotiation are not discussed publicly until the arrangement is ready for approval.

Please let Mr. Albert know about this transmittal and that staff will be discussing this matter with Mr. Graham on Monday.

Hope this is helpful to Mr. Albert.

Thanks

Shiva K. Pant
Chief of Staff
Office of the General Manager
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Direct: 202-962-1721
Cell: 202-744-7587
spant@wmata.com



FOIA CONFIDENTIAL TREATMENT REQUESTED

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:
D1, D3, D6, P6,
70, 71, 80, X2

*A District of Columbia, Maryland and Virginia Transit Partnership*

S2032B

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**
600 FIFTH STREET N.W. WASHINGTON, D.C. 20001

metro

Check Date: Jul/23/2010
Check No.: 679308

Page 1 of 1

Vendor Number: 0000003639

| Invoice Date | Invoice Number | Voucher ID | Purch Order | Gross Amount | Discount Taken | Paid Amount |
|---|---|---|---|---|---|---|
| Jul/15/2010 | MSC780 | 00314012 | | 100,216.76 | 0.00 | 100,216.76 |

| Check Number | Date | Total Gross Amount | Total Discounts | Total Paid Amount |
|---|---|---|---|---|
| 679308 | Jul/23/2010 | $100,216.76 | $0.00 | $100,216.76 |

TO REMOVE LIFT CHECK, FOLD, CREASE AND TEAR ALONG PERFORATION

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
600 FIFTH STREET N.W. WASHINGTON, D.C. 20001

679308

metro

Vendor Number: 0000003639

| Check No. | Date | Net Amount |
|---|---|---|
| 679308 | Jul/23/2010 | $100,216.76 |

Pay: ONE HUNDRED THOUSAND TWO HUNDRED SIXTEEN AND 76/100 DOLLARS

To the Order Of: BANNEKER VENTURES, LLC
C/O Chas A Kaan
729 15th Street 15th Street NW Suite 400
Washington, DC 20005

Ray Smith
PLEASE REF OF WMATA

⑈679308⑈ ⑆254070019⑆ 207990006462 5 ⑈

PLEASE REMOVE BEFORE CASHING

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**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**

600 Fifth Street, NW
'ashington, DC 20001
202/962-1234

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

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Ayes: 7 - Mr. Benjamin, Mrs. Hudgins, Mr. Albert, Ms. Hewlett, Mr. Zimmerman, Mr. Graham and Mr. Downey

**Report by Finance, Administration and Oversight 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

**Doggett, Rosalyn**

| | |
|---|---|
| **From:** | Sequeira, Loyda |
| **Sent:** | Friday, October 16, 2009 6:40 PM |
| **To:** | Moneme, Emeka; Doggett, Rosalyn; Yohance S. Fuller; jkass@dccouncil.us |
| **Cc:** | Montague, Joshua W.; Goldin, Steven; Pant, Shiva K. |
| **Subject:** | RE: BAIS 100527 Sale of FL Ave Joint Development Site |

Hi,

Please see revision below in bold/red. Let me know if this is good to go. Thanks,

**Loyda**

**DESCRIPTION:**

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project will feature ground floor retail along Florida Avenue, with four stories of housing above, for a minimum of 100,000 sf. If additional density can be achieved, Metro will be compensated. At a minimum, the project will include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built); however, the developer is exploring financing to extend affordability.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated a term sheet for disposition of the development site.

The project was initially proposed as a lease; however, the development team subsequently gained control of additional adjacent land on 9th Street and proposes to combine that land with the two of the three Metro parcels between 8th and 9th streets. The combined site will allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. The sale of the site will also allow the three sites to be financed and developed as one project. While these advantages would hold also for a lease, in the event of a lease default there is a high risk disadvantage to Metro, namely, that Metro could not gain effective control of Metro land under a portion of the building constructed on combined Metro land and development team land. For this reason, a sale is preferable.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities will be reserved in perpetuity for Metro.

**A sale will provide for reversion of the property to Metro in the event that the developer does not commence construction of the project within three years of executing the sales agreement. However, the Metro Board may issue a one-time extension of one year.**

Metro will receive 79% (its share of the total size of the development parcel) of the value of any bonus density granted the development team by the District of Columbia.

The negotiated sale agreement will be brought to the Board for approval within the extension period which ends in December 2009.

**From:** Moneme, Emeka
**Sent:** Friday, October 16, 2009 6:33 PM
**To:** Yohance S. Fuller; Sequeira, Loyda; Doggett, Rosalyn
**Cc:** Montague, Joshua W.; Goldin, Steven
**Subject:** Re: BAIS 100527 Sale of FL Ave Joint Development Site

Loyda, you got it?

---

**From:** Yohance (EOM) Fuller
**To:** Moneme, Emeka; Sequeira, Loyda; Doggett, Rosalyn
**Cc:** Montague, Joshua W.; Goldin, Steven
**Sent:** Fri Oct 16 18:25:33 2009
**Subject:** RE: BAIS 100527 Sale of FL Ave Joint Development Site
Roz –

I think it looks good. I made a minor edit to reflect that the one time extension should be one year.

"A sale will provide for reversion of the property to Metro in the event that the developer does not commence construction of the project within three years of executing the sales agreement. However, the Board may issue a one-time extension of a year."

---

**From:** Doggett, Rosalyn [mailto:RDoggett@wmata.com]
**Sent:** Friday, October 16, 2009 6:18 PM
**To:** Moneme, Emeka; Sequeira, Loyda
**Cc:** Fuller, Yohance (EOM); Goldin, Steven; Montague, Joshua W.
**Subject:** BAIS 100527 Sale of FL Ave Joint Development Site

Per your request, the BAIS language regarding reversion will be revised as follows on Monday:

"A sale will provide for reversion of the property to Metro in the event that the developer does not commence construction of the project within three years of executing the sales agreement. However, the Board may issue a one-time extension."

Yohance, please confirm that this language is what you intended and discussed with CM Graham. It would be consistent with the term sheet negotiated by Metro staff and Banneker over the past few days.

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

**From:** Joshua W. Montague
**Subject:** Fwd: Re: Florida Avenue: Draft of the JDA / Lease

>>> "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
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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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:
Routes D1, D3, D6, P6, 70, 71, 80, X2

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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 <u>after</u> 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

Carol B. O'Keeffe
General Counsel

Attachments

cc: Chairman and Members of the Board, WMATA
Richard Sarles, General Manager

# SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE: PROPOSAL SUBMISSION REQUIREMENTS

## SECTION 1: ADMINISTRATIVE AND CONTRACTUAL INFORMATION

### 1.1. Issuing Information

This Joint Development Solicitation (JDS) is issued in accordance with WMATA's Joint Development Policies and Guidelines, Revised July 21, 2005, as may be amended, included as Attachment D to this JDS. The three parcels that comprise the Joint Development Site in this solicitation are available primarily under a long-term lease, as WMATA's preference is to lease, rather than sell, its property. If a sale is proposed, the Proposal must clearly demonstrate that a sale is more advantageous to WMATA than a long-term lease. WMATA reserves the right to select different Developers for individual parcels.

### 1.2. Purpose and Scope

This JDS is intended to provide interested Developers with sufficient summary information about WMATA's requirements to facilitate Proposal preparation. It contains instructions on Proposal content and format, but does not attempt to define all of WMATA's Joint Development contract requirements in detail. Certain contract requirements are non-negotiable.

### 1.3. Amendments and Supplements to JDS

WMATA reserves the right to issue Amendments and/or Supplements to this JDS. Developers will be required to acknowledge in writing the receipt of an Amendment and/or Supplement.

### 1.4. Acceptance/Rejection of Proposals

This JDS does not commit WMATA to designate a Selected Developer or to enter into a Development Agreement. WMATA reserves the right to accept or reject any or all Proposals.

### 1.5. Acceptance of Terms and Conditions

By submitting a Proposal, a Developer is deemed to have agreed to and accepted all terms and conditions set forth in this JDS. Notwithstanding the foregoing, WMATA reserves the right to amend or modify any of the terms and conditions.

### 1.6. Selected Developer Status

A designation as Selected Developer for a Joint Development Site does not mean WMATA accepts the Proposal without further negotiation. Rather, the Developer's Proposal is the foundation for further negotiation and WMATA reserves the right to negotiate a Development Agreement with a Selected Developer containing benefits to WMATA that exceed those set forth in the Proposal.

### 1.7. Binding Agreement

An executed Development Agreement, approved by the WMATA Board of Directors, is the only binding commitment of and by WMATA with respect to a Joint Development Site. Designation of a Selected Developer, WMATA's agreement to a Term Sheet or any conduct or oral representations by WMATA shall not in any way constitute a binding obligation or commitment by WMATA. In submitting a Proposal, the Developer acknowledges it will have no legal or equitable right to, or interest in, any Joint Development Site except as set forth in an executed Development Agreement.

### 1.8. Schedule of Activities

| Item | Date |
|---|---|
| Request for Proposals | AUG 24, 2007 |
| Proposals Due | OCT 5, 2007 |
| Meetings with Developers (if required) | NOV/DEC 2007 |
| Final Proposals Due (if required) | DEC 2007/ JAN 2008 |

### 1.9. Costs

WMATA shall not be liable for any costs incurred by a Developer and/or Development Team responding to this JDS or any costs incurred with respect to the negotiation of the Development Agreement and related final documentation.

### 1.10. Approvals

The designation of a Selected Developer and the terms of a Development Agreement negotiated pursuant to this JDS are subject to the approval of the WMATA Board of Directors and the Federal Transit Administration of the U.S. Department of Transportation (FTA).



FOIA CONFIDENTIAL TREATMENT REQUESTED

**1.11. Pre-Proposal Conference**
Intentionally omitted

**1.12. Inspections**
Intentionally omitted

**1.13. Inquiries**
Inquiries concerning this JDS are to be submitted in writing to:

Mr. Nat Bottigheimer
Contracting Officer
Office of Property Development
and Management
Washington Metropolitan Area
Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Any written response made by WMATA's Contracting Officer will be disseminated to all Developers from whom a Proposal was requested. Oral responses are not binding.

**1.14. Closing Date for Proposal Submission**
One original and 10 copies of the Proposal must be received in a sealed package not later than 3 p.m. on Friday, **October 5, 2007** (Closing Date) addressed as provided in Section 2.7.

**1.15. Late Proposals**
Any Proposal received by WMATA after the Closing Date shall be considered a Late Proposal. A Late Proposal may be accepted and evaluated by WMATA at the sole discretion of WMATA's Contracting Officer.

**1.16. Jurisdictional and Community Participation Requirements**
Prior to submitting a Proposal, Developers are required to meet with jurisdictional representatives from the Office of Planning and interested community organizations, including the Advisory Neighborhood Commission, to share information about a pending Proposal submission to WMATA and to seek their views. Failure to comply with this requirement may result in a Proposal's being rejected. WMATA will provide a contact list to each Developer from whom a Proposal is being requested.

**1.17. WMATA Facilities**
WMATA Facilities are critical to the efficient operation of the transit system and must be accommodated in the site plan. Information on the WMATA facilities beneath the Joint Development Site was provided with the advertisement requiring a May 31, 2007 proposal.

**SECTION 2: PROPOSAL PREPARATION/ FORMAT/CONTENT/SUBMISSION**

**2.1. General**
To be considered, a Developer must submit a complete response to this JDS. WMATA encourages creative and innovative Proposals which promote Transit-Oriented Development consistent with local land use policies. Failure to respond with the requisite information may result in a Developer's being eliminated from consideration.

**2.2. Proposal Submission Structure**
Proposals must be submitted in **two separate**, 8.5 x 11 inch bound volumes with Volume 1 containing Technical Information and Volume 2 containing Economic Information.

The contents of each volume must comply with Section 2.3 and Section 2.4 of this JDS. Proposals should include the identical titles and numbering for each subsection as set forth in this JDS. NOTE: No financial information is to be included or referenced in Volume 1.

**2.3. Proposal Contents: Volume 1–Technical Information**

A. Transmittal Letter -- a letter signed by an officer authorized to make a binding commitment for the Developer which states that the Proposal is valid for a minimum of 180 days from the date of submission and that if selected, the Developer will negotiate in good faith with WMATA.

B. Completed Proposal Form (3 pages) -- See ATTACHMENT A.

C. Table of Contents.

D. Executive Summary <u>excluding</u> all financial information (5 pages maximum).

E. Development Team Information



FOIA CONFIDENTIAL TREATMENT REQUESTED

1. A description of the Developer and the proposed Development Team and the role of each principal member.

2. A statement that the Developer has the power and authority to enter into a Development Agreement and all final documentation as required by WMATA without the consent or joinder of any other party or authority.

F. Development Entity

1. A description of the Developer's business entity and, if a different entity will be formed, details of the structure of this other entity.

2. A detailed description of how the Project's ownership and management will be structured.

G. A proposed site plan and a description of land uses, including an explanation of how the Project complies with Transit-Oriented Development principles. The site plans must show building elevations and heights with number of stories.

Additionally, one jpeg on a disk and one full color visual of the site plan at least 2' by 3' in size must accompany the Proposal. The visual may be rolled up or mounted on posterboard.

H. An explanation of the anticipated impact that the Project will have, if any, on WMATA Facilities beneath the sites. Information on the WMATA facilities was provided with the advertisement for which proposals were requested by May 31, 2007.

I. The proposed Project schedule, starting in January 2008, in Microsoft Project or similar format, which at a minimum includes the following tasks and milestones, if applicable:

1. Term Sheet negotiations (assume 120 calendar days from the Proposal submission);

2. Approval of Selected Developer and Term Sheet by WMATA's Board of Directors (assume 30 calendar days from conclusion of Term Sheet negotiations);

3. Development Agreement and final documentation negotiations and execution (assume 120 calendar days from Selected Developer and Term Sheet approval);

4. Approval of Development Agreement and final documentation by WMATA's Board of Directors (assume 30 calendar days from conclusion of Development Agreement negotiations);

5. Agreement(s) for the acquisition of parcels to be assembled with the Joint Development Site, if applicable;

6. Concept plan preparation and approval;

7. Intentionally omitted.

8. Development plan preparation and approval, including interim WMATA Replacement Facilities plan (allow 30 calendar days for WMATA approval);

9. Local and other governmental approvals and actions (zoning, site plan, alley closings, grants, etc., as applicable);

10. Project financing approval;

11. Schematic design and construction document preparation and approval (allow 25 business days for WMATA approval of 35% construction documents, 20 business days for WMATA approval of 65% construction documents, and 15 business days for WMATA approval of 100% construction documents);

NOTE: if documents are not approved, WMATA comments must be addressed and resubmitted for approval.

12. Local permitting process;

13. Intentionally omitted.

14. Project construction period (per phase, if applicable);

15. Initial occupancy; and

16. Stabilization period.



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J. Zoning

1. The existing zoning classification and, if a change will be sought, the proposed zoning category.

2. The permitted FAR (floor area ratio) or other density measure, and the proposed FAR or other density measure, as applicable.

K. The proposed business relationship with WMATA and the proposed terms (lease, sale, etc.) including, but not limited to, the following:

Lease (WMATA preference is 60 years).

1. Identification of the portion of the Joint Development Site to be leased by location and approximate land area. (NOTE: The leased premises will exclude all WMATA Reserved Areas and Interests.)

Sale

1. Identification of the portion of the Joint Development Site proposed to be purchased in fee simple by location and approximate land area. (NOTE: The sale will exclude all WMATA Reserved Areas and Interests.)

2. An explanation of why the Project should not be developed under a lease and why a sale is more advantageous to WMATA than a long-term lease.

L. A market analysis and marketing strategy for the proposed uses of the WMATA joint development site.

M. A summary (specific financial analysis required in Economic Section) of the Project's impact on the tax base of the local jurisdiction as follows:

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

N. A statement identifying each of the community organizations that the Developer has met with and the meeting dates; the specific information that the Developer shared; the reaction of each community organization to the proposed development concept; the issues raised by each community organization; and how the Proposal addresses these issues. See Section 1.16.

O. A statement describing the Developer's contact with local jurisdiction staff, (representatives' names and meeting dates) and the views and expectations of the local jurisdiction regarding the Project, including any existing or anticipated jurisdictional issues or concerns. See Section 1.16.

P. A statement on whether the Project's feasibility is contingent on any local, state or federal government action or financial support (including a change in regulations; street or alley closing; funding, including guarantees and issuance of tax-exempt bonds; financing and credit enhancements; leasing of space; granting of access to the Joint Development Site; and the justification and process for obtaining government support).

Q. Statements that:

1. The Project is compatible with local land use requirements.

2. The Project will conform to all applicable federal, state and local laws, regulations and ordinances including all federal and relevant local environmental regulations.

R. A quantitative analysis of the Project's beneficial effect on WMATA's total daily transit ridership will be performed by WMATA and will be part of the evaluation of Proposals.

S. A statement identifying the past, current or anticipated contractual or financial relationship of any member of the Development Team (including but not limited to, the Developer, partners or co-venturers) with WMATA or any of its staff or Board Members. The Development Team must also disclose any contractual or financial relationship which may give the appearance of a conflict of interest.



FOIA CONFIDENTIAL TREATMENT REQUESTED

T. The following information about Developer's previous projects:

1. Illustrative materials on three recent successful projects of similar or comparable scope for which substantial financing was obtained.

2. The sources and amounts of debt and equity capital that were raised in previous projects.

U. A list of any projects on which the Developer, its parent company, or any member of the Development Team has defaulted or declared bankruptcy and an explanation of each default or bankruptcy.

V. Detailed information regarding any criminal indictments and felony or fraud convictions of the Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team.

W. A statement indicating whether the Developer is willing to include Disadvantaged Business Enterprises ("DBEs"), as defined in Section 6, in its Project. WMATA encourages Developers to include DBEs and will assist Developers in identifying such firms.

X. If the proposed Project consists of an assemblage of the WMATA Joint Development Site with adjacent property, a statement identifying the adjacent property ownership, and if the property owner and the Developer are not the same, an executed agreement between the property owner and the Developer defining the property owner's participation, if any, in the Project.

Y. Any other information to assist WMATA in its evaluation of the Proposal, including a statement of why WMATA should select the Developer and its Development Team.

**2.4. Proposal Contents: Volume 2 – Economic Information**

A. Table of Contents.

B. Executive Summary of economic information only.

C. The Developer's estimated fair market value of WMATA's land or interest, how the value was derived and the assumptions underlying the value.

D. If the proposed business relationship with WMATA is a Lease (the term must be specified and preferably will be 60 years):

1. A statement that the Developer will pay WMATA a non-refundable option fee of $100,000 for the right to negotiate a Development Agreement upon designation as Selected Developer and approval of the Term Sheet. This fee is separate and distinct from the other payments, deposits and fees which WMATA requires.

2. The amount and timing of pre-development rent to be paid to WMATA during the interval period after the Development Agreement is executed but before the Project produces income (include the estimated length of this period).

3. The guaranteed base rent to be paid to WMATA throughout the term of the lease, including escalations. The description of escalations must include the method used to calculate escalations, their timing, and the projected amount of each escalation.

4. The method of adjusting the base rent if it does not commence by the date projected and/or the final approved density is greater than that proposed.

WMATA expects that the present value of its financial return will not be diminished by delays in the development process.

5. How any environmental remediation costs will be handled.

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

7. WMATA's share of proceeds from a capital event such as an assignment of the leasehold interest, transfer of interest



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in the Developer's business entity, refinancing or sale of the Project, or any other capital event after construction.

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

9. Intentionally omitted

E. If the proposed business relationship with WMATA is a Sale:

1. A statement that the Developer will pay WMATA a non-refundable option fee of $100,000 for the right to negotiate a Development Agreement upon designation as Selected Developer and approval of the Term Sheet. This fee is separate and distinct from the purchase price and the other payments, deposits and fees WMATA requires.

2. The amount and timing of pre-development fees to be paid to WMATA during the interval period after the Development Agreement is executed but before WMATA realizes income from the sale (include the estimated length of this period).

3. The proposed purchase price for each portion of the Joint Development Site including:

a. The schedule of purchase price escalations if the sale is not completed by the date projected.

WMATA expects that the present value of its financial return will not be diminished by delays in the development process.

b. The method of adjusting the purchase price if the final approved density is greater than that proposed.

4. How any environmental remediation costs will be handled.

5. Proposed business arrangement under which WMATA will retain an interest in any development rights in excess of those used by the development constructed pursuant to the Proposal. Under such an arrangement, WMATA will receive payments over and above the purchase price if, upon subsequent redevelopment of the Joint Development Site within 25 years of closing, the redeveloped density is greater than the original density.

6. Identification of any additional payments to WMATA based upon factors chosen by the Developer.

F. A summary table of the sources (including debt, equity and other financing) and uses of funds to design and construct the Project.

G. A 15-year pre-development, construction and operating period cash flow statement which starts in October 2007. It should include each separate phase of development and land use type by phase and contain at a minimum:

1. The following assumptions:

**Financing**
Construction loan rate, term and amount
Permanent loan rate, term and amount
Loan-to-value ratio
Equity as a percentage of total construction costs
**Revenues**
Office rent ($/GSF and #GSF)
Retail rent ($/GSF and #GSF)
Residential ($/DU and #DU)
Parking
Other revenues
**Construction Costs**
Total hard costs
Total soft costs (also as a percentage of total hard costs)
Cost of improvements on a unit basis ($/FAR SF for office and retail, $/DU)
Cost per structured parking space
Cost per surface parking space
Land value per FAR SF
Ground rent to WMATA
**Operating Costs**
Operating Expenses (in $, $/GSF and as a percentage of revenues)

2. The following line items presented



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as a pro forma on an annual basis:

**Sources**
Equity
Construction Financing
Permanent Financing
Other Financing
Total Financing
**Revenues**
Office
Residential
Retail
Parking
Other Revenues
Total Gross Revenues
Total Net Revenues (less vacancy)
**Uses**
WMATA Rent or Sales Price (as applicable)
Construction Costs
Soft - by line item
Hard - by line item
Total
Operating Expenses (all non-debt Operating Costs, e.g.: direct costs, G&A, taxes, legal, marketing, commissions, etc.)
Net Operating Income
Debt Service (including any fees or expenses associated with loans)
Net Cash Flow (defined as revenue less operating expenses, debt service and ground rent to WMATA if applicable)
Percentage Rent to WMATA
Distributions to Investors
Free Cash Flow
**Returns**
Developer's Internal Rate of Return
Return on Investment
Return on Equity

NOTE: The pro forma (and any budgets in other parts of the Proposal) should clearly show all of the fees and income that the Developer, its partners, and affiliates receive from the Project. Those line items should be taken from the pro forma and shown together on the spreadsheet as individual line items in a separate report. Annual replacement reserves (total, $/GSF and $/DU) should also be broken out and shown).

3. The analysis must be presented in current dollars with an annual escalation rate of 3%.

4. All financial models must be submitted to WMATA on disk as well as hard copy. All financial information must be linked in a single spreadsheet, and all files must be in Microsoft Excel and retain all cell relationships.

H. A detailed financial analysis, with assumptions given, of the Project's impact on the tax base of the local jurisdiction as follows:

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

I. Copies of Developer's balance sheets, income statements and sources and uses of funds statements for the past three fiscal years.

J. Statements regarding the Developer's financial creditworthiness and past development experience which can be verified, including the following:

The names and addresses of at least three commercial or institutional credit references and a letter authorizing each credit reference to respond to inquiries from WMATA. At least two of the references should be lending institutions.

**2.5. Proposal Security**
Each Proposal must be accompanied by Proposal Security in the amount of One Hundred Thousand Dollars ($100,000). (Alternative Proposals for the same Joint Development Site require only one Proposal Security.) Acceptable forms of Proposal Security include a proposal bond in the form set forth in ATTACHMENT B, a bank letter of credit in the form set forth in ATTACHMENT C, a cashier's check, certified check or money order. All Proposal Security must be drawn on a U.S. based national bank and contain the following:

At top of Proposal Security document, insert the name of the Joint Development Site _____.



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WMATA will hold all funds that can be deposited into a financial institution in an interest-bearing account, and interest will be paid on such funds. No later than 15 business days after the WMATA Board of Directors identifies and approves the Selected Developer for a specific Joint Development Site, the Proposal Security will be returned to all Developers other than the designated Selected Developer. WMATA shall retain the designated Selected Developer's Proposal Security until a Development Agreement is executed and provisions are made with respect to the disposition of the Proposal Security in the Development Agreement.

**2.6. Alternative Proposals**
A Developer may submit alternative Development Proposals for the Joint Development Site and its individual parcels.

**2.7. Submission of Proposal**
A complete Proposal shall include the items set forth in Section 2.3. and Section 2.4. and the requisite Proposal Security. On or before the Closing Date, one original and 15 copies of the Proposal (marked Proposal for Shaw Howard/Florida Avenue JDS) must be submitted in a sealed package, addressed and mailed or delivered in person to:

Mr.Nat Bottigheimer
Contracting Officer
Office of Property Development
and Management
Washington Metropolitan Area
Transit Authority
600 Fifth Street, NW
Washington, DC 20001

**SECTION 3. PROPOSAL REVIEW, EVALUATION, DEVELOPER SELECTION AND POST DEVELOPER SELECTION PROCESS**

**3.1. Proposal Review Process**
WMATA will review and evaluate Proposals as follows:

A. The Contracting Officer receives and processes all Proposals. Proposals that in WMATA's sole and non-reviewable discretion are deemed non-responsive or not reasonably susceptible of being selected for award will be rejected and returned to the Developer with a written explanation. Please note that any Proposal that does not satisfy the requirements for jurisdictional officials and community organization participation may be rejected as technically unacceptable and returned to the Developer. WMATA reserves the right to accept or reject any Proposal without negotiation or discussion.

B. The Contracting Officer designates an Evaluation Team composed of WMATA's Joint Development staff assisted by other WMATA staff, jurisdictional representative(s) and consultants, as appropriate. An analysis and evaluation of each Proposal deemed to be reasonably susceptible of being selected for award is conducted.

C. The Evaluation Team may meet with all or select Developers for both an oral presentation and specific discussions about a Proposal. If such meetings are held, details on the oral presentation will be provided as part of the scheduling process. Such discussions will include identifying areas of the Proposal that: require clarification or improvement including architectural and engineering designs and drawings, or do not comply with the JDS.

D. If requested by WMATA, Developers shall submit Final Proposals. The Final Proposal may be significantly changed from the Initial Proposal submitted. WMATA reserves the right to waive the Final Proposal submission requirement, to request further clarification of a Final Proposal, or to request a Revised Final Proposal.

E. The Evaluation Team will, in coordination with the Contracting Officer, rate each responsive Proposal, and rank it based upon the Proposal Evaluation Factors in Section 3.2. The Evaluation Team will then forward its ranking to the Contracting Officer, who will decide to tentatively designate a Selected Developer. The Joint Development project manager will commence negotiation of a Term Sheet. If negotiations are unsuccessful, the Joint Development staff, in coordination with the Contracting Officer, may terminate negotiations and commence negotiations with the second ranked Developer and



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those ranked thereafter, in order of ranking. Alternatively, the Joint Development staff may, in coordination with the Contracting Officer, decide upon competitive negotiations with two or more ranked Developers.

F. As soon as the principal business terms for the tentatively Selected Developer's Project have been reduced to a Term Sheet, the Contracting Officer submits a recommendation regarding the designation of a Selected Developer and approval of the Term Sheet to WMATA's Real Estate Committee and to the WMATA Board of Directors.

G. Designation of a Selected Developer must be approved by the WMATA Board of Directors.

**3.2. Proposal Evaluation Factors**

Each Proposal will be evaluated using FTA's requirements for "Highest and Best Use" or "Highest and Best Transit Use" (see www.fta.dot.gov/library/policy/9300.1A/appenB.htm) and the following criteria:

A. Technical Criteria

1. Degree to which the Project reflects Transit-Oriented Development principles;

2. The market viability of the Project;

3. The experience and prior performance of the Development Team;

4. The innovation and creativity of the Project;

5. The compatibility of the Project with local Transit-Oriented Development plans and land use policies; and

6. Benefits accruing to the local jurisdiction.

B. Economic Criteria

1. Financial benefits accruing to WMATA;

2. Financial viability of the Project; and

3. Enhanced ridership.

**3.3. Post Developer Selection Process**

A. A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to send a letter to each of the community organizations with which its representatives met to inform them as to how the Proposal presented to WMATA addresses their issues or concerns. A copy of this letter must also be submitted to WMATA.

B. A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to pay WMATA, in immediately available funds, a non-refundable option fee for WMATA's granting to the Selected Developer the exclusive right to negotiate a Development Agreement. The amount and timing of the non-refundable option fee shall be as set forth in the Proposal (or Final Proposal, as the case may be), in accordance with Section 2.4.

C. After WMATA's Board of Directors has designated a Selected Developer and approved the Term Sheet, WMATA staff, in coordination with the Contracting Officer, will negotiate with the Selected Developer a Development Agreement (and other necessary final documentation) that incorporates the provisions of the Term Sheet. Such Development Agreement shall be completed within 150 days following the WMATA Board's designation of the Selected Developer and approval of the Term Sheet.

In the event that this schedule is not met, the Selected Developer designation expires, the Proposal is no longer viable, and WMATA may retain the Proposal Security (in addition to the non-refundable option fee) in accordance with Section 5.2. WMATA may choose to reestablish the Selected Developer designation and provide a specific time frame to the Selected Developer for the completion of negotiations or to re-advertise the Joint Development Site.



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D. As soon as the Development Agreement (and related final documentation) is completed and executed by the Developer, the Contracting Officer submits a recommendation and summary of the final Development Agreement to WMATA's Real Estate Committee and to the WMATA Board of Directors for approval. There is no binding agreement between the Selected Developer and WMATA until such time as the WMATA Board of Directors has approved the final Development Agreement and the Development Agreement has been executed by the parties

**3.4. Disclosure and Use of Data**
WMATA is required to brief its Board of Directors on all aspects of a Proposal. The proposed business terms of a Proposal will be held in confidence only until the Development Agreement and all final documentation have been approved and executed. WMATA reserves the right to review the zoning and land use aspects of any Proposal with local zoning, land use planning, transportation and environmental officials (and in the State of Maryland, with state officials). Additionally, at the sole discretion of the WMATA Board of Directors, such review may include conducting public hearings, town meetings and similar public forums.

NOTE: WMATA's "Public Access to Records Policy" is available at MetroOpensDoors.com (click"About Metro," then click "Public access to records.")

**SECTION 4. WMATA'S NONNEGOTIABLE REQUIREMENTS AND CONDITIONS**

The following requirements and conditions are nonnegotiable and the concepts will be included in the Development Agreement and final documentation executed by the Selected Developer and WMATA. By submitting a Proposal in response to this JDS, a Developer is agreeing to accept and comply with these nonnegotiable requirements and conditions.

**4.1. WMATA's Reserved Areas and Interests**
The location of WMATA's Reserved Areas and Interests shall be determined by WMATA in its sole and absolute discretion. Additionally, the conveyance or lease of any WMATA property shall be subject to a reservation by WMATA of a permanent, exclusive and irrevocable easement for vertical and horizontal support and as otherwise necessary for the operation and maintenance of present and future WMATA Facilities, WMATA Improvements and WMATA Reserved Areas and Interests.

**4.2. WMATA's Approval Rights and Adjacent Construction Requirements**
The following rights and requirements apply to all Projects:

A. Approval Rights
WMATA shall have the right to approve in its sole and absolute discretion:

1. Matters that affect the integrity, functionality, efficiency, safety, operation, maintenance, legal compliance, cost or profitability of WMATA's business, customers, operations or activities;

2. Matters that affect WMATA Facilities, WMATA Replacement Facilities, WMATA Reserved Areas and Interests, ingress/egress to WMATA Facilities, etc.;

3. Matters that affect any of WMATA's adjacent property;

4. The design and construction of interim and permanent WMATA Replacement Facilities; and

5. Matters that affect the Selected Developer's obligations as they relate to timing (changes in Project schedule) and performance (changes in what will be constructed, i.e., the product mix).

B. WMATA's Comment Rights

WMATA shall have the right to comment on the development plan/site plan and on other matters concerning the Project which do not affect the integrity, functionality, efficiency, safety, operation or maintenance of WMATA Facilities, WMATA Improvements, or WMATA Reserved Areas and Interests. The Selected Developer shall be obligated to consider WMATA's comments and to respond reasonably.

C. WMATA's Construction Requirements

In order to avoid adverse impact on WMATA Facilities, Projects must be built in compliance with WMATA's adjacent construction criteria as



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contained in WMATA's Adjacent Construction Design Manual, Revision I and as further revised, and WMATA's Manual of Design Criteria (Release 8), which are available by e-mailing tbushnag@wmata.com. Additionally, Developers must comply with WMATA's requirements for the relocation and maintenance of operations during construction which include the uninterrupted and unimpeded operation of WMATA Facilities. WMATA will review and approve Developer plans in accordance with established WMATA procedures.

**4.3. Relocation or Replacement of WMATA Facilities**

Intentionally omitted.

**4.4. Selected Developer's Funding of WMATA Compact Public Hearing**

Intentionally omitted.

**4.5. No Subordination of WMATA's Fee Interest**

WMATA will not subordinate its fee interest in its property. In a lease situation, WMATA will permit lenders to have a leasehold security interest in the Project, which security interest would be subordinate to WMATA's right to terminate the lease upon a default by the Selected Developer (subject to the lender's right to cure).

**4.6. Federal Transit Administration (FTA) Requirements**

WMATA is subject to the requirements of the FTA. The terms of the Development Agreement negotiated with the Selected Developer, as it pertains to WMATA property, are subject to FTA approval. While FTA may impose additional requirements which cannot be known until FTA reviews a specific Project, FTA requires that the Selected Developer comply with certain laws and regulations barring discrimination on the basis of race, color, national origin or disabilities; and further requires compliance with FTA requirements regarding conflicts of interest and debarment.

FTA also requires, as a covenant running with the land, that the entire Joint Development Project constitute a Transit-Oriented Development as defined in the latest applicable FTA Regulations. See FTA Circular 9300.1A, Appendix B, The Relationship Between Joint Development and Livable Communities on the FTA web site at: www.fta.dot.gov/library/policy/IFT/iftb.html.

**4.7. Americans With Disabilities Act (ADA)**

All Projects shall be constructed in compliance with Titles II and III of the Americans with Disabilities Act, 42 USCA Section 12101, et seq., as amended, and any regulations promulgated thereunder. Proposals must include a plan indicating how access from the Project to the Metro station will be provided for persons with disabilities. Additionally, if a Project or any subsequent addition, modification or alteration triggers ADA-related improvements to the Metro station, the Selected Developer shall be responsible for the costs of such improvements. The only exceptions are when the ADA-related improvements predate the date of completion of the Project and are required to be made regardless of the Project, or constitute ADA-related improvements that WMATA is implementing at Metro stations in general as part of its system-wide improvements or alterations.

**4.8. Direct Connections**

Intentionally omitted

**4.9. Davis-Bacon Act/Fair Labor Standards Act**

The construction of any WMATA Replacement Facility or WMATA Improvement must be built in compliance with the Davis-Bacon Act, 40 USC Section 276a, et seq., and overtime compensation must be paid in compliance with Section 64 of the WMATA Compact, and the Fair Labor Standards Act, 29 USCA Section 201, et seq. (1978), as amended.

**4.10. Other Laws, Regulations and Requirements**

Developers are responsible for being fully informed of and complying with the requirements of applicable federal, State of Maryland, District of Columbia, Commonwealth of Virginia, and local jurisdictional laws and regulations. Additionally, the Selected Developer shall be responsible for obtaining, at its own cost and expense, all requisite approvals, licenses and permits.

**4.11. WMATA's Indemnification Policy**

The terms of any Development Agreement and final documentation will require that the Selected Developer and its contractors and subcontractors (and subtenants, where applicable) indemnify WMATA against all claims, liabilities and costs of whatsoever kind and nature including environmental claims which may be imposed upon, or incurred by, or



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asserted against WMATA in connection with the Selected Developer's performance under the Development Agreement or related agreements.

WMATA will accept responsibility for environmental claims of third parties if such claims arise from WMATA's actions prior to the transfer of the site to the Selected Developer.

**4.12. WMATA's Insurance Requirements**
The terms of any Development Agreement and final documentation will require that the Selected Developer, its contractors and subcontractors procure and maintain insurance coverage in amounts determined by WMATA, which may include, but is not limited to: General Liability, All Risk Property, Builder's Risk, Worker's Compensation, Automobile Liability, Contractors' Pollution Legal Liability, Railroad Protective Liability, Rental Value Insurance, Professional Errors and Omissions Liability and Boiler and Machinery (during operations only).

**4.13. Payment, Performance and Completion Bonds**
WMATA requires that the Selected Developer secure and file with WMATA a payment bond equal to 100% of the value of each phase of the Project from a federally approved surety company, with sufficient assets. The payment bond must name WMATA for the benefit of laborers, subcontractors, material suppliers and others that have or may have claims or liens against the Project or the realty.

WMATA also requires the Selected Developer to secure and file with WMATA a performance bond equal to 100% of the value of each construction phase of the Project from a federally approved surety company, with sufficient assets and which bond names WMATA for the completion of the planned construction in that phase.

Additionally, if there are WMATA Replacement Facilities being constructed, WMATA requires the Selected Developer to secure and file with WMATA a completion bond equal to 100% of the value of the WMATA Replacement Facilities from a federally approved surety company, with sufficient assets, and which bond names WMATA as the sole obligee for the completion of the Replacement Facilities.

All bonds must be in a form acceptable to WMATA and countersigned by a Commonwealth of Virginia, State of Maryland or District of Columbia resident agent of the surety, with a copy of the agent's license, as issued by the appropriate Insurance Commissioner.

**4.14. WMATA's Disclaimer of Liability**
WMATA disclaims all responsibility and liability for the completeness or accuracy of any information that it provides.

**4.15. Inspection of Accounting Records**
The Selected Developer will be required to permit WMATA, or any of its duly authorized representatives, at reasonable times and places, access to any books, documents, papers and records, including certified financial statements, which are directly pertinent to the Development Agreement. WMATA shall be permitted to audit, inspect, examine, copy and transcribe such books, documents, papers and records. The Selected Developer shall retain all records for three years after submission of any statement required for determining any variable payment obligations under the Development Agreement or related agreements.

**4.16. WMATA's Tax Exempt Status**
WMATA is tax exempt pursuant to the WMATA Compact. Any taxes, assessments or impositions on the Project or the real estate shall be assumed by the Selected Developer. In no event shall the Selected Developer assert or attempt to assert for its own benefit, an exemption or immunity available to WMATA under the WMATA Compact.

**4.17. Financing Requirement**
The Selected Developer shall be obligated to obtain the requisite financing to consummate the lease/sale of the WMATA Joint Development Site, and the development, construction and final completion of the Project by a reasonable date certain, or WMATA may terminate the Development Agreement.

## SECTION 5. ADDITIONAL JOINT DEVELOPMENT REQUIREMENTS AND PROCEDURES

**5.1. Assignment of Proposal, Change in Developer or Withdrawal of Developer**
WMATA considers the designation of Selected Developer to be in the nature of a personal services contract. The Selected Developer will be designated because of its skills, experience, knowledge and financial standing.



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A Developer who submits a Proposal in response to this JDS may withdraw, assign its Proposal or change the composition of its Development Team only as follows:

A. Withdrawal of Proposal

At any time prior to designation of the Selected Developer, a Developer may elect to withdraw its Proposal. Under such circumstances, WMATA shall return the Proposal Security without interest.

B. Assignment of Proposal

At any time prior to designation of the Selected Developer, a Developer may request WMATA's approval to assign its Proposal to another development entity. No purported assignment is valid unless WMATA has given its prior written approval. The Developer and its proposed assignee shall submit all documents required by WMATA before the request will be considered. WMATA is under no obligation to approve the request. If WMATA refuses to grant approval, and the Developer does not want to proceed in accordance with its Proposal, WMATA will return the Proposal Security without interest. An assignment may be subject to the requirement of a Guaranty pursuant to Section 5.7.

C. Change in Composition of Developer or Development Team

1. Prior to designation of the Selected Developer, a Developer may change its composition or the composition of its Development Team only with WMATA's prior written approval. If WMATA does not approve the change, and the Developer does not want to proceed in accordance with its Proposal, WMATA will return the Proposal Security without interest.

2. After designation as the Selected Developer, the Selected Developer must request WMATA's written approval to change its composition or the composition of its Development Team. If WMATA does not approve the change, and the Selected Developer does not want to proceed in accordance with its Proposal, WMATA may terminate the Selected Developer designation and retain the Proposal Security.

D. Other Situations

An assignment or change in the composition of the Development Team which is not addressed above is at the sole discretion of WMATA's Contracting Officer. For any such assignment or change to be valid, WMATA's prior written approval is required. Any purported assignment occurring without WMATA's prior written approval shall be void.

**5.2. Termination of Selected Developer Designation**

WMATA may terminate the Selected Developer designation for any of the following reasons and retain the Proposal Security and any other deposit held by WMATA (except as stated otherwise in subsections I and J):

A. The Selected Developer fails to negotiate and execute the Development Agreement within 150 days following the designation of the Selected Developer and approval of the Term Sheet by the WMATA Board of Directors..

In the event that the foregoing schedule is not met, WMATA may terminate the designation of the Selected Developer and retain the Proposal Security without any liability or further obligation to the Selected Developer. The foregoing deadlines can only be extended by action of the WMATA Board of Directors in its sole and non-reviewable discretion.

B. The Selected Developer or any individual or entity holding ownership in or comprising the Development Team declares bankruptcy.

C. The ownership structure of the Selected Developer changes without WMATA's prior written approval. Structural changes include changes in percentages of ownership interests or changes in ownership of any entity holding an ownership interest in the Selected Developer.

D. The Selected Developer assigns its designation or transfers its rights in a WMATA Joint Development Site without WMATA's prior written approval.



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E. The Selected Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team is indicted for, or convicted of, a fraud or a felony.

F. The Selected Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team is found not to have a satisfactory record of integrity and business ethics, in WMATA's sole and non-reviewable discretion.

G. The Selected Developer provided materially incorrect or incomplete information in any of its submissions to WMATA, as determined in WMATA's sole and non-reviewable discretion.

H. The Selected Developer does not comply with this JDS, its Proposal or the terms of the Development Agreement as negotiated by the parties.

I. In accordance with Section 5.5, the Selected Developer conducts environmental due diligence and consequently modifies its Proposal in a manner which is unacceptable to WMATA. Under such circumstances, WMATA shall return the Proposal Security with any interest that may have accrued, less site restoration costs actually incurred by WMATA.

J. WMATA determines (in its sole and non-reviewable discretion) that termination is in its best interest. Under such circumstances, WMATA shall return the Proposal Security with any interest that may have accrued.

**5.3. Metro Station Access Roads and Interior Maintenance Roads**

Intentionally omitted.

**5.4. Developer's Research Obligations**

A Developer is expected to know all information reasonably ascertainable concerning the site size, and character, quality, and quantity of surface and subsurface materials or obstacles on the Joint Development Site as well as the existing utilities on the Joint Development Site. Some of this information is available from a visual inspection of the Joint Development Site and may be available from technical drawings and specifications (as built drawings) which WMATA will make available upon request, utility companies serving the area and local land records. WMATA disclaims all responsibility and liability for the completeness or accuracy of any information it provides. All Joint Development Sites are subject to existing physical and legal conditions, whether of record or not.

Additionally, a Developer is expected to know the conditions affecting construction on the Joint Development Site, which include but are not restricted to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, the topography and conditions of the ground, and the character of equipment and facilities needed before and during prosecution of the work.

**5.5. Environmental Matters**

WMATA has undertaken no comprehensive environmental investigations of the presence or absence of contaminated material or other environmental conditions that may affect development except as specifically identified. Interested Developers may request permission to perform a due diligence environmental site assessment prior to Proposal submission, after Proposal submission or after designation as the Selected Developer. Such due diligence site assessment and all associated costs shall be the sole responsibility of the Developer. Permission will be granted by WMATA subject to the execution of a Right of Entry Agreement with standard insurance and indemnity provisions. A sample Right of Entry Agreement is available from rdoggett@wmata.com.

WMATA shall be provided, in a timely manner, a copy of each test result and report addressing the environmental site investigation. If environmental contamination is found that requires a clean-up or remediation of the Joint Development Site under a governmental regulatory agency's review, the Developer may withdraw its Proposal (including its Final Proposal) but is responsible for site restoration costs. In the event that the due diligence environmental site assessment is performed after the designation of the Selected Developer, but prior to the execution of the Development Agreement, the Selected Developer and WMATA may negotiate the transaction based



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upon the levels of contaminated materials or other environmental conditions encountered which would substantially delay development or substantially increase the costs of excavation, removal or disposal of soil/materials, or the treatment of groundwater. If the parties cannot agree upon the resolution of these issues the Selected Developer may withdraw its Proposal but the Developer is responsible for site restoration costs, and WMATA has the corresponding right to terminate the Selected Developer designation in accordance with Section 5.2.I.

**5.6. Protest Policy**
The policy and procedure for the administrative resolution of protests involving the designation of a Selected Developer arising pursuant to this JDS are as follows:

A. Only an Interested Party may submit a protest. An Interested Party is defined as a Developer who submitted a Proposal pursuant to this JDS.

B. Protests must be submitted no later than 30 calendar days after WMATA's designation of the Selected Developer. Any protest submitted subsequent to this time may be deemed by WMATA's Contracting Officer to be untimely and denied on that basis unless the Contracting Officer concludes that the issue(s) raised by the protest involves fraud, gross abuse of the selection process, or otherwise indicates substantial prejudice to the integrity of the selection process.

C. The Interested Party wishing to file a protest shall submit a written document to WMATA's Contracting Officer which contains the following:

1. The name and address of the Interested Party;

2. Description of the nature of the protest;

3 Identification of the provision(s) of this JDS, applicable Joint Development Policies and Guidelines or laws upon which the protest is based;

4. A statement of the specific relief requested; and

5. Any documents relevant to the protest.

D. WMATA's Contracting Officer shall carefully review the protest in consultation with WMATA staff. At the discretion of the Contracting Officer, a conference may be held with the Interested Party. The Contracting Officer shall have 30 calendar days to render a written decision on the merits of the protest. A determination by the Contracting Officer that a protest is meritorious may result in a change in the terms, conditions or format of this JDS in the form of an Amendment; the rejection of a Proposal; the cancellation of this JDS; or the termination of the designated Selected Developer.

E. This Protest Policy is not applicable to actions taken by WMATA in response to legal proceedings filed in the courts, or actions taken by WMATA in its sole and non-reviewable discretion.

**5.7 Guaranty**
WMATA may require a third party to guarantee some or all of the obligations of the Selected Developer, including but not limited to construction obligations.

**SECTION 6: DEFINITIONS**

**Contracting Officer**
WMATA's Assistant General Manager for Planning and Joint Development, or, if such position is vacant at the time in question, the person designated to act in such capacity at such time.

**Developer(s)**
The entity submitting or contemplating the submission of a Proposal in response to this Joint Development Solicitation (JDS). The Developer may be any qualified individual or entity with real estate development-related experience and access to financing sufficient to undertake the proposed Project, including real estate brokers, non-profit organizations, public agencies, etc. Real estate brokers are invited to participate as the Developer or as a member of the Development Team as opposed to participating in a purely marketing role. WMATA will not pay any broker's commissions.



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**Development Agreement**
The legal document (lease, sales contract, combination lease/sale, master development agreement or other agreement) that constitutes the contract between WMATA and the Selected Developer.

**Development Team**
The Developer and the principal persons and/or entities (including officers, directors, partners, members, managers or the equivalent of such persons and/or entities) identified by the Developer as the participants in the Project.

**Disadvantaged Business Enterprise (DBE)**
For the purpose of Joint Development Projects, a DBE is a for-profit, small business concern that is owned and controlled (at least 51%) by one or more socially and economically disadvantaged persons. Socially and economically disadvantaged persons are persons who are citizens of the United States (or lawfully admitted permanent residents), and who are either:

A. Black Americans (meaning persons having origin in any of the Black racial groups of Africa);

B. Hispanic Americans (meaning persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portugese culture or origin, regardless of race);

C. Native Americans (meaning persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians);

D. Asian-Pacific Americans (meaning persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong);

E. Subcontinent Asian American (meaning persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldive Islands, Nepal or Sri Lanka); or

F. Women.

**Evaluation Team**
WMATA staff assigned by the Contracting Officer to analyze the Proposals and make recommendations.

**Federal Transit Administration (FTA)**
The federal agency within the U.S. Department of Transportation which administers the federal rules and regulations governing joint development programs and oversees other aspects of real property purchased with federal funds for transit purposes.

**Final Proposal**
If requested by WMATA, the final document or compilation of documents submitted by the Developer for analysis before the Evaluation Team makes its recommendation. See definition of Proposal.

**Initial Proposal**
The initial document or compilation of documents submitted by the Developer in response to this JDS. See definition of Proposal.

**Joint Development**
A creative program through which property interests owned and/or controlled by WMATA are marketed to office, retail/commercial, recreational/entertainment and residential developers with the objective of developing Transit-Oriented Development projects. See definition of Transit-Oriented Development.

**Joint Development Policies and Guidelines**
The procedures approved by the WMATA Board of Directors which govern the Joint Development Program and are included as Attachment D to this JDS.

**Joint Development Project**
The development ideas, concepts and plans that a Developer presents in its Proposal. Also refers to the development plans of the Selected Developer.

**Joint Development Site(s)**
The property areas and interests identified in this JDS.



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**Joint Development Work Program**
A document prepared annually of Joint Development opportunities associated with WMATA-owned properties. The Joint Development Work Program is drafted in coordination with the local jurisdictions and approved by the WMATA Board of Directors.

**Project**
The joint development ideas, concepts and plans that a Developer presents in its Proposal. Also refers to the development plans of the Selected Developer. Project is synonymous with Joint Development Project.

**Proposal(s)**
The development-related documents submitted in response to this Joint Development Solicitation (JDS). The term Proposal can include both the Initial Proposal and, if requested by WMATA, the Final Proposal.

**Selected Developer**
The Developer with the exclusive right to negotiate a Development Agreement with WMATA. WMATA's designation of the Selected Developer shall not become final and binding until a Development Agreement has been negotiated and executed by the parties.

**Term Sheet**
The nonbinding document which summarizes the development concept, financial structure and other major business terms of the Project.

**Transit-Oriented Development**
Those projects that integrate WMATA's transit facilities, reduce automobile dependency, increase pedestrian/bicycle originated transit trips, foster safe station areas, enhance surrounding area connections to transit stations, provide mixed use including housing and the opportunity to obtain goods and services near transit stations, offer active public spaces and promote and enhance ridership and sound growth in the communities which WMATA serves. See also FTA's definition at www.fta.dot.gov/library/policy/IFT/iftb.html.

**WMATA Compact**
Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as may be amended.

**WMATA Facility**
Any improvements, structures, infrastructure components, tangible property and/or areas required, in the judgment of WMATA, for the use, operation, access, maintenance, repair, servicing, replacement or removal of structures and supports, any and all access, parking, operation and service facilities and areas relating to WMATA's operations or activities, including without limitation, the Metro station, tunnels, rails, tracks, bus stations, bus transfer areas, supervision kiosks, employee bathrooms, electric substations, conduits and lines, communications equipment and structures, pedestrian ways, waiting and shelter areas, facilities serving persons with disabilities, cooling towers, chiller plants, vent and fan shafts, bicycle rack and locker areas, storm water management facilities, landscaping, lighting and all other associated facilities.

**WMATA Improvement(s)**
Those improvements, whether an interim replacement facility or a new facility, which will be designed and/or constructed by the Selected Developer for WMATA in a configuration acceptable to WMATA. Upon final acceptance by WMATA, a WMATA Improvement will become a WMATA Facility.

**WMATA Replacement Facility**
A WMATA Improvement designed and/or constructed by the Selected Developer for WMATA in a configuration acceptable to WMATA that replaces any displaced or disrupted WMATA Facility which will be turned over to WMATA.

**WMATA Reserved Areas and Interests**
Includes (a) all areas of, within or adjacent to the Joint Development Site containing any WMATA Facility; (b) all areas of, within or adjacent to the Joint Development Site relating to the use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility; and (c) any and all easements and other reserved rights required by WMATA in connection with its use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility or WMATA operations and business generally, whether expressly provided for or reasonably contemplated. Such easements and other reserved rights shall include, without limitation, easements and reserved rights (whether at, above or



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below ground level) for (i) the construction, operation, maintenance, repair, replacement, removal or relocation of any and all existing tunnels and related facilities, (ii) all WMATA Facilities (including, without limitation, any replacement facilities) which have piling or other structural support within or adjacent to the Joint Development Site, (iii) any and all service facilities serving such tunnels or any WMATA Facility, (iv) all underground power lines and other utilities, (v) horizontal and vertical support for all WMATA Facilities in, on and about the WMATA Joint Development Site, including without limitation, structures, equipment or installations such as foundations, beams, columns, bracing and similar structural features which maintain vertical and horizontal support and are necessary for the maintenance, operation and protection of any WMATA Facility and (vi) protections and approval rights satisfactory to WMATA in its sole and unreviewable discretion with respect to limits on loads and pressures which may affect any WMATA Facility, whether vertical or lateral.



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Execution Copy

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

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

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

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

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

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



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

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

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

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

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



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**6. Security Deposit**

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

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

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

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

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

**7. Consideration**

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

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement or forty-five (45) months after WMATA Board approval and execution of the



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Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent, for the first fifteen (15) months, will be $100,000 per year payable in advance in quarterly instalments of $25,000. Pre-stabilization Rent will increase to $115,000.00 per year for the next twelve (12) months. For the remaining Pre-stabilization Period, rent shall be $130,000.00 per year.

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

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

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

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

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project



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land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

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

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

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

7.6 WMATA Improvements: intentionally omitted



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

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

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

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

7.11 Additional Density:

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

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



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**8. Conditions to Definitive Agreement Consummation**

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

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

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

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

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

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

8.6 Financing Contingency: Developer shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Project and as shall otherwise be reasonably satisfactory to Developer and WMATA.



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## 9. Special Considerations

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

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

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

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

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

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

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

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

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

9.7 Interim Improvements: intentionally omitted

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

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



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

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

**10. Indemnification**

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

**11. Insurance Requirements**

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



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**12. Non-Binding Intent**

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

Agreed this 17th day of July, 2008, by

**Washington Metropolitan Area Transit Authority**

By: Joel R. Washington

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

**Banneker Ventures, LLC**

By: _____

Title: Principal



FOIA CONFIDENTIAL TREATMENT REQUESTED

**District of Columbia Housing Finance Agency**
815 Florida Avenue, NW Washington, DC 20001-3017

December 13, 2007

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

Re: Letter of Interest as part of WMATA Joint Development Solicitation
Development of three parcels on Florida Avenue, NW
Tax Exempt Bond and Low Income Housing Tax Credit Financing

Dear Mr. Karim:

The District of Columbia Housing Finance Agency ("DCHFA" or the "Agency") has reviewed your response to the Washington Metropolitan Transit Authority Joint Development Solicitation (the "Proposal Response") to redevelop the above referenced parcels (the "Project") in the Shaw neighborhood of Washington, DC (the "District").

The Agency has a strong interest in participating in the financing of the redevelopment of over 18,000 square feet of currently vacant parcels. Your proposal to develop the site into a quality mixed-use residential and retail development (aptly called The Jazz @ Florida Avenue) is consistent with the Agency's strategic objective of encouraging the development of affordable housing in vibrant mixed income and mixed-use developments. Moreover, with the proximity of the Project located directly across the street from the Agency, we are enthusiastic to partner with you to develop this site.

According to the Proposal Response, which appears to be consistent with the requirements of your Joint Development Solicitation, your proposal is as follows:

- Redevelop the site, in a mixed-use platform, into 103 high quality units of mixed-income rental housing which will be built over 11,700 square feet of ground floor retail space.
- Make 20% of the units affordable to individuals or families who earn up to 50% of the area median income (AMI).
- Partner with District Development Group and Donatelli Development, both respected developers in the redevelopment of the site.
- Include neighborhood serving retail uses including cultural and arts space.

Phone: 202-777-1600 Fax: 202-986-6705 www.dchfa.org

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

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

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

Sincerely,

Anthony L. Waddell
Director, Public Finance

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

**Minutes**
**Planning, Development and Real Estate Committee**
**April 9, 2009**

The meeting was called to order at 9:04 a.m. Present were:

**Committee members:**

Mr. Neil Albert, Chair
Ms. Elizabeth Hewlett, Vice Chair
Mr. Jim Graham
Mr. Peter Benjamin
Mrs. Catherine Hudgins
Mr. Christopher Zimmerman
Mr. Gordon Linton
Mr. Anthony Giancola
Mr. Marcell Solomon

The Committee meeting was called to order at 9:04 a.m. Mr. Albert moved, seconded by Mr. Zimmerman, that the Committee convene in Executive Session at 9:05 a.m. The Committee voted unanimously in favor of the motion.

The Committee meeting reconvened in the Meeting Room at 9:24 a.m.

**Approval of Agenda**

The agenda was approved.

**Approval of Minutes**

Mr. Benjamin moved, seconded by Mr. Zimmerman, to approve the March 12, 2009 minutes as submitted. The Committee voted unanimously in favor of the motion.

**Action Items**

**A. Extension of Development Agreement Negotiation Period**

Staff sought approval of a 120-day extension for negotiating a joint development agreement for the Shaw-Howard University/Florida Avenue parcels.

Mr. Albert moved, seconded by Mr. Linton, to approve a 120-day extension for negotiating a revised term sheet for the Shaw-Howard University/Florida Avenue parcels. The negotiated agreement will be brought to the Board for approval. The Committee voted unanimously in favor of the motion.

## B. Priority Corridor Network Policies and Standards

Staff sought approval to adopt the proposed Metrobus Priority Corridor Network Plan Design Factors, Service Thresholds, and Service elements to guide near-term project planning and implementation.

Staff will work closely with the individual Committee members to revise materials that will be presented at the April 23, 2009 Planning, Development and Real Estate Committee.

The meeting adjourned at 10:19 a.m.

Report by Planning, Development & Real Estate Committee (B) 09-24-09

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉Action ○Information | MEAD Number: 100426 | Resolution: ○Yes ◉No |
|---|---|---|

**TITLE:**

Extend Negotiating Period for Shaw-Howard U/FL Ave

**PURPOSE:**

Extend the negotiating period for the Shaw-Howard U./Florida Avenue joint development site by 120 days, from August 2009, to allow negotiation of a term sheet and joint development agreement to be brought to the Board in December 2009.

**DESCRIPTION:**

In April 2009, the Board approved a 120-day period to renegotiate a term sheet for the Shaw-Howard U./Florida Avenue joint development site, which consists of three separate parcels totaling 28,892 sf located between 7th and 9th streets NW in Washington, DC. The development team, led by Banneker Ventures, LLC, proposed to lease the site from Metro for 60 years and build a minimum of 104 housing units over ground floor retail space of approximately 11,750 sf.

Upon approving the development team in June 2008, the Board requested that an affordable housing component be included in the project. The development team then amended its financial offer to Metro to include a substantial reduction in rent to reflect its affordable housing component.

The extension approved in April 2009 was to allow for conclusion of term sheet negotiations that would take into account the affordable housing in the project; however, upon review, it became clear that it was also necessary to update the August 2007 third party appraisal for the site to meet Federal Transit Administration requirements for timeliness. The updated appraisal will reflect new District of Columbia mandatory Inclusionary Zoning regulations for affordable housing scheduled to take effect in mid-August 2009 and examine the validity of the developer's recent assertion that the maximum number of housing units that can be accommodated on the site is less than the previously proposed 104.

An appraiser has been engaged, but will not complete its assignment in time for conclusion of term sheet negotiations and a Board decision in September 2009. Accordingly, and in light of the fact that the development team and staff have been reviewing a draft joint development agreement, staff proposes instead to conclude negotiations on the term sheet and joint development agreement and bring both to the Board for its consideration in December 2009.

**FUNDING IMPACT:**

This action will have no immediate impact on funding. Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

Extend the negotiation period for the Shaw-Howard U./Florida Avenue joint development site by 120 days to allow a proposed term sheet and joint development agreement to be brought to the Board in December 2009.

Report by Planning, Development & Real Estate Committee (B) 01-28-10

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100527 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Amended Term Sheet for Shaw-Howard/FL Ave JD Site

**PURPOSE:**

Obtain Board consideration of one time extension for an amended term sheet for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than March 31, 2010.

**DESCRIPTION:**

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project would feature ground floor retail along Florida Avenue, with four stories of housing above, for a base amount of 100,000 sf. If additional density were achieved, Metro would be compensated. At a minimum, the project would include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built); however, the development team is exploring financing to extend affordability.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated an amended term sheet for a 99-year lease of the site with provisions for periodic rent adjustment.

The development team has gained control of adjacent land on 9th Street and proposes to combine that land with the two Metro parcels that are located between 8th and 9th streets. The combined site would allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. Metro would receive 79% of the value of any additional bonus density granted by the District of Columbia; this represents Metro`s share of the combined parcels` size.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities would be reserved in perpetuity for Metro.

Staff is requesting that the Board consider a time extension for an amended term sheet to be brought to the Board not later than March 31, 2010.

**FUNDING IMPACT:**

Revenue from the project would be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

No recommendation.

**VIA CERTIFIED MAIL, FASCIMILE AND E-MAIL**

August 24, 2007

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

RE: Proposal for Shaw-Howard WMATA Property

Dear Mr. Karim:

Thank you for your proposal to develop Washington Metropolitan Area Transit Authority (WMATA) property on Florida Avenue near the Shaw-Howard University Metro station. WMATA is gratified to have received a number of proposals and has carefully reviewed them, together with representatives of the District of Columbia government. We have eliminated some proposals from further consideration.

We are now requesting a full proposal from your organization in accordance with WMATA's standard solicitation guidelines which are attached.

Note that the material supplied to WMATA to date is a not a substitute for that requested in this solicitation. In particular, ability to perform financially and the financial offer remain key considerations for WMATA.

WMATA is required by the Federal Transit Administration to sell or lease its property for the highest and best use which WMATA determines through an appraisal. The appraisal remains confidential. WMATA expects offers made at today's value to be escalated to the actual date of closing or first base rent payment and, in the case of a lease, escalated annually thereafter. WMATA is seeking firm commitments on payment dates and amounts. Your offer should include both.

WMATA's Board of Directors has expressed a preference for leasing rather than selling its property. To be competitive, a proposal for lease, as well as sale, should be submitted.

**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*

Local jurisdiction and community representatives who should be contacted, as required for full proposals, are:

Geraldine Gardner, Acting Associate Director for Neighborhood Planning, DC Office of Planning, 202-442-7619, Geraldine.Gardner@dc.gov

Myla Moss, Vice Chairman, Advisory Neighborhood Commission 1B, 202-462-4913, mjmenjoy@yahoo.com

We look forward to receiving your full proposal. Please deliver it to WMATA headquarters at 600 Fifth Street, NW by 3 p.m. on Friday, October 5, 2007. If you have any questions, please call Rosalyn Doggett at 202-962-2208.

Sincerely,

Joel R. Washington
Acting Director
Office of Property Development and Management

Attachment

## Doggett, Rosalyn

**From:** Moneme, Emeka
**Sent:** Wednesday, April 08, 2009 5:29 PM
**To:** Sequeira, Loyda
**Cc:** Pant, Shiva K.; Bottigheimer, Nat; Doggett, Rosalyn; Francis, Gerald C.
**Subject:** FW: Bank of America CDC capacity to manage the Shaw-Howard/Florida Avenue Joint Venture Development
**Attachments:** MLPerry Project List (2).doc; BACDC Org Chart.pdf

Loyda,

Please forward my modified response below (and attachments) to Chairman Graham and the other board members:

"WMATA staff has checked out each project reference that Banneker Ventures provided, for itself, with mixed results (in some cases the projects are prospective, in others there are lead firms that are more experienced). In regards to Bank of America Community Development Corporation (BACDC), our assessment relied principally on Maurice Perry's experience in new construction/housing development and the assurances of Bank of America leadership. Attached is Mr. Perry's list of projects for which he wrote that he was project manager and Mr. Perry's reporting structure (staff also has a list of references). All the references indicated his ability to handle housing projects of this size and scope. In particular, a senior officer of MacFarlane Costa Housing Partners (Gardenia, CA) said that Mr. Perry was responsible for managing the new construction California projects from pre-development through completion of construction and that he was diligent and careful, with excellent management skills. Staff further relied on comments from Mr. Clerkin, a Regional Manager of BACDC, who indicated that once the bank took on a project it was committed to seeing it through and would provide all necessary support for Mr. Perry.

In Mr. Graham question, he uses the term "major mixed-use." This project is currently planned to have 104 units on the three separate WMATA parcels and will possibly combine the smallest WMATA site (3,800 s.f.) with an adjacent two parcels that will add another 25-30 units. Mr. Perry's experience encompasses new construction of this size. In our discussions with him, he noted his lack of experience in dealing with construction over a Metro tunnel and said, therefore, that he would have a construction manager at least through that stage of the project. The retail component is just under 12,000 s.f. It is likely that the team will have to use retail consultants to help scope out the ground floor retail; but it should not be difficult for this team to find the consulting expertise."

Emeka

---

**From:** Requa, Jack
**Sent:** Wednesday, April 08, 2009 12:53 PM
**To:** Doggett, Rosalyn
**Subject:** FW: Bank of America CDC capacity to manage the Shaw-Howard/Florida Avenue Joint Venture Development

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**From:** Catoe, John B.
**Sent:** Wednesday, April 08, 2009 12:51 PM
**To:** Pant, Shiva K.; Bottigheimer, Nat; Requa, Jack; Francis, Gerald C.; Moneme, Emeka
**Cc:** Sequeira, Loyda; Chambliss, Leenda M.; Barr, Cassandra; Wallace, Maria A; Harris, Annette M.; Morgan, Monic; Ballard, Khalilah
**Subject:** FW: Bank of America CDC capacity to manage the Shaw-Howard/Florida Avenue Joint Venture Development



FOIA CONFIDENTIAL TREATMENT REQUESTED

I don't believe that John Catoe saw this before he left town; in fact, I am sure of it since his flight left at 5 p.m.

Chairman Graham has made some specific requests before tomorrow's meeting.

Please advise who is handling this; perhaps someone needs to call Mr. Catoe on this.

Can I assume that the responsibility for providing this information rests with PLJD?

---

**From:** Jim Graham [mailto:Jim@grahamwone.com]
**Sent:** Tuesday, April 07, 2009 5:03 PM
**To:** Catoe, John B.
**Cc:** czimmerman@arlingtonva.us; Neil.Albert@dc.gov; mbrown@dccouncil.us; catherine.hudgins@fairfaxcounty.gov; jeff.mckay@fairfaxcounty.gov; agiancol@naco.org; ehewlett@shhpa.com; cz.arl@verizon.net; nomolos@verizon.net; peter.metro@verizon.net; gordon.linton@wageworks.com; wmeuille@wdeuille.com
**Subject:** RE: Bank of America CDC capacity to manage the Shaw-Howard/Florida Avenue Joint Venture Development

I have questions in response to your April 3, 2009 memo regarding the capacity of the Bank of America Community Development Corporation (BACDC) to manage the Shaw-Howard/Florida Avenue Joint Venture Development Project.

I would like to ensure that this joint development is managed by a team with a sufficient construction experience. My approval of the initial award was contingent upon participation of Metropolis Development because of this company's demonstrated experience delivering major, mixed-use construction projects.

I am requesting that WMATA staff explain the experience of BACDC in managing major mixed-use development projects through the construction process. I also would like for staff to include some examples of such development projects in their explanation.

Please contact me as soon as you receive this email. I would like to see these materials by the April 9, 2009 PDRE Committee meeting.

Bests, 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. 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 Transportation (including alcohol regulation). Main Committee Number: 202-724-8195. 1350 Pa. Ave., NW, #116, Washington, DC 20004.***

***Chairman and Voting Member, Board of Directors, WMATA/Metro.***

***Website:*** **www.grahamwone.com**



FOIA CONFIDENTIAL TREATMENT REQUESTED 

120 days to negotiate a term sheet

April 2, 2009

MEMORANDUM FOR: Chair and Members of the Board

SUBJECT: Capability of the Banneker Ventures Team to Manage the Shaw-Howard/Florida Avenue Joint Development Project

Last month, Metro staff presented members of the Planning, Development, and Real Estate (PDRE) committee a proposal for a 120-day extension for Metro and Banneker Ventures to negotiate a joint development agreement for the Shaw-Howard/Florida Avenue Joint Development Project.

Prior to acting on this proposal, committee members requested that staff conduct due diligence on the capability of Banneker Ventures, LLC, and its proposed development partner, the Bank of America Community Development Corporation (BACDC), to manage this project.

This memorandum transmits staff's findings for your review prior to the next meeting of the PDRE Committee on April 9, 2009.

Specifically, Metro staff finds that:

- Banneker's capability to manage development projects is increasing, but is not yet fully realized.

- Banneker and Maurice Perry, BACDC's local Vice President, agree that BACDC will be an equity partner and managing member of the project during the construction and lease-up phase; after that approximately five-year period, BACDC will exit, and Banneker will take over.

- BACDC is a wholly-owned subsidiary of Bank of America (BoA). BACDC helps BoA fulfill requirements of the Community Reinvestment Act by investing in and developing affordable housing, often through low income housing tax credit projects.

- BACDC has operated in the Washington, DC-Baltimore area over the past decade and has developed hundreds of new and rehabilitated units.

- Until recently, BACDC had a number of staff members. Currently, Mr. Perry is the only employee. He plans to have no more than one project under construction and one project in the pre-development phase at any one time, which he feels he can handle; however, he states that if his pipeline of projects increases, he will hire additional staff.

- References for Mr. Perry are favorable on both development management and construction oversight expertise for projects of the type being proposed for Florida Avenue. Mr. Perry has stated that he will hire (1) a construction manager for the construction phase, which involves excavation near/over the Metro tunnel and erection of a concrete podium for housing over ground floor retail and (2) a firm to review the architectural plans. BACDC and Banneker are currently interviewing such firms, as well as a potential builder.

- Senior management at BoA in Boston and Dallas is very supportive of this project. Mr. Perry has received preliminary approval to engage in negotiations.

- Mr. Perry has also ordered another appraisal as part of his own due diligence to see if the proposed rents are supportable. He expects to bring a recommendation package to his senior management in the next forty-five days.

- A current financing statement for the project indicates the need for approximately $1 million of city subsidy, the availability of which needs to be confirmed.

In conclusion, based upon the information available at this time, staff is comfortable that Banneker Ventures, LLC, and its proposed development partner, the Bank of America Community Development Corporation (BACDC), have the capability and experience to manage this project.

John B. Catoe, Jr.
General Manager

120 days to negotiate a term sheet

**DRAFT**

March 30, 2009

MEMORANDUM FOR: WMATA Board of Directors

SUBJECT: Development Capacity of Banneker Ventures Team
Shaw-Howard/Florida Avenue Joint Development Project

WMATA's Board of Directors requested that staff conduct due diligence on the development management capability of the Florida Avenue lead developer, Banneker Ventures, LLC, and its proposed development partner, Bank of America Community Development Corporation (BACDC). Results to date are:

- Banneker's development management capability is being developed, but has not been achieved yet.

- Banneker and Maurice Perry, BACDC's local Vice President, agree that BACDC will be an equity partner and managing member of the project during the construction and lease-up phase; after that approximately 5-year period, BACDC will exit, and Banneker will take over.

- BACDC is a wholly owned subsidiary of Bank of America (BoA). BACDC helps BoA fulfill requirements of the Community Reinvestment Act by investing in and developing affordable housing, often low income housing tax credit projects.

- BACDC has operated in the Washington, DC-Baltimore area over the past decade and has developed hundreds of new and rehabilitated units.

- Until recently, BACDC had a number of staff members. Now Mr. Perry is the only one. He currently plans to have no more than one project under construction and one project in pre-development at any one time, which he feels he can handle. However, if his pipeline increases, he will hire additional staff.

- References for Mr. Perry are favorable on both development management and construction oversight expertise for projects of the type being proposed (new, stick built housing on a podium) for Florida Avenue. Mr. Perry has stated that he will hire a construction manager for construction phase involving excavation near/over the Metro tunnel and erection of a concrete podium for housing over ground floor retail and, also, a firm to review the architectural plans. BACDC and Banneker are currently interviewing such firms, as well as a potential builder.

- Senior management at BoA, in Boston and Dallas, is very supportive of this project. Mr. Perry has received preliminary approval to engage in negotiations.

- Mr. Perry has also ordered another appraisal as part of his due own diligence to see if the proposed rents are supportable. He expects to bring a recommendation package to his senior management in the next 45 days.

- A current financing statement for the project indicates the need for approximately $1 million of city subsidy, the availability of which needs to be confirmed.

- Metropolis Development Company dropped out of the project because it "could not manage its risk," i.e. gain control of the development process.

The District of Columbia has requested a 120-day extension for negotiating a development agreement for this project; however, as noted earlier, the Board requested an evaluation of the team's development management capacity first. Staff will be prepared to present its conclusion on BACDC/Banneker development capability at the Planning, Development and Real Estate Committee meeting of April 9.

John B. Catoe, Jr.
General Manager

Sid
fmd

April 2, 2009

MEMORANDUM FOR: Chair and Members of the Board

SUBJECT: Capability of the Banneker Ventures Team to Manage the Shaw-Howard/Florida Avenue Joint Development Project

Last month, Metro staff presented members of the Planning, Development, and Real Estate (PDRE) committee a proposal for a 120-day extension for Metro and Banneker Ventures to negotiate a joint development agreement for the Shaw-Howard/Florida Avenue Joint Development Project.

Prior to acting on this proposal, committee members requested that staff conduct due diligence on the capability of Banneker Ventures, LLC, and its proposed development partner, the Bank of America Community Development Corporation (BACDC), to manage this project.

This memorandum transmits staff's findings for your review prior to the next meeting of the PDRE Committee on April 9, 2009.

Specifically, Metro staff finds that:

- Banneker's capability to manage development projects is increasing, but is not yet fully realized.

- Banneker and Maurice Perry, BACDC's local Vice President, agree that BACDC will be an equity partner and managing member of the project during the construction and lease-up phase; after that approximately five-year period, BACDC will exit, and Banneker will take over.

- BACDC is a wholly-owned subsidiary of Bank of America (BoA). BACDC helps BoA fulfill requirements of the Community Reinvestment Act by investing in and developing affordable housing, often through low income housing tax credit projects.

- BACDC has operated in the Washington, DC-Baltimore area over the past decade and has developed hundreds of new and rehabilitated units.

- Until recently, BACDC had a number of staff members. Currently, Mr. Perry is the only employee. He plans to have no more than one project under construction and one project in the pre-development phase at any one time, which he feels he can handle; however, he states that if his pipeline of projects increases, he will hire additional staff.

- References for Mr. Perry are favorable on both development management and construction oversight expertise for projects of the type being proposed for Florida Avenue. Mr. Perry has stated that he will hire (1) a construction manager for the construction phase, which involves excavation near/over the Metro tunnel and erection of a concrete podium for housing over ground floor retail and (2) a firm to review the architectural plans. BACDC and Banneker are currently interviewing such firms, as well as a potential builder.

- Senior management at BoA in Boston and Dallas is very supportive of this project. Mr. Perry has received preliminary approval to engage in negotiations.

- Mr. Perry has also ordered another appraisal as part of his own due diligence to see if the proposed rents are supportable. He expects to bring a recommendation package to his senior management in the next forty-five days.

- A current financing statement for the project indicates the need for approximately $1 million of city subsidy, the availability of which needs to be confirmed.

John B. Catoe, Jr.
General Manager

Washington Metropolitan Area Transit Authority

**Agenda**
**Planning, Development and Real Estate Committee**
**April 9, 2009**

## Executive Session

### I. Information Item

A. Maryland-National Capital Park and Planning Commission Proposal (N. Bottigheimer)
B. Extension of Development Agreement Negotiation Period (N. Bottigheimer)

**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

**Planning, Development and Real Estate Committee**
**Executive Session**

**Board Information Item I-A**

**April 9, 2009**

# Maryland-National Capital Park and Planning Commission Proposal

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ○Action ◉Information | MEAD Number: | Resolution: ○Yes ◉No |
|---|---|---|

**TITLE:**

Morgan Blvd Sta & MNCPPC Term Sheet for TOD

**PURPOSE:**

Obtain approval to negotiate a term sheet with the Maryland National Capital Park and Planning Commission (MNCPPC) for the sale of Metro property adjacent to the Morgan Boulevard Metrorail Station in Prince George`s County, MD in support of proposed transit-oriented development.

**DESCRIPTION:**

In July 2004, Metro offered for development a "U" shaped parcel adjacent to the Morgan Boulevard Metrorail Station. The parcel required the assemblage of adjacent property for optimum development potential. In the fall 2005, Garrett Morgan Boulevard Development Joint Venture (GMBDJV), a joint venture of Centex Homes, Structures Unlimited and Stepping Stones LLC, was selected to be the developer. The parties failed to achieve a binding joint development agreement, and negotiations were terminated in October 2008.

Metro is in receipt of two recent letters, a March 6, 2009 letter from the MNCPPC proposing to purchase certain properties owned by Metro adjacent to the Morgan Boulevard Metrorail Station and a March 17, 2009 letter from the County Executive of Prince George`s County. The second letter supports the proposal made by the first letter.

MNCPPC`s letter states, "For a number of complicated reasons, Prince George`s County has not yet achieved a proportionate share of success in attracting transit-oriented development projects to Metrorail sites in the County. In this light, we are convinced that Metro`s sale of the site at Morgan Boulevard to the Commission offers a truly remarkable opportunity to improve on this score."

MNCPPC owns property adjacent to the Metro site. MNCPPC proposes an assemblage of the two parcels and envisions three uses for the combined site. Its letter states:

- MNCPPC is prepared to participate with the Maryland Stadium Authority (MSA) in an initiative to construct a new Major League Soccer stadium for DC United on a portion of the combined site.

- MNCPPC would retain a portion of the site to construct a consolidated MNCPPC headquarters with between 200,000 and 250,000 square feet of office space needed to accommodate about 500 employees at that site.

- MNCPPC anticipates holding the balance of the combined site for eventual conveyance to one of the redevelopment agencies operated by the Prince George`s County Government. By utilizing MNCPPC`s existing Advance Land Acquisition Revolving Fund, MNCPPC states that it will be able to hold whatever portion of the property is not needed for the stadium or its consolidated headquarters and sell it later to Prince George`s County so that it may arrange for redevelopment that follows a spirited mixed-use model.

**FUNDING IMPACT:**

No funding impact as a result of this action. The sale of the property at Morgan Boulevard would generate revenues for the Transit Infrastructure Investment Fund (TIIF), but of an as-yet undetermined amount. After negotiations of the term sheet are completed, staff would know the funding impact and bring the proposed term sheet and resulting funding impact to the Board for approval.

**RECOMMENDATION:**

Approve the negotiation of a term sheet with the Maryland National Capital Park and Planning Commission for the sale of Metro property adjacent to the Morgan Boulevard Metrorail station in support of the proposed transit-oriented development.

Planning, Development and Real Estate Committee
Executive Session

Board Information Item I-B

April 9, 2009

# Extension of Development Agreement Negotiation Period

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ○Action ◉Information | MEAD Number: | Resolution: ○Yes ◉No |
|---|---|---|

**TITLE:**

Extend Agreement Negotiation Period for Shaw-FL Av

**PURPOSE:**

Approve a 120-day extension for negotiating a joint development agreement for the Shaw-Howard University/Florida Avenue parcels.

**DESCRIPTION:**

On June 26, 2008, the Board selected a development team and approved a term sheet for the Shaw-Howard University/Florida Avenue property, which consists of three parcels totaling 28,892 sf located between 7th and 9th Streets NW in Washington, DC. The development team was composed of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC. It proposed to develop a minimum of 104 housing units over ground floor retail of approximately 11,750 sf under a 60-year lease.

In its approval, the Board directed that the final agreement include an affordable housing component. It further directed staff to provide documentation to the Board clarifying the roles and responsibilities of the members of the development team.

Following term sheet and Developer approval, staff prepared a draft development agreement, which was provided to the Developer. The Developer has:

A. Requested a revised business deal reflecting the inclusion of affordable housing. The rent would be substantially reduced from that agreed to at term sheet approval.

B. Lost at least one member of the development team, Metropolis Development Company, which provided the construction and development expertise needed for the proposed project. Banneker, the lead member of the development team, has not yet provided documentation on a suitable replacement and its roles and responsibilities on the team.

C. Requested a 99-year lease instead of a 60-year lease.

The extension being requested is expected to provide enough time for resolution of the items noted above.

**FUNDING IMPACT:**

This action will have no immediate impact on funding although a reduction in land value for

affordable housing from that agreed to at term sheet stage will have an impact that will be presented to the Board upon negotiation of a joint development agreement. Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

Approval of a 120-day extension for negotiating a joint development agreement for the Shaw-Howard University/Florida Avenue parcels. A negotiated agreement will be brought to the Board for approval.

FOIA CONFIDENTIAL TREATMENT REQUESTED



# Extend Negotiation Period for Joint Development Agreement

***Presented to the Board of Directors:***

**Planning, Development and Real Estate Committee**
**Executive Session**

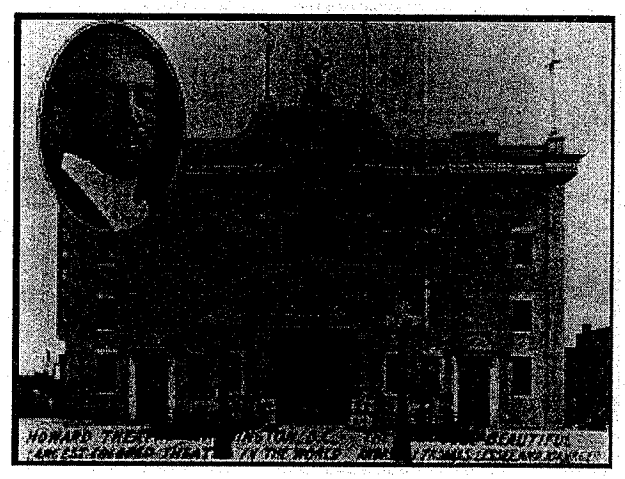
April 9, 2009

WMATA-INV 001182

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

**Approve a 120-day extension for negotiating a joint development agreement.**

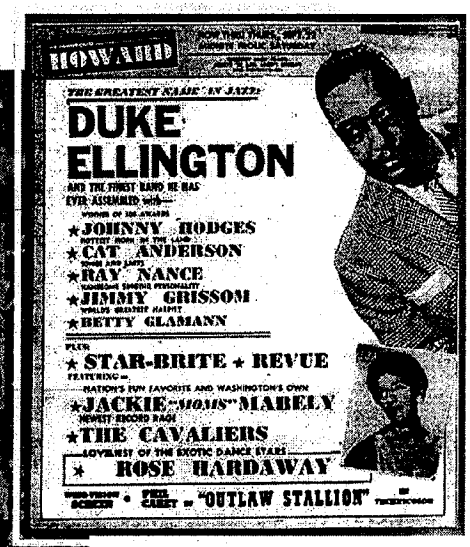


WMATA-INV 001183

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Site

- Metro has 3 parcels (comprising 28,892 sf) that were used to construct Green Line tunnel
- Washington, DC adopted "Duke" Plan for area in 2005




WMATA-INV 001184

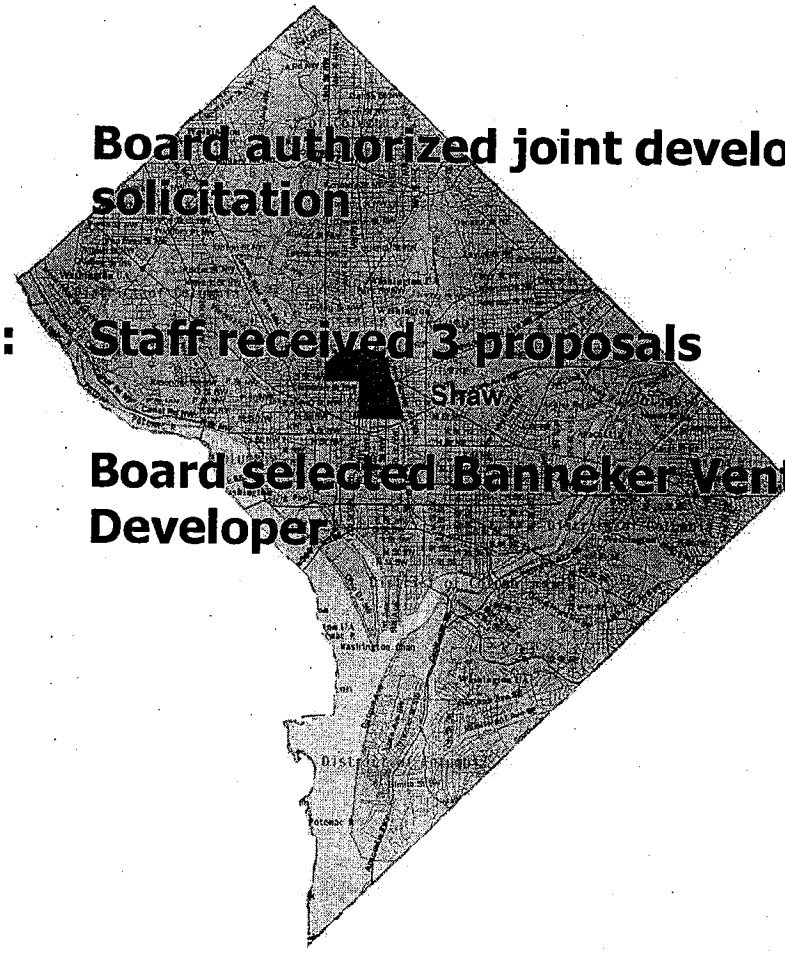
FOIA CONFIDENTIAL TREATMENT REQUESTED

# Background

**July 2006:** Board authorized joint development solicitation

**October 2007:** Staff received 3 proposals

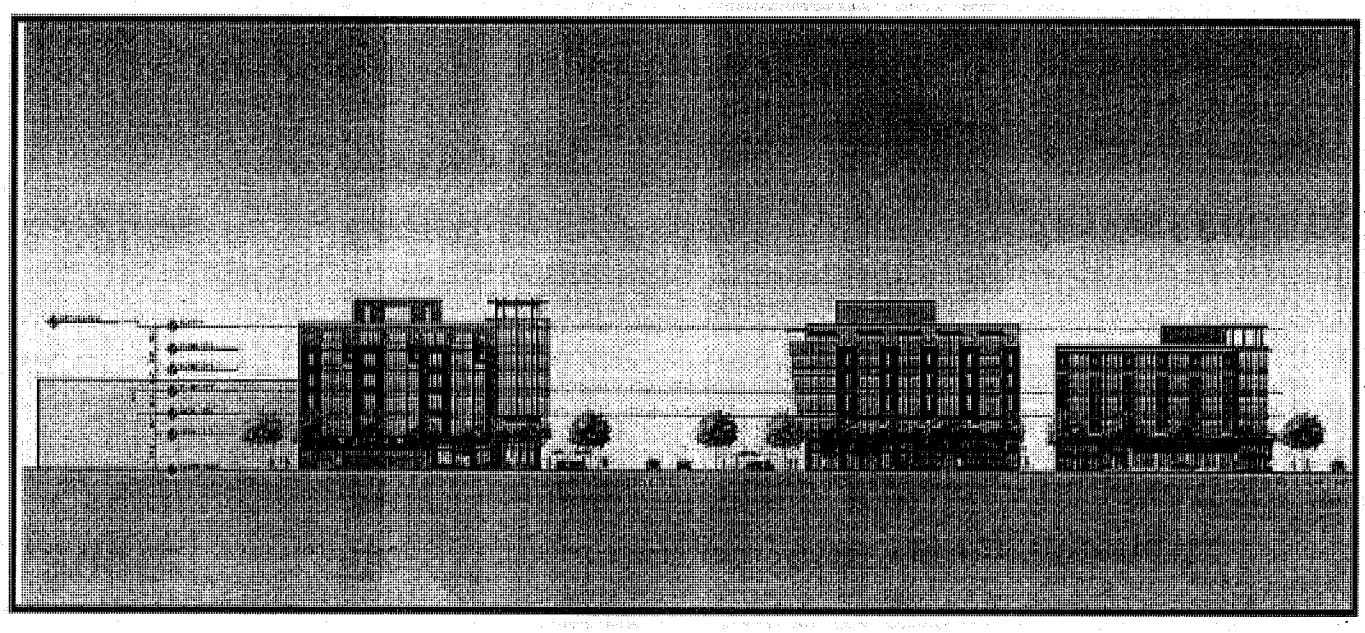
**June 2008:** Board selected Banneker Ventures team as Developer




WMATA-INV 001185

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Elevation



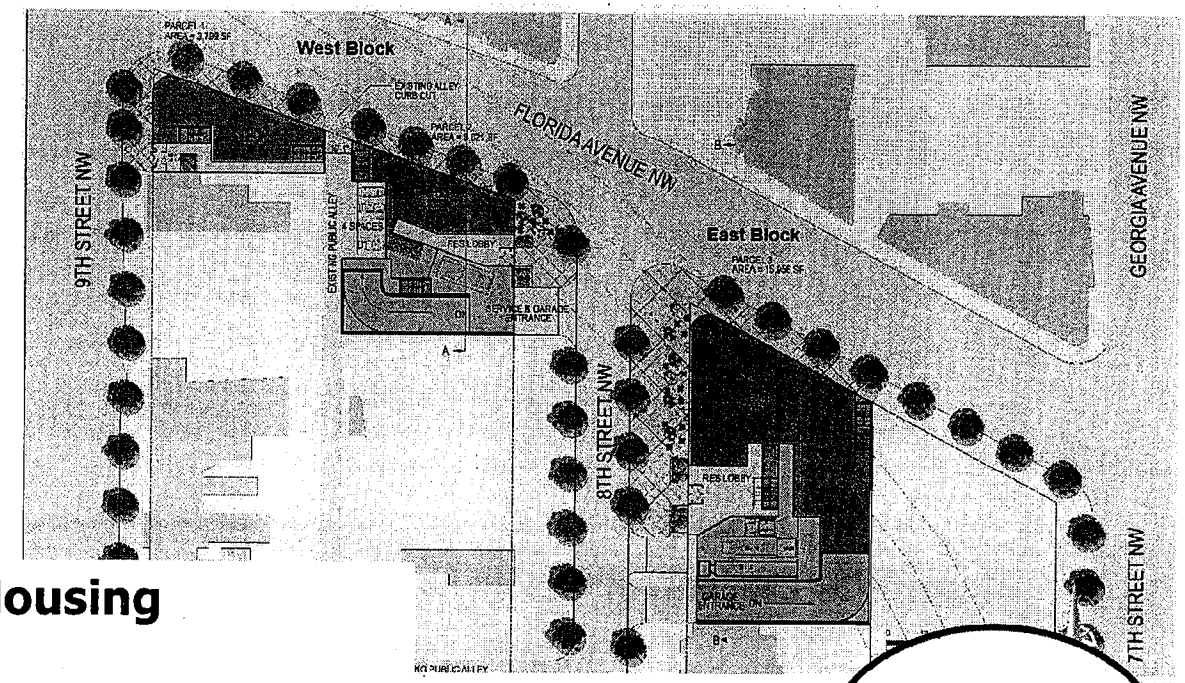
- Provides 104 apartments
- Allocates 11,750 sf for retail/arts uses

WMATA-INV 001186

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Issues

U Street/
African-American
Civil War
Memorial/Cardozo
Station
U & 10th




Shaw-
Howard University
Station
7th & S

- Affordable Housing
- Development Team Capacity
- Lease Term

WMATA-INV 001187

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

**Approve a 120-day extension for negotiating a joint development agreement.**

WMATA-INV 001188

RPD 11/2/11

Board Actions on Aborted Board Actions

| | | Date | MEAD | Action |
|---|---|---|---|---|
| 1. | Developer Selection | 3/08 | Eleanor Hands Policy | postponed |
| 2 | " " | 3/08 | | approved |
| 3. | Extend Agreement Negotiation Period 120 days | 3/09 | 100284 | " 409 |
| | | no action | developer qualifications issue Pomp/BAK due diligent | tabled " |
| 3. | Policy on Affordable Hsg | 3/09 | | |
| 4. | Authority Guidance to Renegotiate | 3/09 | | no action |
| 5. | | | | |
| 6. | Extend term sheet/Exclusive negotiation 120 days to Dec 2009 | 9/09 | 100426 | approved |
| 7. | | | | |
| 8. | Sell FL Ave | 10/09 | 100527 | aborted |
| 9. | Lease FL Ave | 11/5 | 100527 | no action |
| | | 11/19 | | " |
| | | 12/3rd | | " |
| 10. | Time Extension to Negotiate Amended Term Sheet for lease to March 31, 2010 | 1/14/10 | 100527 | approved |
| 11. | Action Amended Term Sheet + Time Extension | 3/25/10 | 100628 | tabled no further act |

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Bottigheimer, Nat
**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:



WMATA-INV 001190

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 001191

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**

| | |
|---|---|
| Base Value to Metro – capitalized lease payment | $2,050,000 |
| 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.

**Additional Revenues**

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.

*Participation in Capital Events*

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

**From:** "Goldin, Steven" <sgoldin@wmata.com>
**Date:** Thu, 22 Oct 2009 15:07:33 -0400
**To:** 'Omar A. Karim'<okarim@bannekerventures.com>; John' 'Hagner<JHagner@wcsr.com>; Maurice' 'Perry<maurice.perry@bankofamerica.com>; jkass@dccouncil.us<jkass@dccouncil.us>; Yohance S. Fuller<Yohance.Fuller@dc.gov>; Doggett, Rosalyn<RDoggett@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>
**Cc:** Catoe, John B.<jbcatoe@wmata.com>; Pant, Shiva K.<SPant@wmata.com>; O'Keeffe, Carol B.<cokeeffe@wmata.com>; Moneme, Emeka<EMoneme@wmata.com>; Bottigheimer, Nat<NBottigheimer@wmata.com>; Sequeira, Loyda<LSequeira@wmata.com>; Meister, Mark K.<MMeister@wmata.com>; Mohsberg, Sid<SMohsberg@wmata.com>; Wallace, Maria A<mawallace@wmata.com>
**Subject:** Florida Avenue

To All:

As per direction from our Board, we are proceeding with preparing a term sheet for the lease of our property. The matter is to be taken up by the full Board in a special meeting in two weeks.

The lease will be as it was when a lease was first discussed (prior to my arrival): a capitalized payment at closing, an annual % participation in net operating income and a % participation upon various capital events (refinance, sale, etc). My understanding is that the participations had been 1.5% and 10% respectively.

By way of this e-mail, I am asking the following actions to be taken:

Omar: Please advise whether you as the developer are in agreement

Maurice: Please advise whether Bank of America CDC is in agreement

Jonathon: Please confirm that Chairman Graham is in agreement

Yohance: Please Confirm that Mr. Albert is in agreement

Roz/Malcolm: Please call Richard Harps and explain that we need the updated appraisal in hand by 10/30. Please initiate a new BAIS.

Josh/John: Please revise the term sheet to reflect the lease and discuss the co-tenancy agreement

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616



FOIA CONFIDENTIAL TREATMENT REQUESTED 

## Doggett, Rosalyn

**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

Besides JDA

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

Guarantee

Co tenancy



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Doggett, Rosalyn
**Sent:** Tuesday, October 27, 2009 3:02 PM
**To:** Mohsberg, Sid
**Subject:** FW: MEAD 100527 - Shaw-Howard Florida Avenue Joint Development Site

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**From:** Doggett, Rosalyn
**Sent:** Tuesday, October 27, 2009 3:00 PM
**To:** O'Keeffe, Carol B.
**Subject:** RE: MEAD 100527 - Shaw-Howard Florida Avenue Joint Development Site

Do you mean that the title for MEAD 100527 should say "Amended Term Sheet for lease etc. etc."?

---

**From:** O'Keeffe, Carol B.
**Sent:** Tuesday, October 27, 2009 2:23 PM
**To:** Doggett, Rosalyn; Moneme, Emeka; Obora, Heather A.; Requa, Jack; Kissal, Carol; Francis, Gerald C.; Sequeira, Loyda; Pant, Shiva K.
**Cc:** Bottigheimer, Nat; Goldin, Steven; Mohsberg, Sid
**Subject:** RE: MEAD 100527 - Shaw-Howard Florida Avenue Joint Development Site

There is an existing Term Sheet for a lease on this property. The one going through needs to reflect the amended term sheet.

---

**From:** Doggett, Rosalyn
**Sent:** Tuesday, October 27, 2009 2:00 PM
**To:** Moneme, Emeka; Obora, Heather A.; Requa, Jack; Kissal, Carol; O'Keeffe, Carol B.; Francis, Gerald C.; Sequeira, Loyda; Pant, Shiva K.
**Cc:** Bottigheimer, Nat; Goldin, Steven; Mohsberg, Sid
**Subject:** MEAD 100527 - Shaw-Howard Florida Avenue Joint Development Site

Please note that MEAD 100527 which all of you, except Shiva, previously approved has been changed from a sale to a lease per Board instructions. The revised BAIS is attached.

Shiva, please approve.

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 

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Tuesday, November 24, 2009 7:20 PM
**To:** Goldin, Steven
**Cc:** aives@bannekerventures.com; 'Tiwana Hicks'; Doggett, Rosalyn; John' 'Hagner; O'Keeffe, Carol B.; Bottigheimer, Nat
**Subject:** RE: Florida Avenue

**Importance:** High

Steve,

Below are our responses to your email from last Thursday:

1. WMATA: The initial capitalized lease payment was deemed insufficient and must be increased.

   Developer Response:

   Yes – + they benefited from an estimated of tunnel cost that exceeded theirs by $800K

   A. The capitalized lease payment was determined by WMATA's independent third-party appraisers based on their opinion of fair market value after considering the development restrictions/requirements to be imposed by the District and the additional costs of constructing on top of the tunnel.
   B. The determination of the fair market capitalized rent did not consider the additional consideration WMATA will receive from Participating Rent at 1.5% of effective gross receipts or Premium Rent at 2% of gross capital proceeds after repayment of debt. The appraiser specifically noted that in the appraisal because such rent is in addition to the fair market value appraisal.
   C. Based on the Additional Density which we expect to build on the Total Project (WMATA's land and the adjoining land in Square 393) and the formula for increasing the capitalized base rent payment in the Term Sheet for WMATA's land, the final, capitalized lease payment (as determined by WMATA in the 11/6/09 memo to the Board) is expected to be between $3.03M and $4.28M, which is between 50% and 100% of the land appraised value as determined by WMATA's independent appraiser.

   If you are available to meet tomorrow to discuss what the staff and Board has in mind about paying more than 50% to 100% more than the appraised value of the land, I will make myself available.

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.

   A. As you recall, the list below summarizes the initial/renal terms for 11 other WMATA joint development projects as provided to us by Nat a few weeks ago:

   | | |
   |---|---|
   | Ballston | 60+39 |
   | Bethesda | 50+49 |



WMATA-INV 001199

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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

wrong facts

Based on zoning information, the Dunn Loring Station project included the fee purchase of a majority of the site and a ground lease of a small portion of the site next to the WMATA Garage where a private garage and 30,000 square feet of retail were jointly being developed. Without the fee purchase of the much larger parcel where 672 condominium units and 20,000 square feet of commercial development will occur, no developer would have accepted the rent adjustment on the leased parcel after 20 years. Therefore, to present Dunn Loring as solely a "2+(4) 10" ground lease is not accurate. Also, to our knowledge, the Dunn Loring project has not gone forward because the developer cannot get financing and should not be considered an existing project until it is successfully financed on the terms WMATA presented. Lecture is gratuitous

We don't have any information on the Friendship Heights Station ground lease. If it does not include a high percentage of residential rental units with a good percentage of affordable units, we respectfully believe it is not comparable to the Shaw/Florida Ave. project.

I think that these loans can be refinanced & terminated the developer's risk

B. It is currently not possible to finance a mixed-use, retail and multifamily project with affordable units with any currently available loan program that does not involve the U.S. Government (HUD/FHA) or the GSE's (Fannie Mae, Freddie Mac) and some sort of government financial support for the affordable units. All of these lending programs are fixed-rate with long maturities. The FHA 220 loan program which has a loan term of 40 years after converting to a permanent loan is the only currently available loan program available for the planned improvements. FHA will not permit a rent increase to have priority over its loan payments and will limit the Percentage Rent ahead of its loan payments to one percent of effective gross rent.

I don't think that that is true

C. The proposal that we submitted since day one showed that we intended to obtain HUD financing, which requires a fixed term of the length of the loan (40 years) plus at least 10 years, making a lease term at least 50 years. WMATA has done several deals that were HUD insured and knows HUD's requirements about not re-setting during the term of the "insured period", which is 50 years at a minimum.

We would consider shortening the fixed term to 50 years and then proposing market adjustments every twenty years if the deal was a 50 year lease with a 49 year option (similar to Bethesda, Dupont, Farragut, 1400 Eye, etc.). However, any term less than 60 years, which WMATA's RFP stated the minimum lease term would be, would make the deal less valuable, and thus, would certainly impact our ability to pay more under a capitalized lease structure discussed in #1 above. However, we remain committed to working with the Staff and Board to come to financial terms that make sense for all parties involved.

not true WMATA prefers a 60 year maximum

Twinbrook has resets every 10 years as does Term Sheet for Navy Yard Chiller

Please let me know if you are available to meet tomorrow to hopefully come to an agreement on these issues.

Have a good evening.



WMATA-INV 001200

Omar

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**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
**Subject:** Florida Avenue

Omar

The Board took no action today after discussing the matter. Following the meeting, staff has been directed to submit a memo to the Board on Wednesday 11/25/09, addressing these issues in order for the Board to reconsider the approval of a term sheet for the lease on 11/30/09:

1) The initial capitalized lease payment was deemed insufficient and must be increased.
2) The lack of a payment "reset" for the first 60 years was deemed unacceptable. The Board wants to see earlier resets and we propose a reset every ten years as a starting point for discussion.

The Real Estate TOD Team and attorneys in the Counsel's Office will be in a work session all day tomorrow. Understanding the short time frame in which we have to resolve this matter, or not, please get back to me on Monday 11/23/09.

Thank you

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001201

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Mohsberg, Sid
**Sent:** Thursday, November 12, 2009 4:15 PM
**To:** Sequeira, Loyda; Bellamy, Michelle A.
**Cc:** Pant, Shiva K.; Green, Jennifer A.; Bottigheimer, Nat; Goldin, Steven; Doggett, Rosalyn; Requa, Jack; Hershorn, Julie G.; O'Keeffe, Carol B.
**Subject:** BAIS 100527 Amended Term Sheet Lease Shaw-Howard/FL Ave Site
**Attachments:** Shaw Howard LEASE term sheet Presentation for 11-19-09 as of 11-12-09-2.pptx; BAIS 100527 Shaw Howard Lease 11-12-09.pdf

Loyda,

Attached are the updated BAIS and presentation for the subject item for tomorrow's mail out for the 11/19/09 PDRE Cmte meeting. They reflect the edits received this afternoon from CHOS.

Please let me know if you have any questions.

Thanks.

Sid



WMATA-INV 001202

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Yohance (EOM) Fuller [yohance.fuller@dc.gov]
**Sent:** Monday, November 09, 2009 2:28 PM
**To:** okarim@bannekerventures.com; jkass@dccouncil.us; jhagner@wcsr.com; Bottigheimer, Nat
**Cc:** Neil.Albert@dc.gov; Doggett, Rosalyn; O'Keeffe, Carol B.; Goldin, Steven
**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

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**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

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



WMATA-INV 001203

FOIA CONFIDENTIAL TREATMENT REQUESTED

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.

John



WMATA-INV 001204

# 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

# 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

## 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

# M E M O R A N D U M

SUBJECT: Amended Term Sheet
Shaw-Howard U/Florida Avenue
Joint Development Site

DATE: March 12, 2010

FROM: PLJD - Nat Bottigheimer

TO: GMGR - John B. Catoe

In January 2010, staff presented Banneker Ventures' proposed terms for the disposition of Metro properties along Florida Avenue. At that time, the Board requested Banneker to return with an improved offer.

In response, Banneker has updated its proposal, and attached with this memo is a detailed comparison of the terms proposed in 2008, in January 2010, and the present March 2010 proposal. Board member Albert has requested obtaining this information prior to the scheduled mailout of Board materials for the March 25th meeting. As you requested, I am providing you this memo summarizing Banneker's new proposed terms so that you can transmit these materials to Board member Albert and all other Board members, as well.

In several significant ways Banneker has improved its offer:

- The value of the offer is higher, a $5.2 million capitalized lease payment at closing versus a $2.8 million proposal in January. It results from the Developer's being able to take advantage of the density bonus for affordable housing through a construction technique not previously envisioned and eliminating costs of acquiring adjacent land.
- Development will occur only on Metro parcels which greatly simplifies implementation. In January the Developer had proposed combining Metro's parcels with those under Developer control and constructing a building straddling both parcels; this compromised Metro's control of its own land in the event of a Developer default. Now that issue has been eliminated.
- A 75-year lease term is proposed instead of the 99-year term put forth in January, allowing Metro to recapture the site at an earlier point in time should it wish to.
- As requested by the Board, there is a provision that allows Metro to recapture the site should the Developer not proceed in a timely manner. Metro can default the Developer and then terminate the lease if the foundation/garage level of the development is not completed within 28

Washington
Metropolitan Area
Transit Authority

months of execution of a joint development agreement.

One change of potential concern is the absence of a development partner with demonstrated experience delivering projects of this nature. Banneker has committed to propose a development partner subsequently, subject to Metro approval.

Overall, the current offer is commensurate with Metro's appraisal at the time of Developer selection in 2008.

FOIA CONFIDENTIAL TREATMENT REQUESTED

**Doggett, Rosalyn**

**From:** Milton J. Grossman [mgrossman@mbolaw.com]
**Sent:** Tuesday, November 17, 2009 2:55 PM
**To:** melmanrogers@gmail.com; Doggett, Rosalyn
**Subject:** Stranger and stranger (from DCist.com)

# DPR Hearings Continue, Kind Of

With relations between Mayor Adrian Fenty and the D.C. Council as strained as they are, you'd think the city's chief executive might do what he could to make things just a little bit better. But if a hearing today before the council on the ongoing Department of Parks and Recreation contracting scandal serves as any indication, that doesn't seem to be the case.

Two key administration officials failed to show at the council's hearing today – the third so far – on the $82 million in parks and rec contracts that were funneled through the D.C. Housing Authority without council approval. The no-shows, as D.C. Wire notes, make this two weeks in a row that administration officials have failed to appear, leading to subpoenas being issued. Just last week, Interim Director of the Department of Parks and Rec Ximena Hartsock was the absentee witness; today Hartsock finally testified, but David Jannarone and Jacquelyn Glover, both of whom work with Deputy Mayor for Economic Development and Planning Valerie Santos, failed to appear.

Santos, who did testify today, was asked twice by Council member Harry Thomas (D-Ward 5) to find out where Jannarone and Glover where. Santos claimed that Glover was not returning calls and that Jannarone had the day off. When pressed about the timing of Jannarone's vacation, Santos admitted that she couldn't exactly remember signing the paperwork allowing him the time away from work.

And so the hearings shall continue.

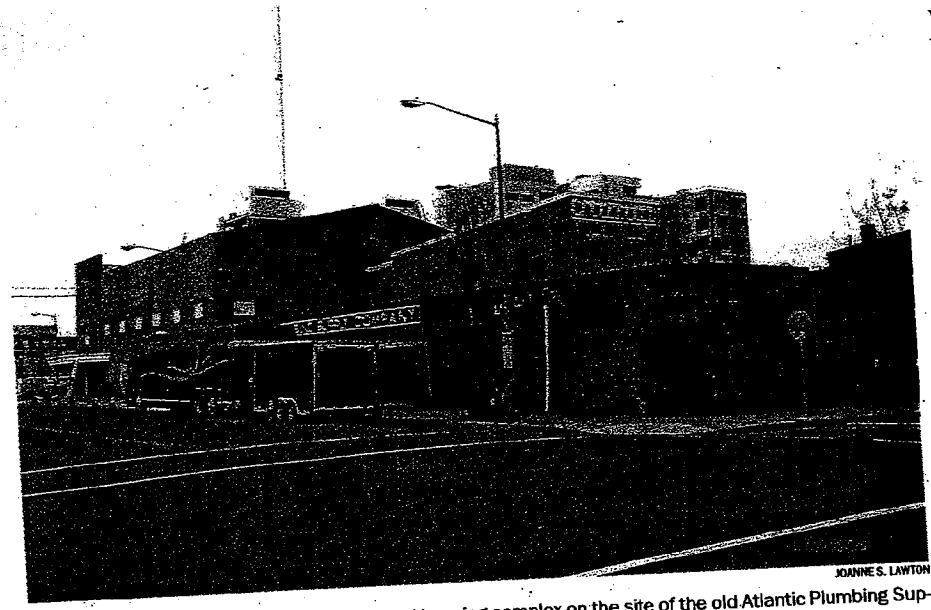


WMATA-INV 001211

$21.6 M purchase
@ 700,000 sf = $31 / FAR sf
@ 800,000 sf = $27 / FAR sf



# : Towers plan faces foreclosure threat



JOANNE S. LAWTON

**REDEVELOPMENT WOES:** Plans for a retail and housing complex on the site of the old Atlantic Plumbing Supply building are in trouble due to the developer's financial problems and possible environmental concerns.

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mont Condominium at 401-425 Massachusetts Ave. NW.

UBS Real Estate Securities Inc. sliced the $21.6 million note on the Atlantic Towers site into commercial mortgage-backed securities, which were sold to multiple investors.

Like hundreds, if not thousands, of other commercial property owners are learning, that meant when the note came due this past May — with virtually no means to refinance the loan — there was no individual lender to work with Broadway on a solution.

After the May default, Wells Fargo Bank, which is serving as trustee for the commercial mortgage-backed securities, transferred the loan to a special servicer — Capmark Finance Inc., which itself declared bankruptcy on Oct. 25, according to court records.

On Sept. 4, Wells Fargo filed a notice of foreclosure, setting an Oct. 13 auction date for the property. That date came and went, and parties to the matter declined to explain why the site was not sold or comment on this story.

On Oct. 26, Wells Fargo filed a second notice of foreclosure, setting a new Feb. 17 auction date.

In the meantime, the trustee also filed a lawsuit on Nov. 17 seeking to put the property into receivership, citing neglect.

According to the complaint, filed in D.C. Superior Court, District officials have notified the owners of the presence of both trespassers and weeds.

The site's industrial past may be one factor complicating a foreclosure sale. Lenders are often reluctant to take title to land burdened with environmental liabilities, according to legal experts.

On Sept. 22 — three weeks before the first scheduled foreclosure auction — a consultant produced a report indicating the presence of environmental contaminants in soil and groundwater samples from the property.

Although the contamination levels are within limits designed to protect groundwater — and both remaining underground storage tanks were found to be tightly sealed — the report states that the results must be reported to the D.C. Department of Health. The department is likely to require a comprehensive site assessment to determine whether it should order corrective action, the report said.

■ E-MAIL: MCASTRO@BIZJOURNALS.COM PHONE: 703/258-0836

FOIA CONFIDENTIAL TREATMENT REQUESTED

Off-Street Parking Requirements C-2-B

1 space/3 apartments = 138/3 = 46 parking spaces

1 space/750 retail gsf over 3,000 gsf = 15 parking spaces for 14,000 gsf retail

46 + 15 = 61 x .75 = 46 space MOR requirement (near Metro you need only 75% of requirement)

Variance needed for 5 spaces if only 41 are provided

Purchase Price and Terms Florida Avenue Parcels 9-30-09

| | | |
|---|---|---|
| 100,711 | buildable sf at 5 stories | source: Eric Colbert, AIA |
| $5,035,550 | price at $50/sf | source: Harps & Harps, MAI |
| -$2,300,000 | deduct for extraordinary cost of building over tunnel | source: WMATA cost estimator |
| -$513,120 | deduct for Inclusionary Zoning affordable housing @ 80% AMI | source: Harps & Harps, MAI |
| $2,222,430 | purchase price | |

add $50/FAR sf for any city-approved density above 100,711 sf generated by WMATA parcels
deduct $80/FAR sf for any city IZ requirements above 6,414 sf generated by WMATA parcels
$100,000 Option Fee is not credited toward purchase price (per executed term sheet)

FOIA CONFIDENTIAL TREATMENT REQUESTED

R. Harps
9/30/09, 3pm

$78 @ $2.2 million = 1 story retail

| | | | |
|---|---|---|---|
| HARPS | $100,711 X $50 | | 5,035,550 |
| | | tunnel deduct | 2,300,000 |
| Residential * | | affordable deduct | 513,120 |
| | | | 2,222,430 |

either 100,711 or
*99,316 = 80,167 x 8% = 6,414 sf. x $80 = 513,120
x 80% ±

R. Doggett 9/30/09
to S Golden
2:40pm

~~100,711 × 55 = 5,549,246~~
~~2,300,000~~
~~3,249,246~~
~~1,546,000~~
~~2,703,246~~
~~900,711~~
~~- 432,575~~

Ever got a little more than MOR

100,711 × $55 = 5,549,246
tunnel 2,300,000
affordable 513,120 432,575
2,816,671
- 503,555
2,320,116

without retail deduction !!

Res. Density = 80,167
.08
6,414 ×80

3,600 x .8 = 2880
7,621 x .8 6096
14,972 x .8 11,976
20,952

.8 x 3600
.8 x 7621
.8 x 14,972

~~2880~~ 172
1542
R Harps
9/30/89
11:55 a.m

100,711 = $2.5M

$55 - $50 = $2 M

28,376 ft x 3.5 = 99,316
Eric says max buildable
MOR
x 4.5
127,692

$ .7 x 28,376
x 50% =
9,932
x $55
546,000

8% x 99,316 = 7,865 s.f.
include retail

Purchase Price and Terms Florida Avenue Parcels 9-25-09

| | | | |
|---|---|---|---|
| 100,311 | buildable sf at 5 stories | | source: Eric Colbert, AIA |
| -1,974 | sf adjustment for 516 sf less in Lot 31 | 85% potential FAR | source: Colbert buildable sf and record plat for lot 31 |
| 98,337 | buildable sf | | |
| | | | |
| $5,408,535 | price at $55/FAR sf | | source: Harps & Harps, MAI |
| -$2,300,000 | deduct for extraordinary cost of building over tunnel | | source: WMATA cost estimator |
| -$700,000 | deduct for Inclusionary Zoning affordable housing @ 80% AMI | | source: Harps & Harps, MAI |
| $2,408,535 | purchase price | | |

add $55/FAR sf for any city-approved density above 98,337 sf generated by WMATA parcels
deduct $80/FAR sf for any city IZ requirements above 8,782 sf generated by WMATA parcels
$100,000 Option Fee is not credited toward purchase price (per executed term sheet)

FOIA CONFIDENTIAL TREATMENT REQUESTED

FLORIDA AVENUE SURVEY

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Tiwana Hicks [thicks@bannekerventures.com]
**Sent:** Thursday, July 30, 2009 12:45 PM
**To:** Doggett, Rosalyn
**Cc:** Maurice L. Perry; okarim@bannekerventures.com; Moneme, Emeka; Meister, Mark K.
**Subject:** Shaw-Howard/Florida Avenue Parcels

**Importance:** High

Mrs. Doggett,

Please confirm the lot and square numbers and the square footages of each of the WMATA parcels included in the Leased Premises. Please also provide us with a copy of Exhibit A to the WMATA Joint Development Term Sheet Shaw-Howard/Florida Avenue Sites, executed July 17, 2008, which outlines the Leased Premises. The total square footage of the Leased Premises, 28,892 SF, as noted in the Term Sheet, JDA and Lease, differs from the total square footage attained after adding up each of the parcels sited in the Term Sheet (i.e., Square 393, Lot 44; Square 393, Lot 45; and Square 416, Lots 18 and 31). Additionally, is the new appraisal complete? If so, can you please provide us with a copy for our records? Thanks in advance for your assistance.

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

## Doggett, Rosalyn

**To:** Medina, Ed; Meister, Mark K.
**Cc:** Montague, Joshua W.; Goldin, Steven
**Subject:** FW: Fla 9th
**Attachments:** Sq 393 Lot 0044 Title Report.pdf; Sq 393 Lot 0045 Title Report.pdf; Sq 416 Lot 0031 Title Report.pdf; The Jazz Boundary & Topo Survey.PDF

Are these adequate? I am dubious. Further, they have included "of 3" with Sq 416, Lot 31 which our surveyor

-----Original Message-----
From: Tiwana Hicks [mailto:thicks@bannekerventures.com]
Sent: Wednesday, October 07, 2009 11:07 AM
To: 'Omar A. Karim'; Doggett, Rosalyn
Cc: Montague, Joshua W.
Subject: RE: Fla 9th

Ms. Doggett,
Attached please find the Survey and title reports. Please call us with any questions.
Thanks.
Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, D.C. 20005
T: (202) 393-5460
F: (202) 393-5462
C: (202) 486-1863
thicks@bannekerventures.com

-----Original Message-----
From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Wednesday, October 07, 2009 10:47 AM
To: Omar A. Karim
Cc: Tiwana Hicks; Montague, Joshua W.
Subject: RE: Fla 9th

Thank you for the reply; I'm working on the term sheet now. Can you please send me a copy of your survey and title report as previously requested? Many thanks. R.

-----Original Message-----
From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, October 06, 2009 6:13 PM
To: Yohance S. Fuller; Doggett, Rosalyn
Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Marshall, Malcolm; Goldin, Steven
Subject: RE: Fla 9th

Ms. Doggett,

Thank you for the memo summarizing the updated appraisal. Based on the final value provided by the appraiser in the memo dated October 1, 2009, we are prepared to enter into the term sheet with you all based on this final value and other terms previously discussed with WMATA staff, and move forward to Committee and Board approval on the 22nd. We look forward to receiving the Term Sheet and final appraisal from you all on Friday.

My best

FOIA CONFIDENTIAL TREATMENT REQUESTED

Wash. Gas field survey

(6)

Metro & Transport tunnels & underground

Transport tunnels & Metro underground

(4)

Dup. Metro & Transport

GENERAL NOTES:

1. Horizontal Datum: Metro Project Datum
2. Vertical Datum: Metro Project Datum
3. Property Zoned: "ARTS/C-2-B" Community Business Center-Medium Density

   Zoning information shown is subject to interpretation by a qualified zoning attorney or personnel practicing in the District of Columbia. AKLine, Inc., offers no opinion in zoning related issues affecting the subject property. To verify in zoning compliance please contact the Office of Zoning at 415 4th Street, N.W., Suite 200 South, Washington, DC 20001 (Tel. 202-727-6311).
4. Property shown hereon lies within Flood Zone "C" - Areas of minimal flooding as established by the U.S. Federal Emergency Management Agency, National Flood Insurance Program, Flood Insurance Rate Map, Community Panel No. 110001 0020 D, map effective date: November 15,1985.
5. This survey was prepared without the benefit of a Title Report and may not reflect easements, property lines and other restrictions of record.
6. Underground utilities designated by Insight, LLC.

NOTE: . Pipe sizes, inverts and types should be verified with existing asbuilt records.

## TRAVERSE INFORMATION

| NO. | NORTHING | EASTING | ELEVATION (DC DPW/C) | DESCRIPTION |
|---|---|---|---|---|
| 101 | 394548.2535 | 793171.5605 | 90.65 | PK NAIL IN CONCRETE |
| 102 | 394575.6979 | 793213.1887 | 90.85 | PK NAIL IN CONCRETE |
| 103 | 394520.0197 | 793371.1844 | 89.81 | PK NAIL IN CONCRETE |
| 104 | 394389.0743 | 793612.0655 | 91.00 | PK NAIL IN CONCRETE |
| 105 | 394327.5389 | 793543.5266 | 90.78 | HUB & TACK |
| 106 | 394456.2958 | 793408.7819 | 89.14 | PK NAIL IN CONCRETE |
| 107 | 394420.9232 | 793261.9178 | 89.58 | PK NAIL IN CONCRETE |
| 108 | 394529.8568 | 793283.9751 | 90.25 | PK NAIL IN CONCRETE |

## BENCHMARK INFORMATION

| NO. | ELEVATION | DESCRIPTION |
|---|---|---|
| BM#1 | 90.65 | PK Nail (Trav#101 as Shown on Plan) |
| BM#2 | 90.85 | PK Nail (Trav#102 as Shown on Plan) |
| BM#3 | 91.00 | PK Nail (Trav#104 as Shown on Plan) |
| BM#4 | 89.14 | PK Nail (Trav#106 as Shown on Plan) |

## METRO CONTROL STATIONS

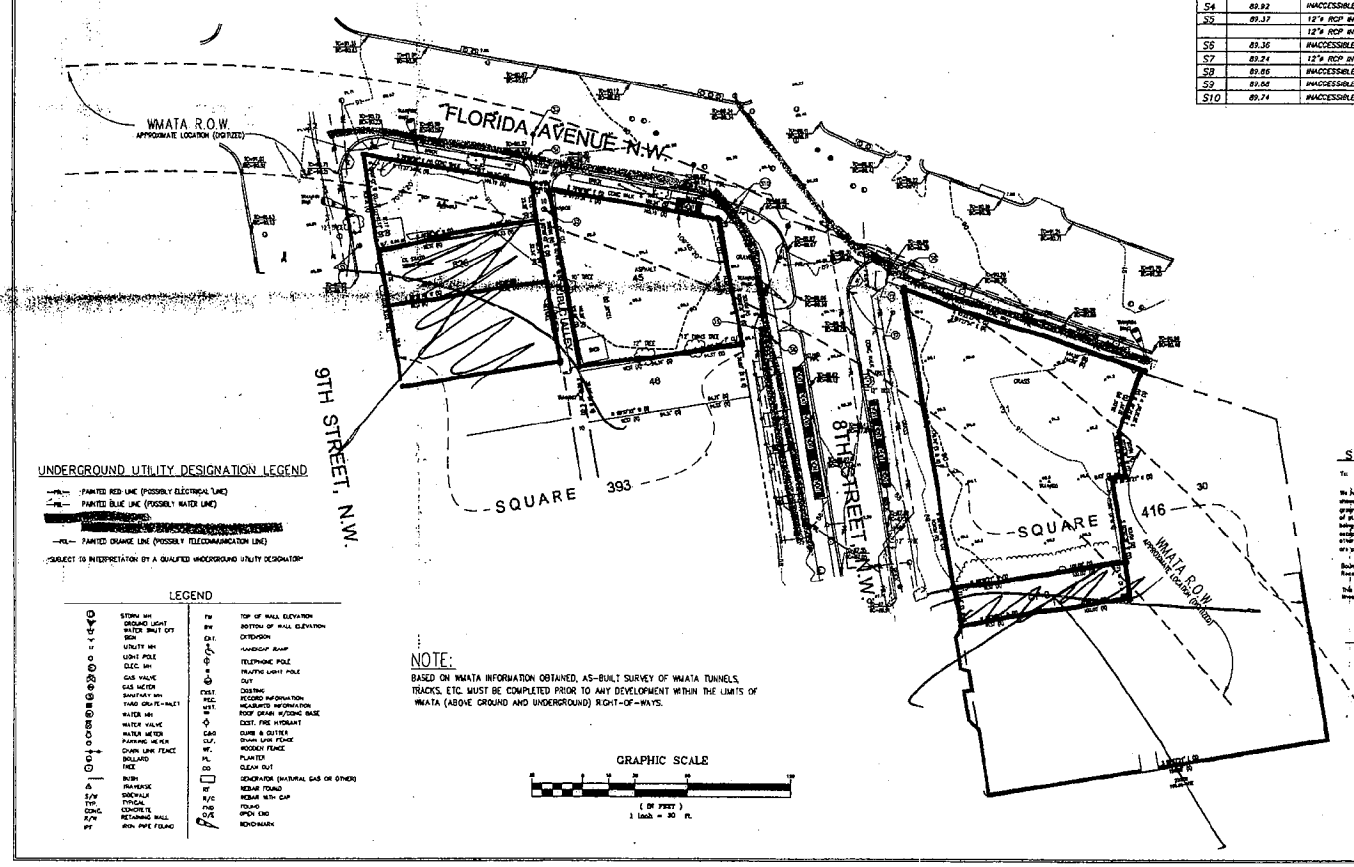
METRO PROJECT DATUM

| NO. | NORTHING | EASTING | ELEVATION | DESCRIPTION |
|---|---|---|---|---|
| E-965 | 395011.8886 | 793100.2940 | 90.763 | METRO DISC - FLORIDA AVENUE N.W. NEAR 8TH STREET, N.W. |
| E-967 | 394134.4133 | 791946.5059 | 89.110 | METRO DISC - 7th STREET, N.W. AND 12th STREET, N.W. |

## STRUCTURE TABLE

| NO. | TOP ELEVATION | PIPE |
|---|---|---|
| S1 | 90.52 | 12"ØPVC INV=80.53 |
| S2 | 90.19 | 12"ØPVC INV=81.28 |
| S3 | 90.33 | INACCESSIBLE - UNABLE TO OPEN |
| S4 | 89.92 | INACCESSIBLE - UNABLE TO OPEN |
| S5 | 89.37 | 12"Ø RCP INV IN=79.58 |
| | | 12"Ø RCP INV OUT=79.56 |
| S6 | 89.36 | INACCESSIBLE - UNABLE TO OPEN |
| S7 | 89.24 | 12"Ø RCP INV OUT=78.94 |
| S8 | 89.86 | INACCESSIBLE - FILLED W/ TRASH |
| S9 | 89.68 | INACCESSIBLE - UNABLE TO OPEN |
| S10 | 89.74 | INACCESSIBLE - FILLED W/ TRASH |

VICINITY MAP
NOT TO SCALE




UNDERGROUND UTILITY DESIGNATION LEGEND

—PRL— PAINTED RED LINE (POSSIBLY ELECTRICAL LINE)
—PBL— PAINTED BLUE LINE (POSSIBLY WATER LINE)
[redacted]
—POL— PAINTED ORANGE LINE (POSSIBLY TELECOMMUNICATION LINE)

"SUBJECT TO INTERPRETATION BY A QUALIFIED UNDERGROUND UTILITY DESIGNATOR"

LEGEND

| | | | |
|---|---|---|---|
| | STORM MH | TW | TOP OF WALL ELEVATION |
| | GROUND LIGHT | BW | BOTTOM OF WALL ELEVATION |
| | WATER SHUT OFF | | |
| | SIGN | EXT. | EXTENSION |
| | UTILITY MH | | HANDICAP RAMP |
| | U.O.I. POLE | | |
| | ELEC. MH | | TELEPHONE POLE |
| | | | TRAFFIC LIGHT POLE |
| | GAS VALVE | | OUT |
| | GAS METER | EXIST. | EXISTING |
| | SANITARY MH | REC. | RECORD INFORMATION |
| | TARO CRA-FE-MALT | MEAS. | MEASURED INFORMATION |
| | WATER MH | | ROOF DRAIN W/CONC BASE |
| | WATER VALVE | | EXIST. FIRE HYDRANT |
| | WATER METER | C&G | CURB & GUTTER |
| | PARKING METER | L.F. | Chain Link Fence |
| | CHAIN LINK FENCE | WF. | WOODEN FENCE |
| | BOLLARD | PL. | PLANTER |
| | INLET | CO | CLEAN OUT |
| | BUSH | | GENERATOR (NATURAL GAS OR OTHER) |
| | FIREHOUSE | RF | REBAR FOUND |
| S/W | SIDEWALK | R/C | REBAR WITH CAP |
| TYP. | TYPICAL | FND | FOUND |
| CONC. | CONCRETE | O/E | OPEN END |
| R/W | RETAINING WALL | | |
| IPF | IRON PIPE FOUND | | BENCHMARK |

NOTE:

BASED ON WMATA INFORMATION OBTAINED, AS-BUILT SURVEY OF WMATA TUNNELS, TRACKS, ETC. MUST BE COMPLETED PRIOR TO ANY DEVELOPMENT WITHIN THE LIMITS OF WMATA (ABOVE GROUND AND UNDERGROUND) RIGHT-OF-WAYS.

GRAPHIC SCALE

( IN FEET )
1 inch = 30 ft.

SURVEYOR'S CERTIFICATION

To: Bernstein Ventures, LLC.

We hereby certify to the best of our professional knowledge and belief and as of the latest date shown hereon, that this survey was established by instrument-type field survey actually made on the ground and that information shown hereon is correct; that the survey correctly shows the location of structures, and other visible improvements on Lots 44 and 45 - Square 393 and Lot 31 - Square 416, being the site for the proposed JAZZ AT FLORIDA AVENUE, N.W. in the District of Columbia and that, except as shown, there is no visible evidence of easements or rights-of-way on said premises or any other easements or right-of-ways of which the undersigned has been advised, that Zoning Classifications are properly shown subject to interpretation by qualified zoning personnel.

Boundary configuration shown hereon, was compiled from record information obtained among the Land Records of the Office of the Surveyor in the District of Columbia and field verified therein as possible.

This survey was prepared without the benefit of a Title Report and may not reflect easements, property lines and other restrictions of record.

October 2, 2008
Date

AKLine, Inc.
James A. Kim
Licensed Surveyor, D.C. & Maryland

DISTRICT OF COLUMBIA
JAMES A. KIM
No. 10313
REGISTERED PROFESSIONAL LAND SURVEYOR

LEAD
Liberty Engineering and Design, PLLC
1140 CONNECTICUT AVE. NW, Suite 700
WASHINGTON, DC 20036
TEL: 202 558 5173
FAX: 202 558 5157

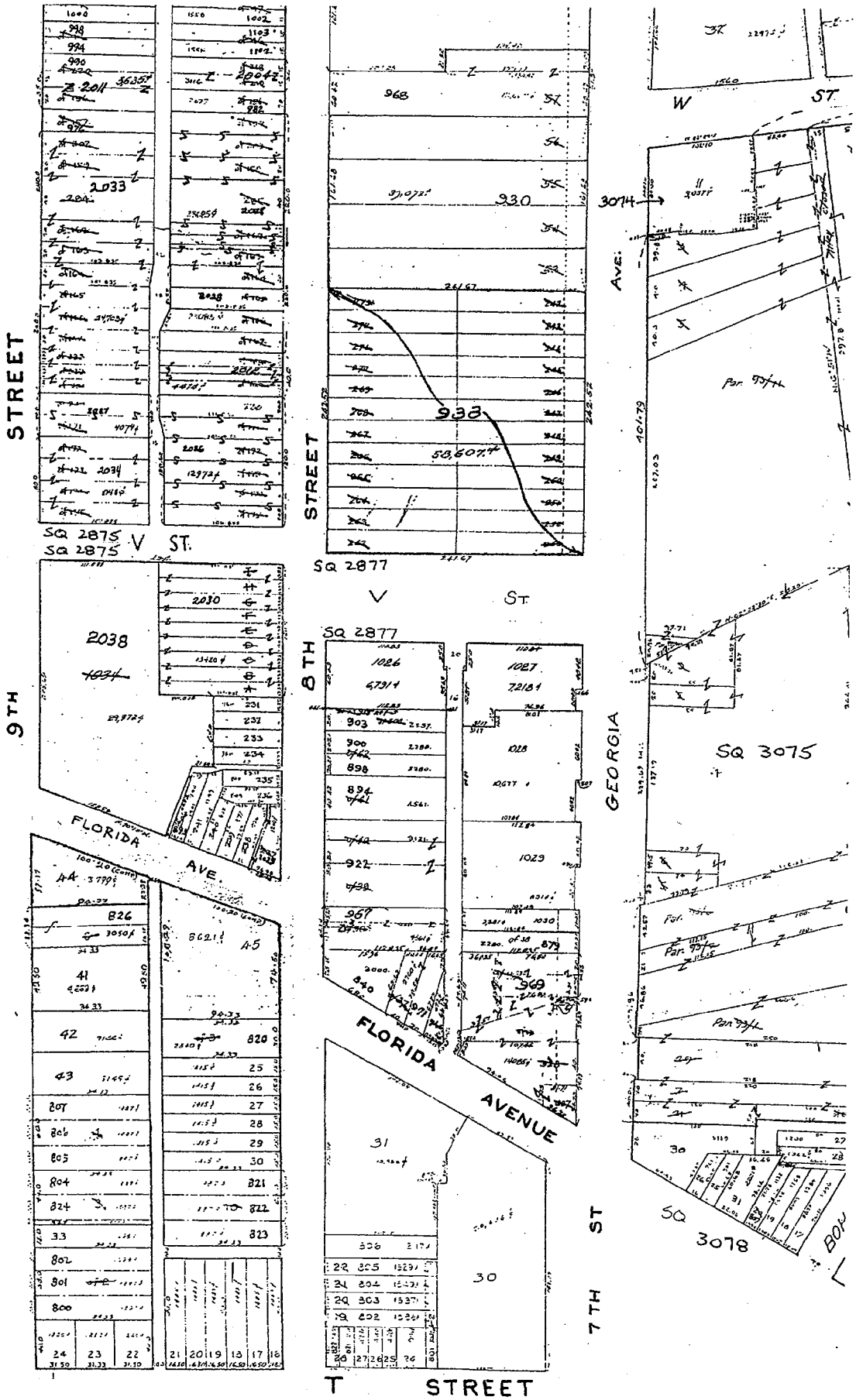
SHEET TITLE
BOUNDARY & TOPOGRAPHIC SURVEY
DRAWN BY: MKS APPROVED BY: JAA

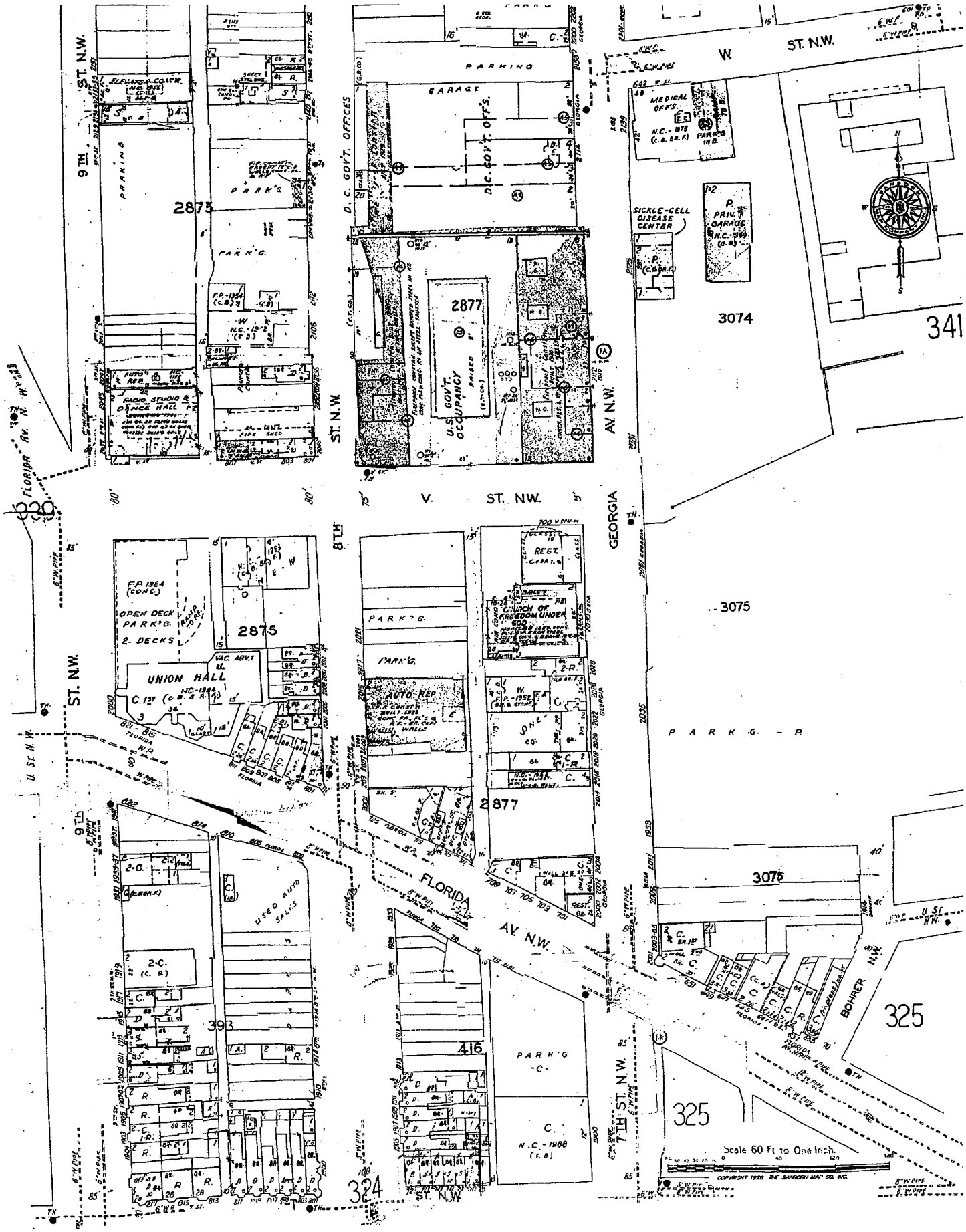
PROJECT TITLE
SQUARE 393, LOTS 44 & 45
SQUARE 416, LOT 31
THE JAZZ AT FLORIDA AVENUE NW.
WASHINGTON, DC.

C-1

DATE:

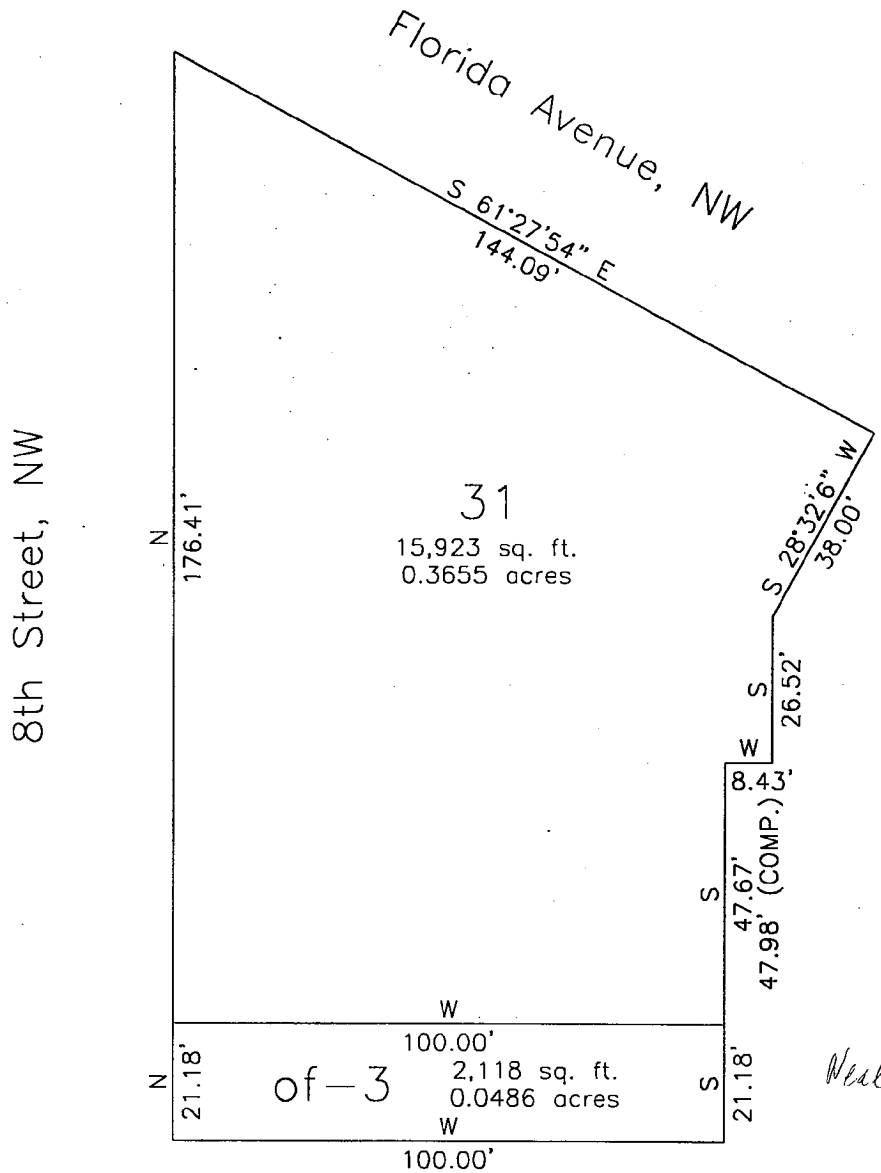
WMATA-INV 001222


STREET
SQ 2875
SQ 2875
V ST.
9TH
2038
2030
FLORIDA AVE.
STREET
SQ 2877
SQ 2877
V ST
8TH
FLORIDA AVENUE
7TH ST
T STREET
GEORGIA
AVE.
3074
SQ 3075
SQ 3078
W ST.


9TH ST. N.W.
PARKING
PARK'G
2875
PARK'G.
RADIO STUDIO & DANCE HALL
D. C. GOV'T. OFFICES
PARKING
GARAGE
D.C. GOV'T. OFF'S.
2877
U.S. GOV'T. OCCUPANCY
W. ST. N.W.
MEDICAL OFF'S.
SICKLE-CELL DISEASE CENTER
P. PRIV. GARAGE
3074
341
339
V. ST. N.W.
8TH ST. N.W.
GEORGIA AV. N.W.
F.P. 1984 (CONC.)
OPEN DECK PARK'G.
2. DECKS
UNION HALL
C. 1ST
PARK'G.
AUTO REP.
CHURCH OF FREEDOM UNDER GOD
3075
PARK'G. - P.
FLORIDA AV. N.W.
USED AUTO SALES
2-C.
393
416
PARK'G -C-
N.C. - 1968
324
3076
BOHRER N.W.
325
7TH ST. N.W.
Scale 60 Ft. to One Inch.
COPYRIGHT 1978 THE SANBORN MAP CO. INC.

# Subdivision Square 416

Total Area
18,041 sq. ft.
0.4142 acres




Neal Eurenstein

Fallen home
Bad Leg
302-4123

SKETCH OF PLAT OF SUBDIVISION SQUARE 416

15,956
3,800 ±
8,600 ±
28,356 × 4.5 = 127,602

28,356

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

WITNESSES

Willie Spencer
Jack A. Schaeffer
Christopher L. McCandlish
Jack A. Schaeffer

OWNERS

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

K. P. Heisemeyer
K.P. Heisemeyer, Director Office of Real Estate

James M. Miller
James M. Miller, Secretary

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

Rose M. Regund
Notary Public

Feb. 28, 1995
My Commission Expires

NUMBER OF TRUSTS None

ASSENT BY TRUSTEES

DEPARTMENT OF FINANCE AND REVENUE

12-2-1996

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

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

Mary O'Shert-Davis
Acting Director, Office of Real Property Tax

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

Jack A. Schaeffer

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

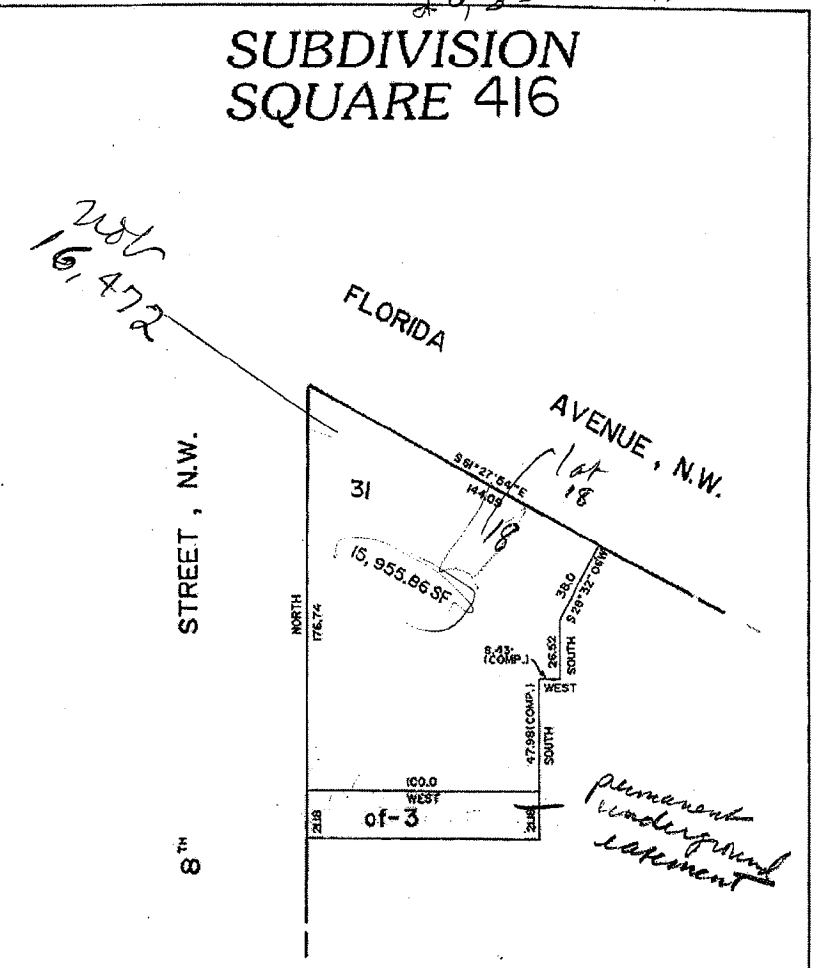
January 13, 1995

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

Zoning "C-3-B/ARTS"

Acting Zoning Administrator

# SUBDIVISION SQUARE 416




16,472
- 15,956
516

SURVEYOR'S OFFICE, D.C.

Made for WMATA
Drawn by BR.L. WASH. Checked by
Record and computations by
Recorded at 3:25 PM December 26 1996
Recorded in Book 169 Page 181 S.O. 78241 8728
Scale: 1 inch = 30. feet File No. 94-205

OFFICE OF THE SURVEYOR

December 26, 1996

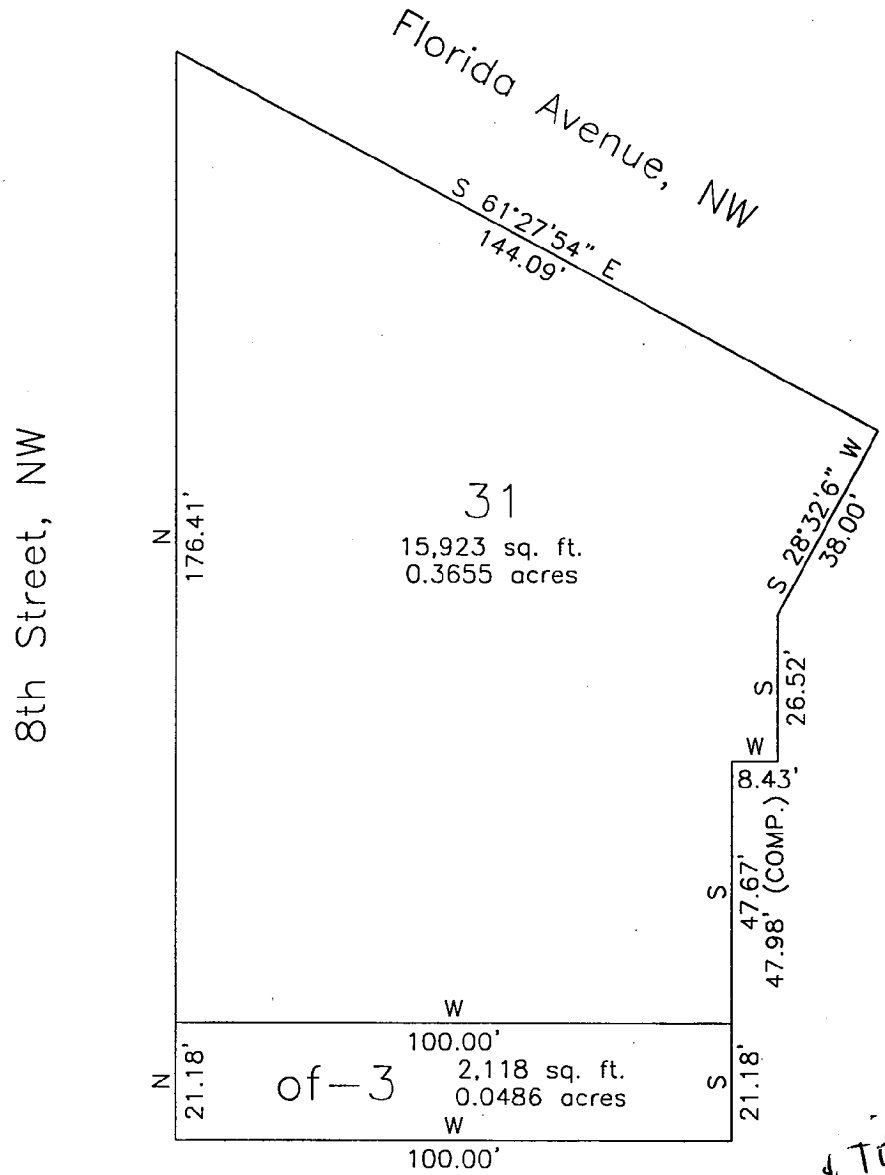
I certify that this plat is correct and it is hereby recorded.

Surveyor, D.C.

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Subdivision Square 416

Total Area
18,041 sq. ft.
0.4142 acres




Maps & Titles
Need Lot History 941
Surveyor's Office

Lot history - metes + bounds
then check the Deed in Land Files

SKETCH OF PLAT OF SUBDIVISION SQUARE 416

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Amended Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

Executive Session

Planning, Development and Real Estate Committee

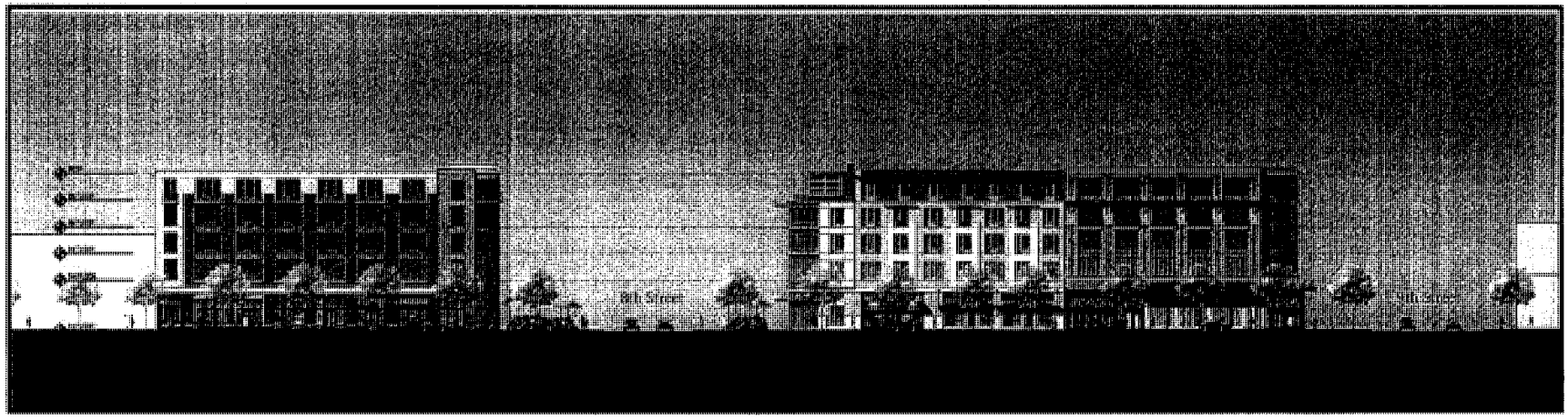
November 19, 2009

WMATA-INV 001228

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Obtain Board action on an amended term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site, and obtain Board direction on next steps.



WMATA-INV 001229

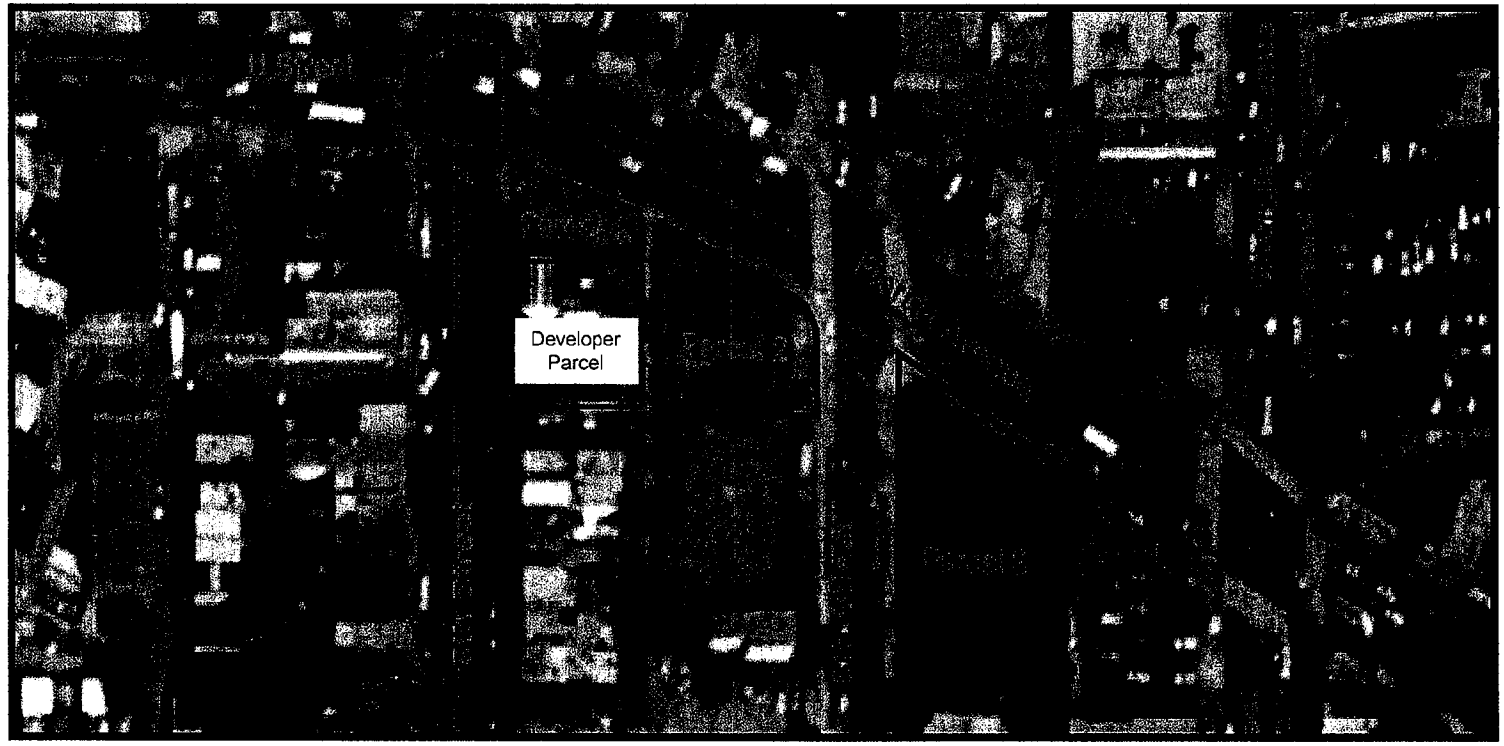
FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate an amended term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate an amended term sheet and joint development agreement. |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status




Developer proposes to combine three Metro parcels with an adjacent, developer-controlled parcel.

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

- Term sheet reflects current appraised value, and reflects a mandatory Inclusionary Zoning adjustment for affordable housing, and extraordinary costs of constructing facilities over Metro tunnels
- Additional revenues to Metro may be generated through increased density, and through participation in gross revenue and capital events
- Current land values could appreciate significantly upon market recovery

WMATA-INV 001232

FOIA CONFIDENTIAL TREATMENT REQUESTED

metro

# Current Status

- Decision on transaction timing is a policy matter for Board deliberation and action
- Consider amended term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site and provide staff direction on whether to move forward with negotiation of joint development agreement and lease.

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**To:** Bottigheimer, Nat
**Cc:** Montague, Joshua W.; Goldin, Steven; Mohsberg, Sid
**Subject:** Florida Ave Term Sheet

Nat, the BAIS for Florida Ave says that we negotiated a 60 year lease for an option to renew for an additional 39 years at market terms.

The latest term sheet that Josh has , and that he was told by Bruce Heppen was given to the Board, says that there is a 99 year lease with a capitalized lease for 60 years and a reappraisal at the 60th year.

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



WMATA-INV 001234

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100527 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Amended Term Sheet Lease Shaw-Howard/FL Ave Site

**PURPOSE:**

Obtain Board consideration of an amended term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site, and obtain Board direction on next steps.

**DESCRIPTION:**

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project would feature ground floor retail along Florida Avenue, with four stories of housing above, for a base amount of 100,000 sf. If additional density were achieved, Metro would be compensated. At a minimum, the project would include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built); however, the development team is exploring financing to extend affordability.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated an amended term sheet for a 99-year lease of the site with provisions for periodic rent adjustment.

The development team has gained control of adjacent land on 9th Street and proposes to combine that land with the two Metro parcels that are located between 8th and 9th streets. The combined site would allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. Metro would receive 79% of the value of any additional bonus density granted by the District of Columbia; this represents Metro`s share of the combined parcels` size.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities would be reserved in perpetuity for Metro.

The negotiated joint development agreement and lease would be brought to the Board for approval within the extension period, which ends in December 2009.

Consider amended term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site and provide staff direction on whether to move forward with negotiation of joint development agreement and lease.

**FUNDING IMPACT:**

Revenue from the project would be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

No recommendation.

FOIA CONFIDENTIAL TREATMENT REQUESTED

**BSA Table 1**
**Florida Avenue / Shaw - Proposal Comparisons**

| | | | 1<br>2008 | 2<br>2009 | 3<br>2010 | 4<br>2011 | 5<br>2012 | 6<br>2013 | 7<br>2014 | 8<br>2015 | 9<br>2016 | 10<br>2017 | 11<br>2018 | 12<br>2019 | 13<br>2020 | 14<br>2021 | 15<br>2022 | 60<br>2067 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Banneker / District - lease (mid December 2007)** | | | | | | | | | | | | | | | | | | |
| Revenues | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $60,000 | $100,000 | $100,000 | | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | |
| Base Rent | 3.000% | fixed annual escalations | | | | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $2,617,307 |
| Other Base Rent Adjustment | | not applicable | | | | | | | | | | | | | | | | |
| Total Gross Revenue | | | $160,000 | $100,000 | $100,000 | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $2,617,307 |
| WMATA Participation | 10.00% | of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $7,947,280 | FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| Cash Flow w/ residual | | | $160,000 | $100,000 | $100,000 | $500,000 | $515,000 | $530,450 | $546,364 | $562,754 | $579,637 | $597,026 | $614,937 | $633,385 | $652,387 | $671,958 | $692,117 | $48,075,772 |
| NPV | | | | | | | | | | | | | | | | | | |
| Base Rent | 5.73% | discount rate | $12,338,401 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $14,038,328 | | | | | | | | | | | | | | | |
| **Banneker / District - lease (March 2008)** | | | | | | | | | | | | | | | | | | |
| Revenues | | | | | | | | | | | | | | | | | | |
| Option Fee | | | $100,000 | | | | | | | | | | | | | | | |
| Predevelopment Rent | | | $60,000 | $100,000 | $115,000 | $130,000 | | | | | | | | | | | | |
| Offeror Land Valuation | | | | | | | | | | | | | | | | | | |
| Base Rent | $400,000 | unpaid year 4, then escalated @ 1.03% to next year | | | | | | | | | | | | | | | | |
| | 2.00% | fixed annual escalations years 6 to 14 | | | | | $597,400 | $605,256 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | | |
| | 3.000% | fixed annual escalations years 15+ | | | | | | | | | | | | | | | $692,096 | $2,617,226 |
| Other Base Rent Adjustment | | not applicable | | | | | | | | | | | | | | | | |
| Total Gross Revenue | | | $160,000 | $100,000 | $115,000 | $130,000 | $597,400 | $605,256 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | $692,096 | $2,617,226 |
| WMATA Participation | 10.00% | of defined capital events | | | | | | | | | | | | | | | | |
| Implied Initial Land Value | $0 | FY08 assessed values | | | | | | | | | | | | | | | | |
| | 3.00% | annual compounded increase | | | | | | | | | | | | | | | | |
| Terminal Value | $45,458,466 | on land only | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $45,458,466 |
| Cash Flow w/ residual | | | $160,000 | $100,000 | $115,000 | $130,000 | $597,400 | $605,256 | $613,215 | $621,279 | $629,449 | $637,726 | $646,112 | $654,608 | $663,216 | $671,938 | $692,096 | $48,075,692 |
| NPV | | | | | | | | | | | | | | | | | | |
| Base Rent | 5.73% | discount rate | $12,339,898 | | | | | | | | | | | | | | | |
| With Residual | 5.73% | discount rate | $14,037,825 | | | | | | | | | | | | | | | |

WMATA-INV 001237

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Approve Joint Development Agreement and Lease for Shaw-Howard U./Florida Avenue Joint Development Site

**Executive Session**

**Planning, Development & Real Estate Committee**

**December 3, 2009**

WMATA-INV 001238

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Obtain approval of a joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site.

WMATA-INV 001239

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate an amended term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate an amended term sheet and joint development agreement. |
| November 2009 | Board approved amended term sheet. |



WMATA-INV 001240

FL Ave Terminatori 6/10

FOIA CONFIDENTIAL TREATMENT REQUESTED

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:
Routes D1, D3, D6, P6,
70, 71, 80, X2

*A District of Columbia, Maryland and Virginia Transit Partnership*

S20325

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**
600 FIFTH STREET N.W. WASHINGTON, D.C. 20001

Check Date: Jul/23/2010
Check No.: 679308

Page 1 of 1

Vendor Number: 0000003639

| Invoice Date | Invoice Number | Voucher ID | Purch Order | Gross Amount | Discount Taken | Paid Amount |
|---|---|---|---|---|---|---|
| Jul/15/2010 | MSC780 | 00314012 | | 100,216.76 | 0.00 | 100,216.76 |

| Check Number | Date | Total Gross Amount | Total Discounts | Total Paid Amount |
|---|---|---|---|---|
| 679308 | Jul/23/2010 | $100,216.76 | $0.00 | $100,216.76 |

TO REMOVE LIFT CHECK, FOLD, CREASE AND TEAR ALONG PERFORATION

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
600 FIFTH STREET N.W. WASHINGTON, D.C. 20001

Wachovia Bank, National Association

| Check No. | Date | Pay Amount |
|---|---|---|
| 679308 | Jul/23/2010 | $100,216.76 |

Pay ****ONE HUNDRED THOUSAND TWO HUNDRED SIXTEEN AND 76 / 100 DOLLAR****

To The Order Of
BANNEKER VENTURES, LLC
C/O Omar A Karim
729 15 Street 15th Street NW Suite 400
Washington, DC 20005

Ray Sriraths
TREASURER OF WMATA

⑈679308⑈ ⑆254070019⑆ 2079900064625 ⑈

PLEASE REMOVE BEFORE CASHING

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100628 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

New Amended Term Sheet Shaw-Howard/FL Av JD Site

**PURPOSE:**

Obtain Board action on an amended term sheet and additional time to negotiate a joint development agreement and lease for the Shaw-Howard/Florida Avenue joint development site to be brought to the Board not later than July 30, 2010.

**DESCRIPTION:**

In January 2010, the Board approved an extension to March 31, 2010 to bring an amended term sheet, with an improved financial offer, for the Shaw-Howard U station/Florida Avenue joint development site. Metro`s site consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project presented in January had these features:

- A proposed development of 100,000 sf on Metro property consisting of ground floor retail along Florida Avenue and four stories of stick-built residential apartments above the retail space. Eight percent of the housing would be affordable under the District of Columbia`s mandatory Inclusionary Zoning regulations.

- Combining the Metro parcels between 8th and 9th streets with developer-controlled property on 9th Street to allow potentially greater density on Metro`s land. If any density increase were granted by the District of Columbia, Metro would receive an increase in rent representing Metro`s share of the combined properties.

- A 99-year ground lease with provisions for rent adjustment.

- A development team led by Banneker Ventures, LLC, with Banc of America Community Development Corporation (BACDC) as its development and financing partner.

- A financial offer that the Board did not find satisfactory.

Having reviewed its options during the extension period, Banneker Ventures now proposes the following project:

- A proposed development of 153,000 sf with ground floor retail along Florida Avenue and four stories of stick built housing on the smallest parcel and six stories of light steel-gauge-construction housing on the larger two parcels. The project would still include 8% affordable housing. The higher amount of development is made possible by taking advantage of the light steel-gauge construction method so that bonus density allowed for affordable housing can be realized. If yet additional density were achieved, Metro would receive additional rent.

- A 75-year ground lease of the site with provisions for periodic rent adjustment.

- A development only on Metro parcels. The funds budgeted for acquisition of the adjacent non-Metro property would be used instead to pay ground rent to Metro.

  The development team led by Banneker currently retains BACDC as its development and financing partner. However, Banneker has indicated that BACDC is uncomfortable with a lease. Consequently, subsequent to term sheet approval, Banneker will seek another experienced development partner to be approved by Metro. BACDC is the third development partner that Banneker has proposed.

- A significantly improved financial offer.

- A provision in the joint development agreement and lease that, if foundations to street level are not fully completed within 7 months of the lease closing, Metro can default the developer and terminate the lease.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities would be reserved in perpetuity for Metro.

Staff is requesting that the Board act on the amended term sheet and a time extension to July 30, 2010 to bring to the Board a joint development agreement and lease for the site that conform to the amended term sheet.

**FUNDING IMPACT:**

The revenue to Metro is significantly improved from that presented in January 2010 and is commensurate with the 2008 appraised value at developer selection.

Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

No recommendation

3/25/10

tabled.

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100628 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

New Amended Term Sheet Shaw-Howard/FL Av JD Site

**PURPOSE:**

Obtain Board action on an amended term sheet and additional time to negotiate a joint development agreement and lease for the Shaw-Howard/Florida Avenue joint development site to be brought to the Board not later than July 30, 2010.

**DESCRIPTION:**

In January 2010, the Board approved an extension to March 31, 2010 to bring an amended term sheet, with an improved financial offer, for the Shaw-Howard U station/Florida Avenue joint development site. Metro`s site consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC

The project presented in January had these features:

- A proposed development of 100,000 sf on Metro property consisting of ground floor retail along Florida Avenue and four stories of stick-built residential apartments above the retail space. Eight percent of the housing would be affordable under the District of Columbia`s mandatory Inclusionary Zoning regulations.

- Combining the Metro parcels between 8th and 9th streets with developer-controlled property on 9th Street to allow potentially greater density on Metro`s land. If any density increase were granted by the District of Columbia, Metro would receive an increase in rent representing Metro`s share of the combined properties.

- A 99-year ground lease with provisions for rent adjustment.

- A development team led by Banneker Ventures, LLC, with Banc of America Community Development Corporation (BACDC) as its development and financing partner.



FOIA CONFIDENTIAL TREATMENT REQUESTED

- A financial offer that the Board did not find satisfactory.

Having reviewed its options during the extension period, Banneker Ventures now proposes the following project:

- A proposed development of 153,000 sf with ground floor retail along Florida Avenue and four stories of stick built housing on the smallest parcel and six stories of light steel-gauge-construction housing on the larger two parcels. The project would still include 8% affordable housing. The higher amount of development is made possible by taking advantage of the light steel-gauge construction method so that bonus density allowed for affordable housing can be realized. If yet additional density were achieved, Metro would receive additional rent.

- A 75-year ground lease of the site with provisions for periodic rent adjustment.

- A development only on Metro parcels. The funds budgeted for acquisition of the adjacent non-Metro property would be used instead to pay ground rent to Metro.

- The development team led by Banneker currently retains BACDC as its development and financing partner. However, Banneker has indicated that BACDC is uncomfortable with a lease. Consequently, subsequent to term sheet approval, Banneker will seek another experienced development partner to be approved by Metro. BACDC is the third development partner that Banneker has proposed.

- A significantly improved financial offer.

- A provision in the joint development agreement and lease that, if foundations to street level are not fully completed within 7 months of the lease closing, Metro can default the developer and terminate the lease.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities would be reserved in perpetuity for Metro.

Staff is requesting that the Board act on the amended term sheet and a time extension to July 30, 2010 to bring to the Board a joint development agreement and lease for the site that conform to the amended term sheet.

**FUNDING IMPACT:**



FOIA CONFIDENTIAL TREATMENT REQUESTED

The revenue to Metro is significantly improved from that presented in January 2010 and is commensurate with the 2008 appraised value at developer selection.

Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

No recommendation



FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Time Extension for Negotiation and Amended Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

Board Executive Session

March 25, 2010

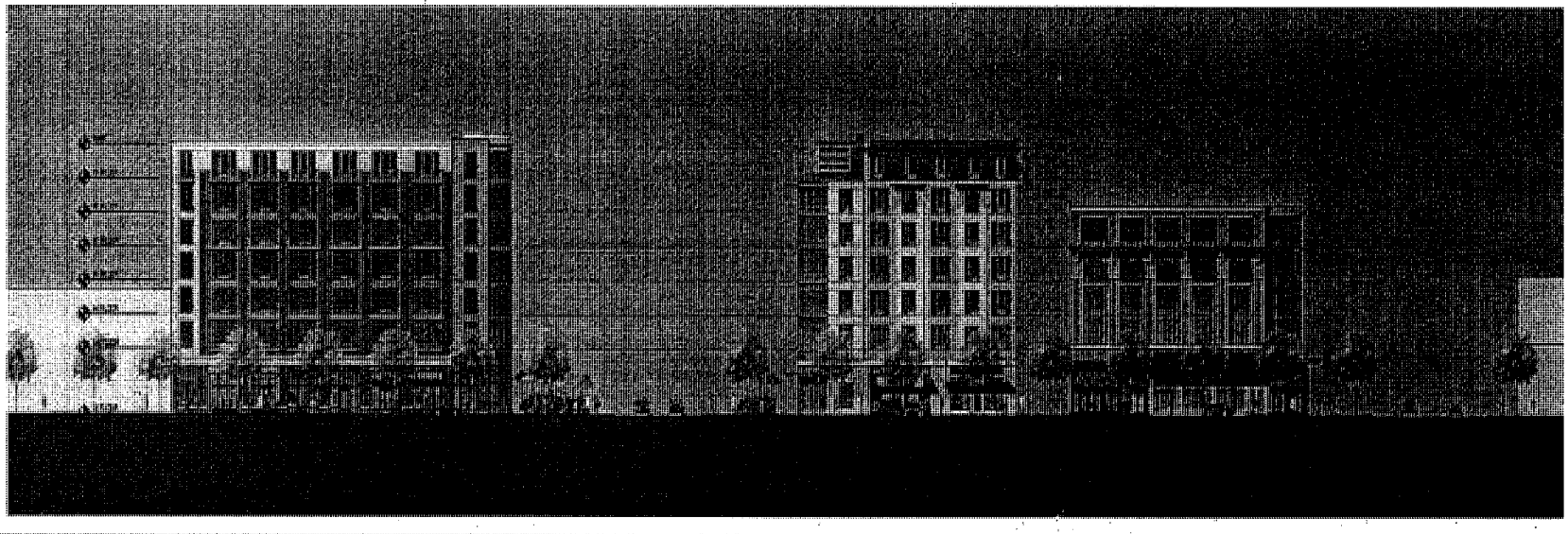


WMATA-INV 001250

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

- Obtain Board consideration of an amended term sheet
- Obtain Board consideration of a time extension to negotiate a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than July 2010





WMATA-INV 001251

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

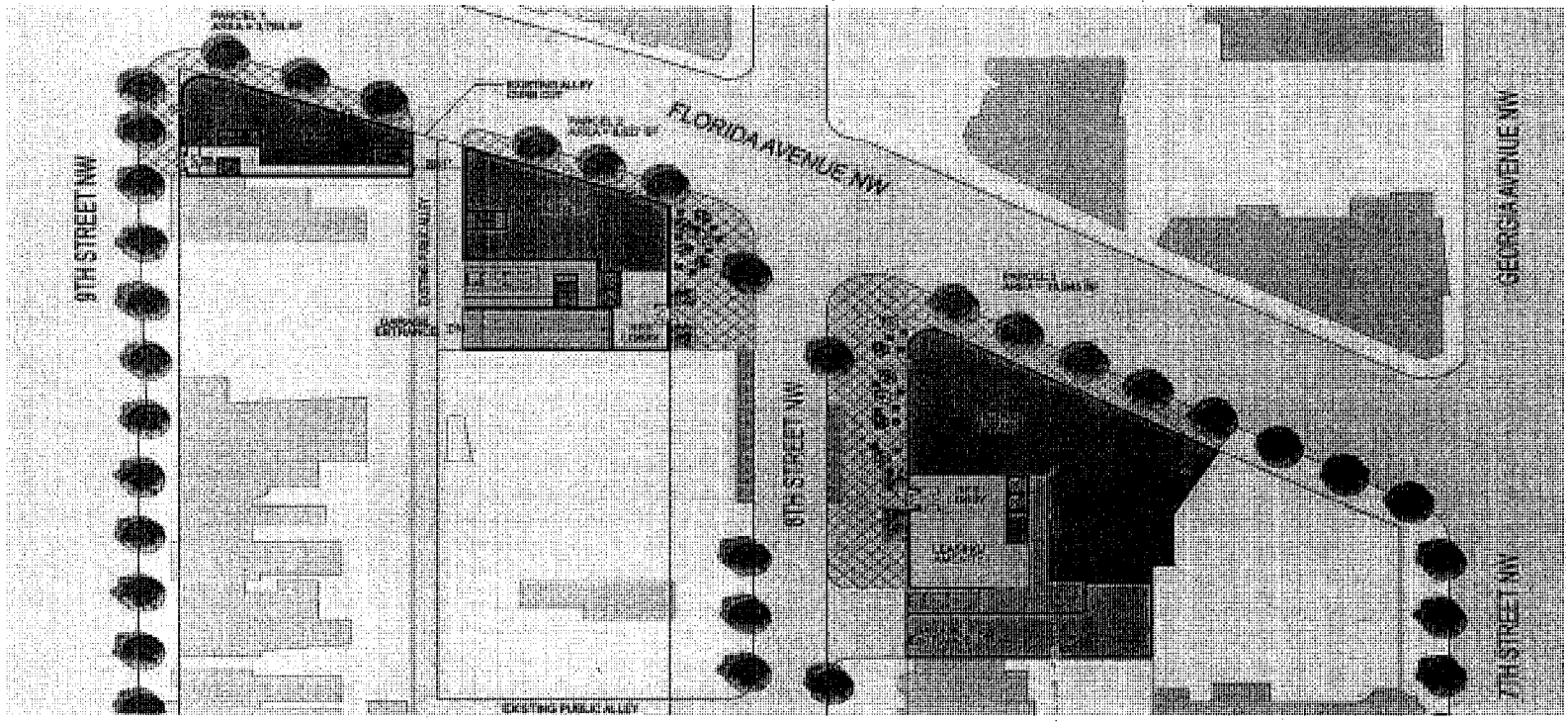
| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of team members, Board approved extension of period to negotiate an amended term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate an amended term sheet and joint development agreement. |
| January 2010 | Board approved extension to March 2010 to negotiate an improved, amended term sheet. |



WMATA-INV 001252

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status




Developer proposes to develop three separate Metro parcels with retail at ground level, apartments above.



WMATA-INV 001253

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

- Banneker Ventures is developer
- Term sheet reflects appraised value, affordable housing under Inclusionary Zoning and extraordinary costs of constructing facilities over Metro tunnels
- Additional revenues to Metro may be generated through participation in capital events
- Ground lease has provisions for periodic rent adjustment



WMATA-INV 001254

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

- Obtain Board consideration of an amended term sheet
- Obtain Board consideration of a time extension to negotiate a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than July 2010



WMATA-INV 001255

FOIA CONFIDENTIAL TREATMENT REQUESTED

**COMPARISON OF TERMS - SHAW-HOWARD U/FLORIDA AVENUE SITE**

| | Original - 2008 | 1st Revision - January 2010 | 2nd Revision - March 2010 |
|---|---|---|---|
| Developer: | A LLC to be formed by Banneker Ventures, the District Group, LLC & Metropolis Development Co. | The Jazz at Florida Avenue, a District of Columbia LLC, whose principals are Banneker Ventures LLC and Banc of America Community Development Corp. | The Jazz at Florida Avenue, a District of Columbia LLC, whose principal is Banneker Ventures LLC. |
| Site Description: | The 28,376 SF site consists of 3 separate parcels on the south side of Florida Ave. between 7th & 9th Streets, NW in Washington, DC. The parcels are undeveloped & were used for construction of the Green Line tunnel, which lies partially beneath each parcel. The sites are no longer needed by WMATA. | Same as original, but WMATA parcels to be combined with developer's adjacent 7,720 sf parcels on 9th St. Developer will construct building that straddles the Metro and Developer parcels. | Same as original |
| Developer's Proposal: | 104 apartments with 11,750 SF of ground floor retail-arts uses totaling 130,000 SF of above-grade development | 100,711 SF on Metro site: 10,000 ground floor retail-arts with housing above. 8% affordable. Combined sites development of 157,000 SF. Metro gets 79% of value of combined sites. | 153,000 sf consisting of 14,600 sf of ground floor retail-arts with 138 apartments above. At least 8% of housing is expected to be affordable at maximum 80% AMI per DC Inclusionary Zoning regulations. |
| *Terms & Conditions of Proposed Ground Lease:* | | | |
| Lease Term: | 60 years | 99 years | 75 years |
| Lease Closing: | 20 months after development agreement execution | 600 days after development agreement execution | 630 days after development agreement execution |
| Default Provision: | No provision | No provision | Lease is in default if garage/foundation level is not complete by 210 days (7 months) after lease closing |
| Construction Completion | 18 months after lease closing | Same as original | Same as original |
| Performance Security: | $250,000 | Same as original | Same as original |
| Option Fee: | $100,000 upon Term Sheet approval | Same as original | Same as original |
| Pre-Closing Rent: | $100,000/year upon development agreement rising to $130,000/year | $50,000 for 1st year after development agreement; $65,000 for 2nd year; $80,000/year thereafter | Same as January |
| Additional Density: | $4.20/year rent for additional FAR sf prior to closing; to be determined by appraisal after closing | $46.59/FAR sf with $74.55/FAR sf deduction for any added Inclusionary Zoning (IZ) affordable housing prior to closing; to be determined by appraisal after closing | Same as January |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date | $2,800,000 capitalized lease payment at closing less Additional Costs Credit TBD | $5,200,000 capitalized lease payment to be paid at closing less Additional Costs Credit TBD |



WMATA-INV 001256

FOIA CONFIDENTIAL TREATMENT REQUESTED

**COMPARISON OF TERMS - SHAW-HOWARD U/FLORIDA AVENUE SITE**

| | Original - 2008 | 1st Revision - January 2010 | 2nd Revision - March 2010 |
|---|---|---|---|
| Base Rent Escalation: | 1.5%/year for 1st 10 years, then 3%/year thereafter | None | None |
| Base Rent Revaluation: | Every 10 years | On 50th year, property is appraised to determine monthly rent; monthly rent escalates 3% every year; monthly rent is re-set every 10 years via appraisal | Same as January |
| Participating Rent: | None | 1.5% of effective gross income | None |
| Capital Event Participation: | 10% of net proceeds | 2% of gross for sale or assignment & 2% of adjusted gross on refinance | Same as January |
| Estimated Value to Metro: | $14,000,000 NPV of Developer's offer | $2,800,000 NPV of Developer's offer for first 50 years. No residual land value included | $5,783,000 NPV of Developer's offer for first 50 years including residual land value |
| Appraised Value of Property: | $7,500,000 Appraised Land Value (did not include reduction for costs of building over Metro Tunnels est. at $2.3 million by Metro in 2008) $525,000 Base 1st Year Rent (Appraisal by Integra in August 2007) | $2,020,000 Capitalized Lease Value (Appraisal by Harps & Harps in August 2009 and Integra in October 2009) | Same as January |



WMATA-INV 001257

Board Items Prep FLNE 3/10

FOIA CONFIDENTIAL TREATMENT REQUESTED

**Agenda**
**Board Executive Session**
**March 25, 2010**

## I. Approval of Agenda

## II. Action Item

A. Act on Amended Florida Avenue Term Sheet and Time Extension to Negotiate a Joint Development Agreement (N. Bottigheimer)

Washington
Metropolitan Area
Transit Authority

Board Executive Session

Board Item I-A

March 25, 2010

# Act on Amended Florida Avenue Term Sheet and Time Extension to Negotiate a Joint Development Agreement



FOIA CONFIDENTIAL TREATMENT REQUESTED

# M E M O R A N D U M

SUBJECT: Amended Term Sheet
Shaw-Howard U/Florida Avenue
Joint Development Site

DATE: March 12, 2010

FROM: PLJD - Nat Bottigheimer

TO: GMGR - John B. Catoe

This memorandum is in response to your request for an update on the subject issue. As you are aware, in January 2010, staff presented Banneker Ventures' proposed terms for the disposition of Metro properties along Florida Avenue. At that time, the Board requested Banneker to return with an improved offer.

In response, Banneker has updated its proposal, and attached with this memo is a detailed comparison of the terms proposed in 2008, in January 2010, and the present March 2010 proposal. As you requested, I am providing you this memo summarizing Banneker's new proposed terms so that you can transmit these materials to Board members.

In several significant ways Banneker has improved its offer:

- The value of the offer is higher, a $5.2 million capitalized lease payment at closing versus a $2.8 million proposal in January. It results from the Developer's being able to take advantage of the density bonus for affordable housing through a construction technique not previously envisioned and eliminating costs of acquiring adjacent land.
- Development will occur only on Metro parcels which greatly simplifies implementation. In January the Developer had proposed combining Metro's parcels with those under Developer control and constructing a building straddling both parcels; this compromised Metro's control of its own land in the event of a Developer default. Now that issue has been eliminated.
- A 75-year lease term is proposed instead of the 99-year term put forth in January, allowing Metro, if it wants, to recapture the site at an earlier point in time.
- As requested by the Board, there is a provision that allows Metro to recapture the site should the Developer not proceed in a timely

Washington
Metropolitan Area
Transit Authority

manner. Metro can default the Developer and then terminate the lease if the foundation/garage level of the development is not completed within 28 months of execution of a joint development agreement.

As with all Board term sheet approvals, any material changes in project details, terms, development principals, etc. would be brought before the Board for review as part of action related to a final Joint Development Agreement. If the Board approves the terms summarized above, staff will return to the Board for approval of a Joint Development Agreement in the June/July timeframe.

Overall, the current offer is commensurate with Metro's appraisal at the time of Developer selection in 2008.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Time Extension for Negotiation and Amended Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

Board Executive Session

March 25, 2010

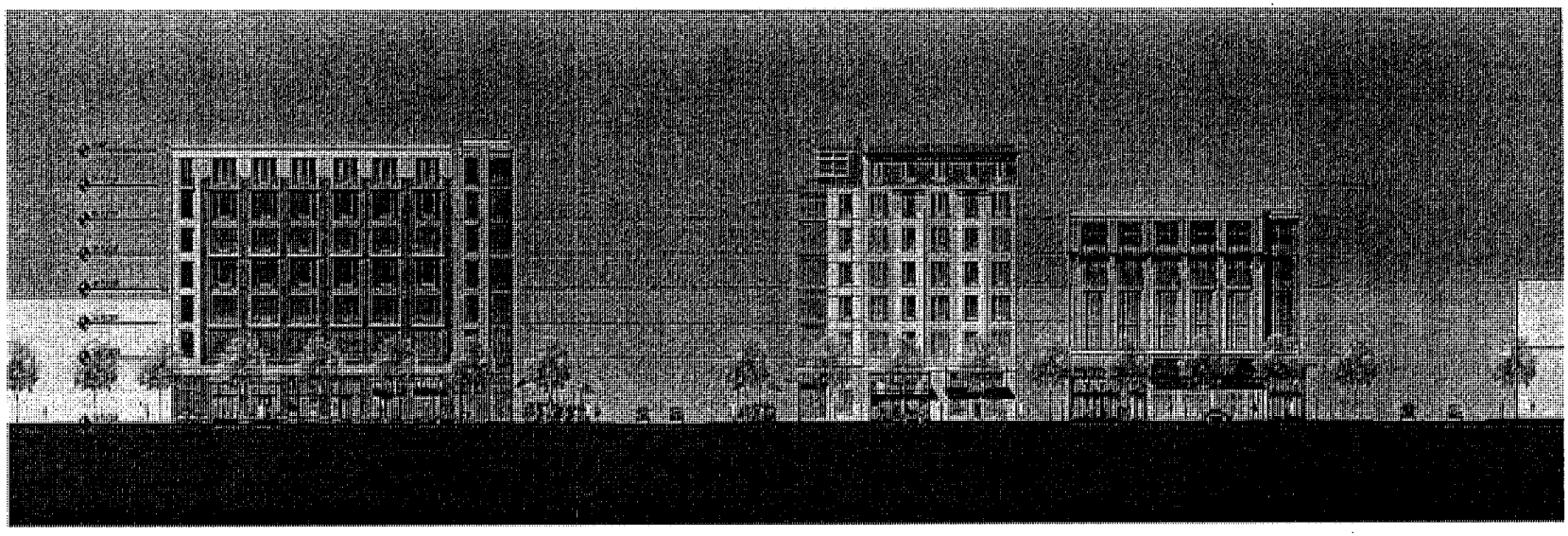


WMATA-INV 001263

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

- Obtain Board consideration of an amended term sheet
- Obtain Board consideration of a time extension to negotiate a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than July 2010





WMATA-INV 001264

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

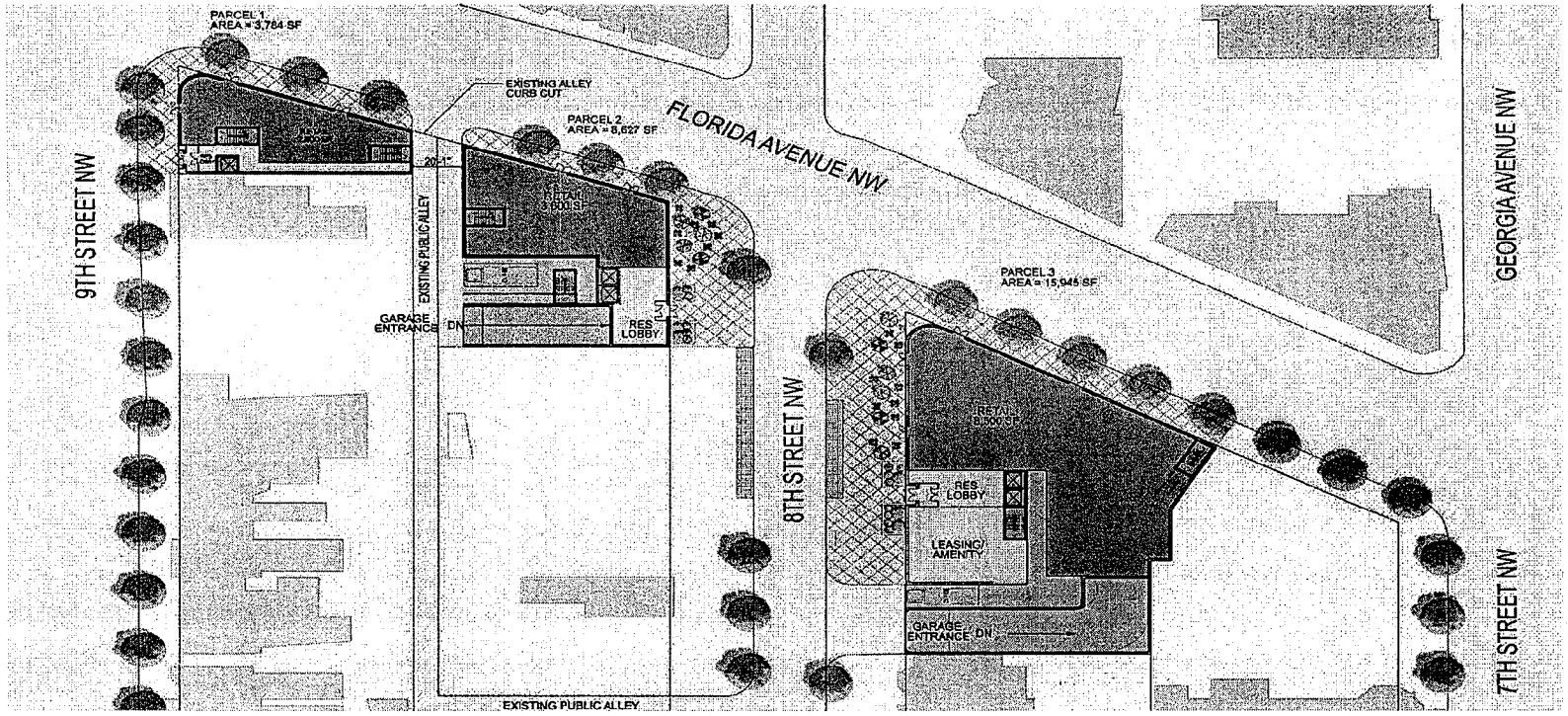
| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of team members, Board approved extension of period to negotiate an amended term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate an amended term sheet and joint development agreement. |
| January 2010 | Board approved extension to March 2010 to negotiate an improved, amended term sheet. |



WMATA-INV 001265

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status




Developer proposes to develop three separate Metro parcels with retail at ground level, apartments above.



WMATA-INV 001266

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

- Banneker Ventures is developer
- Term sheet reflects appraised value, affordable housing under Inclusionary Zoning and extraordinary costs of constructing facilities over Metro tunnels
- Additional revenues to Metro may be generated through participation in gross revenue and capital events
- Ground lease has provision for periodic rent adjustments



WMATA-INV 001267

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

- Obtain Board consideration of an amended term sheet
- Obtain Board consideration of a time extension to negotiate a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than July 2010



WMATA-INV 001268

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Bottigheimer, Nat
**Sent:** Monday, March 15, 2010 12:30 PM
**To:** jkass@dccouncil.us
**Cc:** Pant, Shiva K.; Green, Jennifer A.; Doggett, Rosalyn; Mohsberg, Sid; Goldin, Steven; Sequeira, Loyda
**Subject:** Transmittal memo to accompany term sheet details and public session powerpoint
**Attachments:** rev_FL_AVE_Memo_3-12-10 nb edits 2.doc

Jonathan—

As you requested earlier, attached is a copy of the memo we plan on sending to the Board along with the other materials. We can discuss this in more detail on Thursday.

Best wishes,

Nat



WMATA-INV 001269

# M E M O R A N D U M

SUBJECT: Amended Term Sheet
Shaw-Howard U/Florida Avenue
Joint Development Site

DATE: March 12, 2010

FROM: PLJD - Nat Bottigheimer

TO: GMGR - John B. Catoe

This memorandum is in response to your request for an update on the subject issue. As you are aware, in January 2010, staff presented Banneker Ventures' proposed terms for the disposition of Metro properties along Florida Avenue. At that time, the Board requested Banneker to return with an improved offer.

In response, Banneker has updated its proposal, and attached with this memo is a detailed comparison of the terms proposed in 2008, in January 2010, and the present March 2010 proposal. As you requested, I am providing you this memo summarizing Banneker's new proposed terms so that you can transmit these materials to Board members.

In several significant ways Banneker has improved its offer:

- The value of the offer is higher, a $5.2 million capitalized lease payment at closing versus a $2.8 million proposal in January. It results from the Developer's being able to take advantage of the density bonus for affordable housing through a construction technique not previously envisioned and eliminating costs of acquiring adjacent land.
- Development will occur only on Metro parcels which greatly simplifies implementation. In January the Developer had proposed combining Metro's parcels with those under Developer control and constructing a building straddling both parcels; this compromised Metro's control of its own land in the event of a Developer default. Now that issue has been eliminated.
- A 75-year lease term is proposed instead of the 99-year term put forth in January, allowing Metro, if it wants, to recapture the site at an earlier point in time.
- As requested by the Board, there is a provision that allows Metro to recapture the site should the Developer not proceed in a timely

Washington
Metropolitan Area
Transit Authority

manner. Metro can default the Developer and then terminate the lease if the foundation/garage level of the development is not completed within 28 months of execution of a joint development agreement.

As with all Board term sheet approvals, any material changes in project details, terms, development principals, etc. would be brought before the Board for review as part of action related to a final Joint Development Agreement. If the Board approves the terms summarized above, staff will return to the Board for approval of a Joint Development Agreement in the June/July timeframe.

Overall, the current offer is commensurate with Metro's appraisal at the time of Developer selection in 2008.

FOIA CONFIDENTIAL TREATMENT REQUESTED

3/16

metro

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Time Extension for Negotiation and Amended Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

Board Executive Session

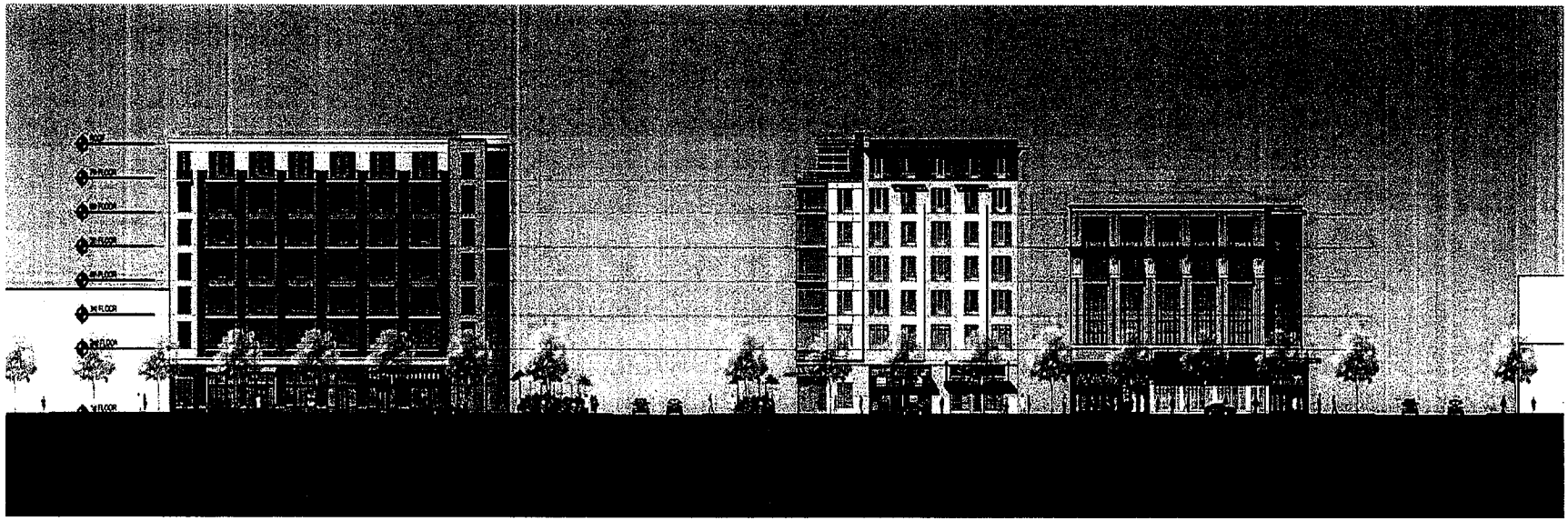
March 25, 2010

WMATA-INV 001272

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

- Obtain Board consideration of an amended term sheet
- Obtain Board consideration of a time extension to negotiate a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than July 2010





WMATA-INV 001273

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

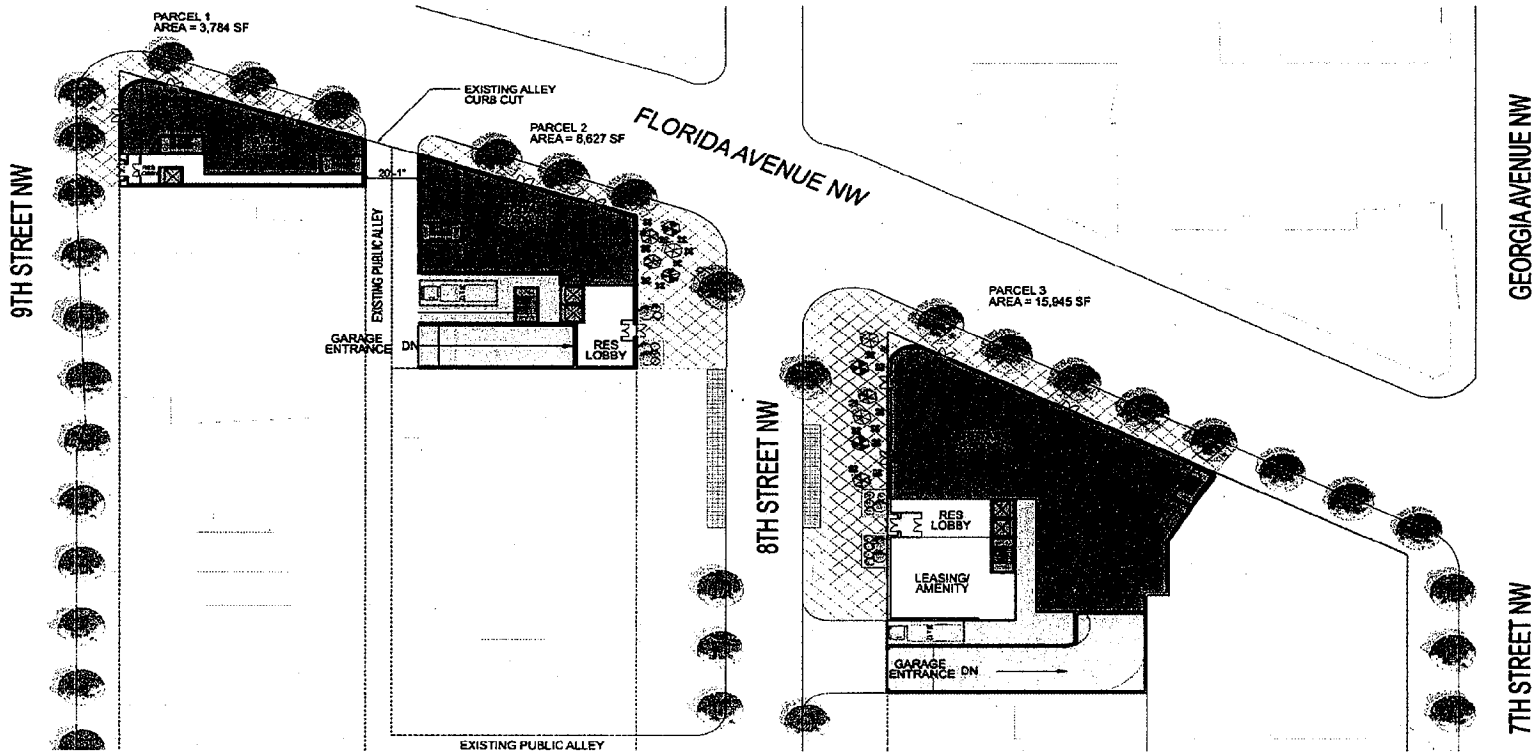
| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of team members, Board approved extension of period to negotiate an amended term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate an amended term sheet and joint development agreement. |
| January 2010 | Board approved extension to March 2010 to negotiate an improved, amended term sheet. |



WMATA-INV 001274

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status




Developer proposes to develop three separate Metro parcels with retail at ground level, apartments above.



WMATA-INV 001275

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

- Banneker Ventures is developer
- Term sheet reflects appraised value, affordable housing under Inclusionary Zoning and extraordinary costs of constructing facilities over Metro tunnels
- Additional revenues to Metro may be generated through participation in capital events
- Ground lease has provisions for periodic rent adjustment



WMATA-INV 001276

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

- Obtain Board consideration of an amended term sheet
- Obtain Board consideration of a time extension to negotiate a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than July 2010



WMATA-INV 001277

In January 2010, the Board approved an extension to March 31, 2010 to bring it an amended term sheet, with an improved financial offer, for the Shaw-Howard U station/Florida Avenue joint development site. Metro`s site consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project presented in January had these features:

- A proposed development of 100,000 sf on Metro property consisting of ground floor retail along Florida Avenue and four stories of stick-built residential apartments above the retail space. Eight percent of the housing would be affordable under the District of Columbia`s mandatory Inclusionary Zoning regulations.
- Combining the Metro parcels between 8th and 9th streets with developer-controlled property on 9th Street to allow potentially greater density on Metro`s land. If any density increase were granted by the District of Columbia, Metro would receive an increase in rent representing Metro`s share of the combined properties.
- A 99-year ground lease with provisions for periodic rent adjustment.
- A development team led by Banneker Ventures, LLC, with Banc of America Community Development Corporation as its development and financing partner.
- A financial offer that the Board did not find satisfactory.

Having reviewed its options during the extension period, Banneker Ventures now proposes the following project:

- A proposed development of 153,000 sf. with ground floor retail along Florida Avenue and four stories of stick built housing on the smallest parcel and six stories of light steel-gauge-construction housing on the larger two parcels. The project would still include 8% affordable housing. The higher amount of development is made possible by taking advantage of the light steel-gauge construction method so that bonus density allowed for affordable housing can taken realized. If yet additional density were achieved, Metro would receive additional rent.
- A 75-year ground lease of the site with provisions for periodic rent adjustment.
- A development only on Metro parcels. The funds budgeted for acquisition of the adjacent non-Metro property would be used instead to pay ground rent to Metro.
- Banneker Ventures is currently the only development partner. It will seek an additional experienced development partner to be approved by Metro.
- A significantly improved financial offer.
- A provision in the Joint Development Agreement and Lease that, if foundations to street level are not fully completed within 24 months of the execution of the Joint Development Agreement, the three Metro parcels will revert to Metro.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities would be reserved in perpetuity for Metro.

Staff is requesting that the Board act on the amended term sheet and a time extension to July 30, 2010 to bring to the Board a joint development agreement and lease for the site that conform to the amended term sheet.

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Bottigheimer, Nat
**Sent:** Friday, March 05, 2010 2:52 PM
**To:** Doggett, Rosalyn; Goldin, Steven
**Cc:** Mohsberg, Sid
**Subject:** RE: FLAVE

Include in the description of the January version: "A cotenancy agreement that Counsel found problematic."

Instead of saying that the current appraisal exceeds the value of the June 2008 appraisal after making appropriate adjustments, you could just say that it is *commensurate with* the 2008 appraisal.

Thanks,

Nat

---

**From:** Doggett, Rosalyn
**Sent:** Friday, March 05, 2010 2:00 PM
**To:** Goldin, Steven; Bottigheimer, Nat
**Cc:** Mohsberg, Sid
**Subject:** FLAVE

How is the attached for BAIS language?

Language below would go into the Funding Impact box. I am using Eric's current npv calculation (%5.87M) based on the upfront capitalized lease payment and the residual value of the project after 50 years to make the statement about the revenue to WMATA being over ¾ of the 2008 $7. M appraised value.

Funding Impact
"The revenue to Metro is significantly improved from that presented in January 2010. It is over three-fourths of the appraised value presented to the Board in June 2008 upon selection of the development team. That appraised value did not take into account extra costs of construction over the Metro tunnel or reduced developer revenue resulting from mandatory Inclusionary Zoning regulations which did not then exist. Taking these factors into account, the current financial offer exceeds the appraised value."

Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).



WMATA-INV 001280

FOIA CONFIDENTIAL TREATMENT REQUESTED

All still ends with "no recommendation" which I assuming it should.

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



WMATA-INV 001281

In January 2010, the Board approved an extension to March 31, 2010 to bring it an amended term sheet, with an improved financial offer, for the Shaw-Howard U. station/Florida Avenue joint development site. Metro's site consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project presented in January had these features:

- A proposed development of 100,000 sf on Metro property consisting of ground floor retail along Florida Avenue and four stories of stick-built residential apartments above the retail space. Eight percent of the housing would be affordable under the District of Columbia's mandatory Inclusionary Zoning regulations.
- Combining the Metro parcels between 8th and 9th streets with developer-controlled property on 9th Street to allow potentially greater density on Metro's land. If any density increase were granted by the District of Columbia, Metro would receive an increase in rent representing Metro's share of the combined properties.
- A 99-year ground lease with provisions for periodic rent adjustment.
- A development team led by Banneker Ventures, LLC, with Banc of America Community Development Corporation as its development and financing partner.
- A financial offer that the Board did not find satisfactory.

Having reviewed its options during the extension period, Banneker Ventures now proposes the following project:

- A proposed development of 153,000 sf. with ground floor retail along Florida Avenue and four stories of stick built housing on the smallest parcel and six stories of light steel-gauge-construction housing on the larger two parcels. The project would still include 8% affordable housing. The higher amount of development is made possible by taking advantage of the light steel-gauge construction method so that bonus density allowed for affordable housing can taken realized. If yet additional density were achieved, Metro would receive additional rent.
- A 75-year ground lease of the site with provisions for periodic rent adjustment.
- A development only on Metro parcels. The funds budgeted for acquisition of the adjacent non-Metro property would be used instead to pay ground rent to Metro.
- Banneker Ventures as the only development partner. It will seek an additional experienced development partner to be approved by Metro.
- A significantly improved financial offer.
- A provision in the Joint Development Agreement and Lease that if foundations to street level are not fully completed within 24 months of the execution of the Joint Development Agreement, the three Metro parcels will revert to Metro.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities would be reserved in perpetuity for Metro.

Staff is requesting that the Board act on the amended term sheet and a time extension to July 30, 2010 to bring to the Board a joint development agreement and lease for the site that conform to the amended term sheet.

FOIA CONFIDENTIAL TREATMENT REQUESTED

COMPARISON OF TERMS - SHAW-HOWARD SITE

| | Original Terms (2008) | Revised Terms (March 2010) |
|---|---|---|
| Developer: | A LLC to be formed by Banneker Ventures, the District Group, LLC & Metropolis Development Co. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principals are expected to be Banneker Ventures LLC & Banc of America Community Development Corporation |
| Site Description: | The 28,376 SF site consists of 3 separate parcels on the south side of Florida Ave. between 7th & 9th Streets, NW in Washington, DC. The parcels are undeveloped & were used for construction of the Green Line tunnel, which lies partially beneath each parcel. The sites are no longer needed by WMATA. | Same, except that the WMATA parcels are expected to be combined with the developer's adjacent 7,720 SF parcels on 9th St. Developer intends to construct a building which will straddle the WMATA parcels and the adjacent parcels |
| Developer's Proposal: | 104 apartments with 11,750 SF of ground floor retail-arts uses totaling 130,000 SF of above-grade development | 100,711 SF attributed to WMATA site consisting of 10,000 SF of ground floor retail-arts with housing above. At least 8% of housing is expected to be affordable at maximum 80% AMI per District IZ regs. The total development for the combined sites is estimated at 157,000 SF following an alley closing & site consolidation. WMATA is estimated to receive 79% of the value of the combined project. |
| *Terms & Conditions of Proposed Ground Lease:* | | |
| Lease Term: | 60 years | 99 years |
| Lease Closing: | 20 months after development agreement execution | 600 days after development agreement execution |
| Const. Completion | 18 months after lease closing | Same |
| Performance Security: | $250,000 | $250,000 |

WMATA-INV 001284

FOIA CONFIDENTIAL TREATMENT REQUESTED

*Terms & Conditions of Proposed Ground Lease (Continued):*

| | | |
|---|---|---|
| Option Fee: | $100,000 upon Term Sheet approval | Same |
| Pre-Closing Rent: | $100,000/year upon development agreement rising to $130,000/year | $50,000 for 1st year after development agreement; $65,000 for 2nd year; $80,000/year thereafter |
| Additional Density: | $4.20/year rent for additional FAR prior to closing; To be determined by appraisal after closing. | $46.59/FAR with $74.55/FAR deduction for any added Inclusionary Zoning (IZ) affordable housing prior to closing; To be determined by appraisal after closing. |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date | $2,800,000 capitalized lease payment to be paid at closing less Additional Costs Credit TBD |
| Base Rent Escalation: | 1.5%/year for 1st 10 years, then 3%/year thereafter | None |
| Base Rent Revaluation: | Every 10 years | On 50th year, property is appraised to determine monthly rent; monthly rent escalates 3% every year; monthly rent is re-set every 10 years via appraisal. |
| Participating Rent: | None | 1.5% of effective gross income |
| Capital Event Participation: | 10% of net proceeds | 2% of gross for sale or assignment & 2% of adjusted gross on refinance |
| Market Valuation: | $14,000,000 NPV of Developer's offer<br>$7,500,000 Appraised Land Value<br>$525,000 Base 1st Year Rent<br>(Appraisal by Integra in 8/07) | $2,800,000 NPV of Developer's offer<br>$2,800,000 Capitalized Lease Value for first 50 years<br>(Appraised by Harps & Harps in 8/09<br>& Integra in 10/09) |

WMATA-INV 001285

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Mohsberg, Sid
**Sent:** Friday, February 26, 2010 3:09 PM
**To:** Bellamy, Michelle A.
**Cc:** Bottigheimer, Nat; Goldin, Steven; Harrington, Thomas; Wallace, Maria A; Meister, Mark K.; Doggett, Rosalyn; Ackerman, Heidi
**Subject:** BAR Update

Michelle,

Please update the BAR to reflect the following agendas for the PPDIR and JDRE.

PGP disappeared!

Sid

---

**3/25/10 Joint Development and Real Estate Committee**

Action:

PLJD: Approval to negotiate and Execute an Easement Agreement with the District of Columbia for the Metropolitan Branch Trail Bridge at Rhode Island Ave-Brentwood Metro Station
(N. Bottigheimer)

PLJD: Approval to negotiate and execute a memorandum of understanding with the City of Alexandria and The Hoffman Company for Eisenhower Avenue station improvements, bus loop
Improvements, and an expanded station square (N. Bottigheimer)

**3/25/10 Board Executive Session**

Information:

PLJD: Act on Amended Florida Avenue Term Sheet and Time Extension to Negotiate a Joint Development Agreement (N. Bottigheimer)

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**4/8/10 Policy, Program, Development & Intergovernmental Relations Committee**

Information:



WMATA-INV 001286

FOIA CONFIDENTIAL TREATMENT REQUESTED

PLJD: Bus Fleet Plan Update (N. Bottigheimer)

Action:

IG: Metro Whistleblower Policy (H. Lew)

**4/22/10 Joint Development and Real Estate Committee**

Action:

PLJD: Relocation of Tie Breaker Station at 100 K Street NE (N. Bottigheimer)

PLJD: Sale of Excess Property at West Falls Church Service and Inspection Yard (N. Bottigheimer)

**4/22/10 Board Executive Session**

Nothing so far from PLJD

---

**5/13/10 Policy, Program, Development & Intergovernmental Relations Committee**

Nothing so far from PLJD

**5/27/10 Joint Development and Real Estate Committee**

Nothing so far from PLJD

**5/27/10 Board Executive Session**

Information

PLDJ: Sale of Excess Metro Property to Georgetown University (N. Bottigheimer)

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**6/10/10 Policy, Program, Development & Intergovernmental Relations Committee**

Nothing so far from PLJD



WMATA-INV 001287

FOIA CONFIDENTIAL TREATMENT REQUESTED

**6/24/10 Joint Development and Real Estate Committee**

Nothing so far from PLJD

**6/24/10 Board Executive Session**

Information

PLJD: Approve joint development agreement and lease for Navy Yard chiller joint development site (N. Bottigheimer) **[MOVE FROM 4/22/10 JDRE Cmte Meeting]**



WMATA-INV 001288

9/14/2009

## PLJD Board of Directors Items
## October 2009

| Committee/ Board | Action/ Information | Ownership | | | Planning, Development, and Real Estate (PD&RE) Committee & Board | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Type | Title | Office | Owner | CMTE & Admin Items Pre-brief for AGM PLJD | PD&RE Items Materials to AGM OPRS | PD&RE Cmte Pre-brief for AGM OPRS | | Revised PD&RE Items Materials to Michelle Bellamy OPRS | | Draft Cmte & Admin Items Materials to SECT | | | GM All Cmte & Admin Items Briefing | Final All Cmte Materials (1 copy) to SECT for Proofing | PD&RE Cmte Mailout Materials (17 copies) to SECT | SECT Mail-out to PD&RE Cmte | Pre-Final Review Materials to SECT for GM Board Final Review | PD&RE Cmte Mtg | GM Board Final Review | Post-Final Review Materials to SECT | Board Mailout Materials (17 copies) to SECT | SECT Mail-out to Board | | Board Meeting | MEAD | Owner |
| PD&RE | Action | Small, Local, and Minority Business Enterprise Guidelines | SAAM | Phil Staub (COUN) | 9/2/09 1000 | 9/4/09 1400 | 9/8/09 1000 | | 9/11/09 1400 | | 9/22/09 1400 | | | 9/28/09 1000 | 9/29/09 1400 | 10/1/09 1400 | 10/2/09 1100 | 10/7/09 1400 | 10/8/09 0900 | 10/9/09 1000 | 10/13/09 1400 | 10/15/02 1400 | 10/16/09 1100 | | 10/22/09 1100 | ? | Phil Staub |

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001289

FOIA CONFIDENTIAL TREATMENT REQUESTED

8/11/2009

# PLJD Board of Directors Items
## September 2009

### Planning, Development, and Real Estate (PD&RE) Committee & Board

| Committee/ Board | Action/ Information | Ownership | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Type | Title | Office | Owner | | PD&RE Items Materials to AGM OPRS | CMTE & Admin Items Pre-brief for AGM PLJD | | PD&RE Cmte Pre-brief for AGM OPRS | Revised PD&RE Items Materials to Michelle Bellamy OPRS | | Draft Cmte & Admin Items Materials to SECT | Edits from SECT returned to Staff | | GM All Cmte & Admin Items Briefing | | Final All Cmte Materials (1 copy) to SECT for Proofing | Last SECT edits returned to Staff | Final Changes from SECT due to Michelle Bellamy | PD&RE Cmte Mailout Materials (17 copies) to SECT | SECT Mail-out to PD&RE Cmte | PD&RE Cmte Mtg | Pre-Final Review Materials to SECT for GM Board Final Review | GM Board Final Review | Post-Final Review Materials to SECT | Board Mailout Materials (17 copies) to SECT | SECT Mail-out to Board | | Board Meeting | MEAD | Owner |
| PD&RE | Action Executive Session | Amended Sale of Arlington Bus Garage Property | PLJD | Jonathan Wyner | | 8/6/09 1400 | 8/7/09 1600 | | 8/12/09 1400 | 8/13/09 1400 | | 8/14/09 1400 | 8/18/2009 1400 | | 8/20/09 1000 | | 8/24/09 1400 | 8/26/09 1400 | 9/1/09 1400 | 9/2/09 1400 | 9/3/09 1100 | 9/10/09 0900 | 9/10/09 1400 | 9/14/09 1000 | 9/15/09 1400 | 9/17/09 1400 | 9/18/09 1100 | | 9/24/09 1100 | 100468 Awaiting CFO Level 3 7/31/09 0613 | Jonathan Wyner |
| PD&RE | Action Executive Session | Extension of Negotiating Period for Shaw-Howard University Station Site | SAAM | Roz Doggett | | 8/6/09 1400 | 8/7/09 1600 | | 8/12/09 1400 | 8/13/09 1400 | | 8/14/09 1400 | 8/18/2009 1400 | | 8/20/09 1000 | | 8/24/09 1400 | 8/26/09 1400 | 9/1/09 1400 | 9/2/09 1400 | 9/3/09 1100 | 9/10/09 0900 | 9/10/09 1400 | 9/14/09 1000 | 9/15/09 1400 | 9/17/09 1400 | 9/18/09 1100 | | 9/24/09 1100 | 100426 Awaiting OMB/ PRMT Level 3 8/10/09 1525 | Roz Doggett |

### Finance, Administration, and Oversight (FAO) Committee & Board

| Committee/ Board | Action/ Information | Ownership | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Type | Title | Office | Owner | Materials to OMBS: Vickie Ellis & Janice McLaughlin | | CMTE & Admin Items Pre-brief for AGM PLJD | CFO Pre-Brief | | Updated Materials to OMBS: Vickie Ellis & Janice McLaughlin | | Draft Cmte & Admin Items Materials to SECT | Edits from SECT returned to Staff | FAO Cmte Materials to CFO for Review | GM All Cmte & Admin Items Briefing | | Final All Cmte Materials (1 copy) to SECT for Proofing | Last SECT edits returned to Staff | | FAO Cmte Materials (17 copies) to SECT | SECT Mail-out to FAO Cmte | FAO Cmte Mtg | Pre-Final Review Materials to SECT for GM Board Final Review | GM Board Final Review | Post-Final Review Materials to SECT | Board Mailout Materials (17 copies) to SECT | SECT Mail-out to Board | | Board Meeting | MEAD | Owner |
| FAO | Information | Prioritization of Capital Needs Inventory | PLAN | Trish Handran | 8/5/09 1700 | | 8/7/09 1600 | 8/10/09 1500 | | | | 8/14/09 1400 | 8/18/2009 1400 | | 8/20/09 1000 | | 8/24/09 1400 | 8/26/09 1400 | | 9/2/09 1400 | 9/3/09 1100 | 9/10/09 0900 | 9/10/09 1400 | 9/14/09 1000 | 9/15/09 1400 | 9/17/09 1400 | 9/18/09 1100 | | 9/24/09 1100 | ? | Trish Handran |
| FAO | | | | | 8/5/09 1700 | | 8/7/09 1600 | 8/10/09 1500 | | | | 8/14/09 1400 | 8/18/2009 1400 | | 8/20/09 1000 | | 8/24/09 1400 | 8/26/09 1400 | | 9/2/09 1400 | 9/3/09 1100 | 9/10/09 0900 | 9/10/09 1400 | 9/14/09 1000 | 9/15/09 1400 | 9/17/09 1400 | 9/18/09 1100 | | 9/24/09 1100 | | |

### Customer Service and Operations and Safety (CSOS) Committee & Board

| Committee/ Board | Action/ Information | Ownership | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Type | Title | Office | Owner | | | CMTE & Admin Items Pre-brief for AGM PLJD | | | | | Draft Cmte & Admin Items Materials to SECT | Edits from SECT returned to Staff | | GM All Cmte & Admin Items Briefing | CSOS Cmte Pre-brief for Deputy GM | Final All Cmte Materials (1 copy) to SECT for Proofing | Last SECT edits returned to Staff | | | | | Pre-Final Review Materials to SECT for GM Board Final Review | GM Board Final Review | Post-Final Review Materials to SECT | CSOS Cmte & Board Mailout Materials (17 copies) to SECT | SECT Mail-out to CSOS & Board | CSOS Cmte | Board Meeting | MEAD | Owner |
| CSOS | | | | | | | 8/7/09 1600 | | | | | 8/14/09 1400 | 8/18/2009 1400 | | 8/20/09 1000 | 8/20/09 1500 | 8/24/09 1400 | 8/26/09 1400 | | | | | 9/10/09 1400 | 9/14/09 1000 | 9/15/09 1400 | 9/17/09 1400 | 9/18/09 1100 | 9/24/09 0900 | 9/24/09 1100 | | |

WMATA-INV 001290

FOIA CONFIDENTIAL TREATMENT REQUESTED

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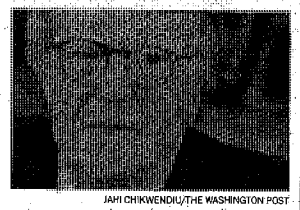

JAHI CHIKWENDIU/THE WASHINGTON POST

**Bob Barnett's clients include Hillary Rodham Clinton and Karl Rove.**

## *Barnett wrote the book on power deals*

# Friends share in Fenty's good fortune

## COUNCIL ORDERS PROBE OF CONTRACTS

*Two of mayor's fraternity brothers are thriving*

BY NIKITA STEWART AND PAUL SCHWARTZMAN

Before Adrian M. Fenty was elected D.C. mayor in 2006, Sinclair Skinner lived in a worn, two-story brick home on Georgia Avenue NW above his dry cleaning business, a venture that collapsed in financial ruin.

But Skinner had one valuable asset: his relationship with Fenty (D), then a D.C. Council member. They had known each other since they attended Howard University in the 1990s and belonged to the same fraternity.

As field director of Fenty's mayoral campaign, Skinner spent hundreds of hours with the candidate knocking on doors across the city. After Fenty's victory, Skinner started an engineering firm that soon landed work on at least three city projects, according to public records.

In addition, the records show, Skinner's firm was a subcontractor on the rebuilding of city parks and recreation centers — work that paid about $700,000. Skinner, 40, bought a Porsche and a handsome $654,000 brick house a few blocks from the mayor's house in the Crestwood neighborhood in Northwest Washington.

Skinner and Omar Karim, another Howard graduate and fraternity brother, are at the center of a coterie of Fenty friends who since the mayor's election have traveled from the political margins to the center of power and influence, often helping one another along the way.

On Friday, the D.C. Council appointed a special counsel to investigate the Fenty administration's awarding of $86 million in construction projects at city parks and recreation centers without the council's approval, which is required on contracts exceeding $1 million. The investigator is expected to examine whether the city showed favoritism to the mayor's friends in awarding the deals.

The mayor's friends were relatively unknown before Fenty's rise: engaged in neighborhood activism, working for a developer or running a nightclub or a landscaping business. After Fenty became mayor, the men prospered, starting or ex-

FRIENDS CONTINUED ON A4

WMATA-INV 001291

FOIA CONFIDENTIAL TREATMENT REQUESTED



# Fenty's image affected by his friends' sudden prosperity

FRIENDS FROM A1

panding companies that have repeatedly landed development and construction projects awarded by the D.C. government.

Karim's roster includes a $4.2 million contract to oversee renovation of at least 16 parks and recreation centers. The Fenty administration did not seek council approval for that contract but now says it should have done so.

Politicians have long cultivated circles of lawyers, developers and lobbyists who, in turn, thrive on access to government's highest levels. But Fenty's friends have risen from obscurity at a pace that has captured the attention of the political and business establishments and fostered an image that is seemingly at odds with Fenty's campaign themes of reform and transparency.

"They're suddenly doing so well at the trough of government," said D.C. Council member Mary M. Cheh (D-Ward 3). "There's this network where they all help each other. They all get rich together. It makes you wonder what's going on. What we know is they're friends of Fenty."

Karim and Skinner declined to comment through their attorney, A. Scott Bolden. Karim recently testified at a council hearing on the parks contracts that he had done nothing wrong. Skinner has not responded to a subpoena from the council, contending that he was improperly served. Last week, a D.C. Superior Court judge ordered Skinner to testify this month or face $1,000-a-day fines for each day he does not appear.

After Fenty's election, Skinner and Karim were not shy about mentioning their mayoral ties as they tried to attract business partners or obtain consulting work, according to five developers and consultants who spoke to the men about possible deals. The sources spoke on the condition of anonymity because they said they fear retribution from the Fenty administration.

R. Donahue Peebles, a developer who has considered challenging Fenty in the 2010 mayoral race, has spoken openly about how political networking during Marion Barry's reign as mayor helped him land his first major real estate deal. After critics accused Peebles of benefiting from cronyism in the mid-1990s, the developer became infuriated and relocated to Miami for a decade before turning his attention back to the District, where the Fenty administration has twice rejected his company's bids for city projects.

Since his return to Washington, Peebles said, at least two of Skinner's associates suggested that he hire Skinner, who they said could help him win District projects and gain access to the mayor and his top aides. Peebles said the associates told him that Skinner's fee was $10,000 to $20,000 a month.

Peebles said Karim approached him after an appearance on the Howard campus in 2007 and told him that Fenty was seeking to empower a new group of minority builders, including Karim. As African Americans, Karim and Skinner could benefit from city requirements that developers partner with minority-owned companies.

Karim, Peebles said, told him that "if I wanted to get to do a development deal with the District of Columbia government under Fenty, I'd have to do business with them and their circle, this new inner circle. He gave me this whole spiel about how it was a new day and how the old guys' day was up. Essentially, the message was I was going to need him."

Peebles said he was angered by what he considered a "flagrant pay-to-play overture." He rejected Karim's offer, he said, and refused to hire Skinner.

Another developer, who renovates commercial and residential properties in the city, said Skinner told him that he represented Liberty Law, owned by Karim, which could provide lobbying services for $25,000 a month even though it is not a registered lobbyist. "They wanted a big part of it up front: $200,000," said the developer, who spoke on condition of anonymity because he does not want to antagonize the Fenty administration.

The developer said that when he asked Skinner what services he would provide, Skinner told him, "You need some stuff, don't you?"

Karim's rise as a developer has been swift, and his portfolio consists mostly of projects awarded by the Fenty administration. Karim, 35, worked for a small developer before starting Banneker Ventures LLC during Fenty's campaign for mayor. Since 2005, Karim, his wife and his firm, which has offices two blocks from the White House, have contributed $10,000 to Fenty campaigns.

In addition to holding parks contracts now under investigation by the special counsel, Karim's company was on the team the Fenty administration chose for the $700 million redevelopment of the area around the Sursum Corda housing complex near North Capitol Street.

Banneker Ventures has played various roles in city projects, sometimes joining with other developers to win a contract and sometimes being hired to manage construction projects, a role that allowed Banneker to hire subcontractors who are also the mayor's friends.

On one project, after Banneker Ventures was hired as a planning consultant, the city later awarded the contract for the project to one of Karim's partners. Karim also worked for the city reviewing developers' proposals on two other projects.

Peter Nickles, the D.C. attorney general and a longtime Fenty adviser, said he sees nothing unusual in the frequency with which Fenty's friends have obtained city work. "They're young, African American guys trying to get involved . . . in the business of the city," he said. "You got a prime contractor, and the prime contractor shows it can get things done. . . . The prime has people it trusts."

Another Fenty friend who has prospered is Keith Lomax, a substitute teacher at Mackin High School in the 1980s, when Fenty was a student there. Lomax's construction company has received nearly $16 million in D.C. contracts since Fenty took office, records show. Bolden, also Lomax's attorney, said the contractor would not comment for this article.

## Skinner's ascent

gal, inappropriate about that?"

2006, Skinner owed the District $17,238 in rent for a spot he had leased at Judiciary Square, according to a settlement in which Skinner agreed to pay the city the back rent.

Skinner's finances improved during Fenty's campaign, which paid him nearly $70,000, according to city records. Sixteen months after the election, Skinner formed Liberty Engineering and Design, which Karim's company hired as a subcontractor on the parks renovations. Invoices show that Liberty has charged Banneker Ventures about $700,000. The council investigated Banneker's contract after discovering that the administration had awarded it without the required legislative approval.

Skinner has courted controversy throughout Fenty's time in office.

Although he has no job in the administration, Skinner, working with a Fenty aide, orchestrated the donation of a city-owned firetruck and ambulance to a town in the Dominican Republic without the knowledge or approval of the D.C. Council, according to a council investigation. The probe described Skinner as "well-connected" and concluded that "inside connections and access . . . resulted in a loss of value to the District government."

Kappa Alpha Psi, the fraternity to which Skinner, Karim and Fenty belong, publicly thanked Skinner for organizing a $37,000, taxpayer-funded reception last August celebrating the fraternity. Nickles declared the use of city funds improper and told the fraternity to reimburse the District.

Despite such incidents, Skinner and Fenty have remained close. At a birthday bash for Skinner atop Macy's downtown rooftop in 2008, hundreds of well-wishers danced to live go-go music as the mayor took out his cellphone to snap photos of the birthday boy.

## Against gentrification

Fenty met Skinner at Howard when the future mayor was a law student and Skinner was studying engineering. At the time, Skinner later told campaign colleagues, he would deliver meals to Fenty, who would hole up in his room for marathon study sessions.

As president of a business association, Skinner published the Georgia Avenue Defender, which in 2005 lampooned council member Jim Graham (D-Ward 1) as "Gramzilla," slayer of black-owned businesses. During his campaign, Fenty rebuffed demands by Graham and others to disavow or fire Skinner.

After the election, Fenty's aides tried to find Skinner a government post, said two former administration officials and a former campaign volunteer. Fenty, meanwhile, on several occasions promised that his friend would not get a job. Asked last month about the administration's efforts on Skinner's behalf, the mayor said only that "he doesn't have a role in my administration."

Skinner started his engineering firm and another company, renting space downtown and in an unmarked house with bars on the windows on Martin Luther King Jr. Avenue SE.

By then, Skinner was close to Warren Williams Jr., who owned Club U, a nightclub on U Street that was shut down in 2005, during the administration of Mayor Anthony A. Williams (D), after a patron was fatally stabbed. Warren Williams also owned an apartment building where tenants complained of rat infestation and no heat. In 2008, council members cited the stabbing and the building when they criticized Fenty's choice of a team that included Warren Williams to manage the D.C. Lottery.

During Fenty's campaign, Warren Williams, at Skinner's suggestion, joined Karim at Banneker Ventures, Williams said. After the election, the developers won several D.C. projects, including managing reconstruction of Walker-Jones Educational Complex and work on redeveloping a theater in the Deanwood neighborhood in Northeast.

The administration and the D.C. Housing Authority picked Banneker Ventures as "master planning consultant" for the redevelopment of the Park Morton housing project in Petworth. After Karim and Warren Williams split up in 2008, the District chose Williams's company, the Warrenton Group, as co-developer of Park Morton. Williams, in

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Fenty declined to talk in detail about his relationships with Skinner and Karim. In a brief interview as he left a news conference last month, he said his administration has awarded contracts properly.

Bolden, speaking for Karim and Skinner, acknowledged that his clients have been real estate consultants, but he said: "They're consultants because of their expertise. It has nothing to do with access to the mayor. [To imply otherwise] devalues their educational background, their entrepreneurship, their love of this city."

He added: "They're Howard graduates. They're fraternity brothers. They're friends with the mayor. Maybe they like doing business together. Anything ille-

Within Fenty's circle, no one else has risen as dramatically as Skinner, who was broke and drove a dented sedan when he went to work for the campaign.

At Skinner's dry cleaning shop on Georgia Avenue, he put up a poster of himself shaking hands with Sherman Hemsley, the actor who played dry cleaner George Jefferson in "The Jeffersons," the TV sitcom known for its "Movin' On Up" theme song. But dry cleaning was not Skinner's way up.

In 2003, about the time his Georgia Avenue property was foreclosed on, Skinner closed a second location, on Rockville Pike, leaving behind a pile of clothing that Montgomery County officials had to return to its owners, said Ralph L. Vines, an administrator in the county's Consumer Protection Office. By

From his earliest years in Washington, Skinner demonstrated a penchant for activism, winning election in 1998 to Petworth's Advisory Neighborhood Commission.

Lenwood Johnson, a commissioner and friend, said Skinner opposed white professionals migrating to the Northwest Washington neighborhood, if only because they could raise property values and drive out longtime residents and businesses. "He'd say, 'Why are they moving over here?' "

Joe Englert, who owns taverns in the District, was planning to open another in Petworth in 2006. Skinner confronted him, asking, "Why would a white man open a business on Georgia Avenue?" said Englert, who is white. "It was hard to respond, it was so outrageous."

an interview, said his company was chosen because of its competence, not its political connections.

Ben Soto, Fenty's campaign treasurer, said the mayor's ties to Skinner and Karim are rooted in a common commitment to improve the city. "He likes people who have a sense of urgency," Soto said. "Omar and Sinclair have that." Their bond, Soto said, trumps any political embarrassment. "When Adrian knows you have his back, it's a hiccup."

Although the friends have benefited from minority contracting rules, access to the mayor does not ensure winning bids, Soto said. The District twice rejected proposals from Karim's company, said Sean Madigan, a city spokesman.

Former mayor Barry (D), now the Ward 8 council member, said Fenty's friends have turned up in D.C.-sponsored projects often enough to raise questions.

"There's nobody in this government more Afro-centric than I am, but you can't hide behind that," said Barry, a longtime advocate of minority set-asides. "The problem I have is the circle is so small. The same ones over and over again. It's not fair."

Lomax is among the Fenty friends helped by Banneker Ventures. Banneker hired Lomax's RBK Construction for at least $3.5 million of the $16 million in D.C. contracts that RBK has received since Fenty took office. That's up from $1 million in city work that RBK got during Anthony Williams's administration.

The D.C. inspector general and the city auditor in May began investigating whether Lomax, a Prince George's resident, falsely used a house in Northeast Washington as a business address to improve his chances of winning city business. Lomax declined to comment.

The investigation, which is continuing, apparently has not dampened Fenty's friendship with Lomax. On a recent Saturday, the pair attended a Georgetown-Duke basketball game, where they posed for photos with President Obama.

Nor have Skinner's troubles made the mayor rethink their relationship. One night last month, as Fenty trolled for votes in the Northeast neighborhood of Burrville, there, following the mayor as he knocked on doors, was Sinclair Skinner.

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Staff researcher Meg Smith contributed to this report.

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**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**
**REAL ESTATE PERMIT**

**THIS REAL ESTATE PERMIT** (the "**Permit**") is made and entered into this day of_____, 2008 (hereinafter "**Effective Date**"), by and between the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a body corporate and politic (hereinafter "**WMATA**") with principal offices at 600 Fifth Street, NW, Washington, DC 20001and **Banneker Ventures, LLC,** a District of Columbia limited liability company, with principal offices at c/o TDC Real Estate Corp., 2101 Wisconsin Avenue, NW, Washington, DC 20007 (hereinafter "**Permittee**"). Permittee and WMATA are sometimes referred to herein jointly as the "**Parties**" or individually as a "**Party**".

**WITNESSETH:**

**WHEREAS**, Permittee has requested permission from WMATA to enter upon WMATA property consisting of Lots 44 and 45 in Square 393 and Lots 18 and 31 in Square 416 in the District of Columbia (the "**Permitted Premises**"), as shown in Exhibit A which is attached hereto and made a part hereof, to perform work set forth in Section 3 of this permit.

**WHEREAS**, WMATA has agreed to allow Permittee and its contractor(s), subcontractor(s) and consultants (hereinafter "**Contractor**" and collectively with the Permittee "**Permitted Parties**" or individually as a "**Permitted Party**") the right and privi-lege to enter upon and use the Permitted Premises to perform the above-referenced work upon the terms and conditions specifically set forth in this Permit

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

Incorporation of Recitals. The Recitals set forth above and attached Exhibits are incorporated herein by this reference and have the same force and effect as if fully hereinafter set forth.

2. **Permitted Access**. This Permit allows Permitted Parties and others acting on behalf of Permitted Parties to enter onto the Permitted Premises, provided that the



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conditions contained herein are met.

3. **Use of Permitted Premises**. In accordance with the terms of this Permit, WMATA grants unto Permitted Parties the right to perform the following work:
   - site survey
   - environmental investigative studies
   - other site investigative studies, including soil borings

   all in accordance with the Term Sheet between the Parties dated July _____, 2008 ("Agreement").

4. **Description of Permitted Premises**. The Permitted Premises are identified in the first Whereas clause of this Permit.

5. **Conditions on Use**.

This Permit may only be exercised by Permitted Parties upon WMATA review and approval of the proposed site investigative studies and schedule of proposed work. Prior to entering the Permitted Premises, Permitted Parties shall submit to WMATA's Office of Joint Development and Adjacent Construction for review and written approval, a description of the work to be undertaken, including detailed plans, as applicable, showing the location of the work, such as each soil boring, and a schedule of work (the "**Work Plan**").

b. Prior to each investigative study, Permittee shall submit to WMATA's Office of Joint Development and Adjacent Construction for review and approval at least seven (7) copies of the proposed work.

c. All work shall be planned and performed in accordance with the requirements of WMATA's Adjacent Construction Design Manual, Rev.2 ) or as further revised (the "**Manual**"). If certain requirements listed as the conditions in this Permit differ from those in the Manual, Permittee shall immediately contact WMATA's Supervisor of Field Projects or the Field Project Facilitator (see Subparagraph h below) for written clarification.

Permittee shall submit the Work Plan to WMATA's for review and written approval at least ten (30) business days prior to the start of work, to ensure that WMATA operations are not disrupted.

Plans, operation sequences and equipment positioning plans must ensure adequate safety for the general public entering/exiting WMATA facilities by car, on foot and riding on WMATA trains and buses and must be approved by WMATA prior to the start of any work.



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f. WMATA will review and provide written comments or approval on design or investigative studies submittals to Permitted Parties within thirty (30) business days after receipt of the plans and schedules. If approval is denied, a re-submittal for approval with all comments resolved shall be made to WMATA. This action shall be repeated until WMATA conveys final written approval. No changes may be made to the approved Work Plan without the prior written approval of WMATA's Field Project Facilitator.

WMATA accepts no liability and waives none of its rights under this Permit solely by reason of its approval of any drawings or specifications.

h. Permitted Parties shall contact WMATA's Supervisor of Field Projects, Mr. William Milner of the Office of Joint Development and Adjacent Construction, telephone: 301-618-1001 (office) or 202- 253-7226 (cell) to schedule a pre-work meeting. This request shall be made at least ten (10) business days prior to any planned start of work on the Permitted Premises. At this meeting, Mr. Milner will designate WMATA's Field Project Facilitator and provide Permitted Parties with the requisite contact information for the Field Project Facilitator.

i. Upon written approval from WMATA, Permitted Parties may conduct the necessary exploration or tests to determine the location of WMATA's existing facilities.

j. Swinging a crane and suspended loads over WMATA property is strictly prohibited except with WMATA's written approval. If WMATA autho-rizes construction activities which involve swinging a crane and suspended loads over Metrorail facilities, such work shall be performed only during WMATA's non-revenue hours, currently the hours of 1:30 a.m. to 4:00 a.m., Monday to Friday and 4:30 a.m. to 6:00 a.m. on Saturday and Sunday (non-revenue hours are subject to change by WMATA, at its sole discretion, to reflect WMATA's operating requirements). Crane inspection paperwork must be submitted to WMATA's Field Project Facilitator. All construction equipment used in the work shall be oriented in accordance with the instructions of WMATA's Field Project Facilitator.

k. When support functions and electrical power outages are required, WMATA's Field Project Facilitator must be contacted at least ten (10) business days prior to the requested start of the respective work. The *General Orders and Track Rights System (GOTRS) Account Request Form* must be submitted to the WMATA Office of Joint Development and Adjacent Construction by Friday noon at least one week preceding the WMATA Operating Week, which begins Saturday morning at 12:01 a.m.,



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to allow WMATA sufficient advance notice to schedule personnel and equipment and to adjust WMATA operations and maintenance to accommodate Permittee's request insofar as possible.

l. Permitted Parties planning to work within twenty-five (25) feet of WMATA's operating tracks must undergo WMATA safety training. WMATA's Field Project Facilitator must be contacted at least ten (10) business days prior to the desired training date. The *Certification of Eligibility for WMATA Contractor Identification (ID) Card* form Section 1 (*Appendix B*), must be completed and submitted to WMATA's Field Project Facilitator prior to the class date.

m. Permitted Parties shall monitor or cause to be monitored the Metrorail structures and tracks during any construction or installation within WMATA's Zone of Influence, as that term is further defined and explained in WMATA's *Manual*, proximate to WMATA structures and interests. The monitoring and contingency plans must be approved by WMATA in writing prior to the start of the work. The monitoring plans must include threshold values and survey control data.

n. Protective fencing to be approved by WMATA shall be installed at the boundary of the areas with public access.

o. Temporary sidewalks or pedestrian ways which will be in use more than ten (10) days shall be constructed of four inch (4") thick Portland cement concrete or four inches of asphaltic concrete placed and finished by a machine.

p. All work within twenty-five (25) feet of WMATA's tracks must be done during non-revenue hours which are currently 1:30 a.m. to 4:00 a.m., Monday to Friday and 4:30 a.m. to 6:00 a.m. on Saturday and Sunday (non-revenue hours are subject to change by WMATA, at its sole discretion, to reflect WMATA's operating requirements). Work in this location may require a "red tag" power outage as determined by WMATA's Field Project Facilitator who must be contacted at least ten (10) business days prior to the requested start date to coordinate the power outage and escort.

q. Work within 25 feet of WMATA tracks will require WMATA escorts from Metrorail Operations, and power outages may be required during pre-work surveys and inspections. *Track Access Request* forms must be submitted by Permitted Parties to WMATA's Field Project Facilitator ten (10) business days before the requested date of work.

r. All utilities must be located by Permitted Parties in advance of work by using WMATA As-Built Drawings and Miss Utility information and must be protected from any damage. Permitted Parties should be aware that



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WMATA As-Built Drawings may not reflect current site conditions and WMATA will not be responsible for any damage caused by such inaccuracies. Any excavation in the vicinity of WMATA or Potomac Electric Power Company power feeders to the Metrorail system and other underground utilities or within the work site shall be through hand excavation.

s. Flammable liquids shall not to be stored within twenty-five (25) feet horizontally or vertically, regardless of topographic or man-made barriers, of WMATA underground facilities, except in the tanks of automobiles. If a flammable liquid storage container of any kind is to be installed between twenty-five (25) and one hundred (100) feet of WMATA underground facilities, protective encasement of the storage container will be required in accordance with NFPA STD 130. Existing underground tanks located within one hundred (100) feet of WMATA facilities and scheduled to be abandoned are to be disposed of in accordance with Appendix C of NFPA STD 130. NFPA STD 130 should also be applied to the construction of new fuel tanks.

t. WMATA reserves the right to inspect the Permitted Premises at any time. Additionally, WMATA reserves the right to inspect, at reasonable times, the Permittee's activities for conformance with the approved work plan and OSHA safety requirements and to ensure that the operations of Metrorail are not impeded at any time. WMATA's designated representative(s) shall have full access to the Permitted Premises for the purpose of determining the safety of the operations and their impact on Metrorail operations, and such person(s) shall have the absolute authority to stop the work if, in WMATA's sole opinion, Permitted Parties are working in a manner that is unsafe for WMATA operations, the work is not in full compliance with the approved Work Plan or is interfering with WMATA operations.

u. Permitted Parties accept the Permitted Premises and adjacent areas in an "as is" condition, including any possible concrete over pours, sheeting and shoring which remain in place, inaccurate location of utilities or portions of the facilities and similar conditions. It shall be Permitted Parties' responsibility to verify the actual location of existing facilities, structures and utilities on the site and provide WMATA with a copy. Permitted Parties agree that the existence of any unknown or inaccurately portrayed facility will not be the subject of a claim against WMATA.

v. Upon completion of tests, Permittee shall provide WMATA's Office of Joint Development and Adjacent Construction with a copy of all surveys, test information, including but not limited to boring logs, test results, and all draft and final reports arising out of or relating to the tests.

w. Permitted Parties shall not be released before the final acceptance of the



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site improvements/restoration by WMATA.

6. **Term of Permit**. The first phase of this Permit commences on the date of execution of a Sale and Development Agreement ("Agreement") between Permittee and WMATA and terminates sixty days thereafter(**Term**") unless terminated for cause as provided in **Paragraphs 10 and 25** herein.

7. **Extension Option**. The Parties may mutually agree in writing to extend the Term of this Permit. Permittee shall request an extension of the Term in writing, at least thirty (30) calendar days prior to the expiration of the Term.

8. **Payment by Permittee**. Not Applicable.

9. **Assignment**. This Permit is not assignable or transferable by Permittee in any way. The rights, privileges, duties and obligations extended to or assumed by Permittee are personal to Permittee, its officers, employees, agents and contractors only.

10. **Suspension/Termination**. WMATA may suspend this Permit, in whole or in part, at its sole option and discretion at any time, if any condition created by Permitted Parties on or about the Permitted Premises threatens the safety or security of the Permitted Premises, any WMATA operation or function, the public, or is in violation of any applicable laws, rules, regulations, policies, instruction or directions whether federal or local relating to this Permit and/or any Permitted Party's work hereunder. If Permitted Parties do not correct the condition which serves as the basis for WMATA's suspension decision within ten (10) calendar days following receipt of written notice of such condition from WMATA, then WMATA may terminate this Permit, in whole or in part, by notice to Permittee without any further opportunity to cure such condition. This Permit may also be terminated or revoked by WMATA, in whole or in part, at its sole option and discretion, at any time, if deemed necessary by WMATA for the purposes of safety, security, operational necessity or any overriding public requirement. Upon termination or earlier revocation of this Permit, all Permitted Parties shall remove their equipment and restore the Permitted Premises to the satisfaction of WMATA. This Permit may be terminated at any time by Permittee by providing ten (10) calendar days prior written notice to WMATA. All obligations and liabilities of Permitted Parties under this Permit shall survive the termination of this Permit pursuant to this Paragraph or the expiration of the Permit pursuant to **Paragraphs 6 and 7** above.

11. **Conduct of Work**. In the conduct of work undertaken herein, the Permitted Parties shall require all parties working on the Permitted Premises to exercise all normal and reasonable safety precautions. Permitted Parties shall maintain the Permitted Premises in a clean and presentable manner.

12. **Employee and Public Safety**. Barricades, fences, signs, lanterns and other



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suitable devices necessary for employee and public safety shall be provided and adequately maintained by Permitted Parties at their sole cost and expense.

13. **Security**. Permitted Parties shall maintain the security of the work site to the satisfaction of WMATA during the entire period of use and occupancy under this Permit.

14. **Restoration**. Upon completion of all activities, Permitted Parties shall remove all of their equipment and restore the Permitted Premises to its previous condition or in accordance with pre-approved plans and specifications, and to WMATA's satisfaction.

15. **Responsibility for Licenses and Permits**. Permitted Parties shall be responsible for obtaining any necessary licenses and permits for the work permitted under this Permit including transportation and disposal of materials.

16. **Compliance with Orders and Directions of WMATA.** With respect to all work permitted under this Permit, Permitted Parties shall at all times conform with and abide by the reasonable orders and directions of WMATA officials or their duly authorized representatives, regardless of whether such orders and directions are oral or written. Nothing in this **Paragraph 16** shall be deemed to limit in any way WMATA's independent right under **Paragraph 10** above, to suspend or terminate this Permit.

17. **Non-Interference with WMATA Activities.** Pursuant to the terms of this Permit, Permitted Parties may only use the Permitted Premises in such manner and at such times as not to interfere with the use, construction, maintenance, repair and operations of WMATA.

18. **Damage to WMATA Property.** Permittee shall be responsible for, and must make good at its own expense, all damage to WMATA property caused in whole or in part by the acts or omissions of any Permitted Party and others acting on behalf of a Permitted Party, in carrying out the operations permitted under this Permit. Permittee shall ensure that such repair or replacement is carried out within fifteen (15) business days of Permittee's receipt of notice from WMATA except in the case of any emergency as determined by WMATA in its sole discretion, in which event Permittee's obligation of repair or replacement shall be immediate upon receipt of notice from WMATA.

19. **Utility Charges**. Permitted Parties at their sole cost and expense, shall pay all charges for any utilities used on the Permitted Premises during occupancy thereof when and as the same shall become due and payable. Permitted Parties are prohibited, without the prior written consent of WMATA (in its sole discretion) from making any connection to any utility line serving WMATA operations.



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**20. Indemnification.**

a. Permittee shall indemnify and save harmless WMATA, its directors, officers, employees and agents from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, including employees of Permittee or its Contractors, and for loss or damage to any property, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work permitted by this Permit and/or any acts in connection with activities to be performed under this Permit resulting in whole or in part from the acts, errors or omissions of Permittee or its Contractor, or any employee, agent or representative of Permittee or its Contractor. Nothing in the preceding sentence shall be deemed to relieve Permittee from ultimate liability for any obligation of Permittee under this Permit.

Permittee shall, and require its Contractor to, indemnify, defend and hold harmless WMATA its directors, officers, employees and agents against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the Permitted Premises by Permitted Parties or anyone acting on their behalf.

c. If any action or proceeding relating to the indemnification required by this **Paragraph 20** is brought against WMATA, then upon written notice from WMATA to the indemnitor, indemnitor shall, at indemnitor's expense, resist or defend such action or proceeding by counsel approved by WMATA in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same.

d. Permittee understands and agrees that it is Permittee's, its Contractor and all Permitted Parties' responsibility to provide indemnification toWMATA pursuant to this **Paragraph 20**. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of insurance to fully fund any indemnification shall not relieve Permittee and other Permitted Paries of any obligation assumed under this indemnification.

**21. Insurance.**

a. It is Permittee's responsibility to ensure that Permittee, its Contractor

and Permitted Parties have adequate and complete coverage as contemplated in this Permit. This responsibility is not waived, nor is any requirement to indemnify waived by WMATA's review and approval of any Policy.

b. WMATA is acknowledged and understood to be a third party beneficiary of any insurance policy carried by any Permitted Party.

c. As may be required in any insurance policy carried by any Permitted Party, this Permit is understood and agreed to be a written contract or an Insured Contract between that Permitted Party and WMATA.

d. Permittee understands and agrees that provision of a complete copy of the Policy or Policies which provide the below required insurance (as indicated by an "**x**" before said type of insurance), including a copy of any endorsement or exclusion thereto, for review and approval by WMATA is a prerequisite for entry onto WMATA property. It is the Permittee's responsibility to ensure adequate and complete coverage as contemplated in this agreement. This responsibility is not waived, nor is any requirement to indemnify waived, by WMATAs review and approval of any Policy.

e. Permittee understands and agrees that WMATA is a self-insured governmental entity and that the insurance and indemnification provided by any Permitted Party under the terms of this Permit shall be Primary. Permittee agrees that to the extent any endorsement contemplates issuance of a permit by a state or political subdivision, WMATA shall be considered a state or political subdivision issuing a permit for the purposes of those policies and endorsements.

f. Insurance Companies. Insurance companies providing the required coverages must be rated by A.M. Best or a comparable rating company and carry at least an "A" rating. All insurance shall be procured from insurance or indemnity companies acceptable to WMATA and licensed and authorized to conduct business in the jurisdiction where the work is to be performed. WMATA's approval or failure to disapprove the insurance shall not release Permitted Parties of full responsibility for liability for damage and accidents.

g. Changes in Insurance Coverage. The requisite insurance policies shall not be canceled, terminated or modified (except to increase the amount of coverage) without thirty (30) calendar days prior written notice from Permittee to WMATA's Office of Insurance, Room, 8D01, and Office of Station Area Planning and Asset Management, Room 5B, 600 Fifth Street, NW, Washington, DC 20001. All correspondence and insurance certificates must include the **joint development project name referenced in the Agreement.**. If any required insurance policies should be canceled, terminated or modified so that the insurance is not in full



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force and effect, then WMATA can hold Permittee in default of this Permit. Under such circumstances, WMATA shall give Permittee a notice of default and after the expiration of the cure period prescribed in **Paragraph 25**, WMATA may terminate this Permit for an event of default or obtain insurance coverage equal to that required herein, the full cost of which shall be paid by Permittee to WMATA on demand.

h. Evidence of Insurance Coverage. Evidence of the requisite insurance policies in the form of the complete insurance policy including any endorsements and certificates of insurance stating work to be performed and joint development project name referenced in the Agreement shall be submitted to WMATA at least ten (10) business days prior to commencement of operations and from time to time at WMATA's request. Permitted Parties shall not be allowed to enter the Permitted Premises until the evidence of insurance has been received and approved in writing by WMATA. All evidence of insurance shall be sent to:

Office of Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

With a copy to:

Office of Insurance
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Room 8D01
Washington, DC 20001

I. Permittee shall require each Contractor, at all tiers, to provide evidence of insurance coverage specified herein (as indicated by an "**x**" before said type of insurance) and such evidence of coverage shall be provided to WMATA.

j. Any contract of insurance or indemnification naming WMATA, the United States of America, or any of the departments, agencies, administrators or authorities as an additional insured shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that WMATA or the United States of America, et al, are not liable in tort by virtue of the fact of being governmental instrumentalities or public or quasi-public bodies.

k. Limits and Modification of Coverage. The limits of liability included here-in are minimum limits. WMATA reserves the right to review or change these limits if the terms of the Permit or standards in the industry change. If requested by WMATA, Permittee shall require its Contractor to make any necessary adjustments in such limits or in the type of coverage to



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reflect then currently acceptable, commercially reasonable policy limits and types of coverage for similar uses and operations. Permittee's failure to cooperate with WMATA regarding this subparagraph shall constitute a Default in accordance with **Paragraph 25** of this Permit. During the term of this Permit and any extensions, except for such longer terms as may be required herein, Permittee shall have its Contractor provide or cause to be provided at least the types and amounts of insurance indicated below:



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## Wallace, Maria A

**From:** Yohance (EOM) Fuller [yohance.fuller@dc.gov]
**Sent:** Monday, October 05, 2009 8:58 PM
**To:** okarim@bannekerventures.com; Bottigheimer, Nat
**Cc:** Neil.Albert@dc.gov; Goldin, Steven
**Subject:** Florida/Shaw Project -- Update and Next Steps

**Importance:** High

Nat --

Thanks for reaching out this afternoon to provide an update on what was causing the hold up last week.

After speaking with you, it is my understanding that WMATA's counsel wants to communicate its concerns to the committee and ultimately the Board about the risks associated with entering into a fee simple transaction for the Florida/Shaw project. I would like to understand specifically what are the risks that your counsel is referring to, what is counsel doing to mitigate those risks, and more importantly why these risks were not communicated when you and your counsel made the initial proposal to move forward with a fee simple transaction after negotiating a leasehold transaction for months.

Second, you and your staff should make every attempt to move forward with this transaction and include it on the agenda for the 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,

Yohance



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## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Monday, November 02, 2009 6:20 PM
**To:** Doggett, Rosalyn; Montague, Joshua W.
**Cc:** aives@bannekerventures.com; mmckinney@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; 'John Hagner'; Meister, Mark K.; Bottigheimer, Nat; Goldin, Steven
**Subject:** 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

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



WMATA-INV 001306

Co 10/30 02
11/2/09
from Omar

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

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

**1. Parties**

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

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



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

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

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

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. ok

**3. Property to Be Leased To DEVELOPER**

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

3.2 DEVELOPER will cause an preliminary ALTA survey and title commitment to be prepared within two (2) months of the effective date of the Definitive Agreement and the final ALTA survey (assuming a closed public alley) and title commitment no later than ~~thirty (30)~~ 60 days before the Closing.

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

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

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

990 mile?

Cant?

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

**5. Due Diligence**

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

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

applicable, and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

**6. Security Deposit**

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00), (the "Security Deposit") to secure DEVELOPER'S performance. The DEVELOPER'S Proposal Security currently being held by WMATA, in the amount of One Hundred Thousand Dollars ($100,000.00), will be applied to the Security Deposit. The DEVELOPER shall also receive a credit in the amount of One Hundred Thousand Dollars ($100,000.00) for added legal, financial and related expenses incurred by DEVELOPER ("Expense Credit"), which will be applied to the Security Deposit. At Closing, the Capitalized Lease Payment shall be reduced by the amount of the Expense Credit and the resulting deficiency ($100,000) to the Security Deposit, shall be replenished by the DEVELOPER.

Deleted: One

Deleted: 1

Who argued to this?

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

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

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001311

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

**7. Consideration**

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

7.2 Rent:

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

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

No mark to market over ??

Who agreed to this?

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

— we have no schedule



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001312

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

d) Capital Event Rent. Capital Events (defined below) shall be permitted in accordance with this Section 7.2(d). Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). A "Capital Event" will include, but not be limited to, any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, (iii) other dispositions, transfers, and conversions that change the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement but not including transfers among existing members, transfers to wholly-owned entities, intra-family transfers, transfers caused by death, transfers required for the initial debt and equity of the Total Project before the permanent loan closing and transfers of interests in publicly traded entities. The Parties agree that Non-Capital Events, which will require WMATA approval, but not WMATA monetary participation, also exist and will be defined in the Definitive Agreement. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original debt to construct the Project secured by DEVELOPER Improvements and repayment of the original equity and member loans to DEVELOPER not yet repaid including an Internal Rate of Return of twenty percent (20%). To confirm DEVELOPER's original project debt and equity, within thirty days of the Closing, DEVELOPER will provide WMATA with documentation confirming such amounts. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. In no event will member loans and equity exceed thirty percent (30%) of development costs to construct the Project.

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

No this allows Omar to ~~[illegible]~~ cash out WMATA on capital event

This was changed to 2% of Adjusted Gross Capital Event Proceeds. Leaves out Equity initially but NOT as part of second refi. proceeds



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001313

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

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

all bried
mtg by's
HUD financing
Not acceptable

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

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

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

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

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

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

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

7.7 Force Majeure Delays: The maximum length of six hundred (600) days to Closing may be extended for any delays caused by acts of God, terrorism,

casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement. Such Force Majeure Delays shall be subject to an increase in the Capitalized Lease Payment, as provided in Section 7.5 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

**8. Conditions to Definitive Agreement Consummation**

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

8.1 Design Approvals: Within ten (10) days of execution of the Definitive Agreement and prior to any final submission to the District, DEVELOPER shall submit to WMATA for its approval a conceptual Total Project site plan in substantial conformance with Exhibit B, including building elevations and floor plans (the "WMATA-Approved Site Plan"). The design of the Total Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Lease Property. WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA within thirty (30) days of receipt of such submission by WMATA.

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

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

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

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement.

The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

8.6 Financing Contingency: DEVELOPER shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Total Project and as shall otherwise be reasonably satisfactory to DEVELOPER and WMATA.

## 9. Special Considerations

9.1 Community Contact: Within one hundred twenty (120) days of the execution of the Definitive Agreement DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA to apprise such groups of the Total Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement. WMATA will include a list of all such groups as part of the Definitive Agreement.

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

a) DEVELOPER will fund any and all costs of the Approvals. WMATA will not incur any costs in connection with the Approvals either in the actual Approvals process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.
b) At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, partial alley closing and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.
c) WMATA shall cooperate with DEVELOPER in all zoning and other related Approvals, including the filing of the alley closing application, lot consolidation/resubdivision application, etc.

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

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

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and previously approved by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval, not to be unreasonably withheld, delayed or conditioned.

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

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the DEVELOPER Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee unless WMATA is prohibited from being so

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

9.7 Interim Improvements: intentionally omitted.

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

Deleted: unconditionally

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

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the DEVELOPER Improvements so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained

with a Continuing Transit Orientation, as described in FTA Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements under Federal Transit Law, which can be found at 72 FR 5788.

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

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

## 10. Indemnification

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

## 11. Insurance Requirements

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

## 12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of one hundred fifty (150) days from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

**Doggett, Rosalyn**

| | |
|---|---|
| **From:** | John Hagner [JHagner@wcsr.com] |
| **Sent:** | Tuesday, October 20, 2009 8:41 PM |
| **To:** | Omar A. Karim; Montague, Joshua W. |
| **Cc:** | Maurice' 'Perry; thicks@bannekerventures.com; Yohance S. Fuller; Doggett, Rosalyn; Bottigheimer, Nat; Goldin, Steven |
| **Subject:** | RE: Jazz @ Florida -- Follow Up |
| **Attachments:** | WINSTON-#4219577-v1G&1H-WMATA_Term_Sheet_for_Sale_of_Shaw-Howard_U-Florida_Ave_Site.DOC; WINSTON-#4219577-v1H-WMATA_Term_Sheet_for_Sale_of_Shaw-Howard_U-Florida_Ave_Site.DOC |

Josh: Per Omar's instruction, I changed the review period in Section 8.1 back to 30 days. I also revised your insert in Section 9.8 to more precisely follow our discussions on the guarantor's liability if certain insurance coverages were not maintained. Finally, I agreed with your edits to Section 11, but added a provision that if the FHA lender has higher scopes and limits, then the Developer will provide the higher requirement.

Attached are a revised Term Sheet and a "redline" showing all changes from the version you distributed with your e-mail at 6:05p tonight. Thank you for your help in getting this done. I hope we can agree the Term Sheet is now final and all declare victory.

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 A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Tuesday, October 20, 2009 8:18 PM
**To:** 'Montague, Joshua W.'
**Cc:** thicks@bannekerventures.com; 'Yohance S. Fuller'; Hagner, John; 'Bottigheimer, Nat'; 'Doggett, Rosalyn'; 'Goldin, Steven'; 'Perry, Maurice'
**Subject:** RE: Jazz @ Florida -- Follow Up

Josh,

We are fine with all of the changes except for the change in time to review the designs. This provision has been in all of our documents for the past 18 months and our schedule is closely tied to it. We already agreed to extend the time it could take to finalize the Definitive Agreement to December. Any additional extensions would delay our construction start and completion date, which would cause us to loose our tax credits. As discussed previously, we have to complete 10% of construction by October 2010 and 100% of construction by December 31, 2011. Since we will have to present WMATA with at least 3 separate reviews, adding another 45 days (15 more for each review), would certainly cause us to miss our deadline, and thus ensure that we loose the tax credits.

John, please review the final provision (para 11) in particular as this is also a new change.

Omar



FOIA CONFIDENTIAL TREATMENT REQUESTED 

**From:** Montague, Joshua W. [mailto: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

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,

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]
**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 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.

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
**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



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**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
W 202.538.1278 | F 202.535.1224 | yohance.fuller@dc.gov

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# 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 The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company (the "DEVELOPER") will be the developer of the Project. The DEVELOPER'S initial principals shall be Banneker Ventures, LLC, a District of Columbia limited liability company ("Banneker"), and Banc of America Community Development Corporation, a North Carolina corporation qualified to do business in the District of Columbia ("BACDC"). At or after the Closing until the "Completion of the Total Project" (as defined in Section 6.4 below), DEVELOPER shall be permitted to only admit other members who are tax credit investors, tax credit syndicators and equity investors for the Total Project so long as such admissions are not a disguised sale of the Project or transfer of control to another developer, except in the limited circumstance where there is an imminent default under the tax credits and the tax credit syndicator exercises its right to replace the manager of the Total Project. After the

[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.





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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 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") 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:

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.





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

4.3 The parties shall also execute and record Conditions, Covenants and Reservations which will include but not be limited to protecting WMATA's 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**. 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 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 "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, correction of any damage to the WMATA property caused by Developer or its contractors, subcontractors or consultants, and satisfaction of all requirements of the WMATA Design Construction Standards applicable to the DEVELOPER Improvements.

**7. Consideration**

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

7.4 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 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 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 feet for such additional density generated by the Sale 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.

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 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].

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



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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.

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 Purchase Price for such Additional Density shall be subject to the 5.8% annual increase.

7.8 Reversion of Sale: If DEVELOPER has not commenced excavation of building foundations within thirty-six (36) 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. The Developer shall have the right with WMATA Board approval to one twelve (12) month extension beyond the initial thirty-six (36) month period after Closing. 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.

**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 Sale Property. WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA within ~~forty-five~~thirty (~~45~~30) days of receipt of such submission by WMATA.



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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 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



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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. [2]

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 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 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 and adversely affect WMATA's operations. The design and construction plans for the DEVELOPER 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, 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, so long as DEVELOPER commences construction of the DEVELOPER Improvements within three (3) years of the date of the Definitive Agreement; otherwise, the most recent versions of the WMATA Design and Construction Standards shall be applicable. The Project will be reviewed in accordance with, and must conform to the requirements of, the aforementioned documents.

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the DEVELOPER Improvements to be constructed by one or more reputable

[2]. The resubdivision of the Sale Property and DEVELOPER Property in Square 393 will not be completed until after Closing.



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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: At the Closing, BACDC will execute an unconditional guaranty ("Guaranty") which guarantees 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) [intentionally omitted], e) that ~~all of the required parties~~the DEVELOPER maintains the railroad protection insurance and DEVELOPER, DEVELOPER's General Contractor(s) and all Major Subcontractors maintain the commercial general liability 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, 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, g) full payment of any increase in the Purchase Price for any Additional Density which increases the Purchase Price after the Closing. The Guaranty will be released by WMATA upon the Completion of the Total Project. The Definitive Agreement will include a minimum financial test to be met by BACDC, which will be 100% of the estimated costs of the construction costs of the Total Project. The adequacy of security and need for this Guaranty to be further discussed in the Definitive Agreement.

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 DEVELOPER Improvements will interfere with the safety or operation of WMATA's transit facilities.



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9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the 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 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 (i) 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, and (ii) ensure that WMATA is added as an "additional insured" under the commercial general liability insurance policies of the DEVELOPER, the General Contractor(s), and all Major



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Subcontractors. The coverages and policies of the railroad protection insurance and the commercial general liability insurance shall adhere to the scopes and limits required by WMATA or the FHA lender, whichever is higher.

**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.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]***



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Agreed this _____ day of October, 2009, by

**Washington Metropolitan Area Transit Authority**

By: _____
Steven E. Goldin
Director, Office of Station Area Planning and Asset Management
Department of Planning and Joint Development

**The Jazz @ Florida Avenue, LLC**

By: _____

Title: _____



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| Summary Report:<br>Litera Change-Pro ML WIX 6.5.0.104 Document Comparison done on 10/20/2009 8:30:35 PM | |
|---|---|
| **Style Name:** Default Style | |
| **Original Filename:** | |
| **Original DMS:**dm://WINSTON/4219577/1G | |
| **Modified Filename:** | |
| **Modified DMS:** dm://WINSTON/4219577/1H | |
| **Changes:** | |
| Add | 8 |
| ~~Delete~~ | 5 |
| ~~Move From~~ | 0 |
| Move To | 0 |
| Table Insert | 0 |
| ~~Table Delete~~ | 0 |
| Embedded Graphics (Visio, ChemDraw, Images etc.) | 0 |
| Embedded Excel | 0 |
| **Total Changes:** | 13 |

Proposal Security – FLORIDA AVE
APRIL 2009

FOIA CONFIDENTIAL TREATMENT REQUESTED

| Account | Serial Number | Date | Amount |
|---|---|---|---|
| 1000075598663 | 1005 | 04/09/2009 | $100,000.00 |

Front Image

THE JAZZ AT FLORIDA AVENUE LLC
PH. 202-667-4110
700 12TH ST NW STE. 700
WASHINGTON, DC 20005

SUNTRUST BANK
ACH RT 061000104
65-270/550

1005

04/06/2009

PAY TO THE ORDER OF WMATA $ **100,000.00

One hundred thousand and 00/100********** DOLLARS

WMATA

MEMO Proposal Security Deposit - Florida Avenue Site

AUTHORIZED SIGNATURE

⑈001005⑈ ⑆055002707⑆ 1000075598663⑈

Security Features Included Details on Back

Back Image

FOR DEPOSIT ONLY
THE ACCOUNT OF WMATA
APR 9 2009
600 5TH ST. N.W.
WASHINGTON, D.C. 20001

PUC 04/09/2009-000088589

Wachovia certifies that the above image accurately represents the physical item from which it was produced.

BANNEKER VENTURES, LLC

April 8, 2009

**BY HAND DELIVERY**

Rosalyn Doggett
Washington Metropolitan Area Transit Authority ("**WMATA**")
600 5th Street, NW
Washington, DC 20001

RE: Replacement of Security Deposit for The Jazz @ Florida Avenue

Dear Mrs. Doggett:

Enclosed, please find a check from The Jazz at Florida Avenue, LLC to WMATA in the amount of $100,000.00 (the "**Replacement Security Deposit**") to replace the Proposal Security Deposit originally submitted by District Development Group, LLC (our former development partner) in the form of a Standby Letter of Credit issued by Bank of America. Please acknowledge receipt of the Replacement Security Deposit by signing and dating one copy of this letter and returning it to me.

Thanks in advance for your assistance with this matter. Please do not hesitate to call me at (202) 667-4110 with any questions.

Sincerely,

T. Hicks

Tiwana Z. Hicks

Enclosure

ACCEPTED:

_____

By: Rosalyn Doggett

cc: Omar A. Karim
Maurice L. Perry

700 12th Street, NW • Suite 700 • Washington, D.C. 20005 • (202) 667-4110
www.bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED

**THE JAZZ AT FLORIDA AVENUE LLC**
PH. 202-667-4110
700 12TH ST NW STE. 700
WASHINGTON, DC 20005

**SUNTRUST BANK**
ACH RT 061000104
65-270/550

1005

04/06/2009

PAY TO THE ORDER OF WMATA $ **100,000.00

One hundred thousand and 00/100********** DOLLARS

Details on Back. Security Features Included

WMATA

MEMO Proposal Security Deposit - Florida Avenue Site

AUTHORIZED SIGNATURE

⑈001005⑈ ⑆055002707⑆ 1000075598663⑈

**THE JAZZ AT FLORIDA AVENUE LLC** 1005

**04/06/2009** **WMATA**

100,000.00

Replacement Proposal Security Deposit
Shaw-Howard/Florida Avenue joint development project.

**1010 Wachovia - 3246** Proposal Security Deposit - Florida Avenue Site 100,000.00

FOIA CONFIDENTIAL TREATMENT REQUESTED

**THE JAZZ AT FLORIDA AVENUE LLC**
PH. 202-667-4110
700 12TH ST NW STE. 700
WASHINGTON, DC 20005

**SUNTRUST BANK**
ACH RT 061000104
65-270/550

1005

04/06/2009

PAY TO THE ORDER OF WMATA $ **100,000.00

One hundred thousand and 00/100********** DOLLARS

Details on Back.

Security Features Included

WMATA

MEMO Proposal Security Deposit - Florida Avenue Site

AUTHORIZED SIGNATURE

⑈001005⑈ ⑆055002707⑆ 1000075598663⑈

**THE JAZZ AT FLORIDA AVENUE LLC** 1005

**04/06/2009** **WMATA**

100,000.00

Replacement Proposal Security Deposit
Shaw-Howard/Florida Avenue joint development project

**1010 Wachovia - 3246** Proposal Security Deposit - Florida Avenue Site 100,000.00

WMATA-INV 001343

FOIA CONFIDENTIAL TREATMENT REQUESTED

**THE JAZZ AT FLORIDA AVENUE LLC**
PH. 202-667-4110
700 12TH ST NW STE. 700
WASHINGTON, DC 20005

**SUNTRUST BANK**
ACH RT 061000104
65-270/550

1005

04/06/2009

PAY TO THE ORDER OF WMATA $ **100,000.00

One hundred thousand and 00/100********** DOLLARS

Details on Back. Security Features Included

WMATA

MEMO Proposal Security Deposit - Florida Avenue Site

AUTHORIZED SIGNATURE

⑈001005⑈ ⑆055002707⑆ 1000075598663⑈

**THE JAZZ AT FLORIDA AVENUE LLC** 1005

**04/06/2009** **WMATA**

100,000.00

Replacement Proposal Security Deposit
Shaw-Howard/Florida Avenue joint development project.

**1010 Wachovia - 3246** Proposal Security Deposit - Florida Avenue Site 100,000.00

FOIA CONFIDENTIAL TREATMENT REQUESTED

**THE JAZZ AT FLORIDA AVENUE LLC**
PH. 202-667-4110
700 12TH ST NW STE. 700
WASHINGTON, DC 20005

**SUNTRUST BANK**
ACH RT 061000104
65-270/550

1005

04/06/2009

PAY TO THE ORDER OF WMATA $ **100,000.00

One hundred thousand and 00/100********** DOLLARS

Details on Back. Security Features Included

WMATA

MEMO Proposal Security Deposit - Florida Avenue Site

AUTHORIZED SIGNATURE

⑈001005⑈ ⑆055002707⑆ 1000075598663⑈

**THE JAZZ AT FLORIDA AVENUE LLC** 1005

**04/06/2009** **WMATA**

100,000.00

Replacement Proposal Security Deposit
Shaw-Howard/Florida Avenue joint development project

**1010 Wachovia - 3246** Proposal Security Deposit - Florida Avenue Site 100,000.00

WMATA-INV 001345

SHAW HOWARD / FLORIDA AVE Letters of Credit
Returned on 5/29/89

FOIA CONFIDENTIAL TREATMENT REQUESTED

UNITED STATES POSTAL SERVICE

SCRANTON PA

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Rosalyn Doggett
3rMATA
600 5th St NW
Suite 5B-10
Washington, DC 20001

10

May 27, 2009

Mr. Alfonso Malave
Bank of America, N.A.
1 Fleet Way
Scranton, PA 18507

Re: Shaw-Howard University Joint Development Site

Dear Mr. Malave:

As we no longer need it, we are returning to you, with this letter, Standby Letter of Credit No. 68021004, issued on October 12, 2007. We thank you for having worked with us.

Sincerely,

Mark K. Meister
Acting Director
Office of Station Area Planning
and Asset Management

Enclosure

cc: Joshua Kern, District Development Group, LLC
Omar Karim, Banneker Ventures, LLC

**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

Bank of America

COPY

BANK OF AMERICA - CONFIDENTIAL



DATE: OCTOBER 12, 2007

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 68021004

AMENDMENT NUMBER 1

ISSUING BANK
BANK OF AMERICA, N.A.
1 FLEET WAY
PA6-580-02-30
SCRANTON, PA 18507-1999

BENEFICIARY
WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
600 FIFTH STREET, NW
WASHINGTON, DC 20001

APPLICANT
DISTRICT DEVELOPMENT GROUP, LLC
3215 MARTIN L. KING, JR. AVENUE, SE
WASHINGTON, DC 20032

THIS AMENDMENT IS TO BE CONSIDERED AN INTEGRAL PART OF THE ABOVE CREDIT AND MUST BE ATTACHED THERETO.

THE ABOVE MENTIONED CREDIT IS AMENDED AS FOLLOWS:

"PAYMENT UNDER THIS LETTER OF CREDIT WILL BE EFFECTED UPON PRESENTATION OF YOUR DRAFT ACCOMPANIED BY THE REQUIRED DOCUMENT(S) (THE "DRAWING") TO BANK OF AMERICA N.A., ANACOSTA BRANCH, 2100 MARTIN LUTHER LING JR. SE, WASHINGTON, DC 20020-5732, ATTENTION: HUGH A. ANDERSON AND A COPY OF SUCH DRAWING SENT SIMULTANEOUSLY BY FACSIMILE TO BANK OF AMERICA, N.A. - SCRANTON FAX NUMBER (570) 330-4186/4187).

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS AMENDMENT, PLEASE CALL 800-370-7519 .

---
AUTHORIZED SIGNATURE

THIS DOCUMENT CONSISTS OF 1 PAGE(S).

ORIGINAL

05-17-1486B 7-2000

Bank of America

COPY

BANK OF AMERICA - CONFIDENTIAL



DATE: OCTOBER 3, 2007

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 68021004

ISSUING BANK
BANK OF AMERICA, N.A.
1 FLEET WAY
PA6-580-02-30
SCRANTON, PA 18507-1999

BENEFICIARY
WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
600 FIFTH STREET, NW
WASHINGTON, DC 20001

APPLICANT
DISTRICT DEVELOPMENT GROUP, LLC
3215 MARTIN L. KING, JR. AVENUE, SE
WASHINGTON, DC 20032

AMOUNT
NOT EXCEEDING USD 100,000.00
NOT EXCEEDING ONE HUNDRED THOUSAND AND 00/100'S US DOLLARS

EXPIRATION
MARCH 31, 2008 AT OUR COUNTERS

RE: ISSUED IN CONNECTION WITH:
JOINT DEVELOPMENT SITE: SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE
JOINT DEVELOPMENT SOLICITATION (JDS) DATED: AUGUST 24, 2007

LADIES AND GENTLEMEN:

1. WE HEREBY OPEN IN YOUR FAVOR, AT THE REQUEST AND FOR THE ACCOUNT OF THE ABOVE-IDENTIFIED APPLICANT, OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. 68021004 IN AN AGGREGATE AMOUNT OF ONE HUNDRED THOUSAND AND 00/100'S U.S. DOLLARS (USD 100,000.00), TO BE AVAILABLE FOR PAYMENT OF YOUR DRAFT(S) DRAWN AT SIGHT ON US, AND ACCOMPANIED, IN THE CASE OF EACH DRAFT, BY YOUR WRITTEN CERTIFICATION TO US SIGNED BY ANY PERSON PURPORTING TO ACT ON YOUR BEHALF, STATING:

"APPLICANT AS THE SELECTED DEVELOPER FOR THE ABOVE-REFERENCED JOINT DEVELOPMENT SITE PURSUANT TO THAT CERTAIN JOINT DEVELOPMENT SOLICITATION (JDS) DATED AUGUST 24, 2007, AND ISSUED BY BENEFICIARY HAS BEEN TERMINATED AS THE SELECTED DEVELOPER IN ACCORDANCE WITH SECTION 5.2 OF THE JDS, AND BENEFICIARY HEREBY CERTIFIES THAT THE SIGHT DRAFT PRESENTED HEREWITH CONSTITUTES AN AMOUNT OWED TO BENEFICIARY UNDER THE JDS.

2. DRAFT(S) DRAWN UNDER THIS LETTER OF CREDIT (AS SAME MAY HAVE BEEN OR MAY BE AMENDED FROM TIME TO TIME) SHALL BE COMPLETELY SUFFICIENT IF IN THE FORM ATTACHED HERETO AS EXHIBIT 'A', AND NEED NOT BE ENDORSED ON THE LETTER OF CREDIT. WE WILL ACCEPT ANY AND ALL

ORIGINAL

Recycled Paper

00-35-3337B 12-2006

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 68021004

STATEMENTS DELIVERED PURSUANT TO THIS CREDIT AS CONCLUSIVE, BINDING, AND CORRECT, WITHOUT HAVING TO INVESTIGATE OR BEING RESPONSIBLE FOR THE ACCURACY, TRUTHFULNESS, CORRECTNESS OR VALIDITY THEREOF AND NOTWITHSTANDING THE CLAIM OF ANY PERSON TO THE CONTRARY.

3. THIS CREDIT SHALL EXPIRE, UNLESS EXTENDED AS PROVIDED HEREIN, AT 5 P.M., EASTERN TIME IN SCRANTON, PENNSYLVANIA, ON MARCH 31, 2008. IF SUCH DATE IS A SATURDAY, SUNDAY, LEGAL HOLIDAY OR DAY ON WHICH WE ARE NOT OPEN FOR BUSINESS ON ACCOUNT OF ANY OTHER REASON, THE EXPIRATION DATE SET FORTH ABOVE SHALL AUTOMATICALLY BE EXTENDED TO OUR NEXT REGULAR BUSINESS DAY. IT IS A CONDITION OF THIS CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR AN ADDITIONAL PERIOD OF 12 MONTHS FROM THE PRESENT AND EACH FUTURE EXPIRATION DATE, UNLESS, NOT LESS THAN 60 DAYS PRIOR TO THE THEN-RELEVANT EXPIRATION DATE, WE NOTIFY YOU BY REGISTERED MAIL OR RECOGNIZED OVERNIGHT COURIER THAT WE ELECT NOT TO EXTEND THIS CREDIT FOR ANY ADDITIONAL PERIOD. UPON RECEIPT OF SUCH A NOTIFICATION, YOU MAY DRAW YOUR SIGHT DRAFT ON US PRIOR TO THE THEN-RELEVANT EXPIRATION DATE FOR THE UNUSED BALANCE OF THIS CREDIT, WHICH NEED BE ACCOMPANIED ONLY BY YOUR SIGNED WRITTEN STATEMENT THAT YOU RECEIVED NOTIFICATION OF OUR ELECTION NOT TO EXTEND.

4. ALL DRAFTS DRAWN UNDER THIS LETTER OF CREDIT MUST REFER TO THE NUMBER AND ISSUE DATE OF THIS CREDIT, AND MUST BE MARKED "DRAWN UNDER BANK OF AMERICA N.A. IRREVOCABLE STANDBY LETTER OF CREDIT NO. 68021004".

5. WE AGREE TO HONOR EACH DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, IF DULY PRESENTED AT OUR OFFICES AT BANK OF AMERICA N.A., 1 FLEET WAY, SCRANTON, PA 18507, ATTN: TRADE OPERS.-STANDBY UNIT AT OR BEFORE 5 P.M. EASTERN TIME IN SCRANTON, PENNSYLVANIA. WE AGREE TO DELIVER PAYMENT IN FULL OF EACH SUCH DRAFT WITHOUT ANY PROCESSING, CHECK, OR OTHER FEES WHATSOEVER, TO YOUR OFFICES AS SET FORTH HEREINABOVE, ATTN: GENERAL COUNSEL, NOT LATER THAN 36 HOURS AFTER THE TIME OF PRESENTMENT (NOT INCLUDING SATURDAYS, SUNDAYS, LEGAL HOLIDAYS, OR ANY DAY ON WHICH WE ARE NOT OPEN FOR BUSINESS ON ACCOUNT OF ANY OTHER REASON) BY OUR CASHIER'S OR TELLER'S CHECK PAYABLE SOLELY TO THE ORDER OF THE "WASHINGTON METROPOLITAN TRANSIT AUTHORITY", OR, BY OUR FEDWIRE IN ACCORDANCE WITH YOUR PAYMENT INSTRUCTIONS.

6. THE ORIGINAL AND/OR ANY AMENDMENT OF THE CREDIT UNDER WHICH DRAFTS ARE PRESENTED BY YOU NEED NOT BE PRESENTED WITH ANY DRAFT DRAWN THEREUNDER IN ORDER TO CONSTITUTE A VALID PRESENTMENT, UNLESS SUCH DRAFT IS A FULL AND/OR FINAL DRAFT UNDER THIS CREDIT.

7. PARTIAL DRAWINGS UNDER THIS LETTER OF CREDIT ARE PERMITTED.

8. THIS CREDIT SHALL BE GOVERNED BY THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, UCP 600 (2007 REV.), PUBLISHED BY THE

ORIGINAL

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 68021004

INTERNATIONAL CHAMBER OF COMMERCE, AND TO THE EXTENT NOT SO GOVERNED IN ACCORDANCE WITH THE STATUTE AND CASE LAW OF THE DISTRICT OF COLUMBIA.

VERY TRULY YOURS,

BANK OF AMERICA N.A.

BY:

AUTHORIZED OFFICER

PRINTED NAME: ALFONSO MALAVE

PRINTED TITLE: AVP

ORIGINAL

Bank of America

COPY

EXHIBIT A

SIGHT DRAFT

DATE: _____

AT SIGHT, PAY TO THE ORDER OF WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, THE SUM OF _____ DOLLARS (USD _____).

FOR VALUE RECEIVED, AND CHARGE TO THE ACCOUNT OF DISTRICT DEVELOPMENT GROUP, LLC.

DRAWN UNDER BANK OF AMERICA, N.A. IRREVOCABLE STANDBY LETTER OF CREDIT NO. 68021004, DATED OCTOBER 3, 2007 (AS AMENDED BY _____), HEREBY CERTIFIES TO YOU THAT:

(INSERT CERTIFICATION LANGUAGE)

TO: BANK OF AMERICA, N.A.
ADDRESS: 1 FLEET WAY
SCRANTON, PA 18507
ATTN: LETTER OF CREDIT DEPT.,
STANDBY UNIT

WASHINGTON METROPOLITAN
AREA TRANSIT AUTHORITY
BY: _____
PRINT NAME: _____
TITLE: _____
600 FIFTH STREET, NW
WASHINGTON, DC 20001

00-35-3337B 12-2006

Rent from year 40 to year 60

Send Josh B AIS

**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~~ lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th Streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

**1. Parties**

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

1.2 The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company (the "DEVELOPER") will be the developer of the Project. The DEVELOPER'S initial principals shall be Banneker Ventures, LLC, a District of Columbia limited liability company ("Banneker"), and Banc of America Community Development Corporation, a North Carolina corporation qualified to do business in the District of Columbia ("BACDC"). At or after the Closing until the "Completion of the Total Project" (as defined in Section 6.4 below), DEVELOPER shall be permitted to only admit other members who are tax credit investors, tax credit syndicators and equity investors for the Total Project so long as such admissions are not a disguised sale of the Project or transfer of control to another developer, except in the limited circumstance where there is an imminent default under the tax credits and the tax credit syndicator exercises its right to replace the manager of the Total Project. After the Completion of the Total Project, there shall be ~~no~~ limited restrictions on DEVEOPER'S composition, members, managers, leasing or financing of the Total Project.

– Josh what do you mean?

**2. Definitive Agreement**

2.1 The Definitive Agreement will be a ~~Purchase and Sale~~Joint Development Agreement ("Definitive Agreement") together with all necessary related documentation upon which WMATA and DEVELOPER mutually agree. The Definitive Agreement will be prepared initially by WMATA. Both parties commit to complete the Definitive Agreement so WMATA can present the agreed-upon Definitive Agreement to its Board for approval within one month of the Board's approval of this Term Sheet. WMATA and DEVELOPER shall execute the Definitive Agreement within three (3) business days of Board approval.

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



FOIA CONFIDENTIAL TREATMENT REQUESTED 

See B A13 - two or one?

a) a ground lease agreement (the "Lease") whereby WMATA will lease the Lease Property to the DEVELOPER for a term of sixty (60) years, with two DEVELOPER option periodss totaling an additional thirty-three (~~33~~) years. 39

Land valued as if vacant

a)b) A ~~The Definitive Agreement will be prepared initially by WMATA. Both parties commit to complete the Definitive Agreement so WMATA can present the agreed-upon Definitive Agreement to its Board for approval within 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.~~conditions, covenants and reservations agreement ("CCRs"), to be recorded among the land records, which will: (i) protect WMATA's interests in its tunnel and associated elements and access thereto; and (ii) include transit oriented development covenants.

2.~~2~~3 The execution of the Lease~~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~~ Leased To DEVELOPER**

3.1 WMATA will ~~sell~~ lease to DEVELOPER approximately 28,376 square feet of land, which area is outlined in ~~red~~ yellow ~~in~~ on **Exhibit A** and attached hereto (the "~~Sale~~ 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 ~~Sale~~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.

yellow?

remember alley

3.2 DEVELOPER will ~~prepare~~ cause the survey and title to be prepared for Closing.

**4. Project**

DEVELOPER will construct improvements on the ~~Sale~~Lease Property (the "Project") in the configuration shown in **Exhibit B** and attached hereto,~~-~~ which configuration includes the Total Project. The ~~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:

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001355

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 ~~" (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"). 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~~" (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. DEVELOPER is acquiring an interest in the Lease Property~~" (as defined in Section 3 below)~~ to develop a single, mixed-use, Transit-Oriented Development project on the combined Lease Property and DEVELOPER Property (the "Total Project").

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

Comment [JM1]: Recorded among the owners?

d) Co-Tenancy Agreement. At Closing, the parties will execute a co-tenancy agreement, which will govern the management and sale of the improvements on assembled Lots 41, 44, 45 and A&T Lot 826 on Square 393, upon termination of the Lease.

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

~~4.34 The parties shall also execute and record Conditions, Covenants and Reservations which will include but not be limited to protecting WMATA's 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**



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001356

5.1 ~~Sale~~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 ~~Sale~~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 ~~Sale~~Lease Property in an "AS IS, WHERE IS" condition.

5.2 Study Period: Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right of Entry Permit for entry onto the ~~Sale~~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 ~~Sale~~Lease Property (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit or the Proposal Security (as defined below), as applicable, and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

**6. Security Deposit**

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of One ~~Two~~ Hundred Fifty Thousand Dollars ($~~2~~50,000.00), (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,



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001357

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 ~~the~~ WMATA's property caused by Developer or its contractors, subcontractors or consultants; and (iv) satisfaction of all requirements of the WMATA Design Construction Standards applicable to the DEVELOPER Improvements.

**7. Consideration**

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

7.2 ~~Purchase Price~~Rent:

a) Pre-Stabilization Rent. The DEVELOPER shall make quarterly non-refundable Pre-stabilization Rent payments beginning upon execution of the Definitive Agreement. The "Pre-Stabilization Period" shall be the period from the effective date of the Definitive Agreement to the earlier of: (i) forty-five (45) months or (ii) Project Stabilization, which will be defined in the Definitive Agreement. ~~Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement or forty-five (45) months after WMATA Board approval and execution of the Definitive Agreement (the "Pre-stabilization Period").~~ Pre-stabilization Rent, for the first fifteen (15) months, will be $150,000 per year payable in advance in quarterly installments of $37,500. Pre-stabilization Rent will increase to $145,000.00 per year for the next twelve (12) months. For the remaining Pre-stabilization Period, rent shall be $130,000.00 per year.

b) Base Rent. The base ~~purchase price~~rent ("~~Purchase Price~~Base Rent") for the ~~Sale~~Lease Property ~~shall~~ will be paid in full at Closing in the amount of Two Million Two Hundred Thousand Dollars ($2,200,000.00).

c) Participation Rent. Participation Rent payments shall begin upon the end of the Pre-Stabilization Period. The DEVELOPER will make

DSCR of 1.25

TBD

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a) DEVELOPER shall

annual payments to WMATA in the amount of one and a half (1.5%) percent of Effective Gross Income, ~~derived~~earned from the operation of the Project for the previous year.

~~a)~~d) Capital Event Rent. Capital Events (defined ~~herein~~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"). "Capital Event" includes any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, (iii) other dispositions, transfers, and conversions that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement. The Parties agree that Non-Capital Events, which will require WMATA approval, but not WMATA monetary participation, also exist and will be defined in the Definitive Agreement. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the ~~start of Project construction~~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.

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

provided assemblage occurs 1st

7.4 Additional Density: If ~~prior final completion of the Project~~at any time, DEVELOPER has received approval for additional density over 100,711 gross FAR square feet, DEVELOPER will adjust the ~~Purchase Price~~Base Rent. The measurement of gross FAR square feet shall be the highest amount generated by the ~~Sale~~Lease Property, whether used on the ~~Sale~~Lease Property or not, in (i) any final zoning approval by the District of Columbia; (ii) the building permit



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approval; or (iii) the 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. [The portion of alley which will become part of the Lease Property will be highlighted in Exhibit A].

a) Prior to Closing: If the DEVELOPER receives approval for additional density prior to CLOSING, the additional density Base Rent ~~Purchase Price~~ adjustment shall be as follows:
   (i) An upward adjustment in the Base Rent by $50/gross FAR square feet for additional density generated by the Lease Property over 100,711 gross FAR square feet; and
   (ii) After the additional density consideration in 7.6(a) is added, a downward adjustment in the Base Rent 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

b) After Closing: During the term of the Lease, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those in effect at Closing ~~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, to be defined in the Definitive Agreement.

Method

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



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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 Base Rent, as provided in Section 7.5 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay. ~~Reversion of Sale: If DEVELOPER has not commenced excavation of building foundations within thirty-six (36) months of Closing, fee simple title to the Sale Property shall revert to and revest in WMATA subject to WMATA's tender to DEVELOPER of the full Purchase Price. The Developer shall have the right with WMATA Board approval to one twelve (12) month extension beyond the initial thirty-six (36) month period after Closing. 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.~~

**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 ~~Sale~~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 ~~Sale~~Lease Property and DEVELOPER Property (collectively, "Approvals") required to allow construction of the Project on the ~~Sale~~Lease Property. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

a) DEVELOPER will fund any and all costs of the Approvals. WMATA will not incur any costs in connection with the Approvals either in the actual Approvals process or for required on-site or off-site

improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

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

c) WMATA shall cooperate with DEVELOPER in all zoning and other related Approvals, including the filing of the alley closing application, lot consolidation/resubdivision application, etc.

d) The resubdivision of the Lease Property and DEVELOPER Property in Square 393 will not be completed until after Closing.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the applicable District agency or agencies an Approvals request and an application for District approval of the WMATA-approved Site Plan, for development of the Sale~~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 ~~DEVELOPER Improvements~~ improvements on the Lease Property or the DEVELOPER Property that materially and adversely affect WMATA's operations. The design and construction plans for ~~the DEVELOPER I~~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~~, as amended and revised from time to time~~ (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, ~~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, so long as DEVELOPER commences construction of the DEVELOPER Improvements within three (3) years of the date of the Definitive Agreement~~; 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 least ten (10) ~~calendar~~ days prior to ~~commencement of construction of the DEVELOPER Improvements~~Closing.

9.7 Interim Improvements: intentionally omitted.

9.8 Guaranty: At the Closing, BACDC will execute an unconditional guaranty ("Guaranty") ~~at Closing~~to WMATA. The Guaranty will be released by WMATA upon the Completion of the Total Project. The Definitive Agreement will include a minimum financial test to be met by BACDC, which will be 100% of the estimated costs of the construction costs of the Total Project. The adequacy of security and need for this Guaranty to be further discussed in the Definitive Agreement. The guaranty agreement will unconditionally guarantee to WMATA:

a) the completion of construction of the DEVELOPER Improvements;
~~a)~~b) the completion of infrastructure required by either the District or WMATA that is not included in the Site Work;
~~b)~~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;
~~c)~~e) the ~~DEVELOPER~~ required parties maintain the insurance required by WMATA under the ~~railroad protection insurance and DEVELOPER, DEVELOPER's General Contractor(s) and all Major Subcontractors maintain the commercial general liability 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;

~~d)~~f) the restoration of the ~~Sale~~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 ~~Sale~~Lease Property longer than 30 days;

~~e)~~g) the timely payment all DEVELOPER obligations under the Definitive Agreement, including full payment of any increase in the ~~Purchase Price~~ Base Rent for any Additional Density which increases the Base Rent ~~Purchase Price~~ 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 ~~DEVELOPER Improvements~~ 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 ~~Sale~~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, ~~pre-Closing~~ operations on the ~~Sale~~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 ~~Sale~~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 ~~Sale~~Lease Property will be obligated, at their sole cost and expense, to restore the ~~Sale~~Lease Property 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~~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 (i) 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, and (ii) ensure that WMATA is added as an "additional insured" under the commercial general liability insurance policies of the DEVELOPER, the General Contractor(s), and all Major Subcontractors. The coverages and policies of the railroad protection insurance and the commercial general liability insurance shall adhere to the scopes and limits required by WMATA or the FHA lender, whichever is higher~~.

**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.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]***

Agreed this _____ day of October, 2009, by

**Washington Metropolitan Area Transit Authority**

By: _____
Steven E. Goldin
Director, Office of Station Area Planning and Asset Management
Department of Planning and Joint Development

**The Jazz @ Florida Avenue, LLC**

By: _____

Title: _____



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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.

1.3 At or after the Closing until the "Completion of the Project" (as defined in Section 4.3 below), DEVELOPER shall be permitted to only admit other members who are tax credit investors, tax credit syndicators and equity investors for the Project so long as such admissions are not a disguised sale of the Project or transfer of control to another developer, except in the limited circumstance where there is an imminent default under the tax credits and the tax credit syndicator exercises its right to replace the manager of the Project. After the Completion of the Project, there shall be limited restrictions on the DEVEOPER'S principals and the identity of any successor lessee/owner of the Project.

## 2. Definitive Agreement

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



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Definitive Agreement within three (3) business days of Board approval of the Definitive Agreement.

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

a) A ground lease agreement (the "Lease") whereby WMATA will lease the Lease Property to the DEVELOPER for an initial term of fifty (50) years, with an option for an additional period of twenty-five (25) years.

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

2.3 The execution of the Lease ("Closing") will take place no later than six hundred thirty (630) days after the WMATA Board approves the Definitive Agreement. The Definitive Agreement shall terminate no later than the Completion of the Project with any surviving obligations being included in the CCRs.

**3. Property to Be Leased To DEVELOPER**

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

3.2 DEVELOPER will cause a preliminary ALTA survey and title commitment to be prepared within three (3) months of the expiration of the Study Period and the final ALTA survey (assuming a closed public alley) and title commitment no later than thirty (30) days before the Closing. The final ALTA survey shall be completed early enough for WMATA and DEVELOPER to agree upon the legal descriptions to exclude the existing WMATA tunnel and associated elements.

**4. Project**

DEVELOPER will construct improvements on the Lease Property (the "Project") in substantially the same configuration shown in **Exhibit B** and attached hereto, in accordance with a project schedule to be attached to and made a part of the



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Definitive Agreement. The Project may not be materially changed without WMATA's written approval, such approval not to be unreasonably withheld, delayed or conditioned. The Project will consist of:

4.1 DEVELOPER's improvements (the "Developer Improvements") are a minimum 153,000 gross square feet including: (i) approximately 138 residential apartment units, (ii) approximately 14,000 gross square feet of retail/arts use, and (iii) approximately 41 parking spaces contingent on District of Columbia ("District") approvals.

4.2 The Developer Improvements will be built in a single phase on the Lease Property.

4.3 "Completion of the Project" is hereby defined as: (i) the issuance of one or more final certificates of occupancy for all residential apartment units and common areas, including parking; and (ii) one or more "shell" certificates of occupancy or equivalent for the retail portions of the Project, subject to completion of the tenant improvements for each unoccupied retail space; and (iii) repair, subject to WMATA's approval, of any damage to WMATA's property caused by Developer or its contractors, subcontractors or consultants; and (iv) satisfaction of all requirements of the WMATA Design Construction Standards applicable to the Developer Improvements.

4.4 Project Schedule. The parties shall attach an agreed upon project schedule (the "Project Schedule") as an exhibit to the Definitive Agreement. It shall be a default of the Definitive Agreement if the DEVELOPER has not constructed building foundations on all three parcels, to at least street level, within 210 days of Closing.

**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



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have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Lease Property (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit or the Proposal Security (as defined below), as applicable, and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement. DEVELOPER and its consultants who physically alter the Lease Property will be obligated, at their sole cost and expense, to restore the Lease Property to the similar condition existing immediately prior to those activities.

**6. Security Deposit**

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) less the Additional Costs Credit (as defined in Section 7.5 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 or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER,



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shall be refunded to DEVELOPER, with interest accrued, within twenty (20) business days following the Completion of the Project.

**7. Consideration**

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

7.2 Pre-Closing Payments. The DEVELOPER shall make quarterly non-refundable Pre-Closing Payments beginning upon the effective date of the Definitive Agreement. Pre-Closing Payments shall be prorated for partial quarters. Pre-Closing Payments shall be made according to the following:

a) Pre-Closing Payments for the first twelve (12) months will be $50,000.00 per year, payable in advance in quarterly instalments of $12,500.00.

b) Pre-Closing Payments will increase to $65,000.00 per year for the next twelve (12) months.

c) Beginning the twenty-fifth (25th) month and continuing until execution of the Lease, Pre-Closing Payments shall be $80,000.00 per year.

7.3 Rent.

a) Capitalized Lease Payment. DEVELOPER shall make a lump sum initial Capitalized Lease Payment of Five Million Two Hundred Thousand Dollars ($5,200,000), less the Additional Costs Credit, at Closing. This payment represents the entire base rent for the Lease Property for the initial fifty (50) year term of the Lease. In no event will any part of the Capitalized Lease Payment be refunded.

b) Monthly Rent Payment. On the 50th anniversary of the Effective Date of the Lease, the DEVELOPER shall begin making monthly base rent payments to WMATA (the "Monthly Lease Payments"). The Monthly Lease Payments amount shall be at Fair Market Value as determined through the three-appraiser method described in the Lease.

(i) Escalation Rate. The Monthly Lease Payments shall escalate annually at the rate of 3.00% per year.



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(ii) Periodic Rent Revaluation. The Monthly Lease Payments shall be adjusted every ten years. The Monthly Lease Payments will be re-adjusted to then current Fair Market Value as established through the three-appraiser process described in the Lease. Monthly Lease Payments will never decrease from the then payable Monthly Lease Payments as a result of any Periodic Rent Revaluation.

c) Capital Event Participation. Capital Events (defined below) shall be permitted in accordance with this Section 7.3(c). Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation").

(i) A "Capital Event" will include, but not be limited to, any of the following by DEVELOPER: (1) assignments of the Definitive Agreement or the Lease, (2) sales or re-financings of the Developer Improvements, (3) dispositions or transfers of membership interests, (4) transfers among existing members, and (5) 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: (A) transfers for estate planning purposes; and (B) transfers required for the initial debt and equity of the Project before the permanent loan closing. The Parties agree that Non-Capital Events, which will require WMATA approval, but not WMATA monetary participation, also exist and will be defined in the Definitive Agreement.

(ii) For Capital Events that involve transfer or disposition of interests in the Developer or the Developer's interest in the Project, WMATA's share will be two percent (2.00%) of the gross proceeds. Gross proceeds are defined as all transaction revenues received by the DEVELOPER (and any affiliated persons or entities receiving income from this event).

(iii) For Capital Events that involve any refinance or financial restructuring from which the DEVELOPER realizes proceeds, WMATA's share will be two percent (2.00%) of the adjusted gross proceeds. The adjusted gross proceeds are defined as all transaction revenues to the DEVELOPER (and any affiliated persons or entities receiving income from this event) less the original senior mortgage debt on the Developer



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Improvements that is paid-off out of said Capital Event proceeds.

(iv) To confirm DEVELOPER's original project debt and equity, within thirty days of the Closing, DEVELOPER will provide WMATA with documentation confirming such amounts. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100.00%) of the original Project cost, including both hard and soft costs.

7.4 Additional Density: If at any time during the first 50 years of the Lease, DEVELOPER has received approval for additional density over 153,000 gross square feet attributable to the Lease Property, DEVELOPER will adjust the Capitalized Lease Payment. The measurement of gross FAR square feet shall be the highest amount generated by the Lease Property, whether used on the Lease Property or not, in (i) any final zoning approval by the District of Columbia; (ii) building permit approval; or (iii) an amount approved in any revisions to the building permit prior to issuance of the final certificates of occupancy.

a) Prior to Closing: If the DEVELOPER receives approval for additional density prior to Closing, the additional density Capitalized Lease Payment adjustment shall be as follows:
   (i) An upward adjustment in the Capitalized Lease Payment by $46.59/gross FAR square feet for additional density generated by the Lease Property over 153,000 gross FAR square feet; and
   (ii) After the additional density consideration in 7.3(a)(i) is added, a downward adjustment in the Capitalized Lease Payment by $74.55/gross FAR square feet for such additional density generated by the Lease Property which increases the Project's affordable housing requirement pursuant to the District's mandatory Inclusionary Zoning regulations (Chapter 26 of the Zoning Regulations of the District) over 8,705 gross FAR square feet.

b) After Closing: If any time between Closing and the end of the first 50 years of the term of the Lease, any densities or unit totals actually constructed on the Developer Improvements that are more than those in effect at Closing and for which no increase in Capitalized Lease Payment has been paid, DEVELOPER shall pay an additional Capitalized Lease Payment. The additional Capitalized Lease Payment payments will be determined through the three-appraiser method, to be defined in the Lease and based on the then-remaining



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time until the end of the 50th year of the term of the Lease. Since the resetting of the base rent at the end of the 50th Lease year will be based on FAR value of the land as vacant, there shall be no additional density adjustments after the 50th Lease year.

7.5 Additional Costs Credit. The term "Additional Costs Credit" is defined to be the amount of staff salaries and 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 salaries and third-party costs delivered to WMATA for verification, which may be redacted to exclude any confidential or privileged information. Based on the acceptable invoices submitted by DEVELOPER, WMATA has calculated the Additional Costs Credit to be $30,000.

7.6 Additional Consideration: The Capitalized Lease Payment, including any adjustments made under Section 7.3 above, shall be increased annually by six and 2/10ths percent (6.20%) per year from the execution of the Definitive Agreement, if Closing or Additional Density occurs later than six hundred thirty (630) days from execution of the Definitive Agreement. No Additional Consideration increase shall be applied for any delay caused by WMATA under Section 7.7. If Additional Density occurs after Closing, then only the increase in the Capitalized Lease Payment for such Additional Density shall be subject to the 6.20% annual increase.

7.7 WMATA Delays: The maximum length of six hundred thirty (630) days to Closing will be extended for delays caused solely by WMATA actions or failure to act, including requesting FTA Approval in accordance with Section 8.5 below. Such extension(s) shall be for the amount of time reasonably necessary to compensate for the delay caused solely by WMATA, *e.g.*, if such a delay causes DEVELOPER to miss a planned filing date which results in a one day-for-one day delay, then the extension shall be measured in days with respect to that filing date, however, if the filing date is for some action which is only available in a certain "time window" and the delay causes DEVELOPER to miss the filing date for such "time window," then the extension shall be measured in a period equal to the next available "time window" with respect to that filing date. In order to receive an extension hereunder, DEVELOPER must provide WMATA with written Notice of said WMATA Delay within thirty (30) days of the commencement of said delay. In no other event, other than Force Majeure Delays as defined in Section 7.8 below, will Closing be delayed, even though DEVELOPER'S schedule may take longer than anticipated.

7.8 Force Majeure Delays: The maximum length of six hundred thirty (630) 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



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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 7.6 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In order to receive an extension hereunder, DEVELOPER must provide WMATA with written Notice of said Force Majeure Delay within thirty (30) days of the commencement of said delay. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

**8. Conditions to Consummation of the Definitive Agreement**

If each of the following conditions is not satisfied pursuant to the terms of this Term Sheet and the Definitive Agreement, then DEVELOPER shall have the right to terminate this Term Sheet or the Definitive Agreement, as applicable, pursuant to the terms therein. If DEVELOPER terminates this Term Sheet, WMATA shall return the Proposal Security to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof, expressly survive termination of this Term Sheet. DEVELOPER shall have the right to terminate the Definitive Agreement, and receive the Security Deposit back from WMATA, pursuant to the terms of the Definitive Agreement.

8.1 Design Approvals: Within ten (10) days of execution of the Definitive Agreement, and prior to any final submission to the District, DEVELOPER shall submit to WMATA for its approval a conceptual Project site plan in substantial conformance with Exhibit B, including building elevations and floor plans (the "Project Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Lease Property. WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA within thirty (30) days of receipt of such submission by WMATA.

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

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

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



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

8.6 Financing Contingency: DEVELOPER shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Project and as shall otherwise be reasonably satisfactory to DEVELOPER and WMATA.

**9. Special Considerations**

9.1 Community Contact: Within one hundred twenty (120) days of the execution of the Definitive Agreement DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement. WMATA will include a list of all such groups as part of the Definitive Agreement.

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

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

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



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c) WMATA shall cooperate with DEVELOPER in all zoning and other related Approvals.

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

9.4 WMATA Review and Approval of Project Site Plan: In the event that DEVELOPER makes any modifications to the Project Site Plan previously approved by WMATA (the "Approved Site Plan"), even if required by the District or other governmental authority, such modifications will be subject to WMATA's approval, not to be unreasonably withheld, delayed or conditioned.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the improvements on the Lease Property that materially and adversely affect WMATA's operations. The design and construction plans for such improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation, WMATA's Adjacent Construction Project Manual, Revision 3, dated December 2008 (collectively, "WMATA Design and Construction Standards"). If the DEVELOPER commences construction of the Developer Improvements within three (3) years of the Effective Date of the Definitive Agreement, the DEVELOPER may use the version of the WMATA Design and Construction Standards that is in effect on the Effective Date of the Definitive Agreement, without subsequent amendments or revisions, with respect to the Approvals, the Project Site Plan, and the design and construction plans for the Developer Improvements. If construction of the Developer Improvements commences after the third anniversary of the Effective Date of the Definitive Agreement, the most recent versions of the WMATA Design and Construction Standards, then in existence, as amended and revised from time to time, shall be applicable to the Project. The Project will be reviewed in accordance with, and must conform to the requirements of, the aforementioned documents.

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Developer Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of Developer Improvements shall be insured by one hundred percent (100.00%) 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,



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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 Dollars ($1,000,000) plus the cost of enforcing the Guaranty against the guarantor. The Guaranty will be released by WMATA upon the Completion of the Project. The Definitive Agreement will include a minimum financial test to be met by the guarantor. The adequacy of security to be further discussed in the Definitive Agreement. The Guaranty will unconditionally guarantee to WMATA:

a) the completion of infrastructure required by either the District or WMATA;
b) the remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities;
c) the required parties maintain the insurance required by WMATA under the Definitive Agreement; and in the event such insurance is not 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; and
d) the restoration of the Lease Property to the condition it was in on the date of Closing should work cease on the excavation portion of the project above the Lease Property prior to completion of the foundation to street level; and

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

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

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Lease Property, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER'S expense, as required by all then-applicable federal and/or District laws or regulations. DEVELOPER agrees to indemnify and hold



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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. 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 and the Lease. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

**12. Non-Binding Intent**

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of one hundred fifty (150) days from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.



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Agreed this _____ day of March, 2010, by

**Washington Metropolitan Area Transit Authority**

By: _____
Steven E. Goldin
Director, Office of Station Area Planning and Asset Management
Department of Planning and Joint Development

**The Jazz @ Florida Avenue, LLC**

By: _____

Title: _____



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From Omar
3/16

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

This Amended and Restated Term Sheet, ("Term Sheet"), for a development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th Streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein. The previous joint development term sheet dated July 17, 2008 is superseded by this Term Sheet.

**1. Parties**

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

1.2 The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company (the "DEVELOPER") will be the developer of the Project (as defined in Section 4 below). The DEVELOPER'S initial principals shall be Banneker Ventures, LLC, a District of Columbia limited liability company ("Banneker"), and Banc of America Community Development Corporation, a North Carolina corporation qualified to do business in the District of Columbia ("BACDC"), subject to the substitution of a different principal for BACDC upon WMATA's approval, not to be unreasonably withheld.

1.3 At or after the Closing until the "Completion of the ~~Total~~ Project" (as defined in Section ~~6.4~~.3 below), DEVELOPER shall be permitted to only admit other members who are tax credit investors, tax credit syndicators and equity investors for the ~~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~~



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

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) A ground lease agreement (the "Lease") whereby WMATA will lease the Lease Property to the DEVELOPER for ~~a single~~n initial term of ~~ninety-nine (99)~~fifty (50) years, with one ~~no renewal or option periods. totaling an additional~~ twenty-five (25) year option period~~s~~.

This is a new item

~~a)~~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.

~~b) 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)~~thirty (630) 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 three (3) months of expiration of the Study Period~~two (2) months of the effective date of the Definitive Agreement~~ and the final ALTA

This is a change



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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~~attached to and ~~agreed upon at the Closing in accordance with~~made a part of the Definitive Agreement. The Project may not be materially changed without WMATA's written approval, such approval not to be unreasonably withheld, delayed or conditioned. The Project will consist of:

4.1 DEVELOPER's improvements (the ~~"DEVELOPER~~"Developer Improvements") are a minimum ~~100,711~~153,000 gross ~~FAR~~ square feet including: (i) approximately ~~80,169 gross FAR square feet for~~ 138 residential apartment units ~~per District of Columbia ("District") approvals and,~~ (ii) approximately ~~10,000~~14,000 gross ~~FAR~~ square feet of retail/arts use, and (iii) approximately ~~10,542 gross FAR square feet of associated loading, lobbies, ramps, and residential and retail~~ 41 parking~~, per~~ spaces contingent on District of Columbia ("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~~



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~~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.~~

~~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~~Developer Improvements will be built in a single phase on the Lease Property~~ as part of the Total Project.~~.

4.3 "Completion of the Project" is hereby defined as: (i) the issuance of one or more final certificates of occupancy for all residential apartment units and common areas, including parking; and (ii) one or more "shell" certificates of occupancy or equivalent for the retail portions of the Project, subject to completion of the tenant improvements for each unoccupied retail space; and (iii) repair, subject to WMATA's approval, of any damage to WMATA's property caused by Developer or its contractors, subcontractors or consultants; and (iv) satisfaction of all requirements of the WMATA Design Construction Standards applicable to the Developer Improvements.

4.4 Project Schedule. The parties shall attach an agreed upon project schedule (the "Project Schedule") as an exhibit to the Definitive Agreement. It shall be a default of the Definitive Agreement if the DEVELOPER has not constructed building foundations on all three parcels, to at least street level, within 210 days of Closing~~840 days of the Effective Date of the Definitive Agreement.~~

**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. DEVELOPER and its consultants who physically alter the Lease Property will be obligated, at their sole cost and expense, to restore the Lease Property to the similar condition existing immediately prior to those activities.

**6. Security Deposit**

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) less the Additional Costs Credit (as defined in Section ~~7.2(b)~~7.5 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.



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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.~~Completion of the Project.

**7. Consideration**

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

7.2 ~~Rent:~~

Pre-Closing ~~Rent.~~Payments. The DEVELOPER shall make quarterly non-refundable Pre-Closing ~~Rent payments~~Payments beginning upon the effective date of the Definitive Agreement. Pre-Closing ~~Rent~~Payments shall be prorated for partial quarters. Pre-Closing Payments shall be made according to the following:

a) Pre-Closing Payments for the first twelve (12) months will be $50,000.00 per year, payable in advance in quarterly instalments of $12,500.00. ~~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) Pre-Closing Payments will increase to $65,000.00 per year for the next twelve (12) months.

c) Beginning the twenty-fifth (25th) month and continuing until execution of the Lease, Pre-Closing Payments shall be $80,000.00 per year.

7.3 Rent.

a) Capitalized Lease Payment. DEVELOPER shall make a lump sum initial Capitalized Lease Payment of ~~Two~~ Five Million ~~Fifty~~Two Hundred Thousand Dollars ~~($2,050,000)~~($5,200,000), 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~~ initial fifty (50) year term of the Lease. In no event will any part of the Capitalized Lease Payment be refunded.

b) Monthly Rent Payment. On the ~~60th~~50th anniversary of the Effective Date of the Lease, the DEVELOPER shall begin making monthly base rent payments to WMATA (the "Monthly Lease Payments"). The Monthly Lease Payments amount shall be at Fair Market Value as determined through the three-appraiser method described in the Lease.

(i) Escalation Rate. The Monthly Lease Payments shall escalate annually at the rate of ~~3%~~3.00% per year.

(ii) Periodic Rent Revaluation. ~~The Monthly Lease Payments shall be adjusted every ten years.~~ The Monthly Lease Payments will be re-adjusted to then current Fair Market Value as established through the three-appraiser process described ~~above.~~in the Lease. Monthly Lease Payments will never decrease from the then payable Monthly Lease Payments as a result of any Periodic Rent Revaluation.

~~Participation Rent. Developer shall pay Participation Rent, at one and a half percent (1.5%)(1.50%) of Effective Gross Income to WMATA.~~

~~Effective Gross Income shall be defined in the Lease as all gross revenue generated from the improvements on the Lease Property, including but not limited to rents, licenses, advertisements, and service fees.~~

~~Payment of Participation Rent shall be paid to WMATA beginninggin at the earlier of (1) the DEVELOPER's receipt of Effective Gross Income or, until the (2) if no Effective Gross Income is generated prior to 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 Agreement.~~

~~(iii) So long as DEVELOPER's senior loan is HUD insured, Participation Rent shall be paid to WMATA in accordance with the HUD requirements. 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 which allow the maximum return on, or return of, equity.to WMATA. At all times during the Lease term, the debt service coverage ratio on any senior loans, other than HUD-insured senior loans or public subsidies, shall be no less than 1.20:1.00.~~

~~Any Participation Rent not paid in a given year shall accumulate interest at six and two-tenths percent (6.20%) and be paid from the next annual cash flow or from Capital Event Rent.proceeds prior to any return on, or return of, equity.~~

c) Capital Event Participation. Capital Events (defined below) shall be permitted in accordance with this Section ~~7.2(d).~~7.3(d). Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation").

(i) A "Capital Event" will include, but not be limited to, any of the following by DEVELOPER: ~~(i)~~(1) assignments of the Definitive Agreement or the Lease, ~~(ii)~~(2) sales or re-



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they agreed to this in November

financings of ~~DEVELOPER's~~the Developer Improvements, ~~(iii) other~~(3) dispositions or transfers of membership interests, ~~(4) transfers among existing members,~~ and ~~(4)~~5) conversions that change the membership of the DEVELOPER to include new members ~~not originally included as~~ of the execution date of the Closing~~Definitive Agreement~~ but not including: (A) transfers ~~among existing members, transfers to wholly-owned entities, intra-family transfers, transfers caused by death,~~for estate planning purposes; and ~~(B)~~ 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~~

Total Project

(ii) For Capital Events that involve ~~a Lease~~transfer or ~~sublease assignment or a sale~~disposition of interests in the ~~DEVELOPER Improvements,~~Developer or the Developer's interest in the Project, WMATA's share will be two percent ~~(2%)~~(2.00%) of the gross proceeds. Gross proceeds are defined as all transaction revenues received by the DEVELOPER (and any affiliated persons or entities receiving income from this event). ~~WMATA will also share in the financial return to the DEVELOPER in the event of~~

??

??

(iii) For Capital Events that involve any refinance or financial restructuring ~~in~~from which the DEVELOPER realizes proceeds ~~therefrom.~~, WMATA's share will be two percent ~~(2%)~~(2.00%) of the adjusted gross proceeds. The adjusted gross proceeds are defined as all transaction revenues to the DEVELOPER (and any affiliated persons or entities receiving income from this event) less ~~any~~the original senior mortgage debt on the ~~DEVELOPER~~Developer Improvements that is paid-off out of ~~the~~said Capital Event proceeds.

(iv) To confirm DEVELOPER's original project debt and equity, within thirty days of the Closing, DEVELOPER will provide WMATA with documentation confirming such amounts. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent ~~(100%)~~(100.00%) of the original ~~Total~~ Project cost, including both hard and soft costs.



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~~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~~50 years of the Lease, DEVELOPER has received approval for additional density over ~~100,711~~153,000 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:~~to Closing: 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,~~Closing, the additional density Capitalized Lease Payment adjustment shall be as follows:

(i) An upward adjustment in the Capitalized Lease Payment by ~~$50/gross~~$46.59/gross FAR square feet for additional density generated by the Lease Property over ~~100,711~~153,000 gross FAR square feet; and

(ii) After the additional density consideration in ~~7.4(a)(i)~~7.3(a)(i) is added, a downward adjustment in the Capitalized Lease Payment by ~~$80/gross~~$74.55/gross FAR square feet for such additional density generated by the Lease Property which increases the Project's affordable housing requirement pursuant to the District's mandatory Inclusionary Zoning regulations (Chapter 26 of the Zoning Regulations of the District) over ~~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.*~~8,705 gross FAR square feet.

b) After ~~Final Certificate of Occupancy: During~~ Closing: If any time between Closing and the end of the first ~~60~~50 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~~ Developer Improvements that are more than those in effect at ~~receipt of the Final Certificate of Occupancy for the Project~~Closing and for which no increase in Capitalized Lease Payment has been paid, ~~such additional densities or unit totals will require~~ DEVELOPER ~~to~~ shall pay an additional Capitalized Lease Payment. The additional Capitalized Lease Payment payments will be determined through the three-appraiser method, to be defined in the ~~Definitive Agreement~~Lease and based on the then-remaining time until the ~~61st~~end of the 50th year of the term of the Lease. Since the resetting of the base rent ~~in~~at the ~~61st~~end of the 50th Lease year will be based on FAR value of the land as vacant ~~land~~, there shall be no additional density adjustments after the ~~60th~~50th Lease year.

~~7.5~~ 7.5 Additional Costs Credit. The term "Additional Costs Credit" is defined to be the amount of staff salaries and 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 salaries and third-party costs delivered to WMATA for verification, which may be redacted to exclude any confidential or privileged information. Based on the acceptable invoices submitted by DEVELOPER, WMATA has calculated the Additional Costs Credit to be $30,000.

7.6 Additional Consideration: The Capitalized Lease Payment, including any adjustments made under Section ~~7.4(a)~~7.3 above, shall be increased annually by ~~five~~six and ~~8/10ths~~2/10ths percent ~~(5.8%)~~(6.20%) per year from the execution of the Definitive Agreement, if Closing or Additional Density occurs later than six hundred ~~(600)~~thirty (630) days from execution of the Definitive Agreement. No Additional Consideration increase shall be applied for any delay caused by WMATA under Section ~~7.6.~~7.7. 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%~~6.20% annual increase.

~~7.6~~7.7 WMATA Delays: The maximum length of six hundred ~~(600)~~thirty (630) 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



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causes DEVELOPER to miss a planned filing date which results in a one day-for-one day delay, then the extension shall be measured in days with respect to that filing date, however, if the filing date is for some action which is only available in a certain "time window" and the delay causes DEVELOPER to miss the filing date for such "time window," then the extension shall be measured in a period equal to the next available "time window" with respect to that filing date. In order to receive an extension hereunder, DEVELOPER must provide WMATA with written Notice of said WMATA Delay within thirty (30) days of the commencement of said delay. In no other event, other than Force Majeure Delays as defined in Section ~~7.7~~7.8 below, will Closing be delayed, even though DEVELOPER'S schedule may take longer than anticipated.

~~7.7~~7.8 Force Majeure Delays: The maximum length of six hundred ~~(600)~~thirty (630) 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~~7.6 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In order to receive an extension hereunder, DEVELOPER must provide WMATA with written Notice of said Force Majeure Delay within thirty (30) days of the commencement of said delay. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

**8. Conditions to Consummation of the Definitive Agreement ~~Consummation~~**

If each of the following conditions is not satisfied ~~within~~ pursuant to the ~~timeframes provided below therefor,~~terms of this Term Sheet and the Definitive Agreement, then ~~in such instance,~~ DEVELOPER ~~may~~shall have the right to terminate this Term Sheet ~~and~~or the Definitive Agreement ~~upon ten (10) days written notice~~, as applicable, pursuant to ~~WMATA, in which event~~the terms therein. If DEVELOPER terminates this Term Sheet, WMATA shall return the Proposal 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~~. DEVELOPER shall have the right to terminate the Definitive Agreement, and receive the Security Deposit back from WMATA, pursuant to the terms of the Definitive Agreement.

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~~"Project Site Plan"). The design of the ~~Total~~ Project shall be oriented in such a manner as to encourage use of WMATA

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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~~Zoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, temporary and permanent alley closings, special exceptions, historic district approvals, resubdivision, zoning modifications, TDR's or similar actions relating to the Lease Property ~~and DEVELOPER Property~~ (collectively, "Approvals") required



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to allow construction of the Project on the Lease Property. DEVELOPER will use commercially reasonable best efforts to obtain such entitlements.

a) DEVELOPER will solely fund any and all costs of applying for~~obtaining~~ the Approvals. WMATA will not incur any costs in connection with the Approvals either in the actual Approvals process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

b) At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, ~~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.~~Approvals.

~~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 Project Site Plan, for development of the Lease Property.

9.4 WMATA Review and Approval of Project Site Plan: In the event that DEVELOPER makes any modifications to the Project Site Plan ~~approved by the District and~~ previously approved by WMATA (the "Approved Site Plan"), even if required by the District or other governmental authority, such modifications will be subject to WMATA's approval, not to be unreasonably withheld, delayed or conditioned.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the improvements on the Lease Property ~~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~~Developer Improvements within three (3) years of the ~~date~~Effective Date of the Definitive Agreement, the DEVELOPER may use the version of the WMATA Design and Construction Standards that is in effect on the ~~date~~Effective Date of the Definitive Agreement, without subsequent amendments or revisions, with respect to the Approvals, the ~~WMATA-approved~~Project Site Plan, and the design and construction plans for the ~~DEVELOPER~~Developer ~~Improvements; otherwise,~~Improvements. If construction of the Developer Improvements commences after the third anniversary of the Effective Date of the Definitive Agreement, the most recent versions of the WMATA Design and Construction Standards, then in existence, as amended and revised from time to time, shall be applicable to the Project. The ~~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~~Developer Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of ~~DEVELOPER~~Developer Improvements shall be insured by one hundred percent ~~(100%)~~(100.00%) 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~~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)~~($1,000,000) plus the cost of enforcing the Guaranty against the guarantor. The Guaranty will be released by WMATA upon the Completion of the ~~Total~~ Project. The Definitive Agreement will include a minimum financial test to be met by 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;~~infrastructure required by either the District or WMATA;
~~b) the completion of infrastructure required by either the District or WMATA that is not included in the Site Work;~~



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~~c) the completion of any demolition and removal of DEVELOPER Improvements as and when required under the terms of the Definitive Agreement;~~

~~d)~~b) the remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities;

~~e)~~c) 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; and

~~f)~~d) the restoration of the Lease Property to the condition it was in on the date of Closing should work cease on the excavation portion of the project above the Lease Property ~~longer than 30 days;~~prior to completion of the foundation to street level; ~~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~~Developer Improvements so as to constitute a Transit-Oriented Development, and the ~~DEVELOPER~~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,~~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 and the Lease. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

**12. Non-Binding Intent**

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of one hundred fifty (150) days from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.



FOIA CONFIDENTIAL TREATMENT REQUESTED

Agreed this _____ day of ~~November, 2009,~~March, 2010, by

**Washington Metropolitan Area Transit Authority**

By: _____
Steven E. Goldin
Director, Office of Station Area Planning and Asset Management
Department of Planning and Joint Development

**The Jazz @ Florida Avenue, LLC**

By: _____

Title: _____



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To Omar Smith
3/15? or 3/12?

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

This Amended and Restated Term Sheet, ("Term Sheet"), for a development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th Streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein. The previous joint development term sheet dated July 17, 2008 is superseded by this Term Sheet.

**1. Parties**

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

1.2 The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company (the "DEVELOPER") will be the developer of the Project (as defined in Section 4 below). The DEVELOPER'S initial principals shall be Banneker Ventures, LLC, a District of Columbia limited liability company ("Banneker"), and Banc of America Community Development Corporation, a North Carolina corporation qualified to do business in the District of Columbia ("BACDC"), subject to the substitution of a different principal for BACDC upon WMATA's approval, not to be unreasonably withheld.

1.3 At or after the Closing until the "Completion of the ~~Total~~ Project" (as defined in Section ~~6.4~~.3 below), DEVELOPER shall be permitted to only admit other members who are tax credit investors, tax credit syndicators and equity investors for the ~~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~~



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

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) A ground lease agreement (the "Lease") whereby WMATA will lease the Lease Property to the DEVELOPER for ~~a single~~n initial term of ~~ninety-nine (99)~~fifty (50) years, with ~~no renewal or~~ option periods~~.~~ totaling an additional twenty-five (25) years.

~~a)~~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.

~~b) 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)~~thirty (630) 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 a~~n~~ 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



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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~~attached to and ~~agreed upon at the Closing in accordance with~~made a part of the Definitive Agreement. The Project may not be materially changed without WMATA's written approval, such approval not to be unreasonably withheld, delayed or conditioned. The Project will consist of:

4.1 DEVELOPER's improvements (the ~~"DEVELOPER~~"Developer Improvements") are a minimum ~~100,711~~153,000 gross ~~FAR~~ square feet including: (i) approximately ~~80,169 gross FAR square feet for~~ 138 residential apartment units ~~per District of Columbia ("District") approvals and~~, (ii) approximately ~~10,000~~14,000 gross ~~FAR~~ square feet of retail/arts use, and (iii) approximately ~~10,542 gross FAR square feet of associated loading, lobbies, ramps, and residential and retail~~ 41 parking~~, per~~ spaces contingent on District of Columbia ("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~~



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~~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.~~

~~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~~Developer Improvements will be built in a single phase on the Lease Property~~ as part of the Total Project.~~.

4.3 "Completion of the Project" is hereby defined as: (i) the issuance of one or more final certificates of occupancy for all residential apartment units and common areas, including parking; and (ii) one or more "shell" certificates of occupancy or equivalent for the retail portions of the Project, subject to completion of the tenant improvements for each unoccupied retail space; and (iii) repair, subject to WMATA's approval, of any damage to WMATA's property caused by Developer or its contractors, subcontractors or consultants; and (iv) satisfaction of all requirements of the WMATA Design Construction Standards applicable to the Developer Improvements.

4.4 Project Schedule. The parties shall attach an agreed upon project schedule (the "Project Schedule") as an exhibit to the Definitive Agreement. It shall be a default of the Definitive Agreement if the DEVELOPER has not constructed building foundations on all three parcels, to at least street level, within 840 days of the Effective Date of the Definitive Agreement.

**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. DEVELOPER and its consultants who physically alter the Lease Property will be obligated, at their sole cost and expense, to restore the Lease Property to the similar condition existing immediately prior to those activities.

**6. Security Deposit**

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) less the Additional Costs Credit (as defined in Section ~~7.2(b)~~7.5 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.



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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.~~Completion of the Project.

**7. Consideration**

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

7.2 ~~Rent:~~

Pre-Closing ~~Rent.~~Payments. The DEVELOPER shall make quarterly non-refundable Pre-Closing ~~Rent payments~~Payments beginning upon the effective date of the Definitive Agreement. Pre-Closing ~~Rent~~Payments shall be prorated for partial quarters. Pre-Closing Payments shall be made according to the following:

a) Pre-Closing Payments for the first twelve (12) months will be $50,000.00 per year, payable in advance in quarterly instalments of $12,500.00. ~~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) Pre-Closing Payments will increase to $65,000.00 per year for the next twelve (12) months.

c) Beginning the twenty-fifth (25th) month and continuing until execution of the Lease, Pre-Closing Payments shall be $80,000.00 per year.

7.3 Rent.

a) Capitalized Lease Payment. DEVELOPER shall make a lump sum initial Capitalized Lease Payment of ~~Two~~ Five Million ~~Fifty~~Two Hundred Thousand Dollars ~~($2,050,000)~~($5,200,000), 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~~ initial fifty (50) year term of the Lease. In no event will any part of the Capitalized Lease Payment be refunded.

b) Monthly Rent Payment. On the ~~60th~~50th anniversary of the Effective Date of the Lease, the DEVELOPER shall begin making monthly base rent payments to WMATA (the "Monthly Lease Payments"). The Monthly Lease Payments amount shall be at Fair Market Value as determined through the three-appraiser method described in the Lease.

(i) Escalation Rate. The Monthly Lease Payments shall escalate annually at the rate of ~~3%~~3.00% per year.

(ii) Periodic Rent Revaluation. The Monthly Lease Payments shall be adjusted every ten years. The Monthly Lease Payments will be re-adjusted to then current Fair Market Value as established through the three-appraiser process described ~~above.~~in the Lease. Monthly Lease Payments will never decrease from the then payable Monthly Lease Payments as a result of any Periodic Rent Revaluation.

c) Participation Rent. Developer shall pay Participation Rent, at one and a half percent ~~(1.5%)~~(1.50%) of Effective Gross Income to WMATA.

(i) Effective Gross Income shall be defined in the Lease as all gross revenue generated from the ~~improvements on the~~ Lease Property, including but not limited to rents, licenses, advertisements, and service fees.

(ii) Payment of Participation Rent shall be ~~paid to WMATA beginninggin~~ at the earlier of (1) the DEVELOPER's receipt of Effective Gross Income or~~, until the~~ (2) if no Effective Gross Income is generated prior to 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~~ Agreement.

(iii) So long as DEVELOPER's senior loan is HUD insured, Participation Rent shall be paid to WMATA in accordance with the HUD requirements~~. 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~~ which allow the maximum return ~~on, or return of, equity.~~to WMATA. At all times during the Lease term, the debt service coverage ratio on any senior loans, other than HUD-insured senior loans or public subsidies, shall be no less than 1.20:1.00.

(iv) Any Participation Rent not paid in a given year shall accumulate interest at six and two-tenths percent (6.20%) and be paid from the next annual cash flow or from Capital Event ~~Rent.~~proceeds prior to any return on, or return of, equity.

d) Capital Event Participation. Capital Events (defined below) shall be permitted in accordance with this Section ~~7.2(d).~~7.3(d). Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation").

(i) A "Capital Event" will include, but not be limited to, any of the following by DEVELOPER: ~~(i)~~(1) assignments of the Definitive Agreement or the Lease, ~~(ii)~~(2) sales or re-



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financings of ~~DEVELOPER's~~the Developer Improvements, ~~(iii) other~~(3) dispositions or transfers of membership interests, (4) transfers among existing members, and (5) 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: (A) transfers ~~among existing members, transfers to wholly-owned entities, intra-family transfers, transfers caused by death,~~for estate planning purposes; and (B) 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~~

(ii) For Capital Events that involve ~~a Lease~~transfer or ~~sublease assignment or a sale~~disposition of interests in the ~~DEVELOPER Improvements,~~Developer or the Developer's interest in the Project, WMATA's share will be two percent ~~(2%)~~(2.00%) of the gross proceeds. Gross proceeds are defined as all transaction revenues received by the DEVELOPER (and any affiliated persons or entities receiving income from this event).~~ WMATA will also share in the financial return to the DEVELOPER in the event of~~

(iii) For Capital Events that involve any refinance or financial restructuring ~~in~~from which the DEVELOPER realizes proceeds~~ therefrom.~~, WMATA's share will be two percent ~~(2%)~~(2.00%) of the adjusted gross proceeds. The adjusted gross proceeds are defined as all transaction revenues to the DEVELOPER (and any affiliated persons or entities receiving income from this event) less ~~any~~the original senior mortgage debt on the ~~DEVELOPER~~Developer Improvements that is paid-off out of ~~the~~said Capital Event proceeds.

(iv) To confirm DEVELOPER's original project debt and equity, within thirty days of the Closing, DEVELOPER will provide WMATA with documentation confirming such amounts. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent ~~(100%)~~(100.00%) of the original ~~Total~~ Project cost, including both hard and soft costs.



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~~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~~50 years of the Lease, DEVELOPER has received approval for additional density over ~~100,711~~153,000 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:~~to Closing: 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,~~Closing, the additional density Capitalized Lease Payment adjustment shall be as follows:

(i) An upward adjustment in the Capitalized Lease Payment by ~~$50/gross~~$46.59/gross FAR square feet for additional density generated by the Lease Property over ~~100,711~~153,000 gross FAR square feet; and

(ii) After the additional density consideration in ~~7.4(a)(i)~~7.3(a)(i) is added, a downward adjustment in the Capitalized Lease Payment by ~~$80/gross~~$74.55/gross FAR square feet for such additional density generated by the Lease Property which increases the Project's affordable housing requirement pursuant to the District's mandatory Inclusionary Zoning regulations (Chapter 26 of the Zoning Regulations of the District) over ~~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*~~



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~~years to the fee simple land value.~~8,705 gross FAR square feet.

b) After ~~Final Certificate of Occupancy: During~~ Closing: If any time between Closing and the end of the first ~~60~~50 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~~ Developer Improvements that are more than those in effect at ~~receipt of the Final Certificate of Occupancy for the Project~~Closing and for which no increase in Capitalized Lease Payment has been paid, ~~such additional densities or unit totals will require~~ DEVELOPER ~~to~~ shall pay an additional Capitalized Lease Payment. The additional Capitalized Lease Payment payments will be determined through the three-appraiser method, to be defined in the ~~Definitive Agreement~~Lease and based on the then-remaining time until the ~~61st~~end of the 50th year of the term of the Lease. Since the resetting of the base rent ~~in~~at the ~~61st~~end of the 50th Lease year will be based on FAR value of the land as vacant ~~land~~, there shall be no additional density adjustments after the ~~60th~~50th Lease year.

~~7.5~~ 7.5 Additional Costs Credit. The term "Additional Costs Credit" is defined to be the amount of staff salaries and 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 salaries and third-party costs delivered to WMATA for verification, which may be redacted to exclude any confidential or privileged information. Based on the acceptable invoices submitted by DEVELOPER, WMATA has calculated the Additional Costs Credit to be $30,000.

7.6 Additional Consideration: The Capitalized Lease Payment, including any adjustments made under Section ~~7.4(a)~~7.3 above, shall be increased annually by ~~five~~six and ~~8/10ths~~2/10ths percent ~~(5.8%)~~(6.20%) per year from the execution of the Definitive Agreement, if Closing or Additional Density occurs later than six hundred ~~(600)~~thirty (630) days from execution of the Definitive Agreement. No Additional Consideration increase shall be applied for any delay caused by WMATA under Section ~~7.6.~~7.7. 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%~~6.20% annual increase.

~~7.6~~7.7 WMATA Delays: The maximum length of six hundred ~~(600)~~thirty (630) 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



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causes DEVELOPER to miss a planned filing date which results in a one day-for-one day delay, then the extension shall be measured in days with respect to that filing date, however, if the filing date is for some action which is only available in a certain "time window" and the delay causes DEVELOPER to miss the filing date for such "time window," then the extension shall be measured in a period equal to the next available "time window" with respect to that filing date. In order to receive an extension hereunder, DEVELOPER must provide WMATA with written Notice of said WMATA Delay within thirty (30) days of the commencement of said delay. In no other event, other than Force Majeure Delays as defined in Section ~~7.7~~7.8 below, will Closing be delayed, even though DEVELOPER'S schedule may take longer than anticipated.

~~7.7~~7.8 Force Majeure Delays: The maximum length of six hundred ~~(600)~~thirty (630) 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~~7.6 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In order to receive an extension hereunder, DEVELOPER must provide WMATA with written Notice of said Force Majeure Delay within thirty (30) days of the commencement of said delay. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

**8. Conditions to Consummation of the Definitive Agreement ~~Consummation~~**

If each of the following conditions is not satisfied ~~within~~ pursuant to the ~~timeframes provided below therefor,~~terms of this Term Sheet and the Definitive Agreement, then ~~in such instance,~~ DEVELOPER ~~may~~shall have the right to terminate this Term Sheet ~~and~~or the Definitive Agreement ~~upon ten (10) days written notice~~, as applicable, pursuant to ~~WMATA, in which event~~the terms therein. If DEVELOPER terminates this Term Sheet, WMATA shall return the Proposal 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~~. DEVELOPER shall have the right to terminate the Definitive Agreement, and receive the Security Deposit back from WMATA, pursuant to the terms of the Definitive Agreement.

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"~~Project Site Plan"). The design of the ~~Total~~ Project shall be oriented in such a manner as to encourage use of WMATA

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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~~Zoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, temporary and permanent alley closings, special exceptions, historic district approvals, resubdivision, zoning modifications, TDR's or similar actions relating to the Lease Property ~~and DEVELOPER Property~~ (collectively, "Approvals") required

to allow construction of the Project on the Lease Property. DEVELOPER will use commercially reasonable best efforts to obtain such entitlements.

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

b) At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, ~~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.~~Approvals.

~~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 Project Site Plan, for development of the Lease Property.

9.4 WMATA Review and Approval of Project Site Plan: In the event that DEVELOPER makes any modifications to the Project Site Plan ~~approved by the District and~~ previously approved by WMATA (the "Approved Site Plan"), even if required by the District or other governmental authority, such modifications will be subject to WMATA's approval, not to be unreasonably withheld, delayed or conditioned.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the improvements on the Lease Property ~~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~~Developer Improvements within three (3) years of the ~~date~~Effective Date of the Definitive Agreement, the DEVELOPER may use the version of the WMATA Design and Construction Standards that is in effect on the ~~date~~Effective Date of the Definitive Agreement, without subsequent amendments or revisions, with respect to the Approvals, the ~~WMATA-approved~~Project Site Plan, and the design and construction plans for the ~~DEVELOPER~~Developer ~~Improvements; otherwise,~~Improvements. If construction of the Developer Improvements commences after the third anniversary of the Effective Date of the Definitive Agreement, the most recent versions of the WMATA Design and Construction Standards, then in existence, as amended and revised from time to time, shall be applicable to the Project. The ~~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~~Developer Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of ~~DEVELOPER~~Developer Improvements shall be insured by one hundred percent ~~(100%)~~(100.00%) 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~~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)~~($1,000,000) plus the cost of enforcing the Guaranty against the guarantor. The Guaranty will be released by WMATA upon the Completion of the ~~Total~~ Project. The Definitive Agreement will include a minimum financial test to be met by 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;~~infrastructure required by either the District or WMATA;
~~b) the completion of infrastructure required by either the District or WMATA that is not included in the Site Work;~~



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~~c) the completion of any demolition and removal of DEVELOPER Improvements as and when required under the terms of the Definitive Agreement;~~

~~d)~~b) the remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities;

~~e)~~c) 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)~~d)the restoration of the Lease Property to the condition it was in on the date of Closing should work cease on the excavation portion of the project above the Lease Property ~~longer than 30 days;~~prior to completion of the foundation to street level; 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~~Developer Improvements so as to constitute a Transit-Oriented Development, and the ~~DEVELOPER~~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,~~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 and the Lease. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

**12. Non-Binding Intent**

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of one hundred fifty (150) days from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.



FOIA CONFIDENTIAL TREATMENT REQUESTED

Agreed this _____ day of ~~November, 2009,~~March, 2010, by

**Washington Metropolitan Area Transit Authority**

By: _____
Steven E. Goldin
Director, Office of Station Area Planning and Asset Management
Department of Planning and Joint Development

**The Jazz @ Florida Avenue, LLC**

By: _____

Title: _____



FOIA CONFIDENTIAL TREATMENT REQUESTED

1st week Nov 09

from Omar

Board given accepted

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

This Amended and Restated Term Sheet, ("Term Sheet"), for a development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th Streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein. The previous joint development term sheet dated July 17, 2008 is superseded by this Term Sheet.

## 1. Parties

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

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

## 2. Definitive Agreement

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



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

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

a) a ground lease agreement (the "Lease") whereby WMATA will lease the Lease Property to the DEVELOPER for a single term of ninety-nine (99) years, with no renewal or option periods.
b) A conditions, covenants and reservations agreement ("CCRs"), to be recorded among the land records, which will: (i) protect WMATA's interests in its tunnel and associated elements and access thereto; and (ii) include transit oriented development covenants.
c) A co-tenancy agreement ("Co-Tenancy Agreement") between WMATA and DEVELOPER to be recorded among the land records after the CCRs which will control the operation and disposition of the Total Project after the Lease and any replacement lease provided to a lender have either expired or been irrevocably terminated.

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

**3. Property to Be Leased To DEVELOPER**

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

3.2 DEVELOPER will cause an preliminary ALTA survey and title commitment to be prepared within two (2) months of the effective date of the Definitive Agreement and the final ALTA survey (assuming a closed public alley) and title commitment no later than thirty (30) days before the Closing. The final ALTA survey shall be completed early enough for WMATA and DEVELOPER to agree upon the legal descriptions to exclude the existing WMATA tunnel and associated elements.



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## 4. Project

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

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

4.2 Assemblage.

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

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

c) Alley Closing. WMATA will consent to the alley closing prior to Closing, provided that when the portion of the public alley is closed, an easement among the owners will be recorded among the 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



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will become part of the Lease Property in red; the portion that will become part of the DEVELOPER Property is shown in green.

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



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applicable, and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

**6. Security Deposit**

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) 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.



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## 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.

c) Monthly Rent Payment.

(i) On the 60th anniversary of the Effective Date of the Lease, the DEVELOPER shall begin making monthly base rent payments to WMATA (the "Monthly Lease Payments"). The Monthly Lease Payments amount shall be at Fair Market Value as determined through the three-appraiser method described in the Lease.

(ii) Escalation Rate. The Monthly Lease Payments shall escalate annually at the rate of 3% per year.

(iii) Periodic Rent Revaluation. The Monthly Lease Payments shall be adjusted every ten years. The Monthly Lease Payments will be re-adjusted to then current Fair Market Value as established through the three-appraiser process described above. Monthly Lease Payments will never decrease from the then payable

Monthly Lease Payments as a result of any Periodic Rent Revaluation.

d) 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~~ from 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.

Surplus cash if required by HUD.

e) 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 REIT 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



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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.

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



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

*NOTE: WMATA expects to adjust these amounts based on the relationship of the Capitalized Lease Payment for a period of 60 years to the fee simple land value.*

b) After Final Certificate of Occupancy: During the first 60 years of the term of the Lease, if HUD insurance no longer remains in place, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those in effect at receipt of the Final Certificate of Occupancy for the Project and for which no increase in Capitalized Lease Payment has been paid, such additional densities or unit totals will require DEVELOPER to pay additional Capitalized Lease Payment. The additional Capitalized Lease Payment payments will be determined through the three-appraiser method, to be defined in the Definitive Agreement and based on the then-remaining time until the 61st year of the term of the Lease. Since the resetting of the base rent in the 61st Lease year will be based on vacant land, there shall be no additional density adjustments after the 60th Lease year.

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

7.6 WMATA Delays: The maximum length of six hundred (600) days to Closing will be extended for delays caused solely by WMATA actions or failure to act, including requesting FTA Approval in accordance with Section 8.5 below. Such extension(s) shall be for the amount of time reasonably necessary to compensate for the delay caused solely by WMATA, *e.g.*, if such a delay causes DEVELOPER to miss a planned filing date which results in a one day-for-one day delay, then the extension shall be measured in days with respect to



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that filing date, however, if the filing date is for some action which is only available in a certain "time window" and the delay causes DEVELOPER to miss the filing date for such "time window," then the extension shall be measured in a period equal to the next available "time window" with respect to that filing date. In no other event, other than Force Majeure Delays as defined in Section 7.7 below, will Closing be delayed, even though DEVELOPER'S schedule may take longer than anticipated.

7.7 Force Majeure Delays: The maximum length of six hundred (600) days to Closing may be extended for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement. Such Force Majeure Delays shall be subject to an increase in the Capitalized Lease Payment, as provided in Section 7.5 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

## 8. Conditions to Definitive Agreement Consummation

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

8.1 Design Approvals: Within ten (10) days of execution of the Definitive Agreement and prior to any final submission to the District, DEVELOPER shall submit to WMATA for its approval a conceptual Total Project site plan in substantial conformance with Exhibit B, including building elevations and floor plans (the "WMATA-Approved Site Plan"). The design of the Total Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Lease Property. WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA within thirty (30) days of receipt of such submission by WMATA.

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

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



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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.



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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



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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.



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## 12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of 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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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: _____



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Rhode Island Ave

**Exhibit J**

**Insurance Requirements**[1]

Section 1. Insurance Obligations

The insurance obligations of each Developer Declarant, ~~its respective contractors, "Major Subcontractors" (as defined below), subcontractors and commercial subtenants~~ are set forth in this Exhibit J. "**Major Subcontractors**" are those contractors and subcontractors of Insured whose cumulative contract or subcontract amount exceeds $2,000,000. The word "contractor," standing alone, includes general contractors, Major Subcontractors, subcontractors, and any other contractors, unless the context clearly indicates otherwise.

Too high?

1.1 At Developer Declarant's sole cost and expense, Developer Declarant shall procure and maintain the following insurance (with the exception of contractors' pollution insurance) and shall require its contractors, Major Subcontractors, subcontractors and subtenants (with the exception of Rental Value Insurance and Business Interruption Value Insurance) to procure and maintain, at their respective sole cost and expense, the following insurance unless otherwise limited below:

Jim Hurd get Amtrak wording

Base insurance + $9M umbrella?

aggregate caps the amount in the base CGL

1.1.1 Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance: ~~a~~ Commercial General Liability Insurance ~~and Excess (Umbrella) Liability Insurance for Bodily Injury and Property Damage liability~~ shall be not less than ~~(i)~~ $10,000,000 ~~Combined Single Limit~~; per occurrence ~~(ii) $1,000,000 Each Occurrence, and (iii) $2,000,000 Aggregate,~~ with ~~$9,000,000 of such Combined Single Limit coverage to be provided in the Excess (Umbrella) Liability Insurance~~. The coverages under Developer Declarant's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance policies may be allocated ~~differently than stated in the preceding sentence~~, so long as the ~~aggregate~~ per occurrence coverage requirements are met. WMATA shall be included as an additional insured under Developer Declarant's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance.

1.1.2 Contractor's, Major Subcontractor's, and Subcontractor's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance: Developer Declarant shall require each of its contractors, Major Subcontractors or subcontractors to have in place a commercial general liability insurance policy issued to and covering the liability of such contractor, Major Subcontractor or subcontractor for all its operations on, near or with respect to the Property. Each Major Subcontractor of Developer Declarant shall have coverage under its Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance for Bodily

[1]The insurance requirements for Developer were obtained from Section 10 of the Joint Development Agreement, and the insurance requirements for the Component Tenants were obtained from Section 8 of the Ground Leases.

Injury and Property Damage liability of not less than: (i) $10,000,000 Combined Single Limit; (ii) $1,000,000 Each Occurrence, and (iii) $2,000,000 Aggregate, with $9,000,000 of such Combined Single Limit coverage to be provided in an Excess (Umbrella) Liability Insurance. Each contractor and subcontractor of Developer Declarant whose cumulative contract or subcontract amount is between $500,000 and $2,000,000 shall have coverage under its Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance for Bodily Injury and Property Damage liability of not less than: (i) $2,000,000 Combined Single Limit; and (ii) $1,000,000 Each Occurrence, with $1,000,000 of such Combined Single Limit coverage to be provided in the Excess (Umbrella) Liability Insurance. Each contractor and subcontractor of Developer Declarant whose cumulative contract or subcontract amount is less than $500,000 shall have coverage under its Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance for Bodily Injury and Property Damage liability of not less than: (i) $1,000,000 Combined Single Limit; and (ii) $500,000 Each Occurrence, with $500,000 of such Combined Single Limit coverage to be provided in the Excess (Umbrella) Liability Insurance. The coverages under the aforesaid Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance policies may be allocated differently than stated in the three preceding sentences, so long as the aggregate coverage requirements are met. WMATA and Developer Declarant shall be included as an additional insured under the Commercial General Liability Insurance and any Excess (Umbrella) Liability Insurance of each Major Subcontractor, contractor and subcontractor of Developer Declarant. Nothing in this Section 1.1.2 shall relieve Developer Declarant of its insurance obligations under Section 1.1.1 of this Exhibit J.

1.1.3 Commercial Subtenant's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance: Prior to the first date each commercial subtenant uses or occupies its subleased premises in the respective Leasehold Property, Retail Declarant or Residential Declarant, as the case may be, shall require each of its respective commercial subtenants to have in place a commercial general liability insurance policy issued to and covering the liability of such commercial subtenant for all its operations on, near or with respect to its subleased premises in the respective Leasehold Property. Each commercial subtenant shall have coverage under its Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance as provided in Exhibit K of the respective Ground Lease. The coverages under the subtenant's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance policies may be allocated differently than stated in Exhibit K of the respective Ground Lease (entitled "Commercial Subtenant's Required Liability Insurance Coverage"), so long as the aggregate coverage requirements are met. WMATA and Retail Declarant or Residential Declarant, as the case

may be, shall be included as an additional insured under the Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance, if any, of each of their respective commercial subtenants. Nothing in this Section 1.1.3 shall relieve Retail Declarant or Residential Declarant of its insurance obligations under Section 1.1.1 of this Exhibit J.

1.1.4 Worker's Compensation: A policy complying with the requirements of the jurisdictions in which the work will be performed, with minimum limits as follows:

| | |
|---|---|
| Workers' Compensation ("Coverage A") | Statutory |
| Employers' Liability ("Coverage B"): | |
| Each Accident | $100,000 |
| Disease – Policy Limit | $500,000 |
| Disease - Each Employee | $100,000 |

provided, however, that the foregoing minimum limits of Workers Compensation and Employer's Liability shall apply for construction work only to contractors and subcontractors of Developer Declarant who are not Major Subcontractors. Developer Declarant at all times, and Developer Declarant's Major Subcontractors for construction work shall be required to increase Employer's Liability "each accident" coverage and Employer's Liability "Disease-Each Employee" coverage to a total of $500,000 through umbrella coverage.

1.1.5 Automobile Liability Insurance: Developer Declarant shall have in place an insurance policy covering the use by Developer Declarant or any of its contractors or subcontractors of all owned, non-owned, hired, rented, or leased vehicles bearing, or under the circumstances in which they are being used, required by the Motor Vehicle Laws of the District of Columbia, Maryland, Virginia, or any other jurisdiction to bear, license plates, and not covered under the aforementioned Commercial General Liability Insurance. The coverage under such policy or policies shall not be less than a Combined Single Limit for Bodily Injury Liability and Property Damage Liability of $1,000,000 per occurrence. Developer Declarant shall use its Best Commercially Reasonable Business Efforts (as defined in the Joint Development Agreement and the Ground Leases) to have WMATA named as an additional insured under each such policy.

1.1.6 Contractor's Pollution Legal Liability: In connection with any construction activities or environmental work done on or about the Property that, in WMATA's reasonable judgment, is likely to involve any of the activities or risks described below in this Section 1.1.6, Developer Declarant shall require all of its contractors (including its general contractor, if applicable) and subcontractors engaging in activities on or about the respective Property involving removal, storage, transport, and disposal of hazardous waste, contaminated soil, or other similar materials, to carry Contractors' "Pollution Legal Liability Insurance" as such coverage description is commonly understood, covering the liability of the contractor or subcontractor. The policy shall include coverage for the risks of bodily injury, personal injury, and loss of, damage to, or loss of use of property, whether any of the foregoing arises directly or indirectly out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, any liquid or gas, waste materials, or any other irritants, contaminants, or pollutants, upon any land, into the atmosphere, or into any course or body of water, whether such discharge, dispersal, release, or escape be gradual or sudden and accidental. Developer Declarant and WMATA shall each be designated as an additional insured under each such insurance policy. The amount of coverage for this insurance shall be a minimum of $1,000,000; provided, however, that WMATA may require a higher amount of coverage if WMATA reasonably so determines and such higher amount is customarily carried by contractors and subcontractors in similar circumstances. Contractor Pollution Legal Liability Insurance need not be in place as of the Effective Date of this Declaration, but instead, Developer Declarant must provide satisfactory evidence of this insurance at least five (5) Business Days before any contractor whose work may involve pollution legal liability begins any such work on or about the Property.

1.1.7 Railroad Protective Liability Insurance: In connection with any construction activities or other work done on or about the respective Property by Developer Declarant or its contractors, Major Subcontractors, or subcontractors, if, in WMATA's reasonable judgment, such construction activities or other work poses a potential for piercing, at any level, a vertical plane extending into the ground and up to the sky, that is fifty feet (50') from the edge of the WMATA rail system component (as defined in this Section 1.1.7) that is nearest to such construction activities or other work, WMATA shall have the right to require Developer Declarant to provide WMATA with a railroad protection insurance policy issued at Developer Declarant's sole cost and expense, to and for the benefit of WMATA and covering the liability of the Developer, the Retail Declarant, the Residential Declarant, and their contractors, Major Subcontractors, and subcontractors for any personal injuries or deaths or any damage to property, equipment, or facilities caused by such construction activities or other work. For purposes of this Section 1.1.7,

rail system components are WMATA's railroad tracks, or any structure that connects directly or indirectly to WMATA's railroad tracks, including ventilation systems, emergency stairways, canopies, station platforms, traction power sub-stations, and station entrances. The coverage under such a policy shall have the following limits: $5,000,000 Combined Single Limit for Bodily Injury and Property Damage, with a $10,000,000 Aggregate; provided, however, that WMATA may require a higher amount of coverage if WMATA reasonably so determines. Within the earlier of thirty (30) days after Notice from WMATA or five (5) Business Days before the first date Developer Declarant or its contractors, Major Subcontractors, or subcontractors engage in any such construction activities or other work, Developer Declarant shall deliver either the original or a certified signed duplicate original of such policy to WMATA for its retention.

Done Bldg is up

1.1.8 Replacement Cost Property Insurance: An insurance policy covering Developer Declarant against loss of or damage to Developer Declarant's real or personal property situated on or about the Property (including boiler and machinery equipment, as applicable), naming WMATA as an additional insured, and written on ISO Special Causes of Loss Form CP 1030 (or substitutes or successors therefor), without any co-insurance provision, and for not less than the full insurable value and replacement cost of such real and personal property, if reasonably available, without reduction for depreciation, and including coverage for expediting expenses, hazardous substances, water damage, demolition and increased cost of construction, extra expense, and business interruption, and covering all pressure, mechanical, and electrical apparatus, including production machines and public utility equipment, with a maximum deductible of $25,000. If an insurance policy with unlimited replacement cost coverage is not available on a commercially reasonable basis, then Developer Declarant shall obtain and annually renew such insurance policy containing such replacement cost coverage as is available on a commercially reasonable basis, whereupon WMATA shall have the right to request, and Developer Declarant shall obtain, a reasonable increase in the coverage amount of the policy. Such property insurance shall include flood and earthquake coverage of at least $2,000,000. At Developer Declarant's option, such flood and earthquake coverage may be carried in a separate policy. All insurance required by this Section 1.1.8 shall also include an automatic waiver of subrogation in favor of WMATA which shall expressly state that the coverage afforded to the insured shall not be voided, prejudiced, or otherwise unavailable if, prior to a loss, the insured shall have waived any and all rights of recovery from the party(ies) responsible for such loss. Developer Declarant shall use its Best Commercially Reasonable Business Efforts (as defined in the Joint Development Agreement and the Ground Leases) to have each policy of

insurance described in this Section 1.1.8 include the maximum amount of terrorism coverage reasonably available.

1.1.9 Rental Value Insurance: Effective as of the "Conversion Date" (as defined in the Ground Leases) and continuing during the entire term of the respective Ground Lease, Residential Declarant and Retail Declarant shall each procure and maintain an annual rental value insurance policy to cover at least one year's projected gross rents from the Component Tenant's respective Leasehold Improvements. Not later than fifteen (15) days before the Conversion Date, and not later than forty-five (45) days before each succeeding anniversary of the rental value insurance policy during the term of the respective Ground Lease, Residential Declarant or Retail Declarant, shall deliver to WMATA the respective revenue projections for the forthcoming rental value insurance policy year and projection of the total amount of Participating Rent (as that term is defined in the respective Ground Lease) which is reasonably expected to be payable to WMATA for such policy year; provided, however, such revenue projections shall be made in good faith by Residential Declarant and Retail Declarant, and the coverage amount under the rental value insurance policy shall be subject to WMATA's Approval. If WMATA disagrees with the revenue projections, WMATA and Residential Declarant or Retail Declarant, as the case may be, shall promptly meet to resolve such disagreement before the anniversary date of said policy, if possible. Said policy shall be amended no later than the later of each anniversary date of such policy or ten (10) Business Days after WMATA's Approval of the coverage amount to provide coverage in the amount so determined. The insurance required by this Section 1.1.9 may be provided by each of Residential Declarant and Retail Declarant, either as a separate policy, or as a separate endorsement, but in either case WMATA shall be one of the loss payees under such policy or endorsement, as its interests may appear. Within five (5) days after Notice from WMATA, Residential Declarant and Retail Declarant, as the case may be, shall deliver either the original or a certified signed duplicate original of such policy (or any endorsement, if applicable) to WMATA for its retention.

1.1.10 Builder's Risk: Developer Declarant, or Developer Declarant's general contractor shall purchase and maintain replacement cost property insurance written on a builder's risk "all risk" or equivalent occurrence basis policy form [including "excess floater" coverage] for the Residential Improvements, Retail Improvements, and for the WMATA Replacement Garage with optional deductibles of no greater than $10,000 except for earthquake (if customarily obtained) and flood coverage (if customarily obtained), for which the optional deductible shall be no greater than $25,000. Developer shall maintain such property insurance, unless otherwise provided in the Declaration or the Joint Development Agreement, until the Conversion Date (as defined in the Joint

Development Agreement). The Builder's Risk insurance shall include, without limitation, insurance against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake (if customarily obtained), flood (if customarily obtained), windstorm, faulty workmanship, testing and start-up, temporary buildings and debris removal including demolition occasioned by enforcement of any Applicable Laws. Flood and earthquake insurance (if customarily obtained) for the Residential Improvements and the Retail Improvements may be subject to a sublimit, which shall be no less than $2,000,000. Flood and earthquake insurance (if customarily obtained) for the WMATA Replacement Garage shall not be subject to any sublimit. Such insurance shall also be written to cover portions of work securely stored off-site if Developer has paid for it, and also portions of the work in transit. Such property insurance shall also include an automatic waiver of subrogation in favor of WMATA which shall expressly state that such coverage afforded to the insured shall not voided, prejudiced, or otherwise unavailable if, prior to a loss, the insured shall have waived any and all rights of recovery from the party(ies) responsible for such loss. WMATA shall be an additional insured under the Builder's Risk insurance policy(ies) for the Residential Improvements and Retail Improvements but the respective Mortgagee shall be the loss payee. To the extent that WMATA has provided funding for, guaranteed, or otherwise become obligated with respect to the WMATA Replacement Garage, WMATA shall be the sole insured under the Builder's Risk insurance policy for the WMATA Replacement Garage; to any other extent, WMATA shall be an additional insured. WMATA agrees to use any proceeds it receives from Builder's Risk insurance to first rebuild and restore the applicable Improvements.

1.1.11 Mortgagee's Insurance: Such insurance policies as Developer Declarant's Mortgagee(s) may require any Developer Declarant to obtain and carry from time to time or at any time, by the Developer during the development and construction of the Project, or by Retail Declarant or Residential Declarant during the term of the respective Ground Lease including insurance against acts of terrorism, civil insurrection, or sabotage. Whenever a Mortgagee shall require Developer Declarant to have a type of coverage or a higher limit of coverage (including terrorism coverage under Section 1.1.8 of this Exhibit J) than is specified in this Exhibit J, such coverage requirement shall apply under this Exhibit J.

The above-described insurance policies shall: (a) except as otherwise expressly provided in Section 1.1.5 of this Exhibit J, designate WMATA as an additional insured on the commercial general liability, contractor's pollution legal liability, replacement cost property insurance, and boiler and machinery insurance policies; (b) designate WMATA as the sole insured and loss payee under the railroad protective liability coverage and

WMATA's rental value insurance coverage; and (c) be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved.

Section 2. Additional Insurance Requirements

2.1. Insurance Companies

2.1.1 Insurance companies providing the aforesaid coverages must be rated "A:XI" by A.M. Best, or a comparable rating as determined by WMATA, from another insurance rating company acceptable to WMATA. All insurance shall be procured from insurance companies licensed and authorized to do business in the District of Columbia, and otherwise in compliance with any federal requirement.

2.2. Changes in Insurance Coverage

2.2.1 The insurance policies required by this Exhibit J shall not be canceled or terminated by the applicable insurer without thirty (30) days' prior written notice to WMATA's Office of Insurance and to the other persons required to receive Notice on behalf of WMATA pursuant to Article 11 of the Declaration. Developer Declarant shall use Best Commercially Reasonable Business Efforts (as defined in the Joint Development Agreement and the Ground Leases) to obtain each insurer's agreement as an endorsement to each insurance policy that the requisite insurance policies shall not be modified (except to increase the amount of coverage) without thirty (30) days' prior written notice to WMATA's Office of Insurance and to the other persons required to receive Notice on behalf of WMATA pursuant to Article 11 of the Declaration. If any of the required insurance policies should be canceled, terminated, or modified, resulting in Developer Declarant's failure to maintain the insurance required under this Exhibit J, and not replaced by Developer Declarant, their respective contractors, subcontractors, or commercial subtenants, as applicable, with, in WMATA's opinion, at least equivalent insurance coverage within three (3) Business Days after Developer Declarant receives written Notice from WMATA requiring such replacement, then WMATA may proceed in accordance with the terms of Section 9.1 of the Declaration.

2.3 Insurance for Construction Changes

2.3.1 In the event that after initial construction of the Retail Declarant's or Residential Declarant's respective Leasehold Improvements have been completed and operations commenced, either Declarant intends to make changes or alterations as permitted under the terms of its respective Ground Lease which require WMATA's review or approval under Article 11 of such Ground Lease, such Declarant shall notify WMATA's Office of Insurance, in writing, of any plans before construction or

demolition work commences. In connection with such changes or alterations, WMATA may require that Retail Declarant or Residential Declarant, as the case may be, obtain such insurance coverage as WMATA reasonably requires to protect WMATA.

2.4 Compliance with Insurance Policies

2.4.1 Developer Declarant shall observe and comply with, or shall cause to be observed and complied with, all the requirements of the insurance policies required by this Exhibit J. Failure to comply with the insurance requirements of this Exhibit J within three (3) Business Days after Developer Declarant receives written Notice from WMATA requiring such compliance shall entitle WMATA to proceed in accordance with the terms of Section 9.1 of the Declaration.

2.5 Evidence of Insurance

2.5.1 Developer Declarant, prior to the time it is making use of any easement granted by WMATA under the Declaration, and thereafter as appropriate, shall deliver, and shall cause their respective contractors and subcontractors to deliver to the Office of Insurance, Washington Metropolitan Area Transit Authority, 600 Fifth Street, NW, Washington, DC 20001, certificates evidencing the insurance required to be obtained under the Declaration (each on ACORD Form 27 or comparable form for general liability insurance) together with copies of all insurance policies similarly required which are not then being held by WMATA, provided, that Retail Declarant and Residential Declarant need not deliver to WMATA evidence of insurance for Rental Value Insurance until fifteen (15) days before the Conversion Date (as defined in the Ground Leases). Developer Declarant shall certify all copies of their respective insurance policies so delivered to WMATA as being complete and accurate. Thereafter, all insurance required to be provided by or on behalf of Developer Declarant pursuant to the Declaration (including any required changes in such insurance) shall be evidenced by annual renewal certificates of insurance in the specified form, and delivered as aforesaid to WMATA's Office of Insurance. All certificates of insurance, except for the insurance required by Section 1.1.7 of this Exhibit J relating to Railroad Protective Liability Insurance (which such policy shall be held by WMATA, and shall name WMATA as the insured and sole loss payee thereof), shall be delivered with endorsements stating that WMATA and such others as Developer Declarant may reasonably determine are additional insureds or loss payees.

2.6 Insurance Review

2.6.1 Every five (5) years during the term of the respective Ground Lease, WMATA and Retail Declarant or Residential Declarant, as the case may

be, shall review the limits and amounts of insurance coverage required to be carried by such Declarant to determine whether such limits and coverage remain commercially reasonable. If WMATA shall reasonably determine that such limits and/or coverages should be increased or otherwise changed based upon such review, WMATA shall provide Notice thereof to Retail Declarant or Residential Declarant, as the case may be, whereupon such Declarant shall comply with such new limits and/or coverages within thirty (30) days after such Notice.

2.7 Other Waivers of Claims and Rights of Recovery

2.7.1 In addition to Retail Declarant's and Residential Declarant's waivers set forth in Section 1.1.11 of this Exhibit J, each of Retail Declarant and Residential Declarant shall cause their respective commercial subtenants or space tenants, operators, or licensees to waive in its commercial sublease, occupancy agreement, or other similar document all claims and rights of recovery against Retail Declarant, Residential Declarant, and WMATA and their respective officers, directors, employees, agents, contractors, subcontractors, and business invitees for injury or loss for damage or loss to any person or entity or its property caused by or resulting from any risks insured against under any insurance policies carried by such commercial subtenant or space tenant, operator, or licensee and in force at the time of any such damage or loss, regardless of the cause of the damage or loss (including the negligence of WMATA and/or Retail Declarant and/or Residential Declarant and/or their respective officers, directors, employees, contractors, subcontractors, agents, and business invitees) to the extent of proceeds actually recovered. Retail Declarant and Residential Declarant shall cause their respective commercial subtenants or space tenants, operators, or licensees, at the sole cost and expense of such subtenant or space tenant, operator, or licensee to obtain any special endorsements required by its insurer to evidence compliance with the aforementioned waiver.

## Doggett, Rosalyn

**From:** Bottigheimer, Nat
**Sent:** Wednesday, October 28, 2009 3:41 PM
**To:** 'thicks@bannekerventures.com'; Montague, Joshua W.; Doggett, Rosalyn
**Cc:** 'aives@bannekerventures.com'; 'mmckinney@bannekerventures.com'; 'okarim@bannekerventures.com'; Yohance S. Fuller; 'JHagner@wcsr.com'; Goldin, Steven; Marshall, Malcolm
**Subject:** Re: Status of Term Sheet and Appraisal

As noted with you earlier, we are getting these items to you Friday.

---

**From**: Tiwana Hicks
**To**: Montague, Joshua W.; Doggett, Rosalyn
**Cc**: aives@bannekerventures.com ; mmckinney@bannekerventures.com ; 'Omar A. Karim' ; Yohance S. Fuller; Bottigheimer, Nat; John' 'Hagner ; Goldin, Steven
**Sent**: Wed Oct 28 15:23:33 2009
**Subject**: Status of Term Sheet and Appraisal
Rosalyn and Josh:

Please advise us as to the status of the Term Sheet and the updated appraisal. 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 

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

This Amended and Restated Term Sheet, ("Term Sheet"), for a development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th Streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein. The previous joint development term sheet dated July 17, 2008 is superseded by this Term Sheet.

**1. Parties**

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

1.2 The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company (the "DEVELOPER") will be the developer of the Project (as defined in Section 4 below). The DEVELOPER'S initial principals shall be Banneker Ventures, LLC, a District of Columbia limited liability company ("Banneker"), and Banc of America Community Development Corporation, a North Carolina corporation qualified to do business in the District of Columbia ("BACDC"), subject to the substitution of a different principal for BACDC upon WMATA's approval, not to be unreasonably withheld.

1.3 At or after the Closing until the "Completion of the Project" (as defined in Section 4.3 below), DEVELOPER shall be permitted to only admit other members who are tax credit investors, tax credit syndicators and equity investors for the Project so long as such admissions are not a disguised sale of the Project or transfer of control to another developer, except in the limited circumstance where there is an imminent default under the tax credits and the tax credit syndicator exercises its right to replace the manager of the Project. After the Completion of the Project, there shall be limited restrictions on the DEVEOPER'S principals and the identity of any successor lessee/owner of the Project.

**Deleted:** Total
**Deleted:** 6.
**Deleted:** Total
**Deleted:** (as defined in Section 4.2(b) below)
**Deleted:** Total
**Deleted:** Total
**Deleted:** Total

**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. WMATA and DEVELOPER shall execute the

**Deleted:** Both parties commit to complete the Definitive Agreement so WMATA can present the agreed-upon Definitive Agreement to its Board for approval within one month of the Board's approval of this Term Sheet.

Definitive Agreement within three (3) business days of Board approval of the Definitive Agreement.

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

a) A ground lease agreement (the "Lease") whereby WMATA will lease the Lease Property to the DEVELOPER for an initial term of fifty (50) years, with one twenty-five (25) year option period.

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

2.3 The execution of the Lease ("Closing") will take place no later than six hundred thirty (630) days after the WMATA Board approves the Definitive Agreement. The Definitive Agreement shall terminate no later than the Completion of the Project with any surviving obligations being included in the CCRs.

**3. Property to Be Leased To DEVELOPER**

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

3.2 DEVELOPER will cause a preliminary ALTA survey and title commitment to be prepared within three (3) months of expiration of the Study Period and the final ALTA survey (assuming a closed public alley) and title commitment no later than thirty (30) days before the Closing. The final ALTA survey shall be completed early enough for WMATA and DEVELOPER to agree upon the legal descriptions to exclude the existing WMATA tunnel and associated elements.

**4. Project**

DEVELOPER will construct improvements on the Lease Property (the "Project") in substantially the same configuration shown in **Exhibit B** and attached hereto, in accordance with a project schedule to be attached to and made a part of the

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**Deleted:** <#>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.¶

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FOIA CONFIDENTIAL TREATMENT REQUESTED

Definitive Agreement. The Project may not be materially changed without WMATA's written approval, such approval not to be unreasonably withheld, delayed or conditioned. The Project will consist of:

4.1 DEVELOPER's improvements (the "Developer Improvements") are a minimum 153,000 gross square feet including: (i) approximately 138 residential apartment units, (ii) approximately 14,000 gross square feet of retail/arts use, and (iii) approximately 41 parking spaces contingent on District of Columbia ("District") approvals.

4.2 The Developer Improvements will be built in a single phase on the Lease Property.

4.3 "Completion of the Project" is hereby defined as: (i) the issuance of one or more final certificates of occupancy for all residential apartment units and common areas, including parking; and (ii) one or more "shell" certificates of occupancy or equivalent for the retail portions of the Project, subject to completion of the tenant improvements for each unoccupied retail space; and (iii) repair, subject to WMATA's approval, of any damage to WMATA's property caused by Developer or its contractors, subcontractors or consultants; and (iv) satisfaction of all requirements of the WMATA Design Construction Standards applicable to the Developer Improvements.

4.4 Project Schedule. The parties shall attach an agreed upon project schedule (the "Project Schedule") as an exhibit to the Definitive Agreement. It shall be a default of the Definitive Agreement if the DEVELOPER has not constructed building foundations on all three parcels, to at least street level, within 210 days of Closing.

**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

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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").

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<#>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"). ¶
<#>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.¶
<#>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 ... [1]

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have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Lease Property (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit or the Proposal Security (as defined below), as applicable, and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement. DEVELOPER and its consultants who physically alter the Lease Property will be obligated, at their sole cost and expense, to restore the Lease Property to the similar condition existing immediately prior to those activities.

**6. Security Deposit**

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) less the Additional Costs Credit (as defined in Section 7.5 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.

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

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

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6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER,



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shall be refunded to DEVELOPER, with interest accrued, within twenty (20) business days following the Completion of the Project.

**7. Consideration**

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

7.2 Pre-Closing Payments. The DEVELOPER shall make quarterly non-refundable Pre-Closing Payments beginning upon the effective date of the Definitive Agreement. Pre-Closing Payments shall be prorated for partial quarters. Pre-Closing Payments shall be made according to the following:

a) Pre-Closing Payments for the first twelve (12) months will be $50,000.00 per year, payable in advance in quarterly instalments of $12,500.00.

b) Pre-Closing Payments will increase to $65,000.00 per year for the next twelve (12) months.

c) Beginning the twenty-fifth (25th) month and continuing until execution of the Lease, Pre-Closing Payments shall be $80,000.00 per year.

7.3 Rent.

a) Capitalized Lease Payment. DEVELOPER shall make a lump sum initial Capitalized Lease Payment of Five Million Two Hundred Thousand Dollars ($5,200,000), less the Additional Costs Credit, at Closing. This payment represents the entire base rent for the Lease Property for the initial fifty (50) year term of the Lease. In no event will any part of the Capitalized Lease Payment be refunded.

b) Monthly Rent Payment. On the 50th anniversary of the Effective Date of the Lease, the DEVELOPER shall begin making monthly base rent payments to WMATA (the "Monthly Lease Payments"). The Monthly Lease Payments amount shall be at Fair Market Value as determined through the three-appraiser method described in the Lease.

(i) Escalation Rate. The Monthly Lease Payments shall escalate annually at the rate of 3.00% per year.

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(ii) Periodic Rent Revaluation. The Monthly Lease Payments shall be adjusted every ten years. The Monthly Lease Payments will be re-adjusted to then current Fair Market Value as established through the three-appraiser process described in the Lease. Monthly Lease Payments will never decrease from the then payable Monthly Lease Payments as a result of any Periodic Rent Revaluation.

c) Capital Event Participation. Capital Events (defined below) shall be permitted in accordance with this Section 7.3(d). Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation").

(i) A "Capital Event" will include, but not be limited to, any of the following by DEVELOPER: (1) assignments of the Definitive Agreement or the Lease, (2) sales or re-financings of the Developer Improvements, (3) dispositions or transfers of membership interests, and (4) conversions that change the membership of the DEVELOPER to include new members not originally included as of the execution date of the Closing, but not including: (A) transfers for estate planning purposes; and (B) transfers required for the initial debt and equity of the Project before the permanent loan closing. The Parties agree that Non-Capital Events, which will require WMATA approval, but not WMATA monetary participation, also exist and will be defined in the Definitive Agreement.

(ii) For Capital Events that involve transfer or disposition of interests in the Developer or the Developer's interest in the Project, WMATA's share will be two percent (2.00%) of the gross proceeds. Gross proceeds are defined as all transaction revenues received by the DEVELOPER (and any affiliated persons or entities receiving income from this event).

(iii) For Capital Events that involve any refinance or financial restructuring from which the DEVELOPER realizes proceeds, WMATA's share will be two percent (2.00%) of the adjusted gross proceeds. The adjusted gross proceeds are defined as all transaction revenues to the DEVELOPER (and any affiliated persons or entities receiving income from this event) less debt on the Developer Improvements that is paid-off out of said Capital Event proceeds.

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<#> Effective Gross Income shall be defined in the Lease as all gross revenue generated from the

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<#> Payment of Participation Rent shall be

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(iv) To confirm DEVELOPER's original project debt and equity, within thirty days of the Closing, DEVELOPER will provide WMATA with documentation confirming such amounts. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100.00%) of the original Project cost, including both hard and soft costs.

7.4 Additional Density: If at any time during the first 50 years of the Lease, DEVELOPER has received approval for additional density over 153,000 gross square feet attributable to the Lease Property, DEVELOPER will adjust the Capitalized Lease Payment. The measurement of gross FAR square feet shall be the highest amount generated by the Lease Property, whether used on the Lease Property or not, in (i) any final zoning approval by the District of Columbia; (ii) building permit approval; or (iii) an amount approved in any revisions to the building permit prior to issuance of the final certificates of occupancy.

a) Prior to Closing: If the DEVELOPER receives approval for additional density prior to Closing, the additional density Capitalized Lease Payment adjustment shall be as follows:
   (i) An upward adjustment in the Capitalized Lease Payment by $46.59/gross FAR square feet for additional density generated by the Lease Property over 153,000 gross FAR square feet; and
   (ii) After the additional density consideration in 7.3(a)(i) is added, a downward adjustment in the Capitalized Lease Payment by $74.55/gross FAR square feet for such additional density generated by the Lease Property which increases the Project's affordable housing requirement pursuant to the District's mandatory Inclusionary Zoning regulations (Chapter 26 of the Zoning Regulations of the District) over 8,705 gross FAR square feet.

b) After Closing: If any time between Closing and the end of the first 50 years of the term of the Lease, any densities or unit totals actually constructed on the Developer Improvements that are more than those in effect at Closing and for which no increase in Capitalized Lease Payment has been paid, DEVELOPER shall pay an additional Capitalized Lease Payment. The additional Capitalized Lease Payment payments will be determined through the three-appraiser method, to be defined in the Lease and based on the then-remaining time until the end of the 50th year of the term of the Lease. Since the resetting of the base rent at the end of the 50th Lease year will be

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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.¶

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based on FAR value of the land as vacant, there shall be no additional density adjustments after the 50th Lease year.

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7.5 Additional Costs Credit. The term "Additional Costs Credit" is defined to be the amount of staff salaries and 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 salaries and third-party costs delivered to WMATA for verification, which may be redacted to exclude any confidential or privileged information. Based on the acceptable invoices submitted by DEVELOPER, WMATA has calculated the Additional Costs Credit to be $30,000.

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7.6 Additional Consideration: The Capitalized Lease Payment, including any adjustments made under Section 7.3 above, shall be increased annually by six and 2/10ths percent (6.20%) per year from the execution of the Definitive Agreement, if Closing or Additional Density occurs later than six hundred thirty (630) days from execution of the Definitive Agreement. No Additional Consideration increase shall be applied for any delay caused by WMATA under Section 7.7. If Additional Density occurs after Closing, then only the increase in the Capitalized Lease Payment for such Additional Density shall be subject to the 6.20% annual increase.

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7.7 WMATA Delays: The maximum length of six hundred thirty (630) days to Closing will be extended for delays caused solely by WMATA actions or failure to act, including requesting FTA Approval in accordance with Section 8.5 below. Such extension(s) shall be for the amount of time reasonably necessary to compensate for the delay caused solely by WMATA, *e.g.*, if such a delay causes DEVELOPER to miss a planned filing date which results in a one day-for-one day delay, then the extension shall be measured in days with respect to that filing date; however, if the filing date is for some action which is only available in a certain "time window" and the delay causes DEVELOPER to miss the filing date for such "time window," then the extension shall be measured in a period equal to the next available "time window" with respect to that filing date. In order to receive an extension hereunder, DEVELOPER must provide WMATA with written Notice of said WMATA Delay within thirty (30) days of the commencement of said delay. In no other event, other than Force Majeure Delays as defined in Section 7.8 below, will Closing be delayed, even though DEVELOPER'S schedule may take longer than anticipated.

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7.8 Force Majeure Delays: The maximum length of six hundred thirty (630) 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

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Section 7.6 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In order to receive an extension hereunder, DEVELOPER must provide WMATA with written Notice of said Force Majeure Delay within thirty (30) days of the commencement of said delay. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

**8. Conditions to Consummation of the Definitive Agreement**

If each of the following conditions is not satisfied pursuant to the terms of this Term Sheet and the Definitive Agreement, then DEVELOPER shall have the right to terminate this Term Sheet or the Definitive Agreement, as applicable, pursuant to the terms therein. If DEVELOPER terminates this Term Sheet, WMATA shall return the Proposal Security, to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof, expressly survive termination of this Term Sheet. DEVELOPER shall have the right to terminate the Definitive Agreement, and receive the Security Deposit back from WMATA, pursuant to the terms of the Definitive Agreement.

8.1 Design Approvals: Within ten (10) days of execution of the Definitive Agreement, and prior to any final submission to the District, DEVELOPER shall submit to WMATA for its approval a conceptual Project site plan in substantial conformance with Exhibit B, including building elevations and floor plans (the "Project Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Lease Property. WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA within thirty (30) days of receipt of such submission by WMATA.

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

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

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

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement.

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

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a) DEVELOPER will solely fund any and all costs of applying for 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.

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

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c) WMATA shall cooperate with DEVELOPER in all zoning and other related Approvals.

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**Deleted:** 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.¶



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

9.4 WMATA Review and Approval of Project Site Plan: In the event that DEVELOPER makes any modifications to the Project Site Plan previously approved by WMATA (the "Approved Site Plan"), even if required by the District or other governmental authority, such modifications will be subject to WMATA's approval, not to be unreasonably withheld, delayed or conditioned.

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9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the improvements on the Lease Property that materially and adversely affect WMATA's operations. The design and construction plans for such improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation, WMATA's Adjacent Construction Project Manual, Revision 3, dated December 2008 (collectively, "WMATA Design and Construction Standards"). If the DEVELOPER commences construction of the Developer Improvements within three (3) years of the Effective Date of the Definitive Agreement, the DEVELOPER may use the version of the WMATA Design and Construction Standards that is in effect on the Effective Date of the Definitive Agreement, without subsequent amendments or revisions, with respect to the Approvals, the Project Site Plan, and the design and construction plans for the Developer Improvements. If construction of the Developer Improvements commences after the third anniversary of the Effective Date of the Definitive Agreement, the most recent versions of the WMATA Design and Construction Standards, then in existence, as amended and revised from time to time, shall be applicable to the Project. The Project will be reviewed in accordance with, and must conform to the requirements of, the aforementioned documents.

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Deleted: Improvements; otherwise,

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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 (100.00%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee unless WMATA is prohibited from being so named by the FHA lender under the HUD financing utilized by DEVELOPER, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at Closing.

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9.7 Interim Improvements: Intentionally omitted.

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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 Dollars ($1,000,000) plus the cost of enforcing the Guaranty against the guarantor. The Guaranty will be released by WMATA upon the Completion of the Project. The Definitive Agreement will include a minimum financial test to be met by the guarantor. The adequacy of security to be further discussed in the Definitive Agreement. The Guaranty will unconditionally guarantee to WMATA:

a) the completion of infrastructure required by either the District or WMATA;
b) the remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities;
c) the required parties maintain the insurance required by WMATA under the Definitive Agreement; and in the event such insurance is not 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; and
d) the restoration of the Lease Property to the condition it was in on the date of Closing should work cease on the excavation portion of the project above the Lease Property prior to completion of the foundation to street level;

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.

**Deleted:** Five Hundred Thousand

**Deleted:** ($1,500,000)

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**Deleted:** which will be $1,500,000.

**Deleted:** and need for this Guaranty

**Deleted:** construction of the DEVELOPER Improvements;

**Deleted:** <#>the completion of infrastructure required by either the District or WMATA that is not included in the Site Work; ¶
<#>the completion of any demolition and removal of DEVELOPER Improvements as and when required under the terms of the Definitive Agreement;¶

**Deleted:** longer than 30 days;

**Deleted:** and

**Deleted:** <#>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. ¶

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FOIA CONFIDENTIAL TREATMENT REQUESTED

**10. Indemnification**

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Lease Property and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to WMATA Transit Facilities located under the Lease Property or breach of any agreement with WMATA, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. Both the Lease and the CCRs shall contain indemnification of WMATA.

Deleted: As to all Study Period activities,

**11. Insurance Requirements**

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

**12. Non-Binding Intent**

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of one hundred fifty (150) days from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.



FOIA CONFIDENTIAL TREATMENT REQUESTED

Agreed this _____ day of March, 2010, by _____ Deleted: November, 2009,

**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

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DEVELOPER Property is outlined in blue on the attached **Exhibit A**.

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").

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.

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

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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

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. 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

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to WMATA. At all times during the Lease term, the debt service coverage ratio on any senior loans, other than HUD-insured senior loans or public subsidies, shall be no less than 1.20:1.00.

Any Participation Rent not paid in a given year shall accumulate interest at six and two-tenths percent (6.20%) and be paid from the next annual cash flow or from Capital Event

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proceeds prior to any return on, or return of, equity.

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(4) transfers among existing members,

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(4) transfers among existing members,

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(4) transfers among existing members,

(vii)

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among existing members, transfers to wholly-owned entities, intra-family transfers, transfers caused by death,

(viii)

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among existing members, transfers to wholly-owned entities, intra-family transfers, transfers caused by death,

(ix)

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among existing members, transfers to wholly-owned entities, intra-family transfers, transfers caused by death,

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a Lease

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a Lease

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a Lease

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a Lease

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a Lease

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in

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DEVELOPER

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DEVELOPER

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receipt of the final certificate of occupancy for the Total Project or while a HUD insured loan remains in place,

a)

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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.*

(i)

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Final Certificate of Occupancy: During

b)

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if HUD insurance no longer remains in place,

c)

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receipt of the Final Certificate of Occupancy for the Project

d)

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## Doggett, Rosalyn

**From:** Omar A. Karim [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
**Attachments:** Florida Avenue Terms (updated as of 3-25-09).doc

**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.

Have 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



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Maurice Perry [maurice.perry@bankofamerica.com]
**Sent:** Tuesday, March 17, 2009 3:36 PM
**To:** Doggett, Rosalyn
**Cc:** Omar A. Karim; Washington, Joel R.; Montague, Joshua W.
**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

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**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 today. 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.

Looking 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

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**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 knowledge. We can hopefully discuss the other items later today after we go through the development partnership structure/capabilities but the % affordable is basic to the pro forma/business deal.

---

**From:** Omar A. Karim [mailto:okarim@bannekerventures.com]
**Sent:** Monday, March 16, 2009 7:20 PM



FOIA CONFIDENTIAL TREATMENT REQUESTED 

# Maurice Perry
# Professional References

Mr. Moe Mohanna
Sr. Vice President
MacFarlane Costa Housing Partners (Formerly Simpson Housing Solutions, LLC)
330 West Victoria Street
Gardena, CA 90248
424.258.2800 886261 8396
Moe.Mohanna@housingpartners.com

Maryann Dillon (Former Manager at BACDC)
Director
Real Estate Division
Housing Opportunities Commission of Montgomery County
10400 Detrick Avenue
Kensington, Maryland 20895-2484
240.773-9214
maryann.dillon@hocmc.org

Woody Broughton
Sr. Project Manager
WCS Construction, LLC
3303 Stanton Road, SE
Washington, DC 20020-3615
202.903.2265
wbroughton@wcsmith.com

Monica Warren-Jones
Program Director for Lending
Enterprise Community Partners
10 G Street, NE Suite 450
Washington, DC 20002
202.842.9190
mwarrenjones@enterprisecommunity.org

David Bowen 3925

# Chapter 7.16 Acceptable Payments

- Fixed % of GPI or EGI
- Fixed % of Surplus Cash
- Fixed $ amount



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001466

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Chapter 7.16 Unacceptable Payments

- Graduated Increases
- COLA Increases
- Future Appraisals

## UNCONDITIONAL CONSTRUCTION COMPLETION

## GUARANTY AGREEMENT

THIS UNCONDITIONAL CONSTRUCTION COMPLETION GUARANTY ("Guaranty"), made as of the _____ day of _____, 2009 ("Effective Date"), by BANC OF AMERICA COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation ("Guarantor"), to and for the benefit of WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324, Maryland Acts of General Assembly, Chapter 869-1965, Virginia Acts of Assembly, Chapter 2-1966, and Resolution of D.C. Board of Commissioners adopted November 15, 1966 ("WMATA").

WHEREAS, The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company ("Developer"), has entered into a certain Lease Agreement with WMATA ("Lease"), of even date herewith, pursuant to which Developer has agreed, among other things, to construct and develop the Project upon the conditions and terms set forth therein; and

WHEREAS, as a condition precedent to the execution of the Lease, Guarantor must execute and deliver this Guaranty of completion of the development and construction of the Project pursuant to the terms of the Lease; and

WHEREAS, Guarantor is the managing member of the Developer and, having a financial interest in the Developer and the Project, has agreed to execute, acknowledge, and deliver this Guaranty; and

NOW THEREFORE, in consideration of the foregoing, the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Guarantor hereby undertakes, guarantees, covenants and agrees as follows:

1. **Completion of Project.** The Guarantor hereby absolutely and unconditionally guarantees to WMATA the following:

   a. The due and punctual Final Completion of the Project in accordance with the Approved Design and Construction Drawings upon the terms and conditions set forth in the Lease and the Transaction Documents; and

   b. The full and prompt payment and performance of all liabilities, obligations, covenants, agreements, and responsibilities of the Developer under the Joint Development Agreement, the Lease, and all of the Transaction Documents during the Term of this Guaranty.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001468

2. **Acknowledge and Consent.**

a. The Guarantor hereby unconditionally acknowledges and consents to the terms, covenants, and conditions of the Lease, the Joint Development Agreement, the Approved Design and Construction Drawings, the Project Schedule, and the Transaction Documents; and

b. Guarantor's obligations hereunder shall not be diminished by any errors or omissions of any contractor, architect, subcontractor, material supplier, consultant, attorney, government agency, or any agent or employee of them in the supervision or performance of work on the Project, it being understood that such risk is assumed by the Guarantor.

3. **Continuing Guaranty.** It is expressly understood and agreed that this is a current and continuing guaranty and that the obligations of Guarantor hereunder shall be absolute under any and all circumstances, without regard to the validity, regularity, modification, or enforceability of the Lease, the Joint Development Agreement, the Transaction Documents, any Project finance documents, any partnership agreements, or any other instruments executed in connection with the same.

4. **Certain Waivers.**

a. To the extent permitted by law, Guarantor hereby waives notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, and any and all notices of nonpayment, non-performance, and non-observance, and other proof, and notice of demand; and

b. Guarantor hereby waives any right to require WMATA to proceed against or exhaust its recourse against Developer or to pursue any other remedy in its power before being entitled to performance from Guarantor or before proceeding against Guarantor. Guarantor hereby waives any defense based upon an election of remedies by WMATA which destroys or otherwise impairs the subrogation rights of Guarantor or the right of Guarantor to proceed against Developer or others for reimbursement, or both; and

c. Guarantor hereby waives all suretyship defenses and defenses in the nature thereof; and

d. Guarantor hereby waives any defense that may arise by reason of (i) the incapacity, lack of authority, death or disability of Developer or Guarantor; (ii) the revocation or repudiation hereof by Guarantor, or the revocation or repudiation hereof by Developer, of Developer's obligations under the Lease or any other instruments executed in connection therewith; or (iii) the failure of WMATA to file or enforce a claim against the estate (either in administration, bankruptcy, or any other proceeding) of Developer or Guarantor; and



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001469

e. Guarantor hereby waives the defense of statute of limitations in any action hereunder; and

f. Guarantor hereby waives any defense based upon any taking, modification, or release of any collateral or guaranties, or any failure to perfect any security interest in, or the taking of, or failure to take any other action with respect to any collateral securing payment or performance hereunder; and

g. Guarantor hereby waives any rights or defenses based upon an offset by Guarantor against any obligation now or hereafter owed to Guarantor by Developer, it being the intention hereof that Guarantor shall remain liable, to the extent set forth herein, until the full performance of the obligations hereunder.

5. **Defenses Not Valid.** Guarantor further agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected, or impaired by any of the following:

a. By reason of the assertion by the Developer of any rights or remedies under or with respect to the Lease, or any other instruments executed in connection therewith, against any Person obligated thereunder; or

b. By reason of any failure to exercise, or delay in exercising, any such right or remedy or any right or remedy hereunder or in respect to this Guaranty; or

c. By reason of the adjudication in bankruptcy of this Guaranty or any guarantor hereunder, any Person obligated under the Lease or any other instruments executed in connection therewith, or the filing of a petition for any relief under any federal, state, or local bankruptcy law by any such Person.

6. **Reimbursement of Expenses.** Guarantor agrees that, in the event this Guaranty is placed in the hands of one or more attorneys for enforcement, collection, collection through legal proceedings affecting creditors' rights, or any other proceedings whatsoever in connection with this Guaranty, or any collateral subject hereto, then Guarantor shall reimburse WMATA on demand for all expenses incurred in enforcing this Guaranty, including reasonable attorneys' fees, costs, and expenses, (whether or not suit is brought hereon) and all such expenses incurred in connection with any trial, appeal, arbitration, or bankruptcy proceedings.

7. **Default.** If Guarantor shall fail or refuse to perform or continue performance of all of Guarantor's obligations under this Guaranty, then WMATA shall, at its sole option, have the right to take, or cause, all necessary action to complete the work described in Section 1 above and to discharge any liens filed against the Project or the Lease Premises and to take any other actions necessary or advisable to cure the Guarantor's default hereunder, either before or after the exercise of any other remedy.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001470

The amounts of any and all expenditures and advances so made by WMATA shall be due and payable by Guarantor immediately upon the incurring or advancement thereof and, if not then paid, shall bear interest at four percent (4%) above the prime rate then in effect in *The Wall Street Journal.*

8. **Term.** Except as provided herein, this Guaranty shall terminate three (3) months after the last to occur of the following:

a. A final certificate of occupancy is issued for the Project following the completion of construction of the Project in accordance with the Approved Design and Construction Documents;

b. Final payment is made under the construction contracts, and the contractor acknowledges in writing that the contractor and all subcontractors have been paid in full and have no further claims under the construction contracts; and

c. The statutory period within which the contractor and any subcontractors under the construction contracts may file liens against the Project has expired; and

d. Final Completion of the Project.

Notwithstanding the foregoing, at any time within three (3) months after the termination of this Guaranty as provided in this Paragraph 8, WMATA may give written notice (the "***Guaranty Notice***") to Guarantor of any outstanding or disputed amount due to WMATA or any third party that relates to the Joint Development Agreement, the Lease, the Transaction Documents, or construction of the Project and may reserve its rights hereunder with respect to such outstanding amount. In the event WMATA gives such Guaranty Notice to the Guarantor, this Guaranty shall survive to the extent of the matters described in such Guaranty Notice and until such matters have been fully paid or resolved to the satisfaction of WMATA. In the event this Guaranty is extended beyond the term by such Guaranty Notice, this Guaranty shall not terminate until such time that WMATA provides Notice of satisfaction of the matters described in the Guaranty Notice.

9. **Assignment**. This Guaranty shall not be assignable by Guarantor without WMATA's prior written approval.

10. **Notices.** All notices, demands, requests and other communications required pursuant to or in connection with the provisions of this Guaranty ("Notice") shall be in writing and shall be deemed to have been properly given or served for all purposes (i) if sent by Federal Express or other nationally recognized overnight carrier for next business day delivery, on the actual date of delivery by such carrier, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified mail, return receipt requested postage prepaid, on the Fifth (5th) Business Day following the date of mailing addressed as follows.

a. *Notices to Guarantor shall be sent to*:



**FOIA CONFIDENTIAL TREATMENT REQUESTED** **WMATA-INV 001471**

Banc of America Community Development Corporation
730 Fifteenth Street, N.W.
Washington, DC 20005-1099
Attn: Maryann Dillon, Senior Vice President
Tel: (202) 624-5160;
Fax: (202) 624-5166

b. *Notices to WMATA shall be sent to*:

Washington Metropolitan Avenue Transit Authority
Attn: Director of Station Area Planning and Asset Management
600 Fifth Street, NW
Washington, D.C. 20001
Phone: 202-962-2616
Fax:

11. **Intended Beneficiary.** No person other than WMATA, or its successors and/or assigns, may directly or indirectly rely upon or enforce the provisions of the Agreement, whether as a third party beneficiary or otherwise.

12. **Binding Agreement; Burden and Benefit.** This Guaranty and each covenant and agreement contained herein shall be binding upon Guarantor, its permitted successors and assigns, and shall inure to the benefit of WMATA, and its successors and assigns.

13. **Authority**. Guarantor represents and warrants to WMATA the following:

a. The Person executing and delivering this Guaranty on Guarantor's behalf is duly authorized to so act; and

b. The Guarantor has the power and authority to enter into this Guaranty; and

c. All action required to authorize Guarantor to enter into this Guaranty has been duly taken.

14. **Entire Agreement**. This Guaranty constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior such agreements and understandings, both written and oral. This Guaranty may not be modified or amended except by a written instrument signed by WMATA and Guarantor.

15. **Severability of Provisions.** If any provision of this Guaranty is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable. The Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Guaranty and the remaining provisions of this Guaranty shall remain in full force and effect and shall not



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001472

be affected by the illegal, invalid or unenforceable provision or by its severance from this Guaranty.

16. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Guaranty shall not operate or be construed to be a waiver of any subsequent breach.

17. **Defined Terms.** Except as expressly provided herein, terms used in this Guaranty with initial capital letters shall have the meanings set forth in the Lease.

18. **Governing Law.** This Guaranty shall be governed, construed, and interpreted as to validity and enforcement and in all other respects in accordance with the laws of the District of Columbia and cannot be modified, amended, or terminated orally.

19. **Headings.** All headings in this Guaranty are for convenience of reference only and are not intended to qualify the meaning of any provision of this Guaranty.

20. **Terminology.** All personal pronouns used in this Guaranty, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

21. **Counterparts.** This Guaranty may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

22. **Guaranty of Payment.** Notwithstanding any other provision of this Guaranty:

a. This Guaranty constitutes a guaranty of payment, not solely a guaranty of collection; and

b. This Guaranty agreement is primary and not conditional.

**[SIGNATURES BEGIN ON THE FOLLOWING PAGE ]**



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001473

IN WITNESS WHEREOF, Guarantor has duly executed this Unconditional Construction Completion Guaranty Agreement as of the date first above written.

BANC OF AMERICA COMMUNITY
DEVELOPMENT CORPORATION,
Guarantor

_____ By:_____

Name:_____

Title:_____



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001474

# MAURICE L. PERRY
# PROJECT LIST

| *PROJECT* | *LOCATION* | *NUMBER OF UNITS* | *HOUSING TYPE* | *CONSTRUCTION TYPE* | *FINANCING* | *YEAR COMPLETED* |
|---|---|---|---|---|---|---|
| San Vicente Townhomes | 101 San Vicente Ave. Soledad, CA | 50 | Rental Multi-Family | New | 9% Tax Credits w/ Conventional Debt | 1998 |
| Pine Ridge Apts. | Osawatomie, KS | 35 | Rental Multi- Family | New | 9% Tax Credits w/ Conventional Debt | 1999 |
| Florence Park Apts. | 401 E. Stewart St. Florence, AZ | 88 | Rental Multi-Family | New Garden Style | 9% Tax Credits w/ Conventional Debt | 2000 |
| Mesa Park Apts. | 604 W. 8th Ave. Mesa, AZ | 140 | Rental Multi-Family | New Garden Style | 9% Tax Credits w/ Conventional Debt | 2000 |
| Sycamore Walk Apartments | 380 Pacheco Rd. Bakersfield, CA | 112 | Rental Multi-Family | New Garden Style | 9% Tax Credits w/ Conventional Debt | 2001 |
| Center Pointe Villas | 11856 Orange St. Norwalk, CA | 240 | Rental Senior | New 4 Story Bldg. & Garden Style Apts. | 4% Tax Credits w/ Tax-Exempt Bonds | 2002 |
| Mountain View Senior Apts. | 511 N. Palmetto Ave. Ontario, CA | 86 | Rental Senior | New Garden Style | 9% Tax Credits w/ HOME Funds & Conventional Debt | 2002 |
| Sterling Market Lofts | Bridgeport, CT | 61 | Rental Artist | Rehab | 4% Tax Credits w/ Local Funds & Tax-Exempt Bonds | 2004 |
| Highland Condominiums | 1800 28th Place, SE Washington, DC | 18 | Condos Family | Rehab | Conventional Construction Loan w/ HOME Funds and Private Mortgages | 2006 |
| Cedar Heights Apartments | 1560 Butler Street, SE Washington, DC | 134 | Rental Multi-Family | Rehab | 9% Tax Credits w/ Conventional Debt & Public Soft Loan | 2007 |
| Courts of Camp Springs | 6200 Carswell Ave Suitland, MD | 414 | Rental Multi-Family | Rehab | 4 % Tax Credits w/ Tax-Exempt Bonds | 2008 |

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Banc of America Community Development Corporation

## Committed to Mid-Atlantic cities and neighborhoods

## National expertise. Regional focus.

At Bank of America, we believe that building strong neighborhoods is good business. That's why we have established teams of experienced professionals in regional offices near you. Our Banc of America Community Development Corporation office delivers the strength of the nation's first, largest and most productive bank-owned community real estate development entity to worthy projects in the Mid-Atlantic region.

### A mission to drive smart growth

Bank of America seeks development opportunities that meet our mission of improving urban communities with projects that are catalysts for revitalization. We work as the primary developer, often in conjunction with local partners, to create positive long-term effects in neighborhoods where we do business.

### Leading community improvement

Our efforts have promoted economic development and achieved national award-winning recognition by providing Mid-Atlantic communities with high-quality investment solutions. We have deep public-private partnership expertise, experience in projects with significant scale, and the capacity to conduct complex transactions. You can depend on us for community development expertise in a variety of areas, including:

- **Urban Infill** – Development of new construction affordable and mixed-income rental housing; including mixed-use projects utilizing federal Low-Income Housing Tax Credits and other affordable housing finance tools.
- **Acquisition/Rehabilitation** – Acquisition/redevelopment of distressed rental properties; conversion of historic or other building types to housing.
- **Master Planned Development** – Work with community stakeholders and local governmental agencies to develop an overall vision to revitalize decaying city neighborhoods or infill sites and obtain the necessary entitlements thru local governments.
- **Fee Development** – Fee development role in partnership with public agency and third-party capital sources.

### Development success

Since 1994 BACDC has built or rehabilitated more than 2,200 units of housing in the Mid-Atlantic region. BACDC seeks partnership opportunities with a variety of community-based development organizations (nonprofits, for-profits and public agencies) to successfully develop future projects. To date, our efforts have helped to revitalize the following properties:

- **Washington View, Washington, DC** – In 2004, substantially rehabilitated 353 multi-family rental units; adjoining development includes 77 condominiums and 60 for-sale townhomes.
- **Centerpoint, Baltimore, MD** – This project consisted of the redevelopment of an entire city block, including new construction and rehabilitation of historic structures. There are a total 392 rental units; 35,000 square feet of retail space, and structured parking.
- **Cedar Heights, Washington, DC** – The redevelopment of this 134-unit multi-family community preserves affordable housing for families who earn 50%-60% of local AMI. It was completed in 2006.
- **Courts of Camp Springs, Suitland, MD** – Bank of America financed the rehabilitation of a 414-unit garden-style apartment community and construction of a 3,000 square foot stand-alone community center and leasing office in June of 2008.
- **Parkside Mixed-Use Community, Washington, DC** – This 15.5 acre transit-oriented development site received master planned zoning approval in 2005 for 1,500 - 2,000 homes, 30,000 to 50,000 square feet of retail space and 500,000 to 750,000 square feet of office space. The first phase of development will consist of 112 townhomes and 98 rental units.
- **Victory Square, Washington, DC** – A 98-unit affordable senior apartment community scheduled to commence construction in 2009 with a total development cost of approximately $18 million. New construction is designed to meet Enterprise Communities' Green Communities standards.

future

in Parkside

### Building stronger neighborhoods in the Mid-Atlantic

Whether you seek expertise in affordable new construction, acquisition/rehabilitation or large-scale master planning, you can count on Banc of America Community Development Corporation to help you achieve your development goals. Contact us directly to discuss the many ways we can put our strength, expertise and commitment to work for you.

Maurice Perry
Sr. Development Manager
1.202.442.7526

**Bank of America**
Bank of Opportunity

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## Doggett, Rosalyn

**From:** Maurice Perry [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
F: 704.683.9162



FOIA CONFIDENTIAL TREATMENT REQUESTED

Bank of America



Community Development

Overview

Community Impact

National Community Relationships

National Initiatives

Local Efforts

Loans and Investments

Historic Tax Credits

Small Business Financing

Rural Business Loan

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Home Ownership Loans

Economic Development

Real Estate Investments

Community Development Corporation

Strategic Investments

LIHTC Investments

# Community Development Corporation

We often work as the primary developer, often in partnership with nonprofit community development corporations and local governments, to create positive long-term effects in neighborhoods where we do business.

### What is the Community Development Corporation?

The Bank of America Community Development Corporation (BACDC), a wholly owned subsidiary of Bank of America, N.A., conducts real estate development and investment in low- and moderate-income communities across the nation. The BACDC focuses on projects in some of the most challenged areas and works with community-based entities to coordinate multilayered financing that make housing and commercial development projects possible.

BACDC works as the primary developer, often in conjunction with nonprofit community development corporations and local governments, to create positive long-term effects in neighborhoods where we do business.

### How it works

The BACDC both invests capital in community development projects and builds or rehabilitates properties. In either case, these BACDC projects can include

- Targeted neighborhood developments
- Multifamily affordable housing developments
- Public housing development
- Retail, commercial and mixed-use developments in targeted neighborhoods

### Make A Difference Centers

A key component of BACDC projects is a Make A Difference Center. These centers are an integral part of a real estate development project and meet the needs of a local community for after school tutoring, computer training, life skills training, financial counseling, or vocational training.

### What we look for in a projects

Before we invest, we look for projects with specific characteristics:

- **Large-scale projects.** Projects large enough to promote tangible neighborhood change.
- **Community partnerships.** By working with nonprofit community development corporations, community-based for-profit developers, and local public housing and redevelopment agencies, we can garner the support we need to complete projects that promote economic growth.
- **Local government support.** We rely on strong political and financial support from local governments in the communities in which we work.
- **Multiple funding sources.** We provide additional funding in the form of construction financing, credit enhancement, tax credit investments and homebuyer mortgages to complement our direct equity investments.
- **Catalytic.** We look for projects that are "firsts" in their

More Financing (

Learn more about developers of affor housing projects.

Learn more about affordable mortga programs.

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Monday, March 23, 2009 7:52 PM
**To:** eric.smart@bolansmart.com; Doggett, Rosalyn; Washington, Joel R.
**Cc:** Maurice' 'Perry; thicks@bannekerventures.com
**Subject:** Jazz @ Florida Avenue - Proforma
**Attachments:** Jazz - Afford Analysis (as of 3-23-09) (updated).xls

Ms. Doggett and Messrs. Washington and Smart,

As requested at our meeting last week, attached please find an updated pro forma showing two Capital Events following stabilization of the project. These analysis can be found under the tab entitled "Combined Proforma".

Please let us know if you have any questions prior to our meeting on Wednesday.

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

Bank of America



Community Development

Overview

Community Impact

National Community Relationships

National Initiatives

Local Efforts

Loans and Investments

## Local Efforts

Bank of America's $750 Billion Goal for Community Development lending and investme results at the local and state levels across our coast-to-coast market. This initiative foc four distinct categories: Affordable housing; Small Business; Consumer Loans; and Eco Development

To see how much money we've loaned and invested in these categories over the life of program, in the states where we do business and on a national basis, click here.

To see how much money we've loaned and invested in selected top markets throughou Bank of America franchise, click here.

You must have Adobe® Reader® in order to read and print the Community Goal docun Download Adobe Reader for free now.



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**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.

this seems to be a larger project 6 vs 4.5 FAR

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

Maurice Perry
Vice President
Banc of America CDC

nowhere here does it say BACDC will be "managing member" during construction & for several years thereafter" as it says in 3/11/09 email from Omar

730 15th Street NW, 8th Floor, Washington, DC 20005

Recycled Paper

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Wednesday, March 11, 2009 2:53 PM
**To:** Doggett, Rosalyn
**Cc:** Maurice' 'Perry; 'thicks'; Moneme, Emeka; Bottigheimer, Nat
**Subject:** Jazz @ Florida Avenue
**Attachments:** Banc of America CDC Quals.pdf; Maurice Perry Bio (BACDC).pdf; Banneker Ventures - Construction Management Experience (WMATA).pdf

**Importance:** High

Ms. Doggett,

As a follow-up to our call yesterday, attached please find the following:

- Information on Banc of America CDC, including an overview of 6 local projects that they have or are currently developing;
- Bio for Maurice Perry, Senior Development Manager with BACDC and their point person for this project; and
- Updated information on Banneker's construction management experience

As discussed, BACDC will be our development and equity partner on the Jazz and serve as managing member of the partnership through the construction phase and for several years thereafter. During the construction phase, we intend to rely on BACDC and BV staff. Moreover, we intend to bring on board a third-party CM firm with experience building complex projects such as the Jazz. We have not made a decision on what firm but have been interviewing shops, one of which is headed by the former Director of Construction for JPI (a national development firm) who has completed several dozen infill multi-family, mixed-use, and commercial projects, including a project above the Metro in downtown DC.

Should you have any questions, please call me at (202) 667-4110.

We look forward to continuing our negotiations with you all and hopefully wrapping them up in the next few weeks.

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 

# Banc of America Community Development Corporation

## Committed to Mid-Atlantic cities and neighborhoods

## National expertise. Regional focus.

At Bank of America, we believe that building strong neighborhoods is good business. That's why we have established teams of experienced professionals in regional offices near you. Our Banc of America Community Development Corporation office delivers the strength of the nation's first, largest and most productive bank-owned community real estate development entity to worthy projects in the Mid-Atlantic region.

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Our efforts have promoted economic development and achieved national award-winning recognition by providing Mid-Atlantic communities with high-quality investment solutions. We have deep public-private partnership expertise, experience in projects with significant scale, and the capacity to conduct complex transactions. You can depend on us for community development expertise in a variety of areas, including:

- **Urban Infill** – Development of new construction affordable and mixed-income rental housing; including mixed-use projects utilizing federal Low-Income Housing Tax Credits and other affordable housing finance tools.
- Acquisition/Rehabilitation – Acquisition/redevelopment of distressed rental properties; conversion of historic or other building types to housing.
- Master Planned Development – Work with community stakeholders and local governmental agencies to develop an overall vision to revitalize decaying city neighborhoods or infill sites and obtain the necessary entitlements thru local governments.
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- Victory Square, Washington, DC – A 98-unit affordable senior apartment community scheduled to commence construction in 2009 with a total development cost of approximately $18 million. New construction is designed to meet Enterprise Communities' Green Communities standards.

### Building stronger neighborhoods in the Mid-Atlantic

Whether you seek expertise in affordable new construction, acquisition/rehabilitation or large-scale master planning, you can count on Banc of America Community Development Corporation to help you achieve your development goals. Contact us directly to discuss the many ways we can put our strength, expertise and commitment to work for you.


Maurice Perry
Sr. Development Manager
1.202.442.7526


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Bank of Opportunity®

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**Maurice Perry**
*Vice President*
*Banc of America Community Development Corporation*

Maurice Perry is a Senior Development Manager responsible for the development and rehabilitation of multi-family apartment communities in the Washington, DC metro area. As Senior Development Manager, he is responsible for site acquisition, project finance and day-to-day project management.

Here since 2002

When?

Before joining Bank of America's community banking team, Maurice worked for East of the River CDC as Vice President of Real Estate Development where he managed a team of project managers responsible for the acquisition and development of affordable rental, condominium and single-family projects in southeast Washington, DC. Prior to East of River CDC, Maurice was a Senior Development Manager with Simpson Housing Solutions, LLC (SHS) in Long Beach, California, one of the nation's largest real estate investment and development firms. While at SHS, he was responsible for the development of over 800 units of affordable housing.

Rhetta Gilham?

K&B firm worked there 3 years ago new constr.

Stick built

Maurice has over 14 years of extensive experience in community housing development. He has special expertise in assembling complex financing to develop affordable housing utilizing tax-exempt bonds and Low Income Housing Tax Credits. Maurice has developed projects that include adaptive re-use, new construction and extensive renovation. He is skilled in community relations and has worked extensively with neighborhood associations and tenant groups.

Maurice earned a B.A. in Business Communications from Loyola University and an MBA from The Anderson School at UCLA. He serves on the boards of the Washington, DC's Coalition for Nonprofit Housing and Economic Development and Mi Casa, Inc., a local nonprofit affordable housing development corporation

Members:

Washington Business Journal - June 9, 2008
/washington/stories/2008/06/09/story17.html

WASHINGTON BUSINESS JOURNAL

Friday, June 6, 2008

# Bank of America unit sees opportunity in residential slowdown

Washington Business Journal - by Jonathan O'Connell Staff Reporter

After downsizing during the housing boom earlier this decade, Bank of America Corp.'s community development corporation is stepping up efforts to invest in projects that benefit low-income communities.

"We've got a pretty active pipeline in Washington ... the market seems to be giving us some good opportunities," said James Feild, a Dallas-based executive with the CDC, a subsidiary of the Charlotte, N.C.-based banking behemoth.

Feild declined to discuss specific projects or disclose how much the CDC expects to invest locally.

The CDC built 5,700 housing units nationally between 2005 and 2007, an investment of around $520 million, he said.

Locally, the CDC is working to secure financing for senior housing at Parkside, the mixed-use project near the Minnesota Avenue Metro station, where it is a partner with Lano International Inc. Parkside is one of 13 projects around the country in various stages of pre-development.

Bank of America made D.C. the beneficiary of some of its most effective community development investments during the past 15 years.

It helped turn around the tiny Hillsdale neighborhood in Southeast, for instance, with more than 200 housing units, including the Townes at Hillsdale condominiums and Washington View Apartments, complete with a computer learning center, an after-school program and a middle school for girls.

But then the community development unit, including the CDC, was restructured. The CDC's development staff in D.C., once three people, was cut to one, Maurice Perry, the development manager. Many leaders departed or were encouraged to leave.

As the hot housing market attracted private investment to low-income neighborhoods, the bank did not think it made sense to compete with other developers or manage properties once they were built, Feild said.

"We've got to be a part of a continuum and see where we can make the most impact," he said. "It's meant that we have to change our approach to the business."

But some former executives say the bank is not empowering the CDC like it once did.

Michael Pitchford, a former community development executive for the bank and now president of the Community Preservation Development Corp., said he was disappointed by the disinvestment in community banking.

"They didn't completely close it down, but they pretty much to me signaled that they would unwind it as soon as they could close the deals," Pitchford said.

Another former executive, Phyllis Caldwell, president of the Washington Area Women's Foundation, said she was dismayed that community development banking was no longer a stand-alone group but also said part of that could be attributed to the fact that "when land prices are rising rapidly there is more competition for deals, so deals are harder to find."

Chris LoPiano, a former senior vice president at the CDC and current partner of the CDC at CityInterests LLC, said when the bank makes cuts "it's with a pretty blunt object."

However, the group is likely to continue building locally, he said. "I think their pipeline is going to be smaller, but over time I think it might get built up again."

*E-mail: joconnell@bizjournals.com phone: 703/258-0835*

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Community Developments Growing Markets with Bank-Owned CDCs

Winter 2004/2005

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Innovative Community Bank CDC

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This Just In... Opportunities from OCC Districts

# How a large bank CDC targets needy neighborhoods

Bank of America's community development corporation draws on more than a quarter-century of experience in using targeted investments to strengthen communities. Today Banc of America CDC continues to pursue community development investments under the broad authority granted to national banks by the OCC's regulation 12 CFR Part 24.

Banc of America CDC financed Overlook Condominiums in Washington, DC, as part of the bank's America Block-by-Block program.

Bank of America views equity investment as a tool to build and enhance the expertise, capacity, and financial strength of non-profits, local agencies, and for-profits to undertake complex, catalytic developments. The CDC engages in direct real estate development, strategic equity investments, and tax credit investments, involving other stakeholders in particular projects targeted to meet the needs of low- and moderate-income neighborhoods.

Moreover, through its America Block-by-Block® program, the bank has targeted selected neighborhoods for multiple investments over the long term. Through this approach, the CDC can bring all of Bank of America's products and services to assist revitalization efforts involving public agencies and neighborhood groups. In Washington, D.C., for example, the CDC began targeting lower-income neighborhoods east of the Anacostia River in 1995, when it acquired the distressed and largely vacant Washington View Apartments in the Hillsdale community. Joining forces with the Hillsdale Collaborative, a group of residents and community leaders committed to creating a new vision for this historic African-American neighborhood, the CDC made a commitment to create for-sale and rental housing.

Many members of the community wanted less density. Demolishing several rundown buildings and creating a park-like recreation area accomplished this. The CDC then financed the rehabilitation of the remaining structures and oversaw the development of 353 affordable rental units. An important element in the project is a Make a Difference Center — a resident support center offering free after-school and summer programs, adult programs, a teen center, and the Washington Middle School for Girls (a private school for at-risk youth).

Neighborhood revitalization continues with the recent completion of the Overlook Condominiums at Washington View, involving the renovation of 77 apartments. Across the street, the bank's CDC in partnership with East of the River CDC, a community-based CDC, acquired Howard Gardens. Howard Gardens, a long-abandoned apartment complex used by drug dealers, was demolished. The site has been redeveloped as the Townes at Hillsdale, 65 affordable and market rate townhouses, now in its last phase. The bank's CDC is currently pursuing additional projects for development with East of the River CDC.

Coupled with the spirited activism of neighborhood groups such as the Washington View Tenants Association, Bank of America's partnership with the community has helped to spur recovery, according to Retta Gilliam, president of East of the River CDC.

"By combining all of our resources," she says, "we've been able to help revitalize and re-energize a wonderful community."

Banc of America CDC had similar success in Florida, where the CDC joined forces in 1999 with Tampa's city government and local nonprofits, including Housing by St. Laurence, to spur the economic revitalization of the Tampa Heights neighborhood just north of downtown.

The initial $16.6 million project, called Mobley Park, included construction of 238 affordable rental apartments for mixed-income residents. The CDC made an equity investment of $5.3 million and provided a $9 million letter of credit to back Hillsborough County Housing Finance Authority bonds. A City of Tampa Housing Initiative Program loan provided an additional $1.3 million, and Housing by St. Laurence contributed land valued at $1 million.

The CDC was determined to jump-start the revitalization of the Tampa Heights neighborhood, using the Mobley Park initiative to attract new businesses, create jobs, and develop more affordable housing in the area. The strategy has worked well to bring together numerous forces within a community. The Tampa Heights market is an example of what can be accomplished through collaboration.

Banc of America CDC, working with the Washington View Tenants Association, financed apartments that overlook Washington, DC.

Mobley Park Apartments — 40 percent affordable, for households at 60 percent of area median income — is fully occupied; nearby housing starts and renovations have picked up; and developers and investors have come into the neighborhood to build market-rate apartments as well as generate first-time homebuyer opportunities. Businesses — including GTE Federal Credit Union and Kforce, a nationwide professional staffing firm — have relocated their headquarters to Tampa Heights, contributing to the renewed vitality of the neighborhood.

Meanwhile, Banc of America CDC has moved ahead with several other initiatives. One such initiative includes partnering with the Home Association, a local nonprofit, to redevelop the site of the historic Centro Asturiano hospital, providing 160 apartments for seniors.

Eighty percent of the units are at rates affordable for lower-income residents, with 22 of those units targeted to those at or below 35 percent of the area median income. Transportation and other services will be available to residents, who will also have the use of an adjacent park. The CDC is also working with the City of Tampa and other entities to create significant further development opportunities on the Tampa Heights riverfront.

The CDC's efforts are also evident across Tampa Bay in the City of Clearwater, where the CDC partnered with Clearwater Neighborhood Housing Services to redevelop a blighted multifamily development in the North Greenwood neighborhood. The apartment complex was dilapidated, offering no amenities to its residents. Today the 25-building complex, known as Greenwood Apartments, has undergone a $14 million rehabilitation including total modernization of the units, exterior remodeling, and the addition of new amenities including an onsite management office, laundry facilities, common green space, and a Make A Difference Center, with computer lab, library, and playground for children's after-school programs. The strong collaboration between the bank, Clearwater NHS, and the City of Clearwater has created more than just upgraded housing. The redevelopment has been a catalyst to attract new development to the community in the form of a new baseball stadium, road improvements, a rehabbed library, and other facilities revitalized by the city. This redevelopment project models the bank's direct role in the process of bringing for-profit, non-profit and governmental partners together with the commitment to transform a distressed community into a thriving neighborhood.

# Banc of America Community Development Corporation

March 17, 2009

Bank of America
Bank of Opportunity™

## BACDC Overview

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- BACDC is the nation's first, largest and most productive bank-owned community real estate development entity.
- BACDC operates under a mission-driven charter to develop projects that are either:
  - Located in low to moderate income census tracts; -OR-
  - Contain a preponderance of affordable and workforce housing.
- BACDC is capitalized with $125 Million in Development Equity for Targeted Investment
- BACDC has 7,500 Units Under Development and Management
- BACDC averages 10 Developments and 2,000 Units Under Development Annually
- BACDC developed or rehabilitated more than 28,000 affordable and mixed-income units in 15 cities over the last 30 years

2



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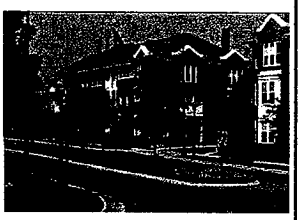
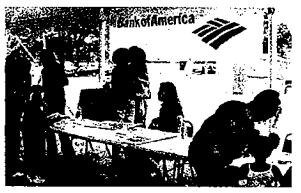
# BACDC Capacity

- Award-winning catalyst developments throughout the country
- Core development capacity
  - Mixed-Income Rental
    - Multifamily Preservation
    - Historic Preservation
    - Infill New Construction
  - Master Development
- Expertise in complex developments involving
  - Multiple layers of public and private financing
  - Public/Private and non-profit partnerships
  - Master planning
  - Large scale mixed-use
  - Transit oriented development



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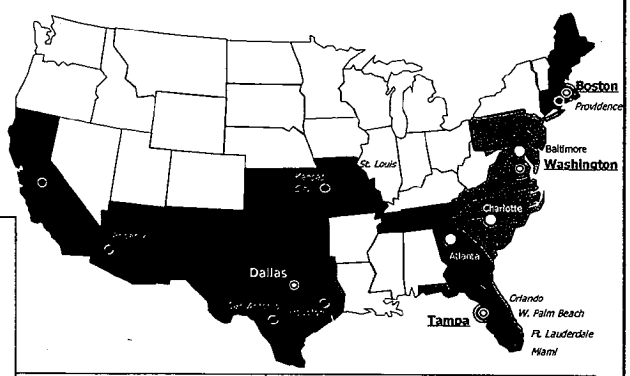
# BACDC Market Presence and Portfolio/Pipeline by Type

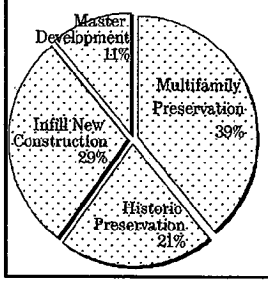
NEW ENGLAND REGION

CENTRAL / SW REGION

SOUTHEAST REGION




**Portfolio / Pipeline by Type**




- Regional Hub Office
- Other Staff / Office
- Other City with Project Activity

- R/E Development Business Regions
- Other BAC Franchise States

4



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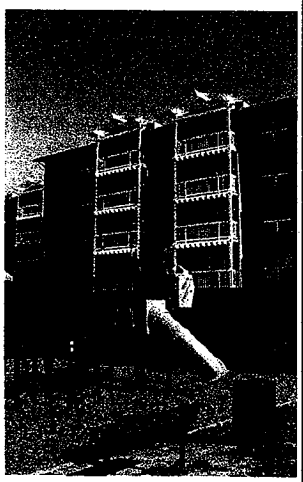
## Multifamily Preservation

- Acquisition/Rehabilitation of Existing Multifamily
- 39 % of Portfolio / Pipeline (11 current projects)
- Financing: Conventional, Bonds & Low Income Housing Tax Credits and other local and federal subsidies
- Structured for simple exit often with non-profit or government partner

Northwood Villas - *Dallas, TX*

Bristol Pines - *Camp Springs, MD*



Washington View - *Washington, DC*

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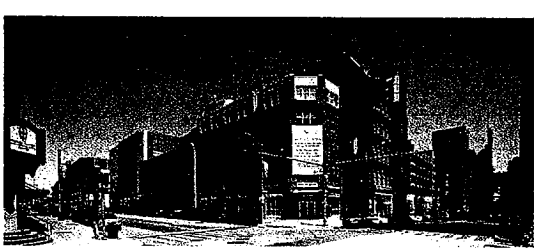
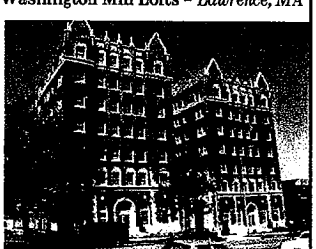
## Historic Preservation

- 21 % of Portfolio / Pipeline (6 current projects)
- Many BACDC Historic Preservation projects utilize the Federal and various State Historic Tax Credit Programs as well as other layers of financing

Washington Mill Lofts - *Lawrence, MA*



Centerpoint Mixed-Use Development - *Baltimore, MD*



Historic Ellison - *Kansas City, MO*

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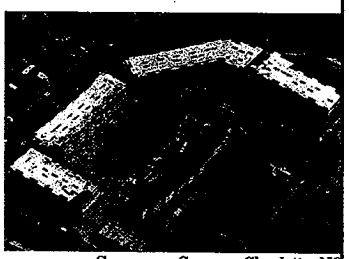
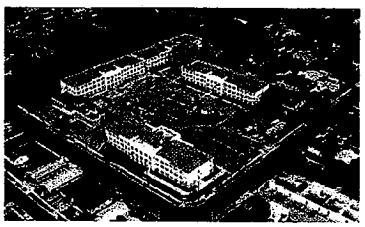
## Infill New Construction

- 29 % of Portfolio / Pipeline (8 current projects)
- Most are LIHTC-based financing (9%; mixed-income bond)
- Many are structured for exit to non-profit or government partner



Sycamore Green - *Charlotte, NC*



Centro Place - *Tampa, FL*

CityView - *Orlando, FL*

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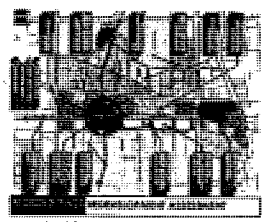
## Master Development

- 11 % of Portfolio / Pipeline (3 current projects)
- Catalytic neighborhood revitalization efforts
- Public/Private Partnerships
- Often multiple-phases with mixed-uses

Central Park Village - *Tampa, FL*



Bedford Pines - *Atlanta, GA*

Parkside - *Washington, DC*

First Ward - *Charlotte, NC*

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# BACDC
# Project Profiles

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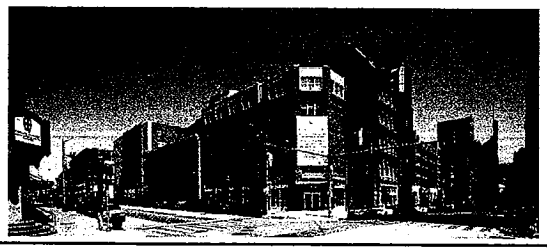
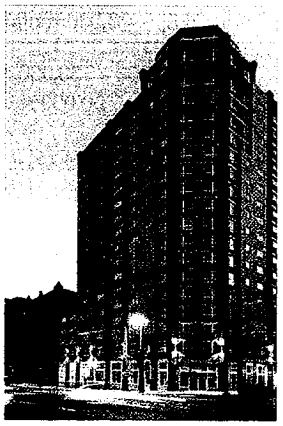
## Centerpoint Mixed-Use Development *Baltimore, MD*

- $100 million revitalization of a full block of Downtown Baltimore's Westside
- Preservation of 9 historic buildings and construction of 3 new buildings
- 392 new residential units, 35,000 sf of new retail, a new parking garage, permanent job creation and a renovated theater





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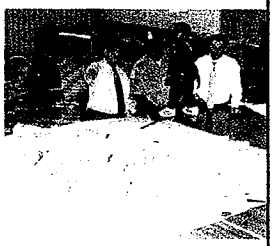
## Parkside Mixed-Use Development

*Washington, DC*

- 15 acre, 3 million square foot master planned mixed-use/mixed-income transit-oriented development with
  - 1,500 – 2,000 rental and for-sale residential units
  - 500,000 – 750,000 square feet of office space
  - 30,000 – 50,000 square feet of retail space
  - New park
  - New public charter school for public policy
  - New pedestrian bridge that links to the subway station
- Consensus based community planning process
- Smart Growth Alliance Program Recognition Award; LEED ND Pilot Candidate



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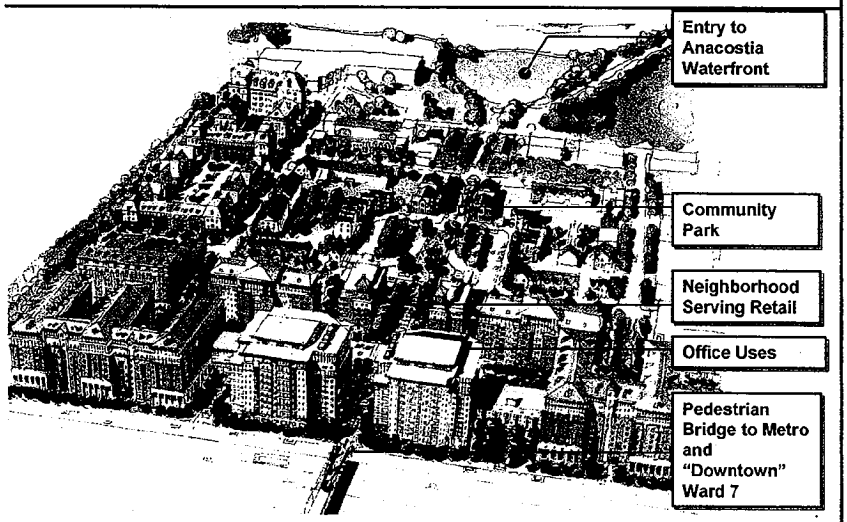
## Parkside Mixed-Use Development

*Washington, DC*

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## Washington View

*Washington, DC*

- Redevelopment of severely distressed 22 acre neighborhood;
- Master planned community
- 495 mixed-income townhomes, condominiums and apartments

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## Courts of Camp Springs

*Suitland, MD*

- Substantial rehabilitation of 414 unit distressed apartment community
- Construction of 3,000 sq. ft. stand alone Community Center and Leasing Office
- Total Development Cost $45 Million
  - 90 % of units affordable at 60% AMI
  - 10 % Market Rate

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## Cedar Heights

*Washington, DC*

- Acquisition/Rehabilitation of a 134 unit rental community
- 100% affordable to families who earn 50% to 60% of local AMI
- Project costs $16 Million
- 9% Low-Income Tax Credits, HOME funds & conventional 1st mortgage

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# Victory Square

*Washington, DC*

- 98 unit independent Senior rental community
- 100% Affordable @ 60% AMI
- New Construction, 4-Story Stick-build
- Designed to meet Enterprise Communities Green Building standards
- Total Cost: $18 Million
- Construction Start – October 2009

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## Note 6 – Outstanding Loans and Leases

Outstanding loans and leases at December 31, 2008 and 2007 were:

| (Dollars in millions) | December 31 2008 | 2007 |
|---|---|---|
| **Consumer** | | |
| Residential mortgage | $247,999 | $274,949 |
| Home equity | 152,547 | 114,820 |
| Discontinued real estate [1] | 19,981 | n/a |
| Credit card – domestic | 64,128 | 65,774 |
| Credit card – foreign | 17,146 | 14,950 |
| Direct/Indirect consumer [2] | 83,436 | 76,538 |
| Other consumer [3] | 3,442 | 4,170 |
| **Total consumer** | 588,679 | 551,201 |
| **Commercial** | | |
| Commercial – domestic [4] | 219,233 | 208,297 |
| Commercial real estate [5] | 64,701 | 61,298 |
| Commercial lease financing | 22,400 | 22,582 |
| Commercial – foreign | 31,020 | 28,376 |
| Total commercial loans | 337,354 | 320,553 |
| Commercial loans measured at fair value [6] | 5,413 | 4,590 |
| **Total commercial** | 342,767 | 325,143 |
| **Total loans and leases** | $931,446 | $876,344 |

[1] Includes $18.2 billion of pay option loans and $1.8 billion of subprime loans obtained as part of the acquisition of Countrywide. The Corporation no longer originates these products.
[2] Includes foreign consumer loans of $1.8 billion and $3.4 billion at December 31, 2008 and 2007.
[3] Includes consumer finance loans of $2.6 billion and $3.0 billion, and other foreign consumer loans of $618 million and $829 million at December 31, 2008 and 2007.
[4] Includes small business commercial – domestic loans, primarily card-related, of $19.1 billion and $19.3 billion at December 31, 2008 and 2007.
[5] Includes domestic commercial real estate loans of $63.7 billion and $60.2 billion, and foreign commercial real estate loans of $979 million and $1.1 billion at December 31, 2008 and 2007.
[6] Certain commercial loans are measured at fair value in accordance with SFAS 159 and include commercial – domestic loans of $3.5 billion and $3.5 billion, commercial – foreign loans of $1.7 billion and $790 million, and commercial real estate loans of $203 million and $304 million at December 31, 2008 and 2007. See *Note 19 – Fair Value Disclosures* to the Consolidated Financial Statements for additional discussion of fair value for certain financial instruments.
n/a = not applicable

The Corporation mitigates a portion of its credit risk in the residential mortgage portfolio through synthetic securitizations which are cash collateralized and provide mezzanine risk protection which will reimburse the Corporation in the event that losses exceed 10 bps of the original pool balance. As of December 31, 2008 and 2007, $109.3 billion and $140.5 billion of mortgage loans were protected by these agreements. As of December 31, 2008, $146 million of credit and other related costs recognized in 2008 are reimbursable by these structures. In addition, the Corporation has entered into credit protection agreements with government-sponsored enterprises on $9.6 billion and $32.9 billion as of December 31, 2008 and 2007, providing full protection on conforming residential mortgage loans that become severely delinquent. These structures provided risk mitigation for approximately 48 percent and 63 percent of the residential mortgage portfolio at December 31, 2008 and 2007.

### Nonperforming Loans and Leases

The following table presents the recorded loan amounts for commercial loans, without consideration for the specific component of the allowance for loan and lease losses, which were considered individually impaired in accordance with SFAS 114 at December 31, 2008 and 2007. SFAS 114 defines impairment to include performing loans which had previously been accounted for as a troubled debt restructuring and excludes all commercial leases.

**Impaired Loans**

| (Dollars in millions) | December 31 2008 | 2007 |
|---|---|---|
| **Commercial** | | |
| Commercial – domestic [1] | $2,257 | $1,018 |
| Commercial real estate | 3,906 | 1,099 |
| Commercial – foreign | 290 | 19 |
| **Total impaired loans [2]** | $6,453 | $2,136 |

[1] Includes small business commercial – domestic loans of $205 million and $152 million at December 31, 2008 and 2007.
[2] Includes performing commercial troubled debt restructurings of $13 million and $44 million at December 31, 2008 and 2007.

Impaired loans include loans that have been modified in troubled debt restructurings where concessions to borrowers who experienced financial difficulties have been granted. Troubled debt restructurings typically result from the Corporation's loss mitigation activities and could include rate reductions, payment extensions and principal forgiveness. Troubled debt restructurings on commercial loans totaled $57 million and $74 million at December 31, 2008 and 2007, of which $44 million and $30 million were classified as nonperforming.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001498

## Table XII Selected Quarterly Financial Data

| (Dollars in millions, except per share information) | 2008 Quarters | | | | 2007 Quarters | | | |
|---|---|---|---|---|---|---|---|---|
| | Fourth | Third | Second | First | Fourth | Third | Second | First |
| **Income statement** | | | | | | | | |
| Net interest income | $ 13,106 | $ 11,642 | $ 10,621 | $ 9,991 | $ 9,165 | $ 8,617 | $ 8,389 | $ 8,270 |
| Noninterest income | 2,574 | 7,979 | 9,789 | 7,080 | 3,639 | 7,480 | 11,281 | 9,992 |
| Total revenue, net of interest expense | 15,680 | 19,621 | 20,410 | 17,071 | 12,804 | 16,097 | 19,670 | 18,262 |
| Provision for credit losses | 8,535 | 6,450 | 5,830 | 6,010 | 3,310 | 2,030 | 1,810 | 1,235 |
| Noninterest expense, before merger and restructuring charges | 10,641 | 11,413 | 9,447 | 9,093 | 10,269 | 8,627 | 9,125 | 9,093 |
| Merger and restructuring charges | 306 | 247 | 212 | 170 | 140 | 84 | 75 | 111 |
| Income (loss) before income taxes | (3,802) | 1,511 | 4,921 | 1,798 | (915) | 5,356 | 8,660 | 7,823 |
| Income tax expense (benefit) | (2,013) | 334 | 1,511 | 588 | (1,183) | 1,658 | 2,899 | 2,568 |
| Net income (loss) | $ (1,789) | $ 1,177 | $ 3,410 | $ 1,210 | $ 268 | $ 3,698 | $ 5,761 | $ 5,255 |
| Average common shares issued and outstanding (in thousands) | 4,957,049 | 4,543,963 | 4,435,719 | 4,427,823 | 4,421,554 | 4,420,616 | 4,419,246 | 4,432,664 |
| Average diluted common shares issued and outstanding (in thousands) | 4,957,049 | 4,563,508 | 4,457,193 | 4,461,201 | 4,470,108 | 4,475,917 | 4,476,799 | 4,497,028 |
| **Performance ratios** | | | | | | | | |
| Return on average assets | (0.37)% | 0.25 % | 0.78 % | 0.28 % | 0.06 % | 0.93 % | 1.48 % | 1.40 % |
| Return on average common shareholders' equity | (6.68) | 1.97 | 9.25 | 2.90 | 0.60 | 11.02 | 17.55 | 16.16 |
| Return on average tangible shareholders' equity [1] | (8.28) | 6.24 | 18.54 | 7.26 | 1.90 | 25.58 | 39.22 | 36.29 |
| Total ending equity to total ending assets | 9.74 | 8.79 | 9.48 | 9.00 | 8.56 | 8.77 | 8.85 | 8.98 |
| Total average equity to total average assets | 9.06 | 8.73 | 9.20 | 8.77 | 8.32 | 8.51 | 8.55 | 8.78 |
| Dividend payout | n/m | n/m | 88.67 | n/m | n/m | 77.97 | 43.60 | 48.02 |
| **Per common share data** | | | | | | | | |
| Earnings (loss) | $ (0.48) | $ 0.15 | $ 0.73 | $ 0.23 | $ 0.05 | $ 0.83 | $ 1.29 | $ 1.18 |
| Diluted earnings (loss) | (0.48) | 0.15 | 0.72 | 0.23 | 0.05 | 0.82 | 1.28 | 1.16 |
| Dividends paid | 0.32 | 0.64 | 0.64 | 0.64 | 0.64 | 0.64 | 0.56 | 0.56 |
| Book value | 27.77 | 30.01 | 31.11 | 31.22 | 32.09 | 30.45 | 29.95 | 29.74 |
| **Market price per share of common stock** | | | | | | | | |
| Closing | $ 14.08 | $ 35.00 | $ 23.87 | $ 37.91 | $ 41.26 | $ 50.27 | $ 48.89 | $ 51.02 |
| High closing | 38.13 | 37.48 | 40.86 | 45.03 | 52.71 | 51.87 | 51.82 | 54.05 |
| Low closing | 11.25 | 18.52 | 23.87 | 35.31 | 41.10 | 47.00 | 48.80 | 49.46 |
| **Market capitalization** | $ 70,645 | $ 159,672 | $ 106,292 | $ 168,806 | $ 183,107 | $ 223,041 | $ 216,922 | $ 226,481 |
| **Average balance sheet** | | | | | | | | |
| Total loans and leases | $ 941,563 | $ 946,914 | $ 878,639 | $ 875,661 | $ 868,119 | $ 780,516 | $ 740,199 | $ 714,042 |
| Total assets | 1,948,854 | 1,905,691 | 1,754,613 | 1,764,927 | 1,742,467 | 1,580,565 | 1,561,649 | 1,521,418 |
| Total deposits | 892,141 | 857,845 | 786,002 | 787,623 | 781,625 | 702,481 | 697,035 | 686,704 |
| Long-term debt | 255,709 | 264,934 | 205,194 | 198,463 | 196,444 | 175,265 | 158,500 | 148,627 |
| Common shareholders' equity | 142,535 | 142,303 | 140,243 | 141,456 | 141,085 | 131,606 | 130,700 | 130,737 |
| Total shareholders' equity | 176,566 | 166,454 | 161,428 | 154,728 | 144,924 | 134,487 | 133,551 | 133,588 |
| **Asset quality [2]** | | | | | | | | |
| Allowance for credit losses [3] | $ 23,492 | $ 20,773 | $ 17,637 | $ 15,398 | $ 12,106 | $ 9,927 | $ 9,436 | $ 9,106 |
| Nonperforming assets [4] | 18,232 | 13,576 | 9,749 | 7,827 | 5,948 | 3,372 | 2,392 | 2,059 |
| Allowance for loan and lease losses as a percentage of total loans and leases outstanding [5] | 2.49 % | 2.17 % | 1.98 % | 1.71 % | 1.33 % | 1.21 % | 1.20 % | 1.21 % |
| Allowance for loan and lease losses as a percentage of total nonperforming loans and leases [5] | 141 | 173 | 187 | 203 | 207 | 300 | 397 | 443 |
| Net charge-offs | $ 5,541 | $ 4,356 | $ 3,619 | $ 2,715 | $ 1,985 | $ 1,573 | $ 1,495 | $ 1,427 |
| Annualized net charge-offs as a percentage of average loans and leases outstanding [5] | 2.36 % | 1.84 % | 1.67 % | 1.25 % | 0.91 % | 0.80 % | 0.81 % | 0.81 % |
| Nonperforming loans and leases as a percentage of total loans and leases outstanding [5] | 1.77 | 1.25 | 1.06 | 0.84 | 0.64 | 0.40 | 0.30 | 0.27 |
| Nonperforming assets as a percentage of total loans, leases and foreclosed properties [4, 5] | 1.96 | 1.45 | 1.13 | 0.90 | 0.68 | 0.43 | 0.32 | 0.29 |
| Ratio of the allowance for loan and lease losses at period end to annualized net charge-offs | 1.05 | 1.17 | 1.18 | 1.36 | 1.47 | 1.53 | 1.51 | 1.51 |
| **Capital ratios (period end)** | | | | | | | | |
| Risk-based capital: | | | | | | | | |
| Tier 1 | 9.15 % | 7.55 % | 8.25 % | 7.51 % | 6.87 % | 8.22 % | 8.52 % | 8.57 % |
| Total | 13.00 | 11.54 | 12.60 | 11.71 | 11.02 | 11.86 | 12.11 | 11.94 |
| Tier 1 Leverage | 6.44 | 5.51 | 6.07 | 5.59 | 5.04 | 6.20 | 6.33 | 6.25 |

(1) Tangible shareholders' equity is a non-GAAP measure. For additional information on ROTE and a corresponding reconciliation of tangible shareholders' equity to a GAAP financial measure, see Supplemental Financial Data beginning on page 29.
(2) We account for acquired impaired loans in accordance with SOP 03-3. For more information on the impact of SOP 03-3 on asset quality, see Consumer Portfolio Credit Risk Management beginning on page 52.
(3) Includes the allowance for loan and lease losses, and the reserve for unfunded lending commitments.
(4) Balances and ratios do not include nonperforming LHFS and nonperforming AFS debt securities.
(5) Balances and ratios do not include loans measured at fair value in accordance with SFAS 159.
n/m = not meaningful



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001499

## Table IV Nonperforming Assets [1, 2]

| (Dollars in millions) | December 31 2008 | 2007 | 2006 | 2005 | 2004 |
|---|---|---|---|---|---|
| **Consumer** | | | | | |
| Residential mortgage | **$ 7,044** | $1,999 | $ 660 | $ 570 | $ 554 |
| Home equity | **2,670** | 1,340 | 289 | 151 | 94 |
| Discontinued real estate | **77** | n/a | n/a | n/a | n/a |
| Direct/Indirect consumer | **26** | 8 | 4 | 3 | 5 |
| Other consumer | **91** | 95 | 77 | 61 | 85 |
| **Total consumer [3]** | **9,908** | 3,442 | 1,030 | 785 | 738 |
| **Commercial** | | | | | |
| Commercial – domestic [4] | **2,040** | 852 | 494 | 550 | 847 |
| Commercial real estate | **3,906** | 1,099 | 118 | 49 | 87 |
| Commercial lease financing | **56** | 33 | 42 | 62 | 266 |
| Commercial – foreign | **290** | 19 | 13 | 34 | 267 |
| | **6,292** | 2,003 | 667 | 695 | 1,467 |
| Small business commercial – domestic | **205** | 152 | 90 | 31 | 8 |
| **Total commercial [5]** | **6,497** | 2,155 | 757 | 726 | 1,475 |
| **Total nonperforming loans and leases** | **16,405** | 5,597 | 1,787 | 1,511 | 2,213 |
| Foreclosed properties | **1,827** | 351 | 69 | 92 | 102 |
| **Total nonperforming assets** | **$18,232** | $5,948 | $1,856 | $1,603 | $2,315 |

(1) At December 31, 2008, balances did not include nonperforming derivatives of $512 million. At December 31, 2008 and 2007 balances did not include nonperforming AFS debt securities of $291 million and $180 million. At December 31, 2004, balances did not include $140 million of nonperforming securities primarily associated with the Fleet acquisition. In addition, balances did not include nonperforming LHFS of $1.3 billion, $188 million, $80 million, $69 million, and $151 million at December 31, 2008, 2007, 2006, 2005, and 2004, respectively.

(2) Balances do not include loans accounted for in accordance with SOP 03-3 even though the customer may be contractually past due. Loans accounted for in accordance with SOP 03-3 were written down to fair value upon acquisition and accrete interest income over the remaining life of the loan.

(3) In 2008, $512 million in interest income was estimated to be contractually due on nonperforming consumer loans and leases classified as nonperforming at December 31, 2008 provided that these loans and leases had been paid according to their terms and conditions, including troubled debt restructured loans of which $387 million were performing at December 31, 2008 and not included in the table above. Approximately $124 million of the estimated $512 million in contractual interest was received and included in net income for 2008.

(4) Excludes small business commercial – domestic loans.

(5) In 2008, $260 million in interest income was estimated to be contractually due on nonperforming commercial loans and leases classified as nonperforming at December 31, 2008, including troubled debt restructured loans of which $13 million were performing at December 31, 2008 and not included in the table above. Approximately $84 million of the estimated $260 million in contractual interest was received and included in net income for 2008.

n/a = not applicable



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001500

# Consolidated Balance Sheet

| (Dollars in millions) | December 31 2008 | 2007 |
|---|---|---|
| **Assets** | | |
| Cash and cash equivalents | $ 32,857 | $ 42,531 |
| Time deposits placed and other short-term investments | 9,570 | 11,773 |
| Federal funds sold and securities purchased under agreements to resell (includes **$2,330** and $2,578 measured at fair value and **$82,099** and $128,887 pledged as collateral) | 82,478 | 129,552 |
| Trading account assets (includes **$69,348** and $88,745 pledged as collateral) | 159,522 | 162,064 |
| Derivative assets | 62,252 | 34,662 |
| Debt securities: | | |
| Available-for-sale (includes **$158,939** and $107,440 pledged as collateral) | 276,904 | 213,330 |
| Held-to-maturity, at cost (fair value – **$685** and $726) | 685 | 726 |
| Total debt securities | 277,589 | 214,056 |
| Loans and leases (includes **$5,413** and $4,590 measured at fair value and **$166,891** and $115,285 pledged as collateral) | 931,446 | 876,344 |
| Allowance for loan and lease losses | (23,071) | (11,588) |
| Loans and leases, net of allowance | 908,375 | 864,756 |
| Premises and equipment, net | 13,161 | 11,240 |
| Mortgage servicing rights (includes **$12,733** and $3,053 measured at fair value) | 13,056 | 3,347 |
| Goodwill | 81,934 | 77,530 |
| Intangible assets | 8,535 | 10,296 |
| Loans held-for-sale (includes **$18,964** and $15,765 measured at fair value) | 31,454 | 34,424 |
| Other assets (includes **$29,906** and $25,323 measured at fair value) | 137,160 | 119,515 |
| **Total assets** | $1,817,943 | $1,715,746 |
| **Liabilities** | | |
| Deposits in domestic offices: | | |
| Noninterest-bearing | $ 213,994 | $ 188,466 |
| Interest-bearing (includes **$1,717** and $2,000 measured at fair value) | 576,938 | 501,882 |
| Deposits in foreign offices: | | |
| Noninterest-bearing | 4,004 | 3,761 |
| Interest-bearing | 88,061 | 111,068 |
| Total deposits | 882,997 | 805,177 |
| Federal funds purchased and securities sold under agreements to repurchase | 206,598 | 221,435 |
| Trading account liabilities | 57,287 | 77,342 |
| Derivative liabilities | 30,709 | 22,423 |
| Commercial paper and other short-term borrowings | 158,056 | 191,089 |
| Accrued expenses and other liabilities (includes **$1,978** and $660 measured at fair value and **$421** and $518 of reserve for unfunded lending commitments) | 36,952 | 53,969 |
| Long-term debt | 268,292 | 197,508 |
| **Total liabilities** | 1,640,891 | 1,568,943 |
| Commitments and contingencies (*Note 9 – Variable Interest Entities* and *Note 13 – Commitments and Contingencies*) | | |
| **Shareholders' equity** | | |
| Preferred stock, $0.01 par value; authorized – 100,000,000 shares; issued and outstanding – **8,202,042** and 185,067 shares | 37,701 | 4,409 |
| Common stock and additional paid-in capital, $0.01 par value; authorized – **10,000,000,000** and 7,500,000,000 shares; issued and outstanding – **5,017,435,592** and 4,437,885,419 shares | 76,766 | 60,328 |
| Retained earnings | 73,823 | 81,393 |
| Accumulated other comprehensive income (loss) | (10,825) | 1,129 |
| Other | (413) | (456) |
| **Total shareholders' equity** | 177,052 | 146,803 |
| **Total liabilities and shareholders' equity** | $1,817,943 | $1,715,746 |

See accompanying Notes to Consolidated Financial Statements.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001501

neighborhoods. These developments usually promise to be the catalyst for further investment and ongoing revitalization. Often these projects fit into a community's master plan for revitalization.

- **Focus on economic integration.** Projects we fund must both attract market-rate housing to areas where it's lacking and preserve affordability for lower- or fixed-income residents.
- **Economically sustainable.** In order to foster a successful, sustainable business, we choose projects that will prove profitable over the long term.



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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001502

## Doggett, Rosalyn

**From:** Maurice Perry [maurice.perry@bankofamerica.com]
**Sent:** Tuesday, March 17, 2009 3:36 PM
**To:** Doggett, Rosalyn
**Cc:** Omar A. Karim; Washington, Joel R.; Montague, Joshua W.
**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
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C: 202.329.7253
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**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 

BANNEKER VENTURES, LLC

**MEETING TO DISCUSS THE JAZZ @ FLORIDA AVENUE**

**TUESDAY, MARCH 17, 2008**

**4:00 PM**

**AGENDA**

1. Update on Partnership

2. Other Relevant Team Members

   - Project Architect – Torti Gallas and Partners, Inc.
   - Structural Engineering Consultant – Mueser Rutledge
   - Land Use Counsel – Holland + Knight LLP

3. Business Terms with WMATA

   - 20% of the units affordable at 50% AMI
   - $300,000 annual payment to WMATA beginning at stabilization;
   - $200,000 pre-stabilization payment;
   - $100,000 deposit at execution of JDA;
   - 12% share of net revenue associated with sale of refinance of project

4. Next Steps
   - Schedule for JDA and Lease Approval

1.) Building across WMATA + NON-WMATA Lots? → Retain issues.
2.) WMATA Right to Approve CM?
   - Experience building over tunnels
3.) JDS Checklist
4.) LOI → During JDA term (Requirement)?

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

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

**Financial Model**

**as of 3/16/09**

FOIA CONFIDENTIAL TREATMENT REQUESTED

## Summary Data

| | | |
|---|---|---|
| Site Area | SF | 28,892 |
| Possible Project GSF | 4.50 FAR | 135,414 |
| Actual Project GSF | 4.10 FAR | 118,457 |
| Retail GSF | | 14,000 |
| Retail NSF | 92% efficiency | 12,880 |
| Residential Gross SF (including loading) | 100% | 104,457 |
| Less - Leasing, lobbies, ramps, etc. | | 10,000 |
| Residential Gross SF (residential flrs only) | | 94,457 |
| Residential Net SF (residential flrs only) | 83% efficiency | 78,399 |
| Residential Net SF - Market | 80% | 62,720 |
| Residential Net SF - Affordable | 20% | 15,680 |
| Total No. of Residential Units | 850 SF avg | 92 |
| Market Rate Units | 80% | 74 |
| Affordable Units | 20% | 18 |
| Below Grade Parking (Resid Parking) | 450.0 SF | 45 |
| Below Grade Parking (Dedicated Retail Parking) | | 15 |
| Total Parking Spaces | | 60 |

**Program % Breakdown**

| | |
|---|---|
| Residential | 77.14% |
| Retail | 10.34% |

**Lease Payments**

| | |
|---|---|
| WMATA - Year 1 of Stabilization | $ 300,000 |

**Vacancy and Bad Debt**

| | |
|---|---|
| Residential | 9% |
| Retail | 5% |

**% of Project Revenue**

| | |
|---|---|
| Residential | 89% |
| Retail | 11% |

**Residential Per SF revenues**

| | |
|---|---|
| Market | $ 2.90 |
| Affordable Units (at 60% of AMI) | $ 1.15 |

| | |
|---|---|
| WMATA Annual Lease Payment - Year 1 | $ 300,000 |
| Security Deposit | 100,000 |
| Pre-Lease Payment | 200,000 |

| | |
|---|---|
| Gap financing [illegible] affordable unit | $60,000 |

## Sources and Uses of Funds

| Sources | Residential | Retail | Total |
|---|---|---|---|
| Debt | $ 18,714,000 | $ - | $ 18,714,000 |
| Gap Financing - Affordable Units | 1,106,816 | | $ 1,106,816 |
| Private Equity - LIHTC | 1,116,299 | - | $ 1,116,299 |
| Private Equity - Developer | 1,400,439 | 3,722,266 | $ 5,122,706 |
| **Total Sources of Funds** | **$ 22,337,554** | **$ 3,722,266** | **$ 26,059,821** |

| Uses | Residential | Retail | Total |
|---|---|---|---|
| Land | $ 308,557 | $ 41,355 | $ 349,911 |
| Hard Costs | 16,825,775 | 2,104,159 | 18,929,935 |
| Transaction/Leasing Fees | 256,102 | 34,324 | 290,426 |
| Architectural/MEP, Structural Services | 615,854 | 82,541 | 698,394 |
| Marketing | 231,417 | 31,016 | 262,433 |
| General and Administrative | 1,153,230 | 254,563 | 1,407,793 |
| Financing Costs | 1,618,932 | 28,054 | 1,646,986 |
| Real Estate Taxes | 171,358 | 22,966 | 194,325 |
| Permit, Utility and Municipal Fees | 263,748 | 35,349 | 299,097 |
| Legal and Accounting | 424,265 | 56,863 | 481,128 |
| Retail | - | 968,310 | 968,310 |
| Insurance | 12,046 | 1,614 | 13,660 |
| Miscellaneous Expenses | 456,269 | 61,152 | 517,422 |
| **Total Uses of Funds** | **$ 22,337,554** | **$ 3,722,266** | **$ 26,059,821** |

## Summary of Stabilized Returns at Sale

| 2015 | Residential | Retail | Total |
|---|---|---|---|
| Effective Gross Income | $ 2,578,285 | $ 304,380 | $ 2,882,665 |
| Expenses | $ 781,833 | $ 225,260 | $ 1,007,093 |
| **Net Operating Income** | **$ 1,796,452** | **$ 79,120** | **$ 1,875,572** |
| Less | | | |
| Reserves | $ 25,197 | $ 32,782 | $ 57,979 |
| Debt Service | $ 1,448,707 | - | $ 1,448,707 |
| Stabilized Net Cash Flow 2015 | **$ 322,549** | **$ 46,338** | **$ 368,887** |

| | | |
|---|---|---|
| **Avail Proceeds before WMATA & Returns** | | **7,865,339** |
| WMATA Share of Avail Profit | 12% **avail profit** | 943,841 |
| Net Proceeds after WMATA share paid | | 6,921,499 |
| **Equity Yield Target** | 17.00% **IRR** | 6,689,456 |
| **Actual Equity Yield** | **19.70% IRR** | |
| **Potential [illegible] ceeds avail after IRR met** | | [illegible]2,043 |

WMATA-INV 001506

| | PROJECT COSTS | | | | Residential | Retail |
|---|---|---|---|---|---|---|
| 1 | .ND COSTS | | | | | |
| | WMATA Parcels | | | | | |
| | WMATA - Option Fee | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | WMATA - Security Deposit | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | Pre-Development Lease Payments | | 200,000.00 | | 154,278.29 | 20,677.33 |
| | **TOTAL LAND COSTS** | | | **400,000.00** | **308,556.57** | **41,354.66** |
| 2 | **HARD COSTS** | | | | | |
| | Residential Units | $130 SF | 13,579,436.00 | | 13,579,436.00 | 0.00 |
| | Retail Space | $100 SF | 1,400,000.00 | | 0.00 | 1,400,000.00 |
| | Below-grade parking (Residential) | $30,000 per space | 1,350,000.00 | | 1,350,000.00 | 0 |
| | Below-grade parking (Retail) | $30,000 per space | 450,000.00 | | 0.00 | 450,000.00 |
| | Infrastructure Costs | | 500,000.00 | | 385,695.72 | 51,693.33 |
| | Index to start Q3/2010 | 4% | 1,094,364.28 | | 844,183.23 | 113,142.66 |
| | Contingency | 5% | 863,971.80 | | 666,460.45 | 89,323.15 |
| | **TOTAL HARD COSTS** | | | **19,237,772.08** | **16,825,775.40** | **2,104,159.14** |
| | **SOFT COSTS** | | | | | |
| 3 | **Transaction/Leasing Fees** | | | | | |
| | .e Insurance - Lender's Policy | $0.60 per $1000 of loan | 32,000.00 | | 24,684.53 | 3,308.37 |
| | Surveys | | 20,000.00 | | 15,427.83 | 2,067.73 |
| | Legal - Term Sheet and Joint Development Agreement | | 150,000.00 | | 115,708.72 | 15,508.00 |
| | Legal - Partnership Documents | | 25,000.00 | | 19,284.79 | 2,584.67 |
| | Appraisal Fee | | 30,000.00 | | 23,141.74 | 3,101.60 |
| | Geotechnical & Environmental | | 75,000.00 | | 57,854.36 | 7,754.00 |
| | Total Transaction/Leasing Fees | | | **332,000.00** | **256,101.96** | **34,324.37** |
| 4 | **Architectural/MEP, Structural Services** | | | | | |
| | A/E Fees | 3.00% hard costs | 577,133.16 | | 445,195.58 | 59,667.87 |
| | Structural Services | 1.00% hard costs | 192,377.72 | | 148,398.53 | 19,889.29 |
| | Reimburseables | 5.00% A/E fees | 28,856.66 | | 22,259.78 | 2,983.39 |
| | Total Architectural/MEP, Structural Services | | | **798,367.54** | **615,853.88** | **82,540.55** |
| 5 | **Marketing** | | | | | |
| | Marketing Center | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Marketing Materials | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Media (newspapers, etc.) | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Signage | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | ecial Events | | 40,000.00 | | 30,855.66 | 4,135.47 |
| | .odel | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Website | | 10,000.00 | | 7,713.91 | 1,033.87 |
| | Total Marketing | | | **300,000.00** | **231,417.43** | **31,016.00** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 6 | **General and Administrative** | | | | | | |
| | /elopment Management | $30,000 mo. | 24 mos. | 720,000.00 | | 555,401.83 | 74,438.39 |
| | Project Management/Administration | $10,000 mo. | 30 mos. | 300,000.00 | | 231,417.43 | 31,016.00 |
| | Construction Management | $25,000 mo. | 18 mos. | 450,000.00 | | 347,126.15 | 46,523.99 |
| | Consulting Fees - Retail | | | 100,000.00 | | 0.00 | 100,000.00 |
| | Security | | | 25,000.00 | | 19,284.79 | 2,584.67 |
| | Total General and Administrative | | | | **1,595,000.00** | **1,153,230.20** | **254,563.04** |
| 7 | **Financing Costs** | | | | | | |
| | Construction Period Interest | | | 877,687.31 | | 877,687.31 | 0.00 |
| | DCHFA Application Fee | 0.10% | | 18,714.00 | | 18,714.00 | 0.00 |
| | DCHFA Construction Monitoring Fee | 0.40% | | 74,856.00 | | 74,856.00 | 0.00 |
| | DCHFA Financing Fee | 0.40% | | 74,856.00 | | 74,856.00 | 0.00 |
| | DCHFA Tax Credit Allocation Fee | 0.10% | | 18,714.00 | | 18,714.00 | 0.00 |
| | DCHFA Internal, External Legal & Consulting | | | 100,000.00 | | 100,000.00 | 0.00 |
| | Administrative Agent Fee | | | 150,000.00 | | 150,000.00 | 0.00 |
| | Credit Enhancement Fee | 0.25% | | 46,785.00 | | 46,785.00 | 0.00 |
| | Lender Inspection Fees | $2,000 mo. | 24 mos. | 48,000.00 | | 48,000.00 | 0.00 |
| | Transfer & Record Taxes (Construct Loan) | 1.45% | | 271,353.00 | | 209,319.38 | 28,054.28 |
| | Total Financing Costs | | | | **1,680,965.31** | **1,618,931.69** | **28,054.28** |
| 8 | **al Estate Taxes** | | | | | | |
| | Land ($1.85 per $100) | 18 mos. | | 222,141.80 | | | |
| | Total Real Estate Taxes | | | | **222,141.80** | **171,358.28** | **22,966.50** |
| 9 | **Permit, Utility and Municipal Fees** | | | | | | |
| | DCRA and WASA Permits | 2% hard costs | | 241,912.10 | | 186,608.93 | 25,010.48 |
| | DDOT Permits | | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | Total Permit, Utility and Municipal Fees | | | | **341,912.10** | **263,748.07** | **35,349.15** |
| 10 | **Legal and Accounting** | | | | | | |
| | Legal - Financing | | | 250,000.00 | | 192,847.86 | 25,846.66 |
| | Legal - Zoning | | | 50,000.00 | | 38,569.57 | 5,169.33 |
| | Legal - General/Retail Leases, etc. | | | 150,000.00 | | 115,708.72 | 15,508.00 |
| | Accounting | | | 100,000.00 | | 77,139.14 | 10,338.67 |
| | Total Legal and Accounting: | | | | **550,000.00** | **424,265.29** | **56,862.66** |
| 11 | **Retail** | | | | | | |
| | Tenant Allowance | $60 per SF | | 772,800.00 | | 0.00 | 772,800.00 |
| | Commissions | 6.00% | | 195,509.58 | | 0.00 | 195,509.58 |
| | Total Retail | | | | **968,309.58** | **0.00** | **968,309.58** |
| 12 | **Insurance** | | | | | | |
| | Builder's Risk (Hard Costs) | $0.06 per $100 | | 11,542.66 | | 8,903.91 | 1,193.36 |
| | Builder's Risk (Soft Costs) | $0.06 per $100 | | 4,073.22 | | 3,142.05 | 421.12 |

| | | | | | |
|---|---|---|---|---|---|
| Total Insurance | | | **15,615.88** | **12,045.96** | **1,614.47** |
| .13 **ɜcellaneous Expenses** | | | | | |
| Lease-up Reserves | | -224,534.42 | | -173,203.93 | -23,213.86 |
| Testing Expenses | | 150,000.00 | | 115,708.72 | 15,508.00 |
| Third Party Inspections | | 100,000.00 | | 77,139.14 | 10,338.67 |
| Misc Soft Costs & Contingencies | 5% soft costs | 341,488.89 | | 263,421.61 | 35,305.39 |
| Total Miscellaneous Expenses | | | **366,954.47** | **456,269.46** | **61,152.06** |
| **TOTAL SOFT COSTS** | | | **7,171,266.70** | **5,203,222.23** | **1,576,752.65** |
| **TOTAL PROJECT COSTS** | | **26,809,038.78** | | **22,337,554.20** | **3,722,266.44** |

**SUMMARY**

| | | | | |
|---|---|---|---|---|
| Market | | | | 80% |
| # of Units | | | | 74 |
| $ per SF | | | $ | 2.90 |
| | | | | |
| Affordable | | | | 20% |
| # of Units | | | | 18 |
| $ per SF | | | $ | 1.15 |
| | | | | |
| Parking | | | | |
| # of spaces | | | | 45 |
| $ per space | | | $ | 150.00 |
| | | | | |
| **Income** | | | | **Year 1** |
| Market Units | | | $ | 2,182,641 |
| Affordable Units | | | $ | 216,383 |
| Other Income | 2.00% | | $ | 47,980 |
| Parking | | | $ | 81,000 |
| Vacancy | 9.00% | | $ | (227,520) |
| **Total Income** | | | $ | 2,300,484 |
| | | | | |
| **Expenses** | | | | |
| WMATA Land Lease | | | $ | 231,417 |
| Real Estate Taxes (Market) | $2,000 | | $ | 147,575 |
| Real Estate Taxes (Affordable) | $1,000 | | $ | 18,447 |
| Property Insurance | $400 | per unit | $ | 36,894 |
| Utilities | $400 | | $ | 36,894 |
| Repairs and Maintenance | $500 | | $ | 46,117 |
| Property Management | 3.00% | gross revenue | $ | 69,015 |
| Payroll | $1,750 | per unit | $ | 161,411 |
| Advertising & Marketing | $600 | | $ | 55,341 |
| Administrative, Painting, Contract Services | $800 | | $ | 73,788 |
| **Total Expenses** | | | $ | 876,899 |
| per unit $ | 9,507 | | | |
| | | | | |
| **NOI** | | | $ | **1,423,585** |
| | | | | |
| Reserves | $250 | | $ | 23,059 |
| | | | | |
| Cash Flow before Debt Service | | | $ | 1,400,527 |
| | | | | |
| Debt Service | | | $ | 1,448,707 |
| | | | | |
| **Net Cash Flow Before Taxes** | | | $ | **(48,180)** |

The Jazz @ Florida Avenue
Residential Proforma

| Year | | | 1<br>2012 | 2<br>2013 | 3<br>2014 | 4<br>2015 | 5<br>2016 | 6<br>2017 | 7<br>2018 | 8<br>2019 | 9<br>2020 | 10<br>2021 | 11<br>2022 | 12<br>2023 | 13<br>2024 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Income** | % of Income | | | | | | | | | | | | | | |
| Market Units | | | $ 2,182,641 | $ 2,269,947 | $ 2,360,745 | $ 2,455,175 | $ 2,553,382 | $ 2,655,517 | $ 2,761,738 | $ 2,872,207 | $ 2,987,095 | $ 3,106,579 | $ 3,230,842 | $ 3,360,076 | $ 3,494,479 |
| Affordable Units | | | $ 216,383 | 221,792 | 227,337 | 233,020 | 238,846 | 244,817 | 250,937 | 257,211 | 263,641 | 270,232 | 276,988 | 283,913 | 291,010 |
| Other Income | 3.00% | | $ 47,980 | 49,900 | 51,896 | 53,972 | 56,130 | 58,376 | 60,711 | 63,139 | 65,665 | 68,291 | 71,023 | 73,864 | 76,818 |
| Parking | | | $ 81,000 | 84,240 | 87,610 | 91,114 | 94,759 | 98,549 | 102,491 | 106,590 | 110,854 | 115,288 | 119,900 | 124,696 | 129,684 |
| Vacancy | 9.00% | | (227,520) | (236,329) | (245,483) | (254,995) | (264,880) | (275,153) | (285,829) | (296,923) | (308,453) | (320,435) | (332,888) | (345,829) | (359,279) |
| Effective Gross Income | | | $ 2,300,484 | $ 2,389,550 | $ 2,482,104 | $ 2,578,285 | $ 2,678,236 | $ 2,782,105 | $ 2,890,048 | $ 3,002,224 | $ 3,118,802 | $ 3,239,956 | $ 3,365,865 | $ 3,496,719 | $ 3,632,712 |
| **Operating Expenses** | Escalation | | | | | | | | | | | | | | |
| WMATA Land Lease | 1.50% * | | $ 231,417 | 234,889 | 238,412 | 241,988 | 245,618 | 249,302 | 253,042 | 256,837 | 260,690 | 264,600 | 272,538 | 280,715 | 289,136 |
| Real Estate Taxes (Market) | 3.00% | | $ 147,575 | 152,003 | 156,563 | 161,260 | 166,098 | 171,080 | 176,213 | 181,499 | 186,944 | 192,553 | 198,329 | 204,279 | 210,407 |
| Real Esate Taxes (Afford) | 3.00% | | $ 18,447 | 19,000 | 19,570 | 20,157 | 20,762 | 21,385 | 22,027 | 22,687 | 23,368 | 24,069 | 24,791 | 25,535 | 26,301 |
| Property Insurance | 3.00% | | $ 36,894 | 38,001 | 39,141 | 40,315 | 41,524 | 42,770 | 44,053 | 45,375 | 46,736 | 48,138 | 49,582 | 51,070 | 52,602 |
| Utilities | 3.00% | | $ 36,894 | 38,001 | 39,141 | 40,315 | 41,524 | 42,770 | 44,053 | 45,375 | 46,736 | 48,138 | 49,582 | 51,070 | 52,602 |
| Repairs and Maintenance | 3.00% | | $ 46,117 | 47,501 | 48,926 | 50,394 | 51,905 | 53,463 | 55,067 | 56,719 | 58,420 | 60,173 | 61,978 | 63,837 | 65,752 |
| Property Management | 3.00% | | $ 69,015 | 71,085 | 73,218 | 75,414 | 77,676 | 80,007 | 82,407 | 84,879 | 87,426 | 90,048 | 92,750 | 95,532 | 98,398 |
| Advertising & Marketing | 3.00% | | $ 55,341 | 57,001 | 58,711 | 60,472 | 62,287 | 64,155 | 66,080 | 68,062 | 70,104 | 72,207 | 74,373 | 76,605 | 78,903 |
| Admin, Painting, Contract Services | 3.00% | | $ 73,788 | 76,001 | 78,281 | 80,630 | 83,049 | 85,540 | 88,106 | 90,750 | 93,472 | 96,276 | 99,165 | 102,139 | 105,204 |
| | | | 715,488 | 736,953 | 759,061 | 781,833 | 805,288 | 829,447 | 854,330 | 879,960 | 906,359 | 933,550 | 961,556 | 990,403 | 1,020,115 |
| **Net Operating Income** | | | $ 1,584,996 | $ 1,652,597 | $ 1,723,043 | $ 1,796,452 | $ 1,872,948 | $ 1,952,659 | $ 2,035,718 | $ 2,122,264 | $ 2,212,444 | $ 2,306,406 | $ 2,404,309 | $ 2,506,316 | $ 2,612,598 |
| **Reserves** | | | 23,059 | 23,750 | 24,463 | 25,197 | 25,953 | 26,731 | 27,533 | 28,359 | 29,210 | 30,086 | 30,989 | 31,919 | 32,876 |
| **Cash Flow Before Debt Service** | | | 1,561,937 | 1,628,847 | 1,698,580 | 1,771,255 | 1,846,995 | 1,925,927 | 2,008,184 | 2,093,905 | 2,183,234 | 2,276,320 | 2,373,320 | 2,474,398 | 2,579,721 |
| **Total Annual Debt Service** | | | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 | 1,448,707 |
| **Before Tax Cash Flow** | | | $ 113,231 | $ 180,140 | $ 249,873 | $ 322,549 | $ 398,288 | $ 477,220 | $ 559,477 | $ 645,198 | $ 734,527 | $ 827,613 | $ 924,613 | $ 1,025,691 | $ 1,131,015 |
| 1st Mortgage Principal Balance | | $ 18,714,000 | $ 18,636,678 | $ 18,553,370 | $ 18,546,922 | $ 18,456,666 | $ 18,442,731 | $ 18,344,410 | $ 18,321,786 | $ 18,214,102 | $ 18,181,390 | $ 18,062,839 | $ 18,018,418 | $ 17,887,251 | $ 17,829,237 |

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

FOIA CONFIDENTIAL TREATMENT REQUESTED

The Jazz @ Florida Avenue
Residential Proforma

| 14<br>2025 | 15<br>2026 |
|---|---|
| $ 3,634,258 | $ 3,779,629 |
| 298,286 | 305,743 |
| 79,891 | 83,087 |
| 134,871 | 140,266 |
| (373,258) | (387,785) |
| $ 3,774,049 | $ 3,920,939 |
| 297,810 | 306,744 |
| 216,720 | 223,221 |
| 27,090 | 27,903 |
| 54,180 | 55,805 |
| 54,180 | 55,805 |
| 67,725 | 69,757 |
| 101,350 | 104,391 |
| 81,270 | 83,708 |
| 108,360 | 111,611 |
| 1,050,718 | 1,082,240 |
| $ 2,723,330 | $ 2,838,699 |
| 33,862 | 34,878 |
| 2,689,468 | 2,803,821 |
| 1,448,707 | 1,448,707 |
| $ 1,240,761 | $ 1,355,114 |
| $ 17,683,425 | $ 17,609,634 |

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

**The Jazz @ Florida Avenue**
**Retail Proforma**

| **Assumptions** | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Rentable S.F. | 12,880 | | | | | | | | | | | |
| Market Space | 7,480 | | | | | | | | | | | |
| Affordable/Non-Profit Space | 5,400 | | | | | | | | | | | |
| Triple Net Lease | | | | | | | | | | | | |
| | **Per S.F.** | **Escalation** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **2020** | **2021** |
| **Operating Income** | | | | | | | | | | | | |
| Retail Tenants - Market | $38.00 | 3% | 284,240 | 292,767 | 301,550 | 310,597 | 319,915 | 329,512 | 339,397 | 349,579 | 360,067 | 370,869 |
| Retail Tenants - Affordable/Non-Profit | $10.00 | 2% | 54,000 | 55,080 | 56,182 | 57,305 | 58,451 | 59,620 | 60,813 | 62,029 | 63,270 | 64,535 |
| Parking | $50.00 | 2% | 9,000 | 9,180 | 9,364 | 9,551 | 9,742 | 9,937 | 10,135 | 10,338 | 10,545 | 10,756 |
| Less: General Vacancy | | 5% | (16,535) | (17,001) | (17,481) | (17,974) | (18,481) | (19,003) | (19,540) | (20,093) | (20,661) | (21,246) |
| Expense Recovery | | | | | | | | | | | | |
| CAM | 3.00 SF | | 38,640 | 39,799 | 40,993 | 42,223 | 43,490 | 44,794 | 46,138 | 47,522 | 48,948 | 50,416 |
| RE Taxes | 8.00 SF | | 103,040 | 106,131 | 109,315 | 112,595 | 115,972 | 119,452 | 123,035 | 126,726 | 130,528 | 134,444 |
| Insurance | 0.40 SF | | 5,152 | 5,307 | 5,466 | 5,630 | 5,799 | 5,973 | 6,152 | 6,336 | 6,526 | 6,722 |
| Administrative | 30.00% | | 8,890 | 9,156 | 9,431 | 9,714 | 10,005 | 10,306 | 10,615 | 10,933 | 11,261 | 11,599 |
| Total Operating Revenue | | | 486,426 | 500,419 | 514,820 | 529,640 | 544,893 | 560,590 | 576,745 | 593,372 | 610,484 | 628,095 |
| **Operating Expenses** | | **Escalation** | | | | | | | | | | |
| CAM | 3.00 SF | 3% | 38,640 | 39,799 | 40,993 | 42,223 | 43,490 | 44,794 | 46,138 | 47,522 | 48,948 | 50,416 |
| RE Taxes | 8.00 SF | 3% | 103,040 | 106,131 | 109,315 | 112,595 | 115,972 | 119,452 | 123,035 | 126,726 | 130,528 | 134,444 |
| Insurance | 0.40 SF | 3% | 5,152 | 5,307 | 5,466 | 5,630 | 5,799 | 5,973 | 6,152 | 6,336 | 6,526 | 6,722 |
| Payroll | 0.25 | 3% | 3,220 | 3,317 | 3,416 | 3,519 | 3,624 | 3,733 | 3,845 | 3,960 | 4,079 | 4,201 |
| Payroll Taxes | 0.04 | 3% | 515 | 531 | 547 | 563 | 580 | 597 | 615 | 634 | 653 | 672 |
| Management Fee (% Total Op Rev) | 4.00% | 3% | 19,457 | 20,041 | 20,642 | 21,261 | 21,899 | 22,556 | 23,233 | 23,930 | 24,648 | 25,387 |
| Leasing Agent Fee | 0.20 | 3% | 2,576 | 2,653 | 2,733 | 2,815 | 2,899 | 2,986 | 3,076 | 3,168 | 3,263 | 3,361 |
| Accounting & Legal Fees | 0.20 | 3% | 2,576 | 2,653 | 2,733 | 2,815 | 2,899 | 2,986 | 3,076 | 3,168 | 3,263 | 3,361 |
| Misc Administrative (Retail) | 0.10 | 3% | 1,288 | 1,327 | 1,366 | 1,407 | 1,450 | 1,493 | 1,538 | 1,584 | 1,632 | 1,681 |
| WMATA Lease | | 1.5% | 31,016 | 31,481 | 31,953 | 32,433 | 32,919 | 33,413 | 33,914 | 34,423 | 34,939 | 35,463 |
| **Total Operating Expenses** | | | 207,480 | 213,239 | 219,164 | 225,260 | 231,531 | 237,983 | 244,622 | 251,452 | 258,479 | 265,709 |
| **Net Operating Income** | | | 278,946 | 287,180 | 295,655 | 304,380 | 313,361 | 322,606 | 332,123 | 341,920 | 352,005 | 362,386 |
| Capital Reserves | | 3.00% | 30,000 | 30,900 | 31,827 | 32,782 | 33,765 | 34,778 | 35,822 | 36,896 | 38,003 | 39,143 |
| **Before Tax Cash Flow** | | | $ 248,946 | $ 256,280 | $ 263,828 | $ 271,598 | $ 279,596 | $ 287,828 | $ 296,302 | $ 305,024 | $ 314,002 | $ 323,243 |

WMATA-INV 001513

## SUPPORTABLE DEBT CALCULATIONS

| | Loan |
|---|---|
| ***Base Residential NOI (net of reserves)*** | 1,561,937 |
| ***Base Retail NOI (net of reserves)*** | 248,946 |
| | 1,810,884 |
| | |
| *DSCR* | 1.25 |
| **Amount Available for Debt Service** | 1,448,707 |
| | |
| **Calculation of Loan Constant** | |
| Amortization Term | 40 |
| Loan Constant | 7.74% |
| | |
| Max Supportable Mortgage | 18,714,000 |
| | |
| Bond Rate | 6.00% |
| DCHFA Fee | 0.40% |
| Trustee Fee | 0.05% |
| FNMA Fee | 0.25% |
| Aggregate Rate | 6.70% |
| | |
| Loan Constant | 7.24% |
| Mortgage Insurance Premium | 0.50% |
| Calculation of Loan Constant | 7.74% |

FOIA CONFIDENTIAL TREATMENT REQUESTED

| NOI Projection | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|---|---|---|---|---|---|---|---|
| Net Operating Income | | | | $ 465,986 | $ 1,357,844 | $ 2,018,699 | $ 2,100,832 | $ 2,186,309 |
| Debt Service | | | | $ 241,451 | $ 1,448,707 | $ 1,448,707 | $ 1,448,707 | $ 1,448,707 |
| Net Cash Flow | | | | $ 224,534 | $ (90,863) | $ 569,992 | $ 652,126 | $ 737,602 |

| IRR Calculation | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|---|---|---|---|---|---|---|---|
| Equity (Cash) | $ (500,000) | $ (1,000,000) | $ (3,622,706) | $ - | $ - | $ - | $ - | $ - |
| Net Cash Flow | - | | | 224,534 | (90,863) | 569,992 | 652,126 | 737,602 |
| Return of Security Deposit to WMATA | | | | | 100,000 | | | |
| Return of Equity (Sale) | | | | | | | | 2,929,315 |
| Net Sales Proceeds | | | | | | | | 7,865,339 |
| Total Paid to All Equity | $ (500,000) | $ (1,000,000) | $ (3,622,706) | $ 224,534 | $ 9,137 | $ 569,992 | $ 652,126 | $ 11,532,256 |

**ACTUAL PROJECT IRR** 19.70%

| Assumed Sale in 2015 | | Amount |
|---|---|---|
| NOI in 2015 | | 2,186,309 |
| Cap Value | 7.25% | 30,156,000 |
| Cost of Sale | 3.00% | (904,680) |
| Gross Sale Proceeds | | 29,251,320 |
| Balance of Loan | | (18,456,666) |
| Net Sales Proceeds | | 10,794,654 |
| Return of Outstanding Equity Plus Cash Flow | | (2,929,315) |
| **Net Sales Proceeds Before Pref and Splits** | | **7,865,339** |

| | | |
|---|---|---|
| WMATA Share | 12% sales proceeds | 943,841 |
| Net Proceeds after WMATA share paid | | **6,921,499** |
| **Targeted IRR** 17% | 2008 equity | 1,000,621 |
| | 2009 equity | 1,565,164 |
| | 2010 equity | 4,319,888 |
| | 2011 equity | -196,218 |
| **Equity Yield Target** | | **6,689,456** |
| **Potential proceeds avail after IRR met** | | **232,043** |

WMATA-INV 001515

FOIA CONFIDENTIAL TREATMENT REQUESTED

**LIHTC Calculation**

| **Qualifying Costs** | | **LIHTC** |
|---|---|---|
| Total Development Cost (Residential Portion) | $ | 22,337,554 |
| Less: | | |
| FF&E | | 500,000 |
| Parking | | 1,350,000 |
| Marketing | | 231,417 |
| Financing Costs | | 1,618,932 |
| Legal and Accounting | | 424,265 |
| Reserves | | 173,204 |
| Total Non-Qualifying Costs | $ | 4,297,818 |
| **Total Eligible Costs** | $ | 18,039,736 |

| **Valuation** | | |
|---|---|---|
| Total Eligible Costs (see above) | $ | 18,039,736 |
| x Factor ( LIHTC - Difficult to Develop Area) | | 130% |
| Total Adjusted Basis | | 23,451,657 |
| x Applicable Fraction | | 20% |
| **Total Qualified Basis** | | **4,690,331** |
| x Annual Tax Rate | | 3.4% |
| Annual Credit | | 159,471 |
| Applicable Period (Years) | | 10 |
| Credit Amount | | 1,594,713 |
| x Equity Proceeds from Sale of Credits @ | | $0.70 |
| **Realized Value to Project** | $ | **1,116,299** |

WMATA-INV 001516

Tax Rate 1.85%

| Address | Value | Assessment | Property Taxes (estimated 09) |
|---|---|---|---|
| 710 Florida Avenue, NW, Square 416, Lot 18 | | 142,970 | 2,645 |
| 716 Florida Avenue, NW, Square 416, Lot 31 | | 4,420,930 | 81,787 |
| Square 392, Lot 45 | | 2,388,620 | 44,189 |
| Square 392, Lot 44 | | 1,052,590 | 19,473 |
| **Total** | **$ -** | **$ 8,005,110** | **$ 148,095** |

FOIA CONFIDENTIAL TREATMENT REQUESTED

| Loan Balance | Month | Monthly Draw | Interest Earnings 2.50% | Interest Cost 7.74% | Net Interest |
|---|---|---|---|---|---|
| **18,714,000** | 0 | 200,000 | - | | |
| 18,514,000 | 1 | 350,000 | 38,988 | 120,721 | 81,734 |
| 18,164,000 | 2 | 500,000 | 38,571 | 120,721 | 82,151 |
| 17,664,000 | 3 | 750,000 | 37,842 | 120,721 | 82,880 |
| 16,914,000 | 4 | 1,000,000 | 36,800 | 120,721 | 83,921 |
| 15,914,000 | 5 | 1,136,714 | 35,238 | 120,721 | 85,484 |
| 14,777,286 | 6 | 1,136,714 | 33,154 | 120,721 | 87,567 |
| 13,640,571 | 7 | 1,136,714 | 30,786 | 120,721 | 89,935 |
| 12,503,857 | 8 | 1,136,714 | 28,418 | 120,721 | 92,304 |
| 11,367,143 | 9 | 1,136,714 | 26,050 | 120,721 | 94,672 |
| 10,230,429 | 10 | 1,136,714 | 23,682 | 120,721 | 97,040 |
| 9,093,714 | 11 | 1,136,714 | 21,313 | 120,721 | 99,408 |
| 7,957,000 | 12 | 1,136,714 | 18,945 | 120,721 | 101,776 |
| 6,820,286 | 13 | 1,136,714 | 16,577 | 120,721 | 104,144 |
| 5,683,571 | 14 | 1,136,714 | 14,209 | 120,721 | 106,512 |
| 4,546,857 | 15 | 1,136,714 | 11,841 | 120,721 | 108,881 |
| 3,410,143 | 16 | 1,136,714 | 9,473 | 120,721 | 111,249 |
| 2,273,429 | 17 | 1,136,714 | 7,104 | 120,721 | 113,617 |
| 1,136,714 | 18 | 1,136,714 | 4,736 | 120,721 | 115,985 |
| **TOTAL** | | **18,714,000** | **329,527** | **1,207,214** | **877,687** |

WMATA-INV 001518

## REQUIRED INSURANCE COVERAGES

### A) INDEMNIFICATION AGREEMENT:

The Owner/Developer/Contractor (ODC) shall indemnify and save harmless WMATA against any and all liability claims, and the cost of whatsoever kind and nature arising or alleged to have arisen for injury, including personal injury to or death of person or persons, and for loss or damage occurring in connection with this permit and or any acts in connection with activities to be performed under this permit resulting in whole or in part from the acts, errors or omissions of the ODC, or any employee, agent or representative of the ODC.

### B) REQUIRED INSURANCE AND MINIMUM LIMITS :

The prime ODC will provide WMATA with evidence of its commercial insurance coverages for the following exposures:

**WORKER'S COMPENSATION:** An insurance policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed. If there is any exposure to the ODC or any of the ODC's personnel due to the U.S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, the ODC will provide coverage for these exposures on an "if any" basis. The coverage under such an insurance policy or policies shall have limits not less than:

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| Worker's Compensation: | STATUTORY LIMIT |
|---|---|
| Employer's Liability: Each Accident | $1,000,000 |
| Disease Policy Limits | $1,000,000 |
| Disease - Each Employee | $1,000,000 |

**COMMERCIAL GENERAL LIABILITY INSURANCE (CGL) :** An insurance policy covering the liability of the ODC for all work or operations under or in connection with this Project; and all obligations assumed by the ODC under this permit . Products, Completed Operations and Contractual Liability must be included, in addition to coverage for explosion, collapse, and underground hazards, wherever required. **Liability for Project Work within 50 feet of owned / operating railroad property is excluded and Railroad Protective Liability Insurance must be provided.**

The coverage under such an insurance policy or policies shall have limits not less than:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

$1,000,000 / $2,000,000 per occurrence/ aggregate,
or combined single limit not less than $ 2,000,000

| | |
|---|---|
| PREMISES MEDICAL PAYMENTS | $5,000 |
| FIRE LEGAL LIABILITY | $1,000,000 |
| PERSONAL INJURY / ADVERTISING | $1,000,000 |

**WMATA must be included as an additional insured under the general liability insurance coverage with respect to activities under this permit.**

**AUTOMOBILE LIABILITY INSURANCE:** A commercial auto insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing valid license plates appropriate for the circumstances for which the vehicles are being used. These vehicles should bear license plates applicable to the state laws for which the vehicle(s) are registered. Liability for ODC's mobile equipment is not subject to this coverage and therefore the aforementioned general liability insurance is required. Contract employees are not permitted to operate any vehicle owned by WMATA whether in commission of the contract or outside the same.

The coverage under such an insurance policy or policies shall include mandatory Uninsured Motorist Coverage where applicable. Form MCS-90 as required by the Motor Carrier Act of 1990 shall also be included where applicable.

The coverage under such an insurance policy or policies shall have limits not less than :

BODILY INJURY AND PROPERTY DAMAGE LIABILITY

$2,000,000 Combined Single Limit

**Uninsured Motorist Coverage Minimum Limit $50,000**

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**WMATA must be included as an additional insured under the auto liability insurance coverage with respect to activities under this permit.**

**C) ADDITIONAL INSURANCE REQUIRED AND MINIMUM LIMITS (As Indicated):**

**WORK WITHIN 50 FEET of WMATA's Right-of-Way:**

**RAILROAD PROTECTIVE LIABILITY INSURANCE:** An insurance policy issued to WMATA for bodily injury and property damage liability of the ODC resulting from the ODC's performance of project work within 50 feet of WMATA's Right of Way. Project work within 50 feet is defined as: work performed on, adjacent to (North-South-East-West), above or beneath WMATA's owned / operating railroad property.

Such insurance shall be written on the ISO Form. The coverage under such an insurance policy shall have a limit of liability not less than:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY

$5,000,000 per occurrence / $10,000,000 aggregate

**CONTRACTOR'S POLLUTION LIABILITY INSURANCE:** An insurance policy covering the liability of The Contractor during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and or asbestos abatement. The policy should also include coverage for bodily injury, and loss of, damage to, or loss of use of property, directly or indirectly arising out of the

discharge, dispersal release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental.

The Contractor shall supply limits not less than the following:

$3,000,000 Per Occurrence

The policy form shall include an extended reporting period of at least (3) years. This coverage shall be secured from an "A" rated insurance carrier acceptable to WMATA and in accordance with the information provided. WMATA shall be included as an additional insured. Prior to commencement of work on this contract the policy form shall be submitted to WMATA for review and approval.

**SHOULD WORK INCLUDE DESIGN OR CONSULTING:**

**PROFESSIONAL ERRORS AND OMISSIONS LIABILITY INSURANCE:** A separate insurance policy to pay on behalf of the ODC all costs the ODC shall become legally obligated to pay as damages due to any claim caused by any negligent act, error or omission of the ODC or any other person for whose acts the ODC is legally liable arising out of the performance under this permit.

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**Such insurance shall be maintained for five (5) years after the final acceptance of the work by either continuation of the policy every year or if coverage is moved to another carrier, the same prior acts retro date should be continued. If coverage is not renewed, an extended reporting period of five years should be purchased and such coverage should be evidenced on the certificate of insurance.**

The coverage under such an insurance policy shall have a limit of liability not less than:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY
$3,000,000 per occurrence / $3,000,000 aggregate

**SHOULD WORK INCLUDE CONSTRUCTING BUILDING / STRUCTURE:**

**BUILDER'S RISK INSURANCE:** An insurance policy covering all risk of physical damage to property under construction. Coverage for damage to building materials to be installed maybe written separately or by endorsement to this policy; damage to ODC's owned, leased or rented equipment maybe written separately or by endorsement to this policy. Insurance shall be on an all-risk policy form including the perils of fire, extended coverage, theft, vandalism, certified acts of terrorism, malicious mischief, collapse and earthquake. Coverage limits shall be equal to the initial contract construction amount and any amendments to the contract which affect the project cost on a replacement cost basis.

Such insurance shall be written on the ISO Form. The coverage under such an insurance policy shall have a limit of liability not less than:

*"The estimated completed value of building under construction or reporting form"*

PROPERTY INSTALLATION FLOATER: An insurance policy or endorsement to existing property coverage for all risk of physical loss or damage to property building materials to be used in, incidental to, or during the installation of and any resultant damage caused by installation of materials in connection with this contract. WMATA shall be named as "Loss Payee" to the extent of WMATA 's insurable interest, if any, in the property to be installed. The coverage under such policy shall have a limit of liability in accordance with the value of the property insured.

Such insurance shall be written on the ISO Form. The coverage under such an insurance policy shall have a limit of liability not less than:

"The estimated cost of materials"

ODC's EQUIPMENT FLOATER: An insurance policy or endorsement to existing property coverage for all risk of physical loss or damage to ODC's TOOLS AND EQUIPMENT. The coverage under such policy shall have a limit of liability in accordance with the value of the equipment.

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Such insurance shall be written on the ISO Form. The coverage under such an insurance policy shall have a limit of liability not less than:

*"The estimated cost of materials"*

D) SPECIAL PROVISIONS FOR INSURANCE REQUIREMENTS:

(1) The ODC shall forward to the Washington Metropolitan Area Transit Authority, Office of Insurance, a certificate or certificates of insurance indicating the insurance and any special provisions required under the foregoing provisions including special endorsements. Such certificate(s) shall be in a form satisfactory to WMATA and shall list the various coverages and limits. Insurance companies providing the coverage must carry at least an "A" Rating. In addition to the aforementioned requirements; the insurance policies shall:

a) not be changed or canceled

b) be automatically renewed upon expiration

c) be continued in full force and effect until completion and acceptance of all work covered by the permit, unless WMATA's Office of Insurance is given thirty (30) days written notice before any change or cancellation is made effective.

**If requested, the ODC shall directly furnish WMATA's Office of Insurance with a certified copy of each insurance policy upon request.**

(2) **The initial and subsequent certificates of insurance shall include a description of the contract work and the assigned WMATA permit or contract number. Prior to beginning any on site project work, the insurance requirements as outlined by the WMATA's Office of Insurance must be approved.**

(3) **All insurance shall be procured from insurance or indemnity companies acceptable to WMATA and licensed and authorized to conduct business in the District of Columbia, State of Maryland and Commonwealth of Virginia. WMATA approval or failure to disapprove insurance furnished by the ODC shall not release the ODC of full responsibility for liability for damage and accidents.**

(4) **If at any time the above required insurance policies should be canceled, terminated or modified so that the insurance is not in full-force and effect as required herein the WMATA reserves the right to terminate this permit.**

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(5) **The ODC shall require each subcontractor, at all tiers to provide evidence of insurance coverage specified herein and such evidence of coverage shall be provided to WMATA, Office of Insurance prior to commencement of work. Such coverage shall remain in full force and effect during the performance of activities under this Contract.**

(6) **Any contract of insurance or indemnification naming WMATA, the United States of America, or any of the departments, agencies, administrators or authorities as additional insured shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that WMATA or the United States of America, et al, are not liable in tort by virtue of being governmental instrumentalities or public or quasi-public bodies.**

(7) **In the event the required certificates of insurance as specified herein are not furnished within ten (10) business days after the execution of the permit, the ODC shall not be permitted to enter upon the property to perform the duties outlined in the permit until all required insurance certificates or evidence of self-insurance has been received.**

(8) The limits of liability included in these requirements are minimum limits. Each project / agreement is reviewed on their individual characteristics and the limit of liability is applied accordingly. WMATA reserves the right to review and or change these limits if the agreed duties/responsibilities lend themselves to further consideration.

## 6.1 Real Estate General Requirements

A. Clearly depict impact to WMATA real property and / or easements on design plans submitted for WMATA review.

B. Real estate transactions with WMATA are handled directly through the Office of Property Development and Management. The Office of Joint Development and Adjacent Construction (JDAC), for purposes of ODC's work, coordinates all design plans, engineering disciplines and real estate permit(s) for temporary and/or permanent real estate rights, leases, etc., with the Office of Property Development and Management.

C. WMATA may grant permits, easements or other rights, on a case-by-case and first-come, first served basis in response to third party requests to use or occupy WMATA real estate where it is determined that the proposed use will not adversely impact existing or planned WMATA facilities.

D. JDAC will review requests to use WMATA property (either temporary and/or permanent use) to determine the compatibility with existing or planned WMATA facilities. Review of requests for permits, easements and other rights will be administered by JDAC **after** design review phases are complete.

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E. WMATA's Office of Property Development and Management is responsible for selecting the appropriate means of conveying the appropriate property interest that accommodates the requested use of WMATA property, for determining a fair market value for the real estate interest to be conveyed and for preparing the requisite documents that convey the appropriate interest in real property.

F. A completed WMATA real estate application is required for all temporary and permanent occupancy requests that impact WMATA property. Impact is considered to include any property interest (including areas of tieback installations) and access by the ODC. WMATA requires payment of fair market value for any property interest conveyed and requires payment of WMATA's costs associated with review of requests for permits, easements and other rights. Reference also Section No. 6.2E for requirements for permanent impact to WMATA property. Real estate application and supportive documentation are required for:

1) New installations on WMATA property.

2) New underground utilities within WMATA underground easements.

3) New installations over WMATA facilities that encroach into WMATA air space and upper limits of surface easements.

4) Providing escorts for on-track structural monitoring of WMATA facilities.

5) Temporary support of excavation system on WMATA property (whether to be left in place or removed at the end of the project).



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6) Overhead protective structures that impact WMATA property.

7) Property screening whereby temporary access on WMATA property is required.

8) Storm drainage runoff directed onto WMATA property from new construction.

9) Temporary access by construction equipment or devices.

10) Encroachment onto any surface easements such as slope easements or access easements.

11) Placement of siltation devices and/or construction clearing and grading zones.

12) Modification(s) to existing WMATA right-of-way fencing at surface levels.

13) Encroachments into WMATA underground easements from underpinning structures and/or soil anchoring systems (such as tie backs).

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G. The ODC shall plan and coordinate project design and construction on and adjacent to WMATA facilities/structures in advance of any property use considerations. WMATA design guidelines highlighted under Section No. 3 & 4 of this manual require structural monitoring of WMATA facilities, structures, etc. should construction impact WMATA's Zone of Influence. Such impact and structural monitoring requirements typically necessitate the need for a WMATA Real Estate Permit (defined for temporary access as a "WMATA right-of-entry permit" and a "WMATA real estate permit" for permanent occupancies) for purposes of gaining access onto WMATA property to design, survey, install, implement and/or execute monitoring programs.

H. Requests for new installations on WMATA property that will require WMATA to incur maintenance, security or other costs will normally be denied, unless the requesting party agrees to pay such costs and demonstrates the financial capability to pay such costs.

## 6.2 Procedures and Application Process

A. Once the engineering design review phase has been completed by WMATA, and plans are approved or conditionally approved, the ODC is required to complete and submit the necessary real estate application and support documentation.

B. The completed real estate application is submitted to WMATA.

C. The Office of Chief Engineer-Facilities will review all incoming requests on a first-come, first served basis. Requests for use of real property will be coordinated with WMATA's Office of Property Development and Management.

D. The Office of Property Development and Management, upon receipt of the property



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request, will:

1) Determine the estate to be conveyed.

2) Establish the value of the property interest (and obtain WMATA Board of Directors and Federal Transit Authority approval when required).

3) Prepare and coordinate the conveyance document.

4) Issue, approve and sign the permit, easement or other conveyance document.

5) Arrange to collect required real estate compensation and insurance certificates in advance of delivery of the executed permit or conveyance document to applicant.

E. Real estate requests that will permanently impact WMATA real property or easements (whether exclusive or non-exclusive easements) will generally require supportive documentation for property acquisition and/or conveyance. Reference **Appendix** for detailed WMATA criteria for property surveys and submission documentation. Plan submissions for real property use shall include, as a minimum:

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1) A certified plat or survey (and/or exhibit), by a licensed surveyor, suitable for recordation which clearly illustrates property interrelation to WMATA's property and facilities. The certified plat should represent a survey of the property being impacted and include all necessary units of measure for WMATA's real estate appraisal (e.g. proposed total areas, easement lengths, easement widths, upper and lower easement limits, etc.)

2) Certified* legal property description(s) of property or easements with metes and bounds.

3) Deed Book and Page Number of property/parcel identified on the plat and legal descriptions.

4) Confirmation that survey is closed and tied to WMATA's existing control (limit of right-of-way to the property lines).

5) Clarification of specific maintenance responsibilities and/or future access to such permanent at-grade or underground structures.

* Certified - signed and sealed documentation by a licensed Land Surveyor practicing in the jurisdiction of the proposed project.

F. NOTE: Conveyances governed by the WMATA Board Regulation Concerning the Use by Others of WMATA Property, Joint Development Agreements and leases/permits which are specifically entered into for purpose of generating revenue for the Authority will be handled in accordance with the procedures established for those actions.

6.3 Real Estate Responsibility



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A. Documentation of Impact to WMATA real property: The ODC shall plan, document, develop and coordinate real estate interests with WMATA.

B. The ODC shall coordinate permit requests with WMATA. It is preferred and less expensive for the ODC's to coordinate all impact to WMATA's real property from joint and/or adjacent construction development in one (1) real estate permit application under one (1) applicant. This process requires advance planning and coordination on the part of the Developer/Contractor prior to interface with WMATA.

## 6.4 Indemnification and General Insurance Requirements and Procedures

A. The ODC who enters the Pre-Development Project Agreement with WMATA will be responsible for complying with all indemnification and insurance requirements for work activities impacting WMATA.

B. WMATA's indemnification and insurance requirements for Joint Development and Adjacent Construction are referenced in **Appendix Section 6** of this Manual. Any on-site work which could cause or with potential to cause impact to WMATA facilities or operations may not begin without proper insurances in place. Work will be suspended in the event insurance is not maintained current by the ODC. WMATA is to be named as an additional insured on all insurance relative to joint and adjacent construction work.

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C. Insurance certifications from the ODC are reviewed and processed by WMATA's Office of Insurance during permitting phases (along with the Office of Property Development and Management).

D. Insurance certificates should be forwarded to WMATA along with each real estate permit application.

E. Contact may be made directly with WMATA's Office of Insurance (202-962-1223) for any specific insurance issues/requirements/questions while working on, over, below or adjacent to WMATA facilities.

## 6.5 Insurance Responsibility

A. The ODC shall keep insurance certifications current with WMATA during the full duration of each project.

B. All policies shall include a special cancellation provision which reads "The Authority is interested in the maintenance of this insurance, and it is agreed that this insurance will not be cancelled, materially changed or not renewed without at least thirty (30) days prior written notice to the Authority". Notice is by Certified Mail, "return receipt requested".

C. At least two (2) weeks prior to the expiration of the original policies or any renewals thereof, evidence of renewal or replacement policies of insurance, with the same terms and limits as expiring, shall be delivered to the Authority.



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Date: 3/17/09

# SIGN –IN SHEET

MEETING:

JAZZ AT Florida Avenue

| Name | Contact Information |
|---|---|
| 1. Joel Washington / WMATA | jrwashington@WMATA.com |
| 2. OMAR KARIM | okarim@bannekerventures.com |
| 3. Maurice Perry | maurice.perry@bankofamerica.com |
| 4. Duane Oates | ~~duane~~ doates@bannekerventures.com |
| 5. Tiwana Hicks | thicks@bannekerventures.com |
| 6. Josh Montague | jwmontague@wmata.com |
| 7. Rosalyn Doggett | rdoggett@WMATA.com |
| 8. | |
| 9. | |
| 10. | |

Date: 3/17/09

8/20/08

Sent to Jwm
From DLA Piper
(D. Lewin)

**DLA PIPER 8/20/08 COMMENTS**

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**
**REAL ESTATE PERMIT**

**THIS REAL ESTATE PERMIT** (the "**Permit**") is made and entered into this day of_____, 2008 (hereinafter "**Effective Date**"), by and between the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a body corporate and politic (hereinafter "**WMATA**") with principal offices at 600 Fifth Street, NW, Washington, DC 20001and **Banneker Ventures, LLC,** a District of Columbia limited liability company, with principal offices at 700 12th Street, NW, Washington, DC 20005 (hereinafter "**Permittee**"). Permittee and WMATA are sometimes referred to herein jointly as the "**Parties**" or individually as a "**Party**".

**WITNESSETH:**

**WHEREAS**, Permittee has requested permission from WMATA to enter upon WMATA property consisting of Lots 44 and 45 in Square 393 and Lots 18 and 31 in Square 416 in the District of Columbia (the "**Permitted Premises**"), as shown in Exhibit A which is attached hereto and made a part hereof, to perform work set forth in Section 3 of this permit.

**WHEREAS**, WMATA has agreed to allow Permittee and its contractor(s), subcontractor(s) and consultants (hereinafter "**Contractor**" and collectively with the Permittee, "**Permitted Parties**" or individually as a "**Permitted Party**") the right and privilege to enter upon and use the Permitted Premises to perform the above-referenced work upon the terms and conditions specifically set forth in this Permit

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Incorporation of Recitals**. The Recitals set forth above and attached Exhibits are incorporated herein by this reference and have the same force and effect as if fully hereinafter set forth.

2. **Permitted Access**. This Permit allows Permitted Parties and others acting on



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behalf of Permitted Parties to enter onto the Permitted Premises, provided that the conditions contained herein are met.

3. **Use of Permitted Premises**. In accordance with the terms of this Permit, WMATA grants unto Permitted Parties the right to perform the following work (**"Permitted Activities"**) on the Permitted Premises:
   - Site survey
   - Environmental investigative studies
   - Other site investigative studies, including soil borings

   all in accordance with the Term Sheet between the Parties dated July 28, 2008 ("Agreement").

4. **Description of Permitted Premises**. The Permitted Premises are identified in the first "Whereas" clause of this Permit.

5. **Conditions on Use**.

   a. Permitted Parties may only exercise this Permit upon WMATA review and approval of the proposed site investigative studies and schedule of proposed work. Prior to entering the Permitted Premises, Permitted Parties shall submit to WMATA's Office of Joint Development and Adjacent Construction for review and written approval, a description of the work to be undertaken, including detailed plans, as applicable, showing the location of the work, such as each soil boring, and a schedule of work (the "**Work Plan**").

   b. Prior to each investigative study, Permittee shall submit to WMATA's Office of Joint Development and Adjacent Construction for review and approval at least seven (7) copies of the proposed work.

   c. All work shall be planned and performed in accordance with the requirements of WMATA's Adjacent Construction Design Manual, Rev.2 ) or as further revised (the "**Manual**"). If certain requirements listed as the conditions in this Permit differ from those in the Manual, Permittee shall immediately contact WMATA's Supervisor of Field Projects or the Field Project Facilitator (see Subparagraph "h" below) for written clarification.

   d. Unless waived in writing by WMATA, Permittee shall submit the Work Plan to WMATA's for review and written approval at least thirty (30) business days prior to the start of work, to ensure that WMATA operations are not disrupted.

e. Plans, operation sequences and equipment positioning plans must ensure adequate safety for the general public entering/exiting WMATA facilities by car, on foot and riding on WMATA trains and buses and must be approved by WMATA prior to the start of any work.

f. Unless waived in writing by WMATA, WMATA will review and provide written comments or approval on design or investigative studies submittals to Permitted Parties within thirty (30) business days after receipt of the plans and schedules. If approval is denied, a re-submittal for approval with all comments resolved shall be made to WMATA. This action shall be repeated until WMATA conveys final written approval. No changes may be made to the approved Work Plan without the prior written approval of WMATA's Field Project Facilitator.

g. WMATA accepts no liability and waives none of its rights under this Permit solely by reason of its approval of any drawings or specifications.

h. Permitted Parties shall contact WMATA's Supervisor of Field Projects, Mr. William Milner of the Office of Joint Development and Adjacent Construction, telephone: 301-618-1001 (office) or 202- 253-7226 (cell) to schedule a pre-work meeting. This request shall be made at least ten (10) business days prior to any planned start of work on the Permitted Premises. At this meeting, Mr. Milner will designate WMATA's Field Project Facilitator and provide Permitted Parties with the requisite contact information for the Field Project Facilitator.

i. Upon written approval from WMATA, Permitted Parties may conduct the necessary exploration or tests to determine the location of WMATA's existing facilities.

j. Swinging a crane and suspended loads over WMATA property is strictly prohibited except with WMATA's written approval. If WMATA authorizes construction activities which involve swinging a crane and suspended loads over Metrorail facilities, such work shall be performed only during WMATA's non-revenue hours, currently the hours of 1:30 a.m. to 4:00 a.m., Monday to Friday and 4:30 a.m. to 6:00 a.m. on Saturday and Sunday (non-revenue hours are subject to change by WMATA, at its sole discretion, to reflect WMATA's operating requirements). Crane inspection paperwork must be submitted to

WMATA's Field Project Facilitator. All construction equipment used in the work shall be oriented in accordance with the instructions of WMATA's Field Project Facilitator.

k. When support functions and electrical power outages are required, WMATA's Field Project Facilitator must be contacted at least ten (10) business days prior to the requested start of the respective work. The *General Orders and Track Rights System (GOTRS) Account Request Form* must be submitted to the WMATA Office of Joint Development and Adjacent Construction by Friday noon at least one week preceding the WMATA Operating Week, which begins Saturday morning at 12:01 a.m., to allow WMATA sufficient advance notice to schedule personnel and equipment and to adjust WMATA operations and maintenance to accommodate Permittee's request insofar as possible.

l. Permitted Parties planning to work within twenty-five (25) feet of WMATA's operating tracks must undergo WMATA safety training. WMATA's Field Project Facilitator must be contacted at least ten (10) business days prior to the desired training date. The *Certification of Eligibility for WMATA Contractor Identification (ID) Card* form Section 1 (*Appendix B*), must be completed and submitted to WMATA's Field Project Facilitator prior to the class date.

m. Permitted Parties shall monitor or cause to be monitored the Metrorail structures and tracks during any construction or installation within WMATA's Zone of Influence, as that term is further defined and explained in WMATA's *Manual*, proximate to WMATA structures and interests. The monitoring and contingency plans must be approved by WMATA in writing prior to the start of the work. The monitoring plans must include threshold values and survey control data.

n. Protective fencing to be approved by WMATA shall be installed at the boundary of the areas with public access.

o. Temporary sidewalks or pedestrian ways which will be in use more than ten (10) days shall be constructed of four inch (4") thick Portland cement concrete or four inches of asphaltic concrete placed and finished by a machine.

p. All work within twenty-five (25) feet of WMATA's tracks must be done during non-revenue hours which are currently 1:30 a.m. to 4:00 a.m., Monday to Friday and 4:30 a.m. to 6:00 a.m. on Saturday and



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Sunday (non-revenue hours are subject to change by WMATA, at its sole discretion, to reflect WMATA's operating requirements). Work in this location may require a "red tag" power outage as determined by WMATA's Field Project Facilitator who must be contacted at least ten (10) business days prior to the requested start date to coordinate the power outage and escort.

q. Work within twenty-five (25) feet of WMATA tracks will require WMATA escorts from Metrorail Operations, and power outages may be required during pre-work surveys and inspections. *Track Access Request* forms must be submitted by Permitted Parties to WMATA's Field Project Facilitator ten (10) business days before the requested date of work.

r. All utilities must be located by Permitted Parties in advance of work by using WMATA As-Built Drawings and Miss Utility information and must be protected from any damage. Permitted Parties should be aware that WMATA As-Built Drawings may not reflect current site conditions and WMATA will not be responsible for any damage caused by such inaccuracies. Any excavation in the vicinity of WMATA or Potomac Electric Power Company power feeders to the Metrorail system and other underground utilities or within the work site shall be through hand excavation.

s. Flammable liquids shall not to be stored within twenty-five (25) feet horizontally or vertically, regardless of topographic or man-made barriers, of WMATA underground facilities, except in the tanks of automobiles. If a flammable liquid storage container of any kind is to be installed between twenty-five (25) and one hundred (100) feet of WMATA underground facilities, protective encasement of the storage container will be required in accordance with NFPA STD 130. Existing underground tanks located within one hundred (100) feet of WMATA facilities and scheduled to be abandoned are to be disposed of in accordance with Appendix C of NFPA STD 130. NFPA STD 130 should also be applied to the construction of new fuel tanks.

t. WMATA reserves the right to inspect the Permitted Premises at any time. Additionally, WMATA reserves the right to inspect, at reasonable times, the Permittee's activities for conformance with the approved work plan and OSHA safety requirements and to ensure that the operations of Metrorail are not impeded at any time. WMATA's designated representative(s) shall have full access to the Permitted



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Premises for the purpose of determining the safety of the operations and their impact on Metrorail operations, and such person(s) shall have the absolute authority to stop the work (until such time as the condition requiring stoppage is cured) if, in WMATA's sole opinion, Permitted Parties are working in a manner that is unsafe for WMATA operations, the work is not in full compliance with the approved Work Plan or is interfering with WMATA operations.

u. Other than as may be expressly provided to the contrary in the WMATA Joint Development Term Sheet for this transaction or any Definitive Agreement relating thereto, Permitted Parties accept the Permitted Premises and adjacent areas in an "as is" condition, including any possible concrete over pours, sheeting and shoring which remain in place, inaccurate location of utilities or portions of the facilities and similar conditions. It shall be Permitted Parties' responsibility to verify the actual location of existing facilities, structures and utilities on the site and provide WMATA with a copy. Permitted Parties agree that the existence of any unknown or inaccurately portrayed facility will not be the subject of a claim against WMATA.

v. Upon completion of tests, Permittee shall provide WMATA's Office of Joint Development and Adjacent Construction with a copy of all surveys, test information, including but not limited to Phase I and Phase II results, boring logs, test results, and all draft and final reports arising out of or relating to the tests.

w. Permitted Parties shall not be released before the final acceptance of the site improvements/restoration by WMATA.

6. **Term of Permit**. This Permit commences on the Effective Date and terminates on the earlier of sixty (60) days after the effective date of the Joint Development Agreement or February 28, 2009 ("**Term**") unless terminated for cause as provided in **Paragraphs 10 and 25** herein.

7. **Extension Option**. The Parties may mutually agree in writing to extend the Term of this Permit. Permittee shall request an extension of the Term in writing, at least thirty (30) calendar days prior to the expiration of the Term.

8. **Payment by Permittee**. Not Applicable.

9. **Assignment**. This Permit is not assignable or transferable by Permittee in any



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way. The rights, privileges, duties and obligations extended to or assumed by Permittee are personal to Permittee, its officers, employees, agents and contractors only.

10. **Suspension/Termination**. WMATA may suspend this Permit, in whole or in part, at its sole option and discretion at any time, if any condition created by Permitted Parties on or about the Permitted Premises threatens the safety or security of the Permitted Premises, any WMATA operation or function, the public, or is in violation of any applicable laws, rules, regulations, policies, instruction or directions whether federal or local relating to this Permit and/or any Permitted Party's work hereunder. If Permitted Parties do not correct the condition which serves as the basis for WMATA's suspension decision within ten (10) calendar days following receipt of written notice of such condition from WMATA, then WMATA may terminate this Permit, in whole or in part, by notice to Permittee without any further opportunity to cure such condition. This Permit may also be terminated or revoked by WMATA, in whole or in part, at its sole option and discretion, at any time, if deemed necessary by WMATA for the purposes of safety, security, operational necessity or any overriding public requirement. Upon termination or earlier revocation of this Permit, all Permitted Parties shall remove their equipment and restore the Permitted Premises to the satisfaction of WMATA. Permittee may terminate this Permit at any time by providing ten (10) calendar days prior written notice to WMATA. All obligations and liabilities of Permitted Parties under this Permit shall survive the termination of this Permit pursuant to this Paragraph or the expiration of the Permit pursuant to **Paragraphs 6 and 7** above.

11. **Conduct of Work**. In the conduct of work undertaken herein, the Permitted Parties shall require all parties working on the Permitted Premises to exercise all normal and reasonable safety precautions. Permitted Parties shall maintain the Permitted Premises in a clean and presentable manner.

12. **Employee and Public Safety**. Barricades, fences, signs, lanterns and other suitable devices necessary for employee and public safety shall be provided and adequately maintained by Permitted Parties at their sole cost and expense.

13. **Security**. Permitted Parties shall maintain the security of the work site to the satisfaction of WMATA during the entire period of use and occupancy under this Permit.

14. **Restoration**. Upon completion of all Permitted Activities, the expiration of

the Term, or other termination of this Permit, Permitted Parties shall remove all of their equipment and restore the Permitted Premises to its previous condition or in accordance with pre-approved plans and specifications, and to WMATA's satisfaction.

15. **Responsibility for Licenses and Permits**. Permitted Parties shall be responsible for obtaining any necessary licenses and permits for the work permitted under this Permit including transportation and disposal of materials.

16. **Compliance with Orders and Directions of WMATA**. With respect to all work permitted under this Permit, Permitted Parties shall at all times conform with and abide by the reasonable orders and directions of WMATA officials or their duly authorized representatives, regardless of whether such orders and directions are oral or written. Nothing in this **Paragraph 16** shall be deemed to limit in any way WMATA's independent right under **Paragraph 10** above, to suspend or terminate this Permit.

17. **Non-Interference with WMATA Activities**. Pursuant to the terms of this Permit, Permitted Parties may only use the Permitted Premises in such manner and at such times as not to interfere with the use, construction, maintenance, repair and operations of WMATA.

18. **Damage to WMATA Property**. Permittee shall be responsible for, and must make good at its own expense, all damage to WMATA property caused in whole or in part by the acts or omissions of any Permitted Party and others acting on behalf of a Permitted Party, in carrying out the operations permitted under this Permit. Permittee shall ensure that such repair or replacement is carried out within fifteen (15) business days of Permittee's receipt of notice from WMATA except in the case of any emergency as determined by WMATA in its sole discretion, in which event Permittee's obligation of repair or replacement shall be immediate upon receipt of notice from WMATA.

19. **Utility Charges**. Permitted Parties at their sole cost and expense, shall pay all charges for any utilities used on the Permitted Premises during occupancy thereof when and as the same shall become due and payable. Permitted Parties are prohibited, without the prior written consent of WMATA (in its sole discretion) from making any connection to any utility line serving WMATA operations.

20. **Indemnification**.



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a. Permittee shall indemnify and save harmless WMATA, its directors, officers, employees and agents from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, including employees of Permittee or its Contractors, and for loss or damage to any property, occurring in connection with, or in any way arising out of (i) the Permitted Parties' use, occupancy and performance of the work permitted by this Permit and/or (ii) any acts in connection with activities to be performed under this Permit resulting in whole or in part from the acts, errors or omissions of Permittee or its Contractor, or any employee, agent or representative of Permittee or its Contractor. Nothing in the preceding sentence shall be deemed to relieve Permittee from ultimate liability for any obligation of Permittee under this Permit.

b. Permittee shall, and require its Contractor to, indemnify, defend and hold harmless WMATA its directors, officers, employees and agents against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including reasonable attorneys fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the Permitted Premises by Permitted Parties or anyone acting on their behalf.

c. If any action or proceeding relating to the indemnification required by this **Paragraph 20** is brought against WMATA, then upon written notice from WMATA to the indemnitor, indemnitor shall, at indemnitor's expense, resist or defend such action or proceeding by counsel approved by WMATA in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same.

d. Permittee understands and agrees that it is Permittee's, its Contractor and all Permitted Parties' responsibility to provide indemnification to WMATA pursuant to this **Paragraph 20**. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of insurance to fully fund any indemnification shall not relieve Permittee and other Permitted Paries of any obligation assumed under this



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indemnification.

**21. Insurance.**

a. It is Permittee's responsibility to ensure that Permittee, its Contractor and Permitted Parties have adequate and complete coverage as contemplated in this Permit. This responsibility is not waived, nor is any requirement to indemnify waived by WMATA's review and approval of any Policy.

b. WMATA is acknowledged and understood to be a third party beneficiary of any insurance policy carried by any Permitted Party.

c. As may be required in any insurance policy carried by any Permitted Party, this Permit is understood and agreed to be a written contract or an Insured Contract between that Permitted Party and WMATA.

d. Permittee understands and agrees that provision of a complete copy of the Policy or Policies which provide the below required insurance (as indicated by an "**x**" before said type of insurance), including a copy of any endorsement or exclusion thereto, for review and approval by WMATA is a prerequisite for entry onto WMATA property. It is the Permittee's responsibility to ensure adequate and complete coverage as contemplated in this agreement. This responsibility is not waived, nor is any requirement to indemnify waived, by WMATAs review and approval of any Policy.

e. Permittee understands and agrees that WMATA is a self-insured governmental entity and that the insurance and indemnification provided by any Permitted Party under the terms of this Permit shall be Primary. Permittee agrees that to the extent any endorsement contemplates issuance of a permit by a state or political subdivision, WMATA shall be considered a state or political subdivision issuing a permit for the purposes of those policies and endorsements.

f. Insurance Companies. Insurance companies providing the required coverages must be rated by A.M. Best or a comparable rating company and carry at least an "A" rating. All insurance shall be procured from insurance or indemnity companies acceptable to WMATA and licensed and authorized to conduct business in the jurisdiction where the work is to be performed. WMATA's approval or failure to disapprove the insurance shall not release Permitted Parties



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of full responsibility for liability for damage and accidents.

g. Changes in Insurance Coverage. The requisite insurance policies shall not be canceled, terminated or modified (except to increase the amount of coverage) without thirty (30) calendar days prior written notice from Permittee to WMATA's Office of Insurance, Room, 8D01, and Office of Station Area Planning and Asset Management, Room 5B, 600 Fifth Street, NW, Washington, DC 20001. All correspondence and insurance certificates must include the **joint development project name referenced in the Agreement**. If any required insurance policies should be canceled, terminated or modified so that the insurance is not in full force and effect, then WMATA can hold Permittee in default of this Permit. Under such circumstances, WMATA shall give Permittee a notice of default and after the expiration of the cure period prescribed in **Paragraph 25**, WMATA may terminate this Permit for an event of default or obtain insurance coverage equal to that required herein, the full cost of which shall be paid by Permittee to WMATA on demand.

h. Evidence of Insurance Coverage. Evidence of the requisite insurance policies in the form of the complete insurance policy including any endorsements and certificates of insurance stating work to be performed and joint development project name referenced in the Agreement shall be submitted to WMATA at least ten (10) business days prior to commencement of operations and from time to time at WMATA's request. Permitted Parties shall not be allowed to enter the Permitted Premises until the evidence of insurance has been received and approved in writing by WMATA. All evidence of insurance shall be sent to:

Office of Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

With a copy to:

Office of Insurance
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Room 8D01

Washington, DC 20001

i. Permittee shall require each Contractor, at all tiers, to provide evidence of insurance coverage specified herein (as indicated by an "**x**" before said type of insurance) and such evidence of coverage shall be provided to WMATA.

j. Any contract of insurance or indemnification naming WMATA, the United States of America, or any of the departments, agencies, administrators or authorities as an additional insured shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that WMATA or the United States of America, et al, are not liable in tort by virtue of the fact of being governmental instrumentalities or public or quasi-public bodies.

k. Limits and Modification of Coverage. The limits of liability included herein are minimum limits. WMATA reserves the right to review or change these limits if the terms of the Permit or standards in the industry change. If requested by WMATA, Permittee shall require its Contractor to make any necessary adjustments in such limits or in the type of coverage to reflect then currently acceptable, commercially reasonable policy limits and types of coverage for similar uses and operations. Permittee's failure to cooperate with WMATA regarding this subparagraph shall constitute a Default in accordance with **Paragraph 25** of this Permit. During the term of this Permit and any extensions, except for such longer terms as may be required herein, Permittee shall have its Contractor provide or cause to be provided at least the types and amounts of insurance indicated below.

l. ☐ --- Worker's Compensation. An insurance policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, and if there is any exposure to personnel of any Permitted Party with the U. S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, Permittee will provide coverage for these exposures on an "if any basis" with limits not less than:

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

m. ☐ --- Commercial General Liability Insurance. A Commercial General Liability Insurance policy issued to and covering the liability for all work and operations under or in connection with this Permit and all obligations assumed by Permittee under this Permit. Coverage shall include Products Liability, Completed Operations and Contractual Liability Insurance in addition to coverage for explosion, collapse, and underground hazards, wherever required. The coverage under such an insurance policy or policies shall be maintained for three (3) years after the termination of this Permit and shall have at least the following limits:

| | |
|---|---|
| Bodily Injury and Property Damage Liability: | $1,000,000 Each Occurrence; $2,000,000 Aggregate |
| Premises Medical Payments: | $5,000 |
| Fire Legal Liability (if applicable) | $1,000,000 |
| Personal Injury/Advertising | $1,000,000 or Combined Single Limit not less than $2,000,000 |

WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance on an appropriate endorsement.

If construction or demolition work is being performed within 50 feet of the center line of WMATA's railroad tracks, then an endorsement that removes the railroad exclusion from the definition of an "Insured Contract" shall be included.

n. ☐ --- Automobile Liability Insurance. A commercial auto insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing valid license plates appropriate for the circumstances for which the vehicles are being used. These vehicles should bear license plates applicable to the state laws for which the vehicle(s) are registered. Liability for contractor's mobile equipment is not subject to this coverage and therefore the aforementioned general liability insurance is required. Contract employees are not permitted to operate any vehicle owned by WMATA whether in commission of the

contract or outside the same.

The coverage under such an insurance policy or policies shall include mandatory Uninsured Motorist Coverage where applicable. Form MCS-90 as required by the Motor Carrier Act of 1980 shall also be included where applicable.

The coverage under such an insurance policy or policies shall have limits not less than:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY $2,000,000 Combined Single Limit

Uninsured Motorist Coverage Minimum Limit $50,000

WMATA must be included as an additional insured under the auto liability insurance coverage with respect to activities related to this Permit.

o. ☐ --- Railroad Protective Liability Insurance. A railroad protective liability insurance policy shall be required, prior to entry on the Permitted Premises, for work within 50 feet in any direction of the center-line of WMATA's operating railroad tracks. Surveying and any investigations that do not disturb the ground in any way shall be excepted from this requirement. An insurance policy issued to WMATA as the named insured and covering the liability of all Permitted Parties for the work to be performed on, above, adjacent to or underneath WMATA's operating railroad property for any personal injuries or deaths or any damage to the property, equipment and facilities caused by the activities of any Permitted Party resulting from performance of this project work. The coverage under such an insurance policy shall have a limit of liability not less than:

p.

BODILY INJURY AND PROPERTY DAMAGE LIABILITY $5,000,000 per occurrence; $10,000,000 aggregate

q. ☐ --- Contractor's Pollution Legal Liability Insurance. (Environmental Impair-ment Liability) Permittee shall require its Contractor to provide an insurance policy covering the liability of Permitted Parties during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and or asbestos abatement. The policy

should also include coverage for bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental.

Limits shall not be less than $3,000,000 Per Occurrence.

The policy form shall include an extended reporting period of at least three (3) years. WMATA shall be included as an additional insured.

r. ☐ --- Professional Errors and Omissions Liability Insurance. A separate insurance policy to pay on behalf of Permittee all costs Permittee's Contractor shall become legally obligated to pay as damages due to any claim caused by any negligent act, error or omission of any Permitted Party out of their acts or omissions in performance of their work under this Permit.

Such insurance shall be maintained for five (5) years after the final acceptance of the work by either continuation of the policy every year or if coverage is moved to another carrier, the same prior acts retro date should be continued. If coverage is not renewed, an extended reporting period of five (5) years should be purchased and such coverage should be evidenced on the certificate of insurance. In addition, Permittee's Contractor should purchase unintentional errors and omissions and cross liability coverage by endorsement if not already provided.

s.

| | |
|---|---|
| For Each Wrongful Act | $3,000,000 per occurrence; $3,000,000 aggregate |

t. ☐ --- Builder's Risk Insurance. (Required if Permittee is constructing a building adjacent to WMATA property.) An insurance policy covering all risk of physical damage to property under construction shall be procured. Coverage for damage to building materials to be installed may be written separately or by endorsement to this policy; damage to Permittee's owned, leased or rented equipment may be written separately or by endorsement to this policy. Insurance shall be on an all-risk policy form including the perils of fire, extended coverage,



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theft, vandalism, certified acts of terrorism, malicious mischief, collapse and earthquake. Coverage limits shall be equal to the initial contract construction amount and any amendments to the contract which affect the project cost on a replacement cost basis.

22. **Non-Liability of WMATA**. WMATA shall have no liability for any injury or property damage whatsoever unless the injury or damage arises solely from WMATA's negligence. Neither the grant of this right of entry, nor any provision thereof, shall impose upon WMATA any new or additional duty or liability or enlarge any existing duty or liability of WMATA. Nothing in this Permit shall be deemed to waive WMATA's immunity as a sovereign entity.

23. **No Impairment of WMATA's Title**. This Permit constitutes a mere license, and nothing in this Permit and no action or inaction by WMATA shall be construed to mean that WMATA has granted Permittee or any other person or entity any legal or equitable estate in the Permitted Premises, or any right, power, or permission to do any act or make any agreement which may create, give rise to, or be the foundation for any right, title, interest, lien, charge, or other encumbrance upon the estate of WMATA in the Permitted Premises. In amplification and not in limitation of the foregoing, Permittee shall not allow any portion of the Permitted Premises to be used by any persons or entities, in such manner as would likely impair WMATA's title or interest in the Permitted Premises or would result in a claim of adverse use, adverse possession, prescription, dedication or other similar claims with respect to the Permitted Premises or any part thereof.

24. **Compliance With All Laws, Rules and Regulations**. Permitted Parties shall comply with all applicable laws, rules and regulations, policies, instructions and directives, whether Federal or Local, relating to this Permit and Permitted Parties' work hereunder. Should any Permitted Parties' work involve use of, or create materials considered to be hazardous waste which require special handling, Permittee shall ensure that disposal of waste and residue is made in accordance with applicable environmental laws and regulations including, but not limited to the Resource Conservation Recovery Act (RCRA), the Toxic Substances Control Act (TSCA) and where required, shall include preparation and filing of reports and travel manifest documents. WMATA shall be provided with copies of all such reports and documents.

25. **Default/Termination**. Permittee shall be deemed to be in default of this Permit if any Permitted Party shall fail to observe or perform any of the provisions, covenants, conditions, or agreements contained herein and such failure shall continue for a period of ten (10) calendar days after written



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notice is received from WMATA. If an event of default shall have occurred and be continuing, WMATA, at its option, may at once, or at any time thereafter, terminate this Permit by written notice to Permittee, whereupon this Permit shall end and all rights of Permitted Parties hereunder (but not their liabilities) shall expire and terminate. Upon such termination by WMATA, and without in any way limiting the remedies available to WMATA at law, in equity or under the terms of this Permit, Permittee shall at once remove all Permitted Parties their persons and equipment from the Permitted Premises, and restore the Permitted Premises in accordance with **Paragraph 14** above. WMATA may enter into or repossess the Permitted Premises either by force, by summary proceeding or otherwise. WMATA shall have no liability by reason of any such reentry, repossession or removal other than as set forth in **Paragraph 22** above. Nothing in this **Paragraph 25** shall be deemed to limit in any way WMATA's independent right under **Paragraph 10** above, to suspend or terminate this Permit.

~~26. Flea Market License. TBD.~~

26. Flea Market License. The parties hereto acknowledge that pursuant to that certain License Agreement dated August 15, 2007 (the "License"), WMATA granted the Licensee (as defined therein) the right to use a portion of the Permitted Premises consisting of Lots 44 and 45, Square 393 (the "Licensed Premises"), for operation of a weekend flea market between the hours of 12:00 a.m. Saturday and 11:00 p.m. Sunday in accordance with the terms and conditions of the License. Pursuant to the License, WMATA retains access to and may enter upon the Licensed Premises at any time for the purpose of conducting soil tests, engineering surveys and other work as may, in the discretion of WMATA, be necessary in connection with construction on, repair or development of WMATA's adjacent Metro rapid rail transit facilities. WMATA shall use commercially reasonable efforts to require Licensee to (a) add Permittee as an additional insured to the insurance policies required to be maintained by Licensee set forth in Section 8 of the License, and (b) execute any documents necessary to allow Permittee and the Permitted Parties to exercise all rights granted under this Permit so that Permittee and the Permitted Parties may conduct the Permitted Activities. WMATA further agrees to use commercially reasonable efforts to obtain an indemnification from Licensee in favor of Permittee and the Permitted Parties against (i) any and all liability claims, actions and costs arising or alleged to have arisen for injury, including personal injury to or death of any person or persons and for loss or damage occurring in connection with the License, and for any acts in connection with activities performed under the License resulting in whole or in part from the acts, errors, or omissions of the Licensee, or any contractor, subcontractor, employee or agent of the

**Licensee, and (ii) all acts of Permittee and the Permitted Parties performed under the Permit. If requested by Permittee, WMATA agrees to terminate the License by providing thirty (30) days advance written notice to the Licensee.**

27. **Notices**. Notices given in connection with this Permit shall be in writing and shall be sent by (i) registered or certified mail, return receipt requested; (ii) hand delivery; or (iii) a nationally recognized overnight courier service for next business day delivery. Notices and other communications shall be deemed to have been given on the earlier of actual receipt or, in the case of overnight courier, on the first business day after delivery to such courier.

If to WMATA:
Director
Office of Station Area Planning
and Asset Management
600 Fifth Street, NW
Washington, DC 20001

If to Permittee:
Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW
Washington, DC 2005
202-667-4110

28. **Officials Not To Benefit.**

a. No member (i.e., Representative or Senator) of, or delegate to Congress, or any similar official, or resident commissioner, or any member of such person's family, shall be admitted to any share or part of this Permit, or to any benefit that may arise therefrom; but this provision shall not apply if this Permit is made with a corporation or other entity with which such official or family member has only a de minimis (in WMATA's sole opinion) contractual or ownership interest. Permittee warrants, represents and agrees that as of the date of this Permit, no person described in this Subparagraph, nor any entity with which such person is affiliated, has any such interest in any Permitted Party. Permittee shall forthwith deliver written notice to WMATA of any breach of the foregoing warranty representation and agreement and shall make reasonable inquiries from time to time to determine whether any such breach has occurred.

b. No member, officer, or employee of WMATA or of a local public body during his/her tenure or one year thereafter shall have any interest, direct or indirect, in this Permit.



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29. **Gratuities**. In connection with this Permit, or any amendments or modifications thereto, the giving of, or offering to give, gratuities (in the form of entertainment, gifts or otherwise) by a Permitted Party or any agent, representative, or other person deemed to be acting on behalf of a Permitted Party, or any contractor, subcontractor or supplier furnishing material to or performing work under this Permit, to any director, officer or employee of WMATA, or to any director, officer, employee of any of WMATA's agents, consultants or representatives, with an intent to secure an agreement or favorable treatment or the making of any determinations with respect to performance under this Permit is expressly forbidden. The terms of this Paragraph shall be strictly construed and enforced in the event of violation hereto.

30. **Governing Law**. This Permit shall be governed by the laws of the District of Columbia and, except that to the extent that District of Columbia law conflicts with the WMATA Compact, WMATA shall be governed by the WMATA Compact.

31. **Counterparts**. The Parties hereto agree that this Permit may be executed in one or more identical counterparts, each of which shall be deemed to be an original thereof, and shall be enforceable against each of the Parties hereto.

32. **Authority**. The Parties represent and warrant that they have the power and authority to enter into and perform their obligations under this Permit.

33. **Entire Agreement**. This Permit constitutes the entire agreement between the Parties. The Parties acknowledge that no representations or warranties have been made except as set forth herein. This Permit shall not be modified or amended in any manner except by an instrument in writing executed by the Parties as an amendment to this Permit.

# SIGNATURES ON NEXT PAGE

DLA PIPER 8/20/08 COMMENTS

**IN WITNESS WHEREOF**, the Parties have caused this Permit to be executed in two counterparts as of the date and year first written above.

**WITNESS OR ATTEST:**

_____

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

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

**WITNESS OR ATTEST:**

_____

**Banneker Ventures LLC**

By: _____
Print Name: _____

Title: _____



FOIA CONFIDENTIAL TREATMENT REQUESTED

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Document comparison done by Workshare Professional on Wednesday, August 20, 2008 3:43:30 PM

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| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 11 |

Original
1st Draft Sent
from WMATA
to Developer

# JOINT DEVELOPMENT AGREEMENT

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,**
WMATA

and

**DEVELOPER, LLC,**
Developer

**The Jazz @ Florida Avenue**

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

**Washington, DC**

Dated as of October _____, 2008

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EXHIBITS

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E. LEASE PREMISES
F. MINIMUM PROJECT COMPLETION MILESTONE REQUIREMENTS
G. PROJECT CONCEPT PLAN
H. WMATA RESERVED AREAS AND INTERESTS
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K. ROE
L. PROPOSED DEVELOPMENT PLAN
M. DEVELOPMENT COVENANTS



FOIA CONFIDENTIAL TREATMENT REQUESTED

# JOINT DEVELOPMENT AGREEMENT

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

## RECITALS

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

R-2. Developer desires and has agreed to lease from WMATA and WMATA desires and has agreed to lease portions of the Property, which portions are collectively defined below as the "**Lease Premises**" 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;

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



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## ARTICLE 1
## DEFINED TERMS

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

1.1.18 **"Covenants, Conditions and Restrictions"** shall have the meaning set forth in Section 11.17.



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

1.1.34 **"Final Completion"** means the proper and full completion of the entire Project, including, but not limited to, satisfactory operation of all equipment and systems, completion or correction of all punch list items, issuance of all required approvals and certificates by any governmental or quasi-governmental authorities with jurisdiction over the Project (including final and unconditional certificates of occupancy), removal of all rubbish, tools, scaffolding and surplus materials from the Project site, and correction of all property damage that is the responsibility of the Developer to WMATA pursuant to the Approved Design and Construction Documents.

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001562

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

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

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

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

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

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

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

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

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

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

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



FOIA CONFIDENTIAL TREATMENT REQUESTED

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

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

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

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

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

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

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

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

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

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

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

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

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

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



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001564

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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## ARTICLE 2
## LEASE AND DEVELOPMENT OF THE PROJECT

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

2.7.1 WMATA shall have at all times the unrestricted right, but not the obligation, to perform any work desired by WMATA on the Property, including without limitation any environmental testing; studies, evaluations or remediation in, on or about the Property.

2.7.2 WMATA shall have at all times the unrestricted right to enter into new agreements or maintain existing agreements affecting the Property, which such agreements shall be terminated by WMATA prior to Closing.

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

## ARTICLE 3
## DEPOSIT AND PRE-STABILIZATION PERIOD PAYMENTS

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



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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 upon WMATA's receipt of a copy of the certificate of occupancy for the Project.

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

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

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

3.1.6 Upon receipt of the Deposit, WMATA shall return to the Developer the proposal security deposit, in the amount of $100,000.00, currently being held by WMATA.



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

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

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

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

## ARTICLE 4
## RIGHT OF ENTRY; DUE DILIGENCE AND STUDY PERIOD

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

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



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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 Notice of termination prior to the expiration of the Study Period in strict accordance with the Notice provisions of this Agreement, Developer shall be deemed to have approved the Lease Premises and this Agreement shall remain in full force and effect.

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

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



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purpose of consummating the transaction contemplated by this Agreement, including Developer's attorneys and representatives, prospective lenders and engineers.

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

## ARTICLE 5
## TITLE

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

## ARTICLE 6
## FINANCING

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

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

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

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



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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; or

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

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

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

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

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

6.5.2 In the event of their exercise of remedies under any loan or security documents, including, without limitation, a foreclosure of any interest of the Developer in the



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Lease Premises or Project, or any deed, assignment or other transfer of title in lieu thereof, payment of the proceeds of each of the Payment Bonds and Performance Bonds securing any and all of such Interest Holders shall be applied solely to costs and expenses for Final Completion of the Project in accordance with the Approved Development Plan and not to any indebtedness or other obligations that may otherwise be secured by such Payment Bond and Performance Bond until such Final Completion is achieved; and

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

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

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

## ARTICLE 7
## APPROVAL PERIOD

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



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

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

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

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

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



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

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



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

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



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7.6.3.1 The Proposed Development Plan shall be (a) substantially in accordance with applicable existing zoning ordinances (and applicable waivers thereto or variances therefrom) or shall provide details concerning proposed rezoning, (b) consistent with the requirements and objectives of any applicable master plan, (c) consistent with the requirements of the Transaction Documents, as same may be adjusted in accordance with the applicable provisions of this Section 7.6.3, and (d) accompanied by reasonably detailed and, to the extent then practicable, objective information concerning their feasibility, including the feasibility of obtaining the proposed development objectives with the exercise of Commercially Reasonable Best Efforts to obtain same.

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

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

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



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Proposed Development Plan, subject, however, to each party's rights of termination of this Agreement in accordance with the terms of this Article 7.

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

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

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

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

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



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

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

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

7.7 **Rezoning and Approvals.** During and throughout the Approval Period, Developer shall use Commercially Reasonable Best Efforts to timely, expeditiously and diligently pursue all final and non-appealable Approvals and Construction Approvals that may be required to allow development of the Lease Premises and construction of improvements thereon consistent in all respects with the Approved Development Plan, including, but not limited to, Approvals for any necessary rezoning under applicable District of Columbia zoning ordinances and of the site plan, plats, subdivision of the Lease Premises and the like. Developer shall have sole responsibility for seeking and obtaining all such Approvals and Construction Approvals and for paying all costs and expenses relating thereto. Developer may commence, at its option, but subject to all the terms and conditions in this Agreement, the effort to obtain the Approvals at any time prior to the expiration of the Study Period and the Development Plan Approval Date, provided, however, that Developer, without the prior written consent of WMATA in its sole and absolute



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discretion, shall not make any Submission for any Approvals until the later to occur of the Development Plan Approval Date or the expiration of the Study Period and, then, only following approval by WMATA of the Proposed Development Plan in accordance with the terms of this Agreement. In connection with Developer's efforts to obtain the Approvals and Construction Approvals, WMATA shall lend reasonable cooperation and assistance to Developer, but without any obligation of WMATA to incur out-of-pocket costs or expenses and without any obligation of WMATA to undertake any significant burden or usage of its personnel.

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

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

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

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



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

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

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

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

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

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

7.10.5 **Submission Procedures.** Within thirty (30) days after receipt of a proposed Submission, together with all related and supporting materials, WMATA shall review the Submission and, if WMATA's approval is required by this Section 7.10, provide denial with comments, or approval, in writing to Developer. If approval is denied on the basis of any inconsistency with the requirements of this Agreement, Developer shall have the absolute obligation to correct such matters, otherwise Developer shall undertake Commercially Reasonable Best Efforts to submit to WMATA a revised



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Submission to WMATA for approval that satisfies and cures each of the issues, objections or qualifications raised by WMATA within thirty (30) days following the date Developer receives the written denial from WMATA. These actions shall be repeated, with thirty (30) day deadlines for each party, until WMATA's approval is obtained or a period of one hundred twenty (120) Days in total from the Development Plan Approval Date shall have passed without WMATA's approval having been obtained (the "**Submission Correction Deadline**"). If WMATA's approval of the Submissions, as revised has not been obtained by the Submission Correction Deadline, either Developer or WMATA shall have the right to terminate this Agreement by written Notice to the other, in which event, the full amount of the Deposit, subject to the terms of Article 3, shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement.

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

7.10.7 **Limitation on Termination Rights.** Developer's rights to terminate under this Section 7.10 shall not apply to any failure by WMATA approve a Submission or any changes thereto on the basis of any inconsistency with the requirements of this Agreement of a Submission or any changes thereto or on the basis of Developer's failure to undertake Commercially Reasonable Best Efforts to submit to WMATA for approval a Submission or make changes or corrections thereto that satisfy and cure the issues, objections or qualifications raised by WMATA.

7.10.8 **No Withdrawal of Rezoning Application; Substitution of Applicant, Use of Materials and Perfection of Right to Appeal.** Developer acknowledges and agrees that WMATA has and shall retain a property interest in any and all Approvals and



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Construction Approvals, any and all rights relating thereto and any applications and Submissions therefor. Developer shall not withdraw any application for any Approvals, Construction Approvals, or other Submissions without the prior written consent of WMATA in its sole and absolute discretion, provided, however, that to the extent that Developer would have continuing liability under any such Approvals, Construction Approvals, or other Submissions, Developer shall have the unqualified right to withdraw the same upon the termination of this Agreement, unless following approval by the WMATA Board of Directors, WMATA executes and delivers to Developer an indemnity agreement in form and substance reasonably acceptable to WMATA and Developer pursuant to which WMATA shall indemnify and agree to defend and hold harmless Developer from and against all such continuing liabilities. Following any Default, termination of this Agreement or failure to consummate Closing all for reasons other than a WMATA Default hereunder, at the option of WMATA, exercisable by delivery of Notice to Developer, WMATA shall succeed to all right, title and interest of the Developer in all Approvals and Construction Approvals, applications and Submissions and shall have the unrestricted right, directly or through its designee, to intervene in and continue pursuit of any and all such Approvals, applications and Submissions without payment of any sums to Developer and without cost to WMATA. In furtherance of the foregoing, Developer shall execute and deliver to WMATA on demand by WMATA all such assignments and other documents as shall be reasonably requested by WMATA to effectuate the same; provided that, in circumstances other than those occasioned by a Developer Default, such assignments and other documents shall be on terms that are acceptable to Developer and WMATA and Developer's obligations to deliver the same shall be subject to WMATA's indemnification obligations, to the extent applicable, as set forth in this Section 7.10.8. All materials submitted in connection with any such Approvals, Construction Approvals, applications and Submissions upon delivery of such Notice shall become the property of WMATA and may be used by WMATA and any designee of WMATA in connection with any and all Approvals or Construction Approvals that may be sought by WMATA. Developer shall use Commercially Reasonable Best Efforts to take all such steps as may be required by applicable laws to perfect the right of Developer (and, by operation of this Section 7.10.8, WMATA or its designee) to appeal any adverse determination relating to the Approvals, Construction Approvals, applications and Submissions.

7.10.9 **Coordination for Obtaining Rezoning, Subdivision, and Other Approvals.** Each party hereby designates its Project representative (respectively, the "WMATA Project Representative" and the "Developer Project Representative"), for purposes of coordinating the exchange of information and the processing of requests relevant to this Agreement. As of the Effective Date, (a) WMATA Project Representative shall be _____, and (b) the Developer Project Representative shall be _____. Thereafter, each party shall deliver to the other Notice of any change in the identity of its Project Representative. Each of WMATA Project Representative and the Developer Project Representative shall keep the other representative fully informed of all pending meetings, hearings and conferences with



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governmental agencies occurring in connection with all applications, Submissions, Approvals, and Construction Approvals and each of WMATA Project Representative designee and the Developer Project Representative shall have the right to attend any and all of the meetings pertaining to the same. Copies of all material communications delivered to or received by Developer or WMATA in connection with applications, Submissions, Approvals, and Construction Approvals shall be promptly delivered to WMATA Project Representative or the Developer Project Representative, respectively. Nothing contained in this Section 7.10.9 shall be deemed to modify any obligation of the parties with respect to the delivery of Notices.

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

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

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

## ARTICLE 8
## LEASE CLOSING

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

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

8.1.2 Intentionally Omitted



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8.1.3 Notwithstanding Sections 8.1.1 above:

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

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

8.1.4 Closing shall take place in the offices of Developer's _____, if in the Washington, D.C. metropolitan area, or at such other place as the parties shall mutually agree. Developer agrees to conduct closing through a pre-closing escrow or other arrangement reasonably requested by WMATA to facilitate closing mechanics and to reduce or eliminate the need for WMATA and its attorneys to be physically present at the Closing.

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

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



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

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

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

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



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together with a copy of its good faith recomputation of the proration and copies of all substantiating information used in such recomputation. The failure of a party to obtain any previously unavailable information or discover an error or omission with respect to an item subject to proration hereunder and to give Notice thereof as provided above within the Proration Period shall be deemed a waiver of its right to cause a recomputation or a correction of an error or omission with respect to such item after the Closing Date.

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

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

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

8.2.1.2 The Development Covenants in the form of Exhibit _____ attached hereto.

8.2.1.3 A closing statement executed by WMATA.

8.2.1.4 The certificate required by Section 10.1.3.

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

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

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



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

8.2.2.2 A closing statement executed by Developer.

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

8.2.2.4 The certificate required by Section 10.2.3.

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

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

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

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

## ARTICLE 9
## REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 **Representations And Warranties of WMATA.**

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

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

9.1.1.2 WMATA has the full corporate power and authority to lease the Lease Premises and to execute the documents to be executed by WMATA and has taken, as applicable, all corporate, or equivalent entity actions required for the execution and delivery of this Agreement and prior to Closing will have taken, as applicable, all corporate, or equivalent entity actions required for the



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consummation of the transactions contemplated by this Agreement. The parties executing this Agreement on behalf of WMATA have full power and authority to bind WMATA to the obligations of WMATA set forth herein. The terms and conditions of this Agreement do not conflict with, cause a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement to which WMATA is a party or by which WMATA or the Property is otherwise bound. WMATA has not made any other agreement for the sale of, or given any other person the right to purchase, all or any part of any of the Lease Premises;

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

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

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

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

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

9.2 **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



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Closing of the Lease Premises, it assumes all risks associated therewith, except only for those matters that are within the express scope of WMATA's representations and warranties and then only for such period as to which claims in respect thereto may be asserted by Developer under the terms of this Agreement.

9.3 **WMATA Information.** Developer agrees that it will be leasing and developing the Lease Premises based solely on its inspection and investigation of the Lease Premises. In order to induce WMATA to enter into this Agreement, Developer represents and warrants that it has undertaken all due diligence and has reviewed and conducted such independent analyses, studies, reports, investigations and inspections as it deems appropriate in connection with the Lease Premises and the Project that Developer in its judgment has determined to its satisfaction to be required or desirable, (including, without limitation, relating to the value of the Lease Premises, the suitability, physical or environmental condition of the Lease Premises, compliance or lack of compliance of the Lease Premises with any state, federal, county or local law, ordinance, order, permit or regulation, the feasibility of the Project, market conditions, projected development cost requirements, profits, taxes, rents, demand for rental space or any other attribute of or matter relating to the Lease Premises or the Project). To the extent that WMATA has provided or provides any information, data, reports, studies or the like (**"WMATA Information"**), WMATA has made and makes no representations or warranties whatsoever regarding the accuracy, completeness or reliability of all or any part thereof. Developer acknowledges that it has been and under the terms of this Agreement is being provided with ample opportunity to confirm the suitability, feasibility and all other characteristics of the Lease Premises and Project and the WMATA Information to its satisfaction, and that it shall rely only on its own due diligence and not on any WMATA Information in making a determination as to whether it should continue with the Project. If Developer relies on any such WMATA Information, such reliance shall be at Developer's sole risk and peril and all claims against WMATA, WMATA's Affiliates and any and all of their respective partners, officers, directors, participants, employees, contractors, attorneys, consultants, representatives, agents, successors, assigns or predecessors-in-interest in respect thereto are hereby waived and released and they shall have no liability whatsoever to Developer as a result of Developer's use thereof or reliance thereon.

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

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



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

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

9.8 **Representations And Warranties Of Developer**

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

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

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

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



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

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

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

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



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## ARTICLE 10
## CONDITIONS PRECEDENT TO CLOSING

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

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

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

10.1.3 Developer shall have received a certificate executed by an executive officer of WMATA, dated as of Closing, certifying that the condition specified in Section 10.1.2 has been satisfied or that such representations are unsatisfied or modified to reflect changes in facts and circumstances between the Effective Date and Closing, provided that such certificate shall not be required to subject WMATA to any greater liability or impose any additional obligations other than as expressly set forth in this Agreement;

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

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

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

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

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

10.1.9 There exists no condition, that constitutes a material and adverse change to the environmental condition existing on the expiration date of the Study Period of the



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Lease Premises that is the subject of the Closing which condition could not have been discovered during the Study Period with the exercise of commercially reasonable diligence and thorough investigation, review and testing, including, without limitation, pursuant to Phase I environmental assessments of the Lease Premises and any further testing as would be properly recommended by any Phase I Assessment. A "material and adverse change" shall not include any event, condition, change, conflict, litigation or proceeding, which was caused directly or indirectly by Developer, its Consultants or any of its or their affiliates or any of its or their agents, contractors, representatives or others associated with them, including, without limitation, in connection with activities on or about the Property.

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

10.2 **WMATA's Conditions**. Without limiting any of WMATA's rights elsewhere provided for in this Agreement, WMATA's obligation to consummate a Closing under this Agreement shall be subject to and conditioned upon the fulfillment of each and all of the following conditions precedent:

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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## ARTICLE 11
## DEVELOPMENT RIGHTS AND OBLIGATIONS

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

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

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

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



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

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

11.6 **WMATA Approval of Design and Construction Documents**. WMATA shall have the right to approve 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. WMATA's Unconditional Approval Matters and all design modifications required to comply with WMATA's requirements in conformity with the terms of this Section shall be promptly incorporated by Developer into the Design and Construction Documents. The Design and Construction Documents as finally approved by WMATA shall constitute the "**Approved Design and Construction Documents**".

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



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

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

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

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



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manager, if any, shall supplement the Project Schedule with a portrayal thereof in the form of a bar graph.

11.8.3 Developer shall prepare a monthly schedule summary report in such form, detail and character as reasonably approved by WMATA. The report shall identify the significant schedule milestones achieved during the month, identify those milestones that were not achieved and explain why they were not achieved, and shall include a detailed schedule of the following month's activities. Accompanying the report shall be an updated, current Project Schedule consistent with the Minimum Project Completion Milestone Requirements.

11.8.4 After the commencement of construction of the Project, Developer shall hold progress meetings at the job site with such frequency as is reasonably requested by WMATA (but not more often than one time per month), at such time and place as is mutually acceptable to WMATA and Developer. At such meetings, the progress of the Project shall be reported in reasonable detail with reference to the then applicable Project Schedule and all other construction schedules. Developer shall use Commercially Reasonable Best Efforts to cause each major subcontractor then performing work on the Project to have a competent representative present at each such meeting to report on the condition of his work and to receive information regarding the performance of future work by such subcontractor. Meeting minutes shall be prepared by the Developer and distributed within three (3) days following the meeting.

11.9 **Progress Submissions.** Updated Design and Construction Documents shall also be submitted to WMATA at approximately 35%, 65% and 100% completion of the Project.

11.9.1.1 WMATA shall review and provide the Developer with written notification of its approval or disapproval of these submissions within thirty (30) Business Days following receipt thereof.

11.9.1.2 If WMATA requires changes in any item submitted for review pursuant to Section 11.8, then Developer shall resubmit the necessary changes for WMATA's further review. A WMATA notice under this Section 11.19 requiring changes and/or disapproving a prior resubmission shall specify with reasonable detail the nature of the changes required and all of the reasons therefor. Developer's resubmission shall be made in accordance with this Section 11.9. If WMATA gives notice disapproving such a resubmission and requires one or more further re-submissions after a prior resubmission, the procedures specified in this Section 11.9 shall continue to be applied until WMATA has approved the latest resubmission.

11.10 **Failure to Submit**. Developer's failure to make the requisite submissions shall constitute an Event of Default.



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11.11 **Disclaimer of Liability**. WMATA accepts no liability and waives none of its rights under this Agreement or the Lease solely by reason of its approval of any drawings or specifications, nor shall its approval be construed to be a warranty thereof.

11.12 **Use of Property**. Developer shall confine its construction and related activities to the Lease Premises and to areas permitted by law, ordinances, permits and the Design and Construction Documents and shall not unreasonably burden the Lease Premises with materials or equipment so as to adversely affect WMATA's operations or other portions of the Property.

11.12.1 Developer shall be solely responsible for all material or equipment stored by Developer or by any subcontractors on the Lease Premises. Developer shall use Commercially Reasonable Best Efforts to secure the Project construction site. Developer shall properly safeguard and store any combustible materials necessary to the work so as to protect against the possibility of fire or other damage.

11.12.2 In the event that Developer, a contractor or a construction manager encounters any materials on, under or at the Property that is or any of them believes to be hazardous (including but not limited to Hazardous Materials or substances) requires special handling, disposal or treatment, they shall immediately stop work in the affected area and shall immediately report the condition to WMATA. All work involving or affected by the condition shall not thereafter be resumed until such time as the material has been disposed of, abated or otherwise removed at the sole cost, expense, responsibility and control of Developer.

11.12.3 Developer shall be responsible for coordination of any design and construction activities of WMATA and those of Developer and shall bear any increased costs and expenses arising out of any failure relating thereto.

11.12.4 All Existing Improvements that constitute Metro Facilities, utility and capacity shall remain in operation during the construction of the Project and Developer shall be responsible for ensuring that its construction activities do not interfere with such operations.

11.13 **Failure to Commence or Proceed with Diligence**. In addition to any and all other remedies of WMATA and without constituting an election of remedies, if Developer fails to commence and thereafter materially fails to diligently and timely carry out design and construction of the Project in accordance with the Project Schedule and the Approved Design and Construction Documents or, if Developer fails to continuously and using Commercially Reasonable Best Efforts perform, carry out and prosecute the Project, so that it is in reasonable accordance with the approved Project Schedule for its performance and completion, and fails within sixty (60) days after receipt of written Notice from WMATA to commence and correct such failure, WMATA, without prejudice to any other remedy WMATA may have, may perform and oversee or cause to be performed and managed, in WMATA's discretion, the Project or the work that Developer is failing to prosecute diligently and Developer and Guarantor shall be jointly and severally liable



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for payment to WMATA of the cost of performing such work on demand. Notwithstanding the foregoing, WMATA shall forbear from exercising the right set forth in this subsection, if within such sixty (60) day period an Institutional Lender that has provided financing for the undertakes in writing to WMATA to perform and oversee or cause to be performed and managed the Project or the work that Developer is failing to prosecute diligently and within Thirty (30) days thereafter corrects or causes to be corrected such lack of diligence and prosecution and thereafter causes construction of the Project to be timely performed in accordance with this Agreement.

11.14 **Final Completion**. Final Completion of the Project shall occur on or before the date specified in the Project Schedule. The foregoing Project Schedule shall be subject to extension on account and to the extent of any Force Majeure occurrences and delays caused solely by WMATA (but only to the extent that completion of an activity required to be performed by Developer is actually delayed and such delay is properly and timely claimed by Developer). Upon Final Completion, Developer shall deliver to WMATA one set of mylar as-built drawings and, if available, the same in digital, Auto Cad ver. 12 minimum, and, if feasible, Auto Cad 2000.

11.15 **Inspection**. WMATA shall have the right from time to time to enter the Lease Premises to inspect the progress of work being performed by Developer to verify compliance with all applicable obligations of Developer under this Agreement, and to operate or perform any work desired by WMATA in respect of the Metro Facilities and WMATA's Reserved Areas and Interests, provided, however, that WMATA shall use reasonably diligent efforts to minimize any disruption to the work being performed by Developer or the conduct of any business being conducted on the Project. All such entries onto the Lease Premises (other than for purposes relating to the Metro Facilities, Metro Station, or WMATA's Reserved Areas and Interests) shall occur during construction working hours, except in the event of an emergency, during which WMATA's right of access to the Project may occur at any time.

11.16 **Certificates of Final Completion and Occupancy; Warranties.** The obligations of Developer under Section 11.2 hereof with respect to the Project shall not be deemed satisfied unless and until Developer shall have for such component of the Project (a) obtained an unconditional certificate of occupancy for the Developer Improvements (including all base building, core and shell improvements and operating systems, but excluding any pending tenant finish work), (b) delivered to WMATA a certificate of final completion certified to WMATA's reasonable satisfaction stating that all applicable Project improvements have been constructed in accordance with the Design and Construction Documents, and in compliance with all applicable legal requirements, and (c) corrected all material defects shown on the material defect list approved by WMATA and prepared by the Project architect selected by Developer, which list shall be prepared within ten (10) Business Days after receipt of the certificate of occupancy referenced above in this Section 11.16 for the Project and caused substantial compliance with all continuing warranties issued for the benefit of the Project during the applicable warranty period.



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11.17 **Covenants, Conditions, and Restrictions.** A condition precedent to Developer's rights to develop and construct improvements on the Lease Premises shall be the creation and recordation of covenants, conditions, and restrictions. After WMATA's approval of the Design and Construction Documents and prior to commencement of any construction, Developer shall prepare and deliver to WMATA for its approval, which approval shall not be unreasonably withheld or delayed, proposed covenants, conditions and restrictions to be recorded against the Property. In the event that Developer shall fail to prepare and deliver such proposed covenants, conditions and restrictions to WMATA or shall fail to record approved covenants, conditions, and restrictions against the Property by the dates for such preparation, delivery or approval set forth in this Agreement or the Minimum Project Completion Milestone Requirements, WMATA shall have the right to prepare and record interim covenants, conditions and restrictions that may be reasonably required by WMATA, not inconsistent with the terms of this Agreement. The proposed covenants, conditions and restrictions prepared by Developer (and any interim covenants, conditions and restrictions) shall (i) contain such terms, covenants, conditions and restrictions as shall be reasonably required or requested by WMATA, not inconsistent with the terms of this Agreement, to protect WMATA's interests in and operations at the Property and WMATA's Adjacent Property, including, without limitation, protections, easements, obligations and restrictions for the benefit of WMATA relating to the Metro Facilities (whether or not integrated into improvements to be constructed by Developer) and WMATA's Reserved Areas and Interests and any potential adverse impacts on WMATA's transit operations and (ii) shall reaffirm all covenants and restrictions contained in the Lease and the Development Covenants and (iii) shall be consistent with requirements imposed by the District of Columbia and this Agreement. Subject to satisfaction of the requirements of the immediately preceding sentence, the covenants, conditions and restrictions as may be further amended or supplemented by WMATA shall be subject to the approval of Developer, such approval not to be unreasonably withheld, conditioned or delayed. The Covenants, Conditions and Restrictions as finally mutually approved by WMATA and Developer (the "**Covenants, Conditions and Restrictions**"), shall, together with the Development Covenants, thereafter be deemed to comprise a part of the Approved Development Plan, shall be recorded against the Property at the expense of Developer and shall be senior to all other matters of record other than the Permitted Exceptions. Subject to such applicable requirements of the District of Columbia, WMATA shall have the right from time to time to reasonably amend the Development Covenants and the Covenants, Conditions and Restrictions (and to record the amended Development Covenants, and the Covenants, Conditions and Restrictions against the Property), without limitation, to reflect the scope, characteristics and actual locations of as-built improvements and WMATA's Reserved Areas and Interests provided that, Developer shall have the right to review and pre-approve each such proposed amendment to the Development Covenants or Covenants, Conditions and Restrictions so required by WMATA, such approval not to be 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.



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11.18 **Guaranty**. Guarantor shall guarantee: (1) the Final Completion of the construction of the Developer Improvements by the Final Completion Date in accordance with the Approvals and the Approved Development Plan, (2) the Final Completion of construction as and when required under the terms of this Agreement of all improvements and infrastructure that are required to be constructed by Developer under the terms of any and all of the Lease, this Agreement, the Approvals and the Approved Development Plan (including, without limitation, site plan and building permit requirements) and which are commenced, are required to be commenced prior to termination of this Agreement, or will be commenced promptly following Closing, (3) the removal, as and when required under the terms of this Agreement, of all improvements and infrastructure as required by this Agreement, (4) the remediation of all Hazardous Materials to the extent required by any and all of this Agreement, by applicable environmental Law or by any court or other governmental authority having jurisdiction, (5) the full and timely payment and performance of all obligations relating to the construction and development of the improvements in connection with the construction of the Project to be constructed, paid for or provided by or at the expense of Developer under the terms of this Agreement and (6) the full and timely payment and performance of all other obligations of Developer under this Agreement. All such obligations shall be evidenced and governed by the Guaranty, which shall be delivered to WMATA on the Effective Date concurrently with the execution and delivery of this Agreement. Nothing contained in this Section 11.18 shall be deemed to constitute a release or diminution of liability of Developer or any other surety in respect of any obligation or liability under this Agreement or any of the Transaction Documents. The Letter of Credit shall secure all obligations under the Guaranty.

11.19 **Completion Bond, Performance Bond and Payment Bond**

11.19.1 Developer shall furnish separate performance and payment bonds covering faithful performance of all contracts for construction of the Project and payment of obligations arising thereunder, respectively, which bonds shall be issued by a surety authorized to transact business in the District of Columbia and acceptable to WMATA in its discretion, as follows.

11.19.1.1 A payment bond in a penal sum equal to one hundred percent (100%) of the "Contract Price" of the Developer Improvements as reflected in the Approved Design and Construction Documents. The proceeds of such bond shall be applied to Final Completion of the Project.

11.19.1.2 A performance bond in a penal sum equal to one hundred percent (100%) of the "Contract Price" of the Developer Improvements as reflected in the Approved Design and Construction Documents. The proceeds of such bond shall be applied to Final Completion of the Project.



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11.19.1.3 A completion bond, if necessary, in a penal sum equal to one hundred twenty percent (120%) of the replacement costs of Metro Facilities, as reflected in the Approved Design and Construction Documents. The completion bond, if necessary, shall be in a form approved by WMATA.

11.19.2 Developer shall deliver the required bonds to WMATA at least ten (10) calendar days prior to Closing.

11.19.3 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

11.19.4 Such bonds shall comply with the other terms and conditions of this Agreement for the benefit of WMATA, including, without limitation, regarding the application and disposition of payments thereunder.

11.19.5 Each of such bonds shall include among their provisions for payment or performance that the obligations of the surety shall be unconditionally activated upon any determination by WMATA of a Default under this Agreement or any of the Transaction Documents and that WMATA shall be given notice of any default by Developer under the construction contract(s) or construction loan documents.

11.20 **Deposit**. To the extent not forfeited under other provisions of this Agreement, the Deposit shall serve as security (and not as liquidated damages) for the faithful and timely performance of Developer's obligation to complete construction of the Project in conformity with the terms of this Agreement; provided that, the Deposit shall be refunded to Developer in conformity with the provisions of Article 3.

11.21 **Maintenance of Infrastructure**. Developer acknowledges that Developer, and not WMATA, shall have a continuing obligation with respect to the maintenance, operation, repair and replacement of any and all infrastructure constructed on the Lease Premises.

11.22 **Safety of Persons and Property.**

11.22.1 Developer shall take commercially reasonable precautions for safety of, and shall provide commercially reasonable protection to prevent damage, injury or loss to: (1) employees and other persons who may be affected by activities relating to the Project; (2) the work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Developer, or its 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.



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11.22.2 Developer shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

11.22.3 Developer shall erect and maintain, as required by existing conditions and performance of this Agreement, commercially reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

11.22.4 When use or storage of explosives or other Hazardous Materials or equipment or unusual methods are necessary for execution of the Project, Developer shall exercise utmost care and carry on such activities under supervision of properly qualified personnel with all due regard for WMATA's operations and activities so as not to adversely affect the same.

11.22.5 Developer shall promptly remedy, at no additional cost to WMATA, all damage and loss to all property caused in whole or in part by Developer, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

11.22.6 Developer shall designate a responsible individual at the Project site whose duty shall be to use Best Commercially Reasonable Efforts to prevent accidents.

11.22.7 Developer shall provide commercially reasonable fire protection equipment and safeguards to protect WMATA's interests in accordance with WMATA's insurance carrier's requirements.

11.23 **Signage**. The existence, content and location of all signs proposed to be placed on the Property by Developer, or its contractors, and any and all signage that in any way relates or refers to WMATA or Metro Facilities shall be subject to prior written approval by WMATA in its discretion. The existence, content and location of all signs proposed to be placed and placed on the Property by WMATA or its agents, and any and all signage that in any way relate or refer to or provide directions to Developer shall be subject to prior written approval by Developer in its discretion.

11.24 **Offsite Improvements**. Developer shall pay to WMATA on demand, amounts equal to the proportionate construction and maintenance costs of any offsite improvements constructed by WMATA, (by way of example, but not limitation, storm water management ponds), which benefit the Project, if any. Any perpetual maintenance costs associated with the Project shall constitute an obligation which runs with the land and shall survive Closing and shall be included among the Development Covenants and the Covenants, Conditions and Restrictions to be recorded against the Property.

11.25 **Davis Bacon Requirements**. Developer shall comply with the "Davis-Bacon Act," 40 U.S.C. §276a, et seq. and with Section 64 of WMATA Compact and the "Fair Labor Standards Act," 29 U.S.C.A. §201, et seq. (1978) as amended in connection with all



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construction activities relating in whole or in part to the WMATA's Reserved Areas and Interests on the Property.

## ARTICLE 12
## INSURANCE REQUIREMENTS

12.1 **Scope and Limits of Required Insurance Coverage.** Beginning on the Effective Date and through the ninetieth (90th) day following Final Completion of the Project, Developer, and each of its contractors and subcontractors and every Person directly or indirectly employed by any of them and every Person for whose acts any of them may be liable (collectively, 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 Agreement and the other Transaction Documents by any and all of the Insurance Obligors such coverage and policies having the scope and limits not less than as set forth below:

12.1.1 **General Liability Insurance.** One or more commercial general liability insurance policies issued to and covering the liability of the Insurance Obligor for all activities and obligations under or in connection with this Agreement and the other Transaction Documents. Such coverage shall include, without limitation, completed operations and contractual liability insurance, explosion, collapse and underground liability coverage of not less than the following limits:

12.1.1.1 **Non-Construction Activities and Obligations.** Personal Injury and Property Damage Liability: $5,000,000 Combined Single Limit Each Occurrence.

12.1.1.2 **Construction Activities and Obligations.** Personal Injury and Property Damage Liability: $10,000,000 Combined Single Limit Each Occurrence, except as provided below:

12.1.2 **Commercial Property Insurance.** One or more special form insurance policies, which in the aggregate cover one hundred twenty percent (120%) of the full replacement cost of all improvements on the Property.

12.1.3 **Builder's Risk Coverage.** To the extent not fully covered by the policies required under subsection 12.1.1, one or more policies of builder's risk insurance on the improvements, buildings and materials, equipment and supplies on or about the Property that have been or are to be incorporated into the Project. Such insurance shall also include those Project materials, equipment, and supplies owned by WMATA and stored off-site. This insurance shall include the interests of WMATA and the Insurance Obligors, subcontractors and sub-subcontractors. Such insurance shall be written on a replacement cost basis and shall afford coverage at least



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equivalent to an "all-risk" builder's risk policy form as customarily defined within the insurance industry. One or more insurance policies in such amounts as shall be reasonably required by WMATA in respect of all construction, installation, alteration and other similar construction activities of the Insurance Obligor, but in no event less than the estimated completed value of the Project.

12.1.4 **Insurance Fully Complying with All Applicable Worker's Compensation, U.S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Law and the Federal Employers' Liability Act Requirements.** One or more insurance policies, which in the aggregate fully comply with all applicable worker's compensation, disability benefit and other similar employee benefit statutes, regulations and requirements, including, without limitation, those of the District of Columbia, and with all requirements of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, Admiralty Laws, or the Federal Employers' Liability Act. Such policies, without limitation, shall conform to all applicable statutory limits and, to the extent not specified to the following minimum coverage limits:

| | |
|---|---|
| Employers' Liability: | |
| Each Accident: | $1,000,000 |
| Disease Policy Limits: | $1,000,000 |
| Disease-Each Employee: | $1,000,000 |

12.1.5 **Automobile Liability Insurance.** One or more insurance policies covering the use of all owned, non-owned, hired, rented or leased vehicles having coverage scopes and limits not less than as required by all applicable motor vehicle laws, including, without limitation, of the District of Columbia, to the extent not fully covered by the policies required under subsection 12.1.1. In no event shall the coverage under such policies shall have a combined single limit for bodily injury liability and property damage liability of less than $5,000,000 per occurrence.

12.1.6 **Contractors' Pollution Legal Liability Insurance.** One or more insurance policies covering contractors' pollution legal liability, including, without limitation, the liability of the Insurance Obligor occasioned by environmental testing and release, removal, storage, transport and disposal of Hazardous Materials. The policy shall include coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, solid, liquid or gas, waste materials or other irritants, contaminants or pollutants from, into or upon the Property, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The coverage under such an insurance policies shall have limits not less than $3,000,000 per occurrence of claims made.

12.1.7 **Railroad Protective Liability Insurance.** One or more insurance policies covering the liability of any and all of the Insurance Obligors for any and all personal injuries, deaths and any and all damage to property, equipment and facilities caused by work



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performed by the Insurance Obligor on, above, below, adjacent or within fifty (50) feet of an of the Metro Facilities. The coverage under such policies shall have limits not less than $5,000,000 combined single limit for bodily injury and property damage with a $10,000,000 aggregate.

12.1.8 **Indemnification and other Liabilities under this Agreement and the Transaction Documents.** One or more insurance policies covering the liability of the Insurance Obligor for any and all indemnification obligations and indemnification liabilities under this Agreement and the Transaction Documents.

12.1.9 At the request of WMATA, such other insurance in such amounts as may from time to time be reasonably required by WMATA against such other insurable hazards as at the time are commonly insured against in the case of premises similarly situated, due regard being given to the type of the improvements, its construction and its use and occupancy.

12.1.10 If, by reason of changed circumstances or economic conditions, the insurance amounts referred to in this Agreement become in WMATA's reasonable judgment inadequate, Developer shall increase the amounts of such insurance promptly upon WMATA's reasonable request, which increased amounts shall be consistent with that customarily carried with respect to premises similarly situated to the Property, giving due regard to the type of improvements and its construction, use and occupancy.

12.1.11 **WMATA's Interests.** Each of the Insurance Obligors shall cause its insurance carrier(s) to name WMATA as an additional insured under its policies and to provide not less than sixty (60) days' written Notice of modification, termination, or cancellation of the policy to WMATA and to issue an endorsement to WMATA to that effect with a copy of such Notice and endorsement to WMATA's Office of Risk Management. Such endorsement shall be delivered to WMATA on or before the earlier of the Effective Date and before the expiration of any term thereof from an insurance company licensed to do business in the jurisdiction in which the Property is located. All policies required to be procured or provided by Insurance Obligors (i) shall be written on an occurrence basis unless otherwise indicated and WMATA's coverage shall be specified as primary policy coverage and not contributing with or in excess of any coverage which WMATA may carry; (ii) shall be on a basis which in each appropriate instance shall not make any Insurance Obligor a coinsurer; (iii) shall provide that coverage shall not be voided or reduced on account of the performance of any construction or other work on the Property; (iv) shall provide that coverage shall not be affected, limited, voided or reduced as to WMATA on account of any actions or omissions by any or all of the Insurance Obligors, nor shall any such actions or omissions affect or limit the obligation of the insurance company to pay the amount of any loss sustained; (v) shall provide that coverage shall not be voided or 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



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agents, contractors and employees, to the maximum extent possible; and (vii) shall provide for a deductible or self insured retention not to exceed $10,000. Neither the issuance of any insurance policies required hereunder, nor the minimum limits specified herein with respect to the Insurance Obligors' insurance coverages, shall be deemed to release, limit or restrict in any way the Insurance Obligors' liability arising under or out of this Agreement or otherwise.

12.1.12 **Verification of Coverage.** With respect to each and every one of the insurance policies herein required to be procured by the Insurance Obligors, on or before the Effective Date (or in the case of insurance relating solely to construction of the Project on or before the fifteenth (15th) day preceding the commencement of any construction or construction related activities) and not less than sixty (60) days before any such insurance policy shall expire, each of the Insurance Obligors shall deliver to WMATA's Office of Risk Management (at 600 Fifth Street, N.W., Washington, DC 20001 or such other address as may be specified by WMATA) at WMATA's option either an original or copy of the insurance policy for each such required policy or renewal thereof, as the case may be. Each and every insurance policy required to be carried hereunder by or on behalf of Insurance Obligors shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that, unless WMATA shall first have been given sixty (60) days' prior written notice thereof: (i) such insurance policy shall not be canceled or allowed to lapse, and shall continue in full force and effect, (ii) the insurance carrier shall not, for any reason whatsoever, fail to renew such insurance policy, and no material changes may be made in such insurance policy, except in the event of the Insurance Obligors' nonpayment, for which WMATA shall have been given not less than twenty (20) days' prior written notice. From time to time within ten (10) Business Days following request by WMATA, the Insurance Obligors shall deliver to WMATA evidence reasonably satisfactory to WMATA that such insurance policies and coverages remain in full force and effect, and that all premiums which are due and payable have been paid. The terms "insurance policy" and "insurance policies" as used in this Agreement shall be deemed to include any extension or renewals of such insurance policies. Evidence of each renewal or replacement of the policies required by this Agreement and the other Transaction Documents shall be delivered by the Insurance Obligors to WMATA at least twenty (20) days prior to the respective expiration of the applicable policies.

12.2 **Failure to Procure or Maintain Insurance.** In the event that Insurance Obligors shall fail to furnish and maintain any insurance coverage required to be procured by Insurance Obligors or fails to maintain acceptable policies of insurance, WMATA shall have the option, but not the obligation, to obtain the same and pay the premium therefor at the sole cost and expense of the Insurance Obligors, without the need of any notice to Insurance Obligors, and the premium so paid by WMATA together with a service charge equal to ten percent (10%) shall be immediately due and payable by Insurance Obligors to WMATA.



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12.3 **Compliance with Insurance Requirements.** The Insurance Obligors shall not do or permit to be done or omit to do any act or thing upon the Property that will invalidate or be in conflict with any insurance policies covering the Property or any part thereof, including all common areas or fixtures and property therein, or any other insurance policies or coverage referred to above; and each of the Insurance Obligors shall promptly comply with all rules, orders, regulations or requirements relating to such insurance policies, including all rules, orders, regulations, requirements and insurance regulations, and shall not do, or permit anything to be done, in, on or about the Property, or bring or keep anything therein, which shall increase the rate of fire insurance on the Property or on any property, including all common areas, located therein, or increase the rate or rates of any other insurance referred to in this Agreement. If any act or omission of any of the Insurance Obligors, its or their agents, employees or contractors shall result directly in any increase in the premium rates applicable to any such insurance policies carried by WMATA, or other increased costs to WMATA in order to comply with insurance regulations, in excess of the premium rates or such costs in effect, then the Insurance Obligors shall reimburse WMATA for the amounts of any such increased rates or costs on account of such act or omission (with joint and several liability therefor) within fifteen (15) days after receipt of a statement therefor from WMATA.

12.4 **Minimum Qualifications of Insurance Companies.** Insurance companies providing the coverages required by this Article 12 shall be rated by A.M. Best or a comparable rating company and carry at least an "A" rating and a "Financial Size Category" of at least "X" or better or, if such ratings are not then in effect, the equivalent thereof or such other financial and size rating as WMATA may at any time consider appropriate. All insurance shall be procured from insurance companies authorized to do business in the jurisdiction in which the Property is located. WMATA's approval or failure to disapprove the insurance furnished by the Insurance Obligors shall not release, limit or restrict in any way Insurance Obligors' liability arising under or out of this Agreement or otherwise.

12.5 **Survival of Insurance and Indemnification Covenants.** The requirements of this Article12 shall survive Closing, shall be embodied in the Development Covenants and the Covenants, Conditions and Restrictions.



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## ARTICLE 13
## TRANSIT ORIENTED DEVELOPMENT; FTA APPROVAL; MISCELLANEOUS REQUIREMENTS

13.1 **Transit-Oriented Development**. In accordance with FTA requirements (including, without limitation, FTA Circular 9300.1B, Appendix B), Developer warrants and covenants that the Project to be designed and to be constructed on the Lease Premises shall constitute a "Transit-Oriented Development". In addition, Developer warrants and covenants that it shall maintain a "Continuing Transit Orientation" each as defined below. The requirements of this Section shall be among the Development Covenants and Covenants, Conditions and Restrictions. Developer and its heirs, successors and assigns shall cause the Lease Premises at all times to maintain a "Continuing Transit Orientation" for so long as a Metrorail station is open and in operation on or about the Property or any WMATA's Adjacent Property, (or to the extent required by FTA regulations or other applicable Laws) within reasonable proximity thereof. The terms "Transit-Oriented Development" and "Continuing Transit Orientation" mean respectively, as applicable to design and construction of the Project and as to its subsequent maintenance and operation, satisfaction of each of the following, each as reasonably determined by WMATA: (a) provision of convenient pedestrian and vehicular access to a transit station; (b) incorporation of private investment and office, commercial or residential development; (c) design which enhances the effectiveness of a mass transit project and is physically or functionally related to the mass transit project; and (d) creation of non-vehicular capital improvements that are designed to result in increased transit usage.

13.2 **FTA Project Approval**. WMATA and Developer acknowledge that the Project is subject to approval by the FTA ("**FTA Project Approval**"). WMATA will apply for FTA Project Approval within thirty (30) days following the Effective Date. WMATA will provide evidence of receipt of FTA Project Approval to Developer. In the event FTA Project Approval is denied, and all possible appeals exhausted, this Agreement will be terminate and expire as of the date of such denial, the full amount of the Deposit, subject to the terms of Article 3 shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement.

13.3 **Disclaimer**. WMATA shall have no obligation to make any change, demolition or improvement of or to the Lease Premises, WMATA's Residual Property, WMATA's Adjacent Property or any other portion of the Property, including without limitation, to comply with Applicable Laws, except as expressly set forth in this Agreement, and Developer shall have no right to make any such changes, demolitions or improvements without the prior written consent of WMATA in each instance first obtained, Applicable Laws, except as expressly set forth in this Agreement.



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13.4 **Americans with Disabilities Act.** All improvements constructed by Developer on the Lease Premises shall comply with Title II and III of the Americans With Disabilities Act, 42 U.S.C., 12101, et seq., as amended, and any regulations promulgated thereunder ("ADA"), to the extent applicable. If as a result of such improvements, or any subsequent alteration, addition or modification thereto, ADA-related improvements to the Metro Station or any Metro Facilities are required, Developer shall be solely responsible for the cost of all such improvements and shall pay or reimburse WMATA for all such costs on demand.

13.5 **Use of WMATA Compact.** Developer understands and agrees that in no event shall Developer assert for its own benefit, or attempt to claim or assert, an exemption or immunity available to WMATA under the Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as same may be amended (the "WMATA Compact").

13.6 **Hazardous Materials.** Developer shall not cause or permit any Hazardous Materials to be used, generated, stored or disposed of, on or about, from or adjacent to the Property.

13.7 **Noise and Vibrations.** No claims shall be made by Developer against WMATA arising from usual noise or vibration caused from WMATA's normal transportation related operation of the Metro Station or any Metro Facilities. A provision to this effect shall be included in all subleases delivered pursuant to this Agreement.

13.8 **No Interference.** Developer shall not interfere or permit any interference with any of WMATA's operations or the free flow of pedestrian traffic to and from the Metro Station, Metro Facilities, or WMATA's Reserved Areas and Interests. Developer shall not conduct or permit any activities to be conducted that would interfere with or diminish WMATA's ability to realize transit revenues in, on or about the Property.

**13.9** **Acknowledgment of Tax Exempt Status.** Developer acknowledges that WMATA is a tax exempt entity and agrees that WMATA shall not be responsible for the payment of any taxes or impositions relating to this Agreement or the transactions contemplated by this Agreement or the other Transaction Documents. Any and all taxes and other impositions resulting solely from any and all activities of Developer shall be their sole responsibility and obligation and not that of WMATA. From and after the Closing, other than such impositions as WMATA has routinely paid and is legally required to pay with respect to the Property on and before the Effective Date, Developer (and not WMATA) shall be responsible for the payment of any and all taxes and impositions, including, without limitation, real estate taxes, relating to the Lease Premises.

13.10 **Officials Not To Benefit.**

13.10.1 No member (i.e., Representative or Senator) of, or delegate to, Congress, or any similar official, or any member of such person's family, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not apply if this Agreement is made with a corporation or other entity



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with which such official or family member has only a de minimis (in WMATA's sole opinion) contractual or ownership interest. Developer or any Consultant warrants, represents, and agrees that as of the date of this Agreement, no person described in this Subparagraph, nor any entity with which such person is affiliated, has any such interest in Developer or any Consultant. Developer or any Consultant shall forthwith deliver written notice to WMATA of any breach of the foregoing warranty, representation, and agreement, and shall make reasonable inquiries from time to time to determine whether any such breach has occurred.

13.10.2 No member, officer, or employee of WMATA or of a local public body during his/her tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement.

13.11 **Gratuities.** In connection with this Agreement, or any amendments or modifications thereto, the giving of, or offering to give, gratuities (in the form of entertainment, gifts or otherwise) by the Developer or any Consultant, or any agent, representative, or other person deemed to be acting on behalf of the Developer or any Consultant, or any contractor, subcontractor or supplier furnishing material to or performing work under this Agreement, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any director, officer or employee of WMATA, or to any director, officer, employee or agent of any of WMATA's agents, consultants or representatives, with a view toward securing an agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to performance under this Agreement or any agreement that will be negotiated, is expressly forbidden. The terms of this Paragraph shall be strictly construed and enforced in the event of violation hereto.

## ARTICLE 14
## ASSIGNMENT OF AGREEMENT

14.1 **Assignment**

14.1.1 Prior to Final Completion, this Agreement shall not be assignable by the Developer or the Guarantor.

14.1.2 After Final Completion, neither this Agreement nor any rights or interests conferred hereunder shall be assigned or assignable, delegated or transferred in any manner by Developer or Guarantor, without WMATA's prior written approval in WMATA's sole discretion and any purported assignment delegation or transfer in violation of this provision shall be null and void. No assignment shall relieve or release Developer or Guarantor from any of their respective obligations under this Agreement or the Guaranty, as applicable, and without limitation, WMATA shall not be required to consent to any assignment that would adversely affect WMATA's rights, expectations and requirements under Article 2.



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14.1.3 All assignments (whether or not requiring the consent of WMATA) shall be made expressly subject to the terms, guarantees, covenants and conditions of this Agreement and shall require among other things:

14.1.3.1 That the assignment shall not be binding on WMATA until a duly executed copy of the assignment is delivered to WMATA. The assignment shall designate the name of the assignee and the address to which all Notices required by this Agreement shall be sent; and

14.1.3.2 That the assignee shall assume all rights and obligations of Developer or Guarantor, as applicable, under this Agreement and the other Transaction Documents.

14.1.3.3 Such assignment shall not (a) relieve Developer or Guarantor of any liabilities and obligations under this Agreement or any of the other Transaction Documents; or (b) relieve Guarantor of any liabilities and obligations under the Guaranty or (c) impair or adverse affect the rights of WMATA under this Agreement or any agreement, undertaking or security related to or contemplated by this Agreement.

14.2 **Change of Control.**

14.2.1 There shall be no Change of Control in either the Developer or the Guarantor prior to the Final Completion of the Project.

14.2.2 After Final Completion, there shall be no Change of Control in the Developer, without WMATA's prior written approval, in WMATA's sole discretion. WMATA shall not be required to consent to any Change in Control that would adversely affect WMATA's rights, expectations and requirements under Article 2.



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## ARTICLE 15
## FORFEITURE OF DEVELOPMENT RIGHTS

In addition to all other rights and remedies of WMATA, if Developer fails to secure the Approvals on or before expiration of the Approval Period or if WMATA's right to terminate arises under Article 6 at WMATA's election in its sole and absolute judgment, Developer shall forfeit the right to lease or develop the Lease Premises. Nothing in this Article shall impair or diminish the scope or exercise of WMATA's remedies for any Default.

## ARTICLE 16
## BROKERAGE

WMATA and Developer each represents and warrants to the other that it has not dealt with or utilized the services of any real estate broker, sales person or finder in connection with this Agreement.

## ARTICLE 17
## POSSESSION AND DUTY OF CARE

17.1 **Possession.** Possession of the Lease Premises shall be delivered to Developer at Closing, pursuant to the terms of the Lease. Except only for Developer's license during the Study Period as set forth in and limited by the terms of Article 4, nothing in this Agreement and no action or failure to act by WMATA, shall constitute a grant by WMATA to Developer or any Consultant or any other Person of (or acquiescence regarding) any legal or equitable estate in or to the Property or any part thereof or of any license right, power, or permit, interest, lien, charge, or other encumbrance on the Property or WMATA's right, title or interest therein. Developer and each Consultant shall not suffer or permit any portion of the Property to be used by any Person, so as to threaten, burden, diminish, adversely affect or impair WMATA's rights, title or interest in the Property and each Developer and Consultant shall indemnify, defend (with attorneys approved by WMATA) and hold WMATA harmless against any and all damage, losses, costs and expenses (including, without limitation, attorneys' fees and costs) arising out of any breach of this subsection. To the extent that possession of the Lease Premises shall not be delivered to Developer at Closing, vacant (except as contemplated by the Permitted Exceptions or otherwise expressly set forth in this Agreement), all lessees, tenants and occupants, and all holdover tenants shall be and become tenants by sufferance of Developer, provided, however, that nothing in this Section 17.1 shall diminish or impair the rights of WMATA set forth in this Agreement or the other Transaction Documents.

17.2 **Duty of Care and Reporting.**

17.2.1 Developer and each Consultant by exercising any right or license, pursuant to Article 4 under this Agreement, to enter onto the Lease Premises and to conduct activities relating thereto for any purpose, acknowledges that WMATA's Metro Facilities occupy portions of the Property and are located on, under, or about the Property, such that Developer and each Consultant shall be held to a duty of special and utmost care



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not to damage, interfere with or adversely affect in any way such tunnels, any other Metro Facilities or any ancillary equipment or facilities. Without limiting the foregoing, Developer and each Consultant shall protect the Metro Facilities, including, without limitation, any and all adjacent right-of-way areas from any and all falling objects. It shall be the responsibility of Developer to inform each Consultant of the requirements of this subsection. However, at the request of WMATA, Developer and each Consultant shall be required to deliver to WMATA a written acknowledgment of the foregoing, but failure of WMATA to request the same shall not excuse noncompliance with the terms of this subsection.

17.2.2 Developer and each Consultant shall, prior to conducting any work or other activity within the confines of any tunnel or any adjacent right-of-way which is above or adjacent to the third rail or any other significant electrical facilities (e.g., traction stations), first attend and complete, to WMATA's satisfaction, a safety class conducted by WMATA's Safety and Fire Protection Branch.

17.2.3 Developer and each Consultant shall only enter and conduct activities in, on or about the Property subject to the terms of an express written Right of Entry, as described in Article 4, and in such manner and at such times so as not to interfere with WMATA's use, construction, maintenance, repair or operations thereof. If access to any track areas is required, such access shall be limited to only one (1) track at a time.

17.3 **Indemnification**. Developer shall indemnify, defend (with attorneys selected by Developer, subject to WMATA's approval, not to be unreasonably withheld, and retained at Developer's expense) and hold WMATA harmless from any and all claims, damages, actions, losses, costs, expenses (including, without limitation legal fees and expenses) and liabilities of whatsoever nature or kind that may arise in connection with any and all actions taken by Developer, its Consultants and its and their employees, agents and invitees in, on, about or in connection with the Property or their performance of this Agreement and the related Transaction Documents, including, without limitation, any and all surveys, tests, investigations, construction and other activities.

17.4 **Survival**. Except as otherwise expressly provided in this Article 17, the requirements of this Article 17 shall not be limited to the Study Period, shall survive Closing and shall run with the land and shall be deemed a part of and shall be incorporated within the Development Covenants and the Covenants, Conditions and Restrictions.



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## ARTICLE 18
## DEFAULTS AND REMEDIES

18.1 **WMATA's Default**. The following shall constitute a "Default" by WMATA under this Agreement:

18.1.1 If WMATA refuses to consummate a Closing as required under the terms of this Agreement; or

18.1.2 If WMATA makes any material misrepresentation under Section 9.1 of this Agreement; or

18.1.3 If following the Study Period and the Approval Period, WMATA fails to pay when due and payable any impositions it is legally required to pay in respect of the Lease Premises and any such failure is not cured within thirty (30) business days after receipt of Notice (or such additional period as may be otherwise provided under this Agreement or agreed by the parties to effect such cure, so long as WMATA timely commences such cure and thereafter diligently prosecutes such cure to completion), and such non-payment prevents the consummation of the Closing or completion of construction of the Project; or

18.1.4 If WMATA fails to perform any material agreement or covenant required to be performed by WMATA under the terms of this Agreement and any such failure is not cured within thirty (30) business days after receipt of Notice (or such additional period as may be otherwise provided under this Agreement or agreed by the parties to effect such cure, so long as WMATA timely commences such cure and thereafter diligently prosecutes such cure to completion), and such refusal prevents the consummation of the Closing or completion of construction of the Project.

18.1.5 Notwithstanding anything to the contrary, (i) WMATA shall not be in default for any failure or non-satisfaction of a condition precedent to Developer's obligation to consummate Closing and (ii) the foregoing shall not diminish WMATA's right to adjourn or postpone a Closing as provided in this Agreement.

18.2 **Developer's Remedies**. If WMATA shall be in Default under this Agreement, and, if Developer is not otherwise in Default hereunder, Developer, in addition to any other rights and remedies available to it at law or in equity (including, without limitation, the right to require specific performance) shall be entitled to terminate this Agreement and to receive a refund of the then remaining Deposit, which shall be promptly refunded to Developer by WMATA (except to the extent of WMATA's entitlement to retain same under Section 17.3 or other terms of this Agreement), or, with the prior written consent of WMATA, proceed to cure WMATA's default.

18.3 **Developer's Default.**

18.3.1 The following shall constitute a "Default" by Developer under this Agreement:



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18.3.1.1 If any Closing is not consummated for any reason other than WMATA's Default, a failed condition precedent to Developer's obligations to proceed to any Closing under this Agreement or the existence of circumstances that under the express terms of this Agreement excuse Developer's obligation to consummate the Closing; or

18.3.1.2 If Developer fails to comply with or adhere to any obligations under Article 3 and such failure is not cured within five (5) Business Days after receipt of Notice from WMATA or if Developer fails to comply with Section 4.5; or

18.3.1.3 If Developer fails to comply with or adhere to any obligations under Article 12 (Insurance Requirements), and such failure is not cured within five (5) Business Days after receipt of Notice from WMATA; or

18.3.1.4 If Developer fails to comply with or adhere to any obligations under any Article 14(Assignment of Agreement) and such failure is not cured within five (5) Business Days after receipt of Notice from WMATA; or

18.3.1.5 If Developer fails to comply with or adhere to any obligations under Section 2.6.2 (maintaining Qualified Team) and such failure is not cured within fifteen (15) Business Days after receipt of Notice from WMATA; or

18.3.1.6 If Developer fails to undertake Commercially Reasonable Best Efforts as and when required by the terms of this Agreement and such failure is not cured within ten (10) Business Days after receipt of Notice from WMATA; or

18.3.1.7 If Developer fails to comply with or adhere to any obligations under ARTICLE 11 in accordance with any deadlines set forth therein, or, as to any obligation for which no deadline has been set in such ARTICLE 11 within twenty (20) Business Days after receipt of Notice from WMATA; or

18.3.1.8 If Guarantor shall breach any covenant of Guarantor contained in the Guaranty, or any other Transaction Document to which Guarantor is a party or by which Guarantor is bound, if any, and such breach continues beyond the expiration of any applicable notice and cure period specified in the Guaranty or such other Transaction Document; or



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18.3.1.9 If Developer makes any material misrepresentation in this Agreement or any of the other Transaction Documents, or if Guarantor makes any material misrepresentation in the Guaranty, or if any of them make any material misrepresentation in any other material submission to WMATA; or

18.3.1.10 If Developer or Guarantor make any material misrepresentation to any governmental authority for or in connection with the transactions contemplated by this Agreement; or

18.3.1.11 If Developer or Guarantor files a voluntary petition in bankruptcy, or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future applicable federal or state law, or Developer or Guarantor seeks or consents to, or acquiesces, in the appointment of any trustee, receiver or liquidator of such Developer or Guarantor, or of all or any substantial part of its or their assets, or of the ownership interests of Developer or Guarantor under this Agreement.

18.3.1.12 If there occurs the filing of a petition by or against Developer or Guarantor (i) in any bankruptcy or other insolvency proceeding with respect to Developer or Guarantor; (ii) seeking any relief under any state or federal debtor relief law with respect to Developer or Guarantor; (iii) for the appointment of a liquidator or receiver for all or substantially all of Developer or Guarantor's property or for Developer's interest in this Agreement; or (iv) for the reorganization of Developer or Guarantor or for modification of Developer's or Guarantor's capital structure and Developer or Guarantor, as the case may be, fails to have the proceedings initiated by such petition stayed or dismissed within sixty (60) days after the filing thereof; or

18.3.1.13 If Developer shall breach any other material covenant of Developer contained in this Agreement or in any right of entry agreement between Developer and WMATA or fail to perform any other material obligation and such failure is not cured within twenty-one (21) Business Days after receipt of Notice.

18.3.2 Notwithstanding anything to the contrary, Developer shall not be in default for any failure or non-satisfaction of a condition precedent to WMATA's obligation to consummate Closing, unless the failure or non-satisfaction of such condition precedent is the result of Developer's Default hereunder.

18.4 **WMATA's Remedies.**



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18.4.1 WMATA shall be entitled to exercise the following remedies in connection with a Default by Developer under this Agreement:

18.4.1.1 If Developer shall be in Default under this Agreement prior to the consummation of the Closing contemplated by this Agreement, WMATA shall have the right to terminate this Agreement by Notice to Developer and the full amount of the Deposit then held by WMATA pursuant to the terms of this Agreement shall be retained by WMATA as liquidated damages for such Default as WMATA's sole and exclusive remedy hereunder, other than pursuant to Section 17.3 and pursuant to the terms of this Agreement that expressly survive any termination of this Agreement.

18.4.1.2 If Developer shall be in Default under this Agreement after consummation of Closing, then WMATA shall have all rights and remedies available to it at law or in equity (including, without limitation, the full amount of the Deposit then held by WMATA pursuant to the terms of this Agreement, the right to require specific performance and to terminate this Agreement) as to such Default.

18.4.2 The parties agree that it would be impracticable and extremely difficult to ascertain the actual damages suffered by WMATA as a result of Developer's Default hereunder, and that, under the circumstances existing as of the Effective Date, the liquidated damages to the extent provided for in Section 18.4.1 represent a reasonable estimate of the damages that WMATA would incur as a result of such Default by Developer. The parties acknowledge and stipulate that payment of such liquidated damages is not intended as a forfeiture or penalty. The parties hereby waive any and all rights to contest the validity of these liquidated damages provisions, including, but not limited to the defense that there is or may be an adequate remedy at law.

18.4.3 The payment of liquidated damages as provided in Section 18.4.1 shall not extinguish or otherwise affect any other of Developer's post-closing liabilities or WMATA's remedies in respect thereof specified in this Agreement, or WMATA's right to payments under the Guaranty.

18.4.4 All remedies of WMATA under this Agreement and under applicable laws shall be cumulative, unless otherwise expressly provided to the contrary in this Agreement.

18.5 **Intentionally Omitted.**

18.6 **Refund of Deposit.**



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18.6.1 Developer shall be entitled to a refund of the Deposit, subject to the terms of Article 3 and then only in accordance with the terms and provisions of this Agreement, and to the extent provided in subsection 18.6.2;

18.6.2 Notwithstanding anything to the contrary, WMATA's obligation to refund the Deposit to Developer shall be subject to offset by WMATA to the extent of WMATA's entitlement to retain all or any portion of the Deposit under the terms of this Agreement for obligations of Developer that have accrued prior to the date on which WMATA's obligation to make such refund arises.

## ARTICLE 19
## RISK OF LOSS OR CASUALTY

The risk of loss or damage to the Property by fire or other casualty until Closing is assumed by WMATA, provided that WMATA's responsibility shall be only to the extent of any recovery from insurance carried on the Property. Upon assignment to Developer of any insurance proceeds in respect of fire or other casualty occurring between the Effective Date and the time of settlement, Developer shall have no right to terminatc this Agreement on account thereof, but WMATA shall assign to Developer its interest in and to any insurance policies and proceeds thereof payable as a result of such damage or destruction. WMATA shall not, in any event, be obligated to effect any repair, replacement or restoration, but may do so at its option, in which case WMATA may apply the insurance proceeds to the costs of restoration.

## ARTICLE 20
## EMINENT DOMAIN

20.1 **Total Taking.** If prior to the Closing, there should be a Taking of the entire Lease Premises, such Taking shall be deemed to have caused this Agreement to terminate and expire as of the date of such Taking, the full amount of the Deposit, subject to the terms of Article 3 shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement. Each Taking contemplated by this subsection 20.1 shall be deemed to be and shall be referred to in this Agreement as a "Total Taking".

20.2 **Partial Taking.**

20.2.1 If, prior to the Closing, there should be a Taking of less than the entirety of the Lease Premises, and the remaining portions of the Lease Premises cannot reasonably be adequately developed in the context of the exercise by Developer of Commercially Reasonable Best Efforts to do so as a project of commercially reasonable usefulness, design, construction, and economic feasibility, then Developer or WMATA shall have the right to terminate this Agreement as to the Lease Premises that is the subject of such partial Taking, as applicable, upon Notice to the other within ninety (90) days after the date of the Taking of the Lease Premises Such Notice shall state the date of termination, which shall not be later than the date of the Taking.



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20.2.2 Intentionally Omitted.

20.2.3 If a Partial Taking occurs and neither WMATA or the Developer exercises its right to terminate this Agreement in conformity with the terms of this Section 20.2, WMATA shall be entitled to continue to hold the Deposit and to otherwise deal with the same in conformity with the provisions of this Agreement. Developer shall pay the Rent for the applicable portion of the Lease Premises that is not affected by such Partial Taking without reduction.

20.2.4 Each Taking contemplated by this subsection 20.2 shall be deemed to be and shall be referred to in this Agreement as a "Partial Taking".

20.2.5 Date of Taking. For the purposes of this Article, the date of the Taking shall be the date on which title vests in the condemnor.

20.3 **Condemnation Proceeds**. Except as expressly set forth in Section 20.2, all condemnation proceeds and any and all awards and payments in respect of a Total Taking or Partial Taking (all such proceeds, awards and payments collectively the "Condemnation Proceeds") shall vest in WMATA and Developer hereby irrevocably assigns to WMATA any and all of their rights in all Condemnation Proceeds.

## ARTICLE 21
## DISPUTE RESOLUTION

21.1 **Alternative Dispute Resolution Mechanisms**. In the event of a dispute between the parties (including, without limitation, any claim by one party against the other party) with respect to any matter arising under this Agreement or any of the Transaction Documents, the party raising a dispute or claim (the "Aggrieved Party") shall give the other party written notice specifying the nature of the dispute and the monetary amount involved, if any (the "Dispute Notice"). For a period of fifteen (15) days after receipt of the Dispute Notice, the parties' Designated Representatives shall proceed diligently and in good faith in an effort to resolve the dispute to their mutual satisfaction. If the parties fail to resolve the dispute prior to the expiration of the fifteen (15)-day period, then upon the written request of the Aggrieved Party to the other party (the "Alternative Dispute Notice"), the following provisions with respect to non-binding, alternative resolution of the dispute shall govern:

21.1.1 If the Dispute Notice specifies a monetary amount less than $500,000, then (a) within three (3) days after receipt of the Alternative Dispute Notice, each party shall appoint a representative (meeting the qualifications of Section 21.1.3); provided that, if a party shall fail to timely appoint its representative, the other party may appoint such representative; (b) within three (3) days after their collective selection, the two (2) representatives selected shall select a third (3rd) representative (meeting such standards); and, (c) the three representatives (the "Dispute Review Panel") shall meet



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within three (3) days after their collective appointment (or at such reasonable time thereafter as a majority of the Dispute Review Panel may agree upon) to decide the disputed issue. The disputed issue shall be resolved, by not less than a majority vote of the Dispute Review Panel, within thirty (30) days after the date of the selection of the third representative. Fees of, and expenses incurred by, the representative of a party in connection with the dispute resolution shall be borne by such party, and of the third (3rd) representative, equally by both parties.

21.1.2 If the Dispute Notice (a) does not specify a monetary amount, or (b) specifies that the matter in dispute cannot be reduced to monetary terms, or (c) specifies a monetary amount equal to or greater than $500,000, or if the parties do not elect to be bound by the decision and award of the Dispute Review Panel, any party the Aggrieved Party shall file a demand with the American Arbitration Association in Washington, D.C. simultaneously with delivering the Alternative Dispute Notice to the other party. Such arbitration shall be conducted in Washington, D.C. in accordance with the applicable rules of the American Arbitration Association (the "AAA Rules") by a panel of not less than three (3) arbitrators. The arbitrators shall be selected in accordance with the AAA Rules from the roll maintained by the American Arbitration Association in Washington, D.C., and shall be sworn faithfully and fairly to determine the dispute in question. Fees of, and expenses incurred by, the arbitrators in connection with the dispute resolution shall be borne equally by both parties.

21.1.3 The representatives or arbitrators selected in accordance with this Section shall not be related by blood, marriage or professional affiliation to the parties or the principals of the parties, and must be professionals or persons with at least ten (10) years' experience in the substantive area in which the dispute has arisen.

21.2 **Discovery**. Notwithstanding any provision in the AAA Rules to the contrary, in any arbitration proceeding, the parties each, prior to the arbitration hearing, shall be entitled to take limited discovery in the form of the right to request documents, the right to serve not more than thirty (30) interrogatories and the right to take not more than four (4) depositions, with respect to each other party and may, in addition, for good cause shown, be permitted additional discovery in the discretion of the arbitrators; and (c) at the arbitration hearing, shall be entitled to present evidence and to cross-examine witnesses.

21.3 **Binding Effect.** The decision and award of the Dispute Review Panel or the arbitration panel, as the case may be, shall be non-binding and shall only be enforceable against either party in any court of competent jurisdiction pursuant to a separate agreement to make such decision binding, which agreement shall be in each party's sole and absolute discretion.



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## ARTICLE 22
## MISCELLANEOUS

22.1 **Recitals, Exhibits And Schedules**. All Recitals, Exhibits and Schedules annexed hereto are incorporated herein and made a part of this Agreement for all purposes.

22.2 **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of WMATA and Developer, and their respective successors, heirs and permitted assigns.

22.3 **Captions**. The captions, headings and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

**22.4 Number And Gender Of Words**. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

22.5 **Notices**

22.5.1 All notices, demands, requests and other communications required pursuant to or in connection with the provisions of this Agreement ("Notice") shall be in writing and shall be deemed to have been properly given or served for all purposes (i) if sent by Federal Express or the nationally recognized overnight carrier for next business day delivery, on the actual date of delivery by such carrier, or (ii) if personally delivered, on the actual date of delivery or (iii) if sent by certified mail, return receipt requested postage prepaid, on the Fifth (5th) Business Day following the date of mailing addressed as follows:

| | |
|---|---|
| If to Developer: | |
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| | |
| And with a copy to: | |
| | |
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| | |
| If to WMATA: | Washington Metropolitan Avenue<br>Transit Authority<br>600 Fifth Street, NW |



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| | |
|---|---|
| | Washington, D.C. 20001<br>Attn: Director of Station Area Planning and Asset Management<br>Phone:202-962-2616<br>Fax: |
| | |
| And with a copy to: | Washington Metropolitan Avenue Transit Authority<br>600 Fifth Street, NW<br>Washington, D.C. 20001<br>Attn: Rosalyn Doggett<br>Phone:202-962-2208<br>Fax: |
| | |
| And with a copy to: | Washington Metropolitan Avenue Transit Authority<br>600 Fifth Street, NW<br>Washington, D.C. 20001<br>Attn: Carol O'Keeffe<br>Phone: _____<br>Fax: _____ |

22.5.2 Any of the parties may designate a change of address by Notice in writing to the other parties in conformity with this Section. Whenever in this Agreement the giving of Notice by mail or otherwise is required, the giving of such Notice may be waived in writing by the person or persons entitled to receive such Notice.

22.6 **Governing Law And Venue**. The laws of the District of Columbia shall exclusively govern the validity, construction, enforcement and interpretation of this Agreement, unless otherwise specified herein, except for the conflict of laws provisions thereof. All claims, disputes and other matters in question arising out of or relating to this Agreement, or the breach thereof, shall be decided by proceedings instituted and litigated in the United States District Court for the district in which the Property is situated, and the parties hereto expressly consent to the venue and jurisdiction of such court.

22.7 **Entirety And Amendments.** This Agreement embodies the entire Agreement between the parties and supersedes all prior Agreements and understandings, if any, relating to the Property and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

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



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this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

22.9 **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is deemed an original for all purposes and all such counterparts shall, collectively, constitute one Agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

22.10 **Further Acts.** In addition to the acts and deeds recited herein and contemplated to be performed, executed or delivered by WMATA and Developer, WMATA and Developer agree to perform, execute or deliver or cause to be performed, executed or delivered any and all such further acts, deeds and assurances as may be reasonably necessary or appropriate to consummate the transactions contemplated in this Agreement.

22.11 **Disadvantaged Business Enterprises; Non-Discrimination Obligation.** In accordance with WMATA's voluntary minority business enterprise program, Developer acknowledges WMATA's fifteen percent (15%) aspirational goal for hiring minority contractors, with such aspirational goal to be sought using race neutral methods only. This is an aspirational goal only, and failure to achieve minority hiring goals shall not be a default hereunder. In addition, Developer agrees that it will not discriminate on the basis of race, color, national origin, sex, or any other unlawful basis in the award and performance of contracts or subcontracts.

22.12 **Sovereign Immunity; Anti Deficiency Clause**. Subject to the provisions of this Section 22.12, WMATA shall be liable for its contractual obligations to Developer under this Agreement in accordance with the law of the District of Columbia (including rules on conflict of laws) and the WMATA Compact. Except to the limited and specific extent set forth in the preceding sentence, nothing in this Agreement, any other related document or circumstance shall in any way waive or be deemed or construed to waive any immunity of WMATA with respect to this Agreement, whether such immunity arises under the WMATA Compact, the Constitution of the United States or any Amendment thereto, any statute or regulation of the District of Columbia, the State of Maryland, the Commonwealth or Virginia, common or decisional law, or otherwise. Developer agrees that all obligations of WMATA under this Agreement that directly or indirectly require, or may require, WMATA's expenditure of any of its funds are, and shall be, subject to the appropriation and availability of funding through WMATA's normal and customary budgetary procedures.

22.13 **Construction.** No provision of this Agreement shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this 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



FOIA CONFIDENTIAL TREATMENT REQUESTED 

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.

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



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WMATA for its costs of enforcing this provision. The provisions of this Section 22.20 shall survive any termination of this Agreement.



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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement under seal as their free act and deed for the uses and purposes herein contained as of the date first set forth above.

WMATA:

**Washington Metropolitan Area Transit Authority**

By:_____ **[SEAL]**

Printed: _____

Title: _____

Developer:

**[Developer]**

By:_____ **[SEAL]**

Printed: _____

Title: _____

[_____]

By:_____ **[SEAL]**

Printed: _____

Title: _____



FOIA CONFIDENTIAL TREATMENT REQUESTED

1st Draft Sent
from WMATA
To Developer

# GROUND LEASE AGREEMENT

*BETWEEN*

## WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

*AS WMATA*

*AND*

## DEVELOPER, LLC

*AS DEVELOPER*



FOIA CONFIDENTIAL TREATMENT REQUESTED

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# LEASE AGREEMENT

**THIS LEASE AGREEMENT** (this "**Lease**") is entered into as of October, _____, 2008 (the "Effective Date") by and between **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324, Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of D.C. Board of Commissioners adopted November 15, 1966, having a principal business address at 600 Fifth Street, NW, Washington, DC 20001 ("**WMATA**") and Developer, LLC, a District of Columbia Limited Liability Company having a principal address at _____ ("**Developer**").

## RECITALS

WMATA holds legal title to one or more certain tracts of land comprising approximately 28,892 square feet located at the intersection of 8th Street and Florida Ave, NW and 9th Street and Florida Ave, NW in the District of Columbia, each as more particularly described in Exhibit A attached hereto and made a part hereof, collectively defined below as the "**Property**."

WMATA and Developer have entered into a certain Joint Development Agreement dated as of October _____, 2008 (the "JDA") with respect to the Property, a copy of which is attached hereto, and incorporated herein, as Exhibit _____.

Pursuant to and in accordance with the JDA, WMATA desires and has agreed to lease to Developer, and Developer desires and has agreed to lease from WMATA, portions of the Property, which portions are collectively defined below as the "Lease Premises", on the terms and conditions set forth below (which terms and conditions shall control in the event of any conflict with these Recitals).

**NOW, THEREFORE**, in consideration of the agreements, terms, covenants, and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows.

## ARTICLE 1
## DEFINED TERMS

1.1 Capitalized terms in this Lease shall have the meanings set forth in this ARTICLE 1 below.

1.1.1 "**AAA Rules**" shall have the meaning set forth in Section 24.1.2.

1.1.2 "**ADA**" shall have the meaning set forth in Section 8.6.

1.1.3 "**Adjusted Gross Capital Event Proceeds**" shall have the meaning set forth in Section 5.7.2.

1.1.4 "**Affiliate**" means with respect to any Person, any other Person directly or indirectly Controlling (including but not limited to, all trustees, partners,



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members, directors and officers of such Person), Controlled by or under direct or indirect common Control with such Person.

1.1.5 "**Aggrieved Party**" shall have the meaning set forth in Section 24.1.

1.1.6 "**Agreement**" means this Lease by and between WMATA and Developer.

1.1.7 "**ALTA**" means the American Land Title Association.

1.1.8 "**Alternative Dispute Notice**" shall have the meaning set forth in Section 24.1.

1.1.9 "**Approvals**" means all variances, special exceptions, special use permits, preliminary plans, site plan approvals, platting or replatting approvals, rezoning approvals, subdivision approvals, or other similar approvals necessary for the development of the Project on the Lease Premises in conformity with the terms of the Approved Development Plan.

1.1.10 **"Approved Design and Construction Documents"** shall have the meaning set forth in Section 11.6 of the JDA.

1.1.11 "**Approved Development Plan**" shall mean the Approved Development Plan for the Lease Premises, as described in Section 7.6.5 of the JDA, and attached hereto as Exhibit _____.

1.1.12 "**Base CPI**" shall have the meaning set forth in Section 1.1.29.

1.1.13 "**Base Rent**" shall have the meaning set forth in Article 5.

1.1.14 "**Base Developer Improvements**" means that portion of the Developer Improvements consisting of the structural elements, building systems (electrical, mechanical, plumbing, HVAC, etc.) and the exterior facade (including the roof and all related systems and installations and all exterior windows) of the building or buildings shown in the Approved Development Plan as being located within the Lease Premises, together with any and all offsite improvements as are associated therewith or otherwise required to make such improvements to be constructed on the Lease Premises fully functional. Without limitation of the foregoing, the term Base Developer Improvements excludes all interior Developer finish work to be performed within the interior of the building or buildings, and all related building system connections, interior equipment and fixture installations.

1.1.15 "**Business Day**" means any day other than a Saturday or Sunday or Federal holiday or legal holiday in the District of Columbia or the jurisdiction in which the Lease Premises is located.

1.1.16 "**Calendar Year**" means each period from and including January 1 through December 31 during the Term of this Agreement.



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1.1.17 "**Capital Event**" means any and all of the following, whether effected in a single transaction or a series of related transactions: (a) any sale, assignment, refinancing, transfer, conveyance, syndication, exchange, hypothecation, or other transaction having an effect similar to any of the foregoing including, without limitation any Taking (a "Transfer") of all or any part of or interest in the Lease Premises, this Agreement, or any Developer Improvements; (b) the Transfer of all or any portion of the interest in this Agreement by Developer or; (c) any Transfer any ownership interests of Developer; and (d) any other transaction by Developer with respect to its interest in or to the Lease Premises or any Developer Improvements that would be characterized as a capital event under generally accepted accounting principles.

1.1.18 "**Capital Event Participation Rent**" shall have the meaning set forth in Section 5.7.

1.1.19 "**Change of Control**" means (a) the sale or transfer, in a single transaction or a series of related or unrelated transactions, of beneficial ownership of either (i) the membership interests in Developer, (ii) the membership interests of the members of the Developer, or (iii) the combined voting power of Developer's outstanding membership interests or securities, as the case may be, entitled to vote generally in the election of managers or directors, as the case may be, (b) the merger or consolidation of Developer with or into any other entity, or (c) any one or series of related sales or conveyances to any person or entity of all or substantially all of Developer's assets.

1.1.20 "**Commercially Reasonable Best Efforts**" means the diligent and timely satisfaction of the following standards in the context of the Developer Responsibilities: (i) undertaking all actions (including, without limitation, payment and performance obligations) that would usually and customarily be undertaken or performed by a diligent and experienced real estate owner, developer and construction manager in performance of the terms of this Agreement and (ii) undertaking such additional commercially reasonable actions as are appropriate in the context of unanticipated or unusual events, circumstances or obstacles to lawfully achieve the Developer Responsibilities.

1.1.21 "**Condemnation Costs**" shall have the meaning set forth in Section 23.4.

1.1.22 "**Construction Approvals**" means all governmental approvals and permits other than the Approvals required in order to commence and complete the construction of the improvements comprising the Development Project, including, but not limited to, all required engineering permits and building permits.

1.1.23 "**Construction Related Obligatio ns**" shall have the meaning set forth in Section 6.2.



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1.1.24 "**Consultants**" means all the agents, consultants, contractors, engineers, surveyors, attorneys and employees retained by Developer for or in connection with the transaction contemplated by this Agreement.

1.1.25 "**Consumer Price Index**" shall have the meaning set forth in Section 1.1.29.

1.1.26 "**Continuing Transit Orientation**" shall have the meaning set forth in Section 8.3.

1.1.27 "**Control**", "**Controlled**" or "**Controlling**" means the power of a Person, directly or indirectly, to direct or cause the direction of the disposition of property, management and policies of another Person, whether through ownership of voting securities, by contract or otherwise.

1.1.28 "**Covenants, Conditions and Restrictions**" shall mean the covenants, conditions, and restrictions created pursuant to Section 11.17 of the JDA, a copy of which is attached hereto as Exhibit _____.

1.1.29 "**CPI Adjustment**" means a change in the particular dollar amount referred to, measured by the cumulative change in the Consumer Price Index from January 1, 2008 ("Base CPI") to January 1 of the Calendar Year for which such dollar amount is to be determined ("Current CPI"). If the Current CPI has increased from the Base CPI, such dollar amount shall be increased, but not decreased, in the same proportion as such increase in the Consumer Price Index. "Consumer Price Index" shall mean the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index - (CPI-U) Wash.-Balt., DC-MD-VA-WV All Items Nov. 1996=100. If the manner in which the Consumer Price Index is determined by the Bureau of Labor Statistics shall be substantially revised, including, without limitation, a change in the base index year, such adjustment shall be made by the parties in such revised index as would produce results equivalent, as nearly as possible, to those which would have been obtained if such manner of determining the Consumer Price Index had not been so revised. If the Consumer Price Index shall become unavailable to the public because publication is discontinued, or otherwise, or if equivalent data is not readily available to enable the parties to make the calculations referred to herein, then the parties shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar in the combined Washington, D.C. greater metropolitan area, published by another governmental agency, or if no such index shall be available, then a comparable index published by a major bank or other financial institution, or a university, or a recognized financial publication.

1.1.30 "**Cure Actions**" shall have the meaning set forth in Section 18.2.

1.1.31 "**Current CPI**" shall have the meaning set forth in Section 1.1.29.

1.1.32 "**Day or day**" means a calendar day except when stated to be "Business Day".



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1.1.33 "**Default**" shall have the meaning set forth in ARTICLE 19.

1.1.34 "**Default Rate of Interest**" shall mean the greater of (a) fifteen percent (15%) per annum or (b) ten percent (10%) per annum above the prime rate of interest as published in the *Wall Street Journal.* If the prime rate of interest is no longer available, WMATA will choose a new index which is based upon comparable information. In no event will the Default Rate of Interest be at a rate greater than the highest rate which is at the time lawful in the District of Columbia.

1.1.35 "**Density or Densities**" shall have the meaning set forth in Section 3.1.1.

1.1.36 "**Density Adjustment Rent**" shall have the meaning set forth in Section 5.8.

1.1.37 **"Design and Construction Documents"** means the complete set of design documents and working drawings and specifications for the work to be designed and constructed under the conditions of this Agreement and the Lease, including all documents to be submitted to the appropriate governmental authorities in order to construct the Project. The Design and Construction Documents shall also include the site plan as well as architectural, structural, electrical, mechanical, sheeting and shoring, excavation and utility drawings associated with the Project.

1.1.38 "**Designated Representative**" shall have the meanings set forth in Section 28.2.5 and Section 28.3.7.

1.1.39 "**Developer**" shall mean _____, LLC, a limited liability company formed by Banneker Ventures, LLC, a District of Columbia limited liability company, as managing member and _____% owner; the District Development Group, LLC, a District of Columbia limited liability company, as _____% owner; and Metropolis Development Company, LLC, a District of Columbia limited liability company, as _____% owner.

1.1.40 "**Developer's Actual Knowledge**" means the actual (and not the constructive) collective knowledge of _____. Developer represents, however, that _____ is an individual having knowledge of facts relevant to the matters covered by the representations and warranties of Developer set forth in this Agreement and to whom facts and information relevant to the matters covered by such representations and warranties would be reported in the ordinary course of business.

1.1.41 "**Developer Improvements**" means those Improvements that at any time may exist or be constructed on the Lease Premises.

1.1.42 "**Developer Responsibilities**" means and includes any and all: requirements, endeavors, objectives, conditions that are required or reasonably contemplated under the terms of this Agreement (and steps relating to any and all of the foregoing, including, without limitation, filing applications; making



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appearances; providing information, documents, studies and other materials; satisfying all requirements of applicable governmental authorities and those exactions that would reasonably be satisfied by a diligent and experienced real estate owner, developer and construction manager in the context of an acquisition, development and construction project similar to the Project; procuring and maintaining competent professional support, oversight and management, and timely making payments).

1.1.43 "**Development Covenants**" means the covenants to be recorded against the Lease Premises, pursuant to the JDA, at or prior to the Effective Date, requiring and limiting construction on and use of such parcel**[s]** to the uses and improvements specified or to be determined in accordance with the JDA and this Lease and reflected in the Approved Development Plan, except only as approved by WMATA in its sole and absolute discretion. The foregoing shall be applicable for so long as WMATA is the owner of any interest in or conducts operations at or from WMATA's Residual Property or WMATA's Adjacent Property. Such covenants shall contain provisions for easements for the use and operation of the Metro Facilities.

1.1.44 "**Dispute Notice**" shall have the meaning set forth in Section 24.1.

1.1.45 "**Dispute Review Panel**" shall have the meaning set forth in Section 24.1.1.

1.1.46 "**Effective Date**" shall have the meaning set forth in the Preamble.

1.1.47 "**Environmental Laws**" means any and all environmental or health and safety-related laws, regulations, rules, ordinances, orders or determination of any governmental or judicial authority at the federal, state, or local level, to the extent applicable to WMATA, Developer or the Lease Premises, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act.

1.1.48 "**Existing Improvements**" means all improvements existing on the Property as of the Effective Date.

1.1.49 "**Fair Market Value**" shall mean fair market value determined pursuant to the provisions of Article 27.

1.1.50 "**FAR**" means a ratio, the numerator of which is the Gross Floor Area of all buildings on a lot expressed in square footage and the denominator of which is the gross area of that lot expressed in square footage.

1.1.51 "**FAR Square Feet**" means the maximum Gross Floor Area permitted to be developed consistent with maximum FAR limits within an applicable zoning classification or pursuant to an applicable Approval, waiver, variance or the like.



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1.1.52 "**Final Completion**" means the proper and full completion of the entire Project, including, but not limited to, satisfactory operation of all equipment and systems, completion or correction of all punch list items, issuance of all required approvals and certificates by any governmental or quasi-governmental authorities with jurisdiction over the entire Project (including final and unconditional certificates of occupancy), delivery of as-built plans and specifications, removal of all rubbish, tools, scaffolding and surplus materials from the Project site, correction of all property damage that is the responsibility of the Developer to WMATA pursuant to the Approved Design and Construction Documents.

1.1.53 "**Final Completion Date**" means the date established in Exhibit _____ for Final Completion of the entire Project as the same may be extended pursuant to the express terms and provisions of this Lease or the JDA.

1.1.54 "**Financial Statement**" shall have the meaning set forth in Section 5.12.

1.1.55 "**First Leasehold Mortgage**" shall have the meaning set forth in Section 18.1.

1.1.56 "**First Leasehold Mortgagee**" shall have the meaning set forth in Section 18.1.

1.1.57 **"Force Majeure"** means any of the following occurrences that do not, in whole or in part, arise out of a Default of Developer and could not reasonably have been anticipated or mitigated and are not related to financial incapacity or related delays of Developer: a strike, civil riot, war, invasion, fire or other casualty, unavailability of labor or materials, adverse weather conditions, which occurrences delay or prevent performance by Developer of a post-Closing construction obligation hereunder. In the event of a Force Majeure, the Person affected thereby shall be entitled to an increase in the time for performance equal to the number of days, or portions thereof, that completion of the activity beyond the dates established in this Agreement is actually delayed by such Force Majeure. Force Majeure shall not include delays due to government activity, inactivity, failure to timely respond, or omission.

1.1.58 "**FTA**" means the Federal Transit Administration of the United States Department of Transportation.

1.1.59 "**FTA Project Approval**" shall have the meaning set forth in Section 8.4.

1.1.60 "**Gross Floor Area**" means the sum expressed in square feet of the gross horizontal areas of the several floors of all buildings on a lot, measured from the exterior faces of exterior walls and from the center lines of walls separating two buildings, including, but only to the extent included in the calculation of FAR under applicable Laws, basements, elevator shafts and stairwells, penthouses, attic space, interior balconies and mezzanines, cellars and outside balconies.



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1.1.61 **"Guarantor"** means _____, having a principal address at _____. The value of Guarantor's net worth must be greater than three times the value of the Project.

1.1.62 "**Guaranty**" means those certain Guaranties, in the form attached as Exhibit _____, to be executed and delivered by Guarantors (in addition to the Payment and Performance Bond(s)) in accordance with Section 11.18 of the JDA.

1.1.63 "**Guaranty Letter of Credit**" means a letter of credit in the form attached as an exhibit to the form of Guaranty, fully meeting all of the requirements of each such Guaranty.

1.1.64 "**Hazardous Materials**" means any and all substances, materials or wastes that are or become regulated by any local governmental authority, any state having jurisdiction over the Lease Premises or the United States Government or otherwise pose a material threat to human health, safety or the environment. Without limiting the generality of the foregoing, the term "Hazardous Materials" includes, without limitation, any and all materials, substances and wastes that are: (a) defined as a "hazardous waste", "hazardous material", "hazardous substance", "extremely hazardous waste" or "restricted hazardous waste" under any provision of local, state or federal law, or (b) petroleum, or (c) asbestos, or (d) polychlorinated biphenyls, or (e) radioactive materials, or (f) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), or (g) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, (42 U.S.C. § 6903), or (h) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601).

1.1.65 "**Impositions**" means all taxes, assessments, sewer rents, water meter and water charges, vault charges, excise taxes, levies, license and permit fees, charges for public utilities and all other charges and governmental impositions, general and special, ordinary and extraordinary, unforeseen and foreseen, of any and every kind and nature, including, without limitation, all real estate taxes and leasehold taxes, that with respect to any time during the Term of this Agreement may be assessed, levied, confirmed, imposed upon, or become due and payable or become a lien on any or all of the Developer Improvements, the Leasehold Interest, the Lease Premises, the Metro Facilities (to the extent of any interest therein established in favor of Developer under this Agreement), or any part of any or all of the foregoing, or any appurtenance to any or all of the foregoing.

1.1.66 "**Improvements**" means all buildings, portions of buildings, site amenities, decks, parking, and other structures of whatever kind on the Lease Premises,



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and all equipment and fixtures therein and any replacements, additions and substitutes of, to and for the same.

1.1.67 "**Institutional Lender**" means any of the following Persons, that is not an Affiliate of Developer or Guarantor, provided, that such entity has assets equal to at least U.S. $500,000,000: (i) any bank, savings institution, trust company or national banking association, or any wholly-owned subsidiary of any thereof, acting for its own account or in a fiduciary capacity, (ii) any charitable foundation, (iii) any insurance company, (iv) any pension, retirement or profit sharing trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisers Act of 1940, as amended, is acting as trustee or agent, (v) any investment company, as defined in the Investment Company Act of 1940, as amended, (vi) any college or university, (vii) any government, any public employees, pension or retirement system any other governmental agency supervising the investment of public funds or (viii) any Real Estate Investment Trust ("REIT").

1.1.68 "**Insurance Obligors**" shall have the meaning set forth in Section 10.1.

1.1.69 "**Interim Replacement Facilities**" means all temporary facilities, structures, physical improvements and components, design features and requirements complying with WMATA's then existing standards, to fully and adequately replace all Existing Improvements, or any portion thereof located on the Lease Premises (including, without limitation, all facilities of WMATA relating to any and all of the ownership, use and operation of the Metro Facilities, Metro Station, driveways and turnarounds accommodating the circulation of buses, vans and passenger vehicles, parking lots and kiss-and-ride facilities, bus bays, bus loading and circulation facilities, short term parking, and kiss-and-ride facilities) on a temporary basis, until Replacement Facilities have been fully and finally completed and delivered to WMATA.

1.1.70 "**JDA**" shall have the meaning set forth in the Recitals, and an executed copy of which is attached hereto as Exhibit _____ and incorporated herein.

1.1.71 "**Land**" means all of those certain tracts of land comprising approximately 28,292 square feet located in the District of Columbia, more particularly described in Exhibit A attached hereto and made a part hereof and all rights, privileges and appurtenances pertaining thereto.

1.1.72 "**Laws**" means any federal, state or local constitutions, statutes, codes, ordinances, regulations, judicial or administrative requirements, rules, orders, judgments, decrees, injunctions, decisions or other rules of law.

1.1.73 "**Lease Obligations**" shall have the meaning set forth in Section 6.1.

1.1.74 "**Lease Premises**" means a portion of the Property, less and except WMATA's Reserved Areas and Interests, depicted and more fully described



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in Exhibit _____ as the "Lease Premises" (including all benefits and appurtenances thereto that are included with the meaning of the term "Property" as used herein, that shall be leased to Developer by WMATA subject to and in accordance with the terms of this Agreement.

1.1.75 **"Lease Year"** shall mean each period of twelve (12) calendar months during the Term commencing on January 1 and expiring on December 31 of the same calendar year, except that the first lease year shall commence on the Effective Date and shall end on December 31 of the same calendar year and the last lease year shall expire on the date of the expiration of the Term.

1.1.76 **"Leasehold Interest"** shall mean Developer's leasehold interest in the Lease Premises pursuant and subject to the provisions of this Agreement.

1.1.77 **"Leasehold Mortgage"** shall mean a mortgage or deed of trust or similar security interest on Developer's rights and interests under this Agreement and the Leasehold Interest of Developer hereunder, including Developer's interest in the Developer Improvements, securing Developer's obligations to a Leasehold Mortgagee, including, without limitation, a trust indenture under which this Agreement shall have been mortgaged or similarly pledged, any ancillary instruments required by the Leasehold Mortgagee, any instruments required in connection with a sale-leaseback transaction, and any mortgage of less than all of the leasehold.

1.1.78 **"Leasehold Mortgagee"** shall mean an Institutional Lender or other lender approved by WMATA that is the mortgagee, grantee, party secured, or beneficiary under any Leasehold Mortgage and the successors and assigns of such mortgagee, grantee, party secured, or beneficiary, and shall be deemed to include the trustee under any such Leasehold Mortgage and the successors and assigns of such trustee.

1.1.79 **"Major Subleasehold Mortgagee"** shall mean the mortgagee, grantee, party secured, or beneficiary under any Subleasehold Mortgage and the successors and assigns of such mortgagee, grantee, party secured, or beneficiary, and shall be deemed to include the trustee under any such Leasehold Mortgage and the successors and assigns of such trustee, but only to the extent pertaining to a subleasehold of the Lease Premises consisting of Twenty Percent (20%) or more of the total leaseable square footage of office, retail and other commercial space or of the total number of residential units within the Lease Premises.

1.1.80 **"Major Subtenant"** shall mean any subtenant of a subleasehold of the Lease Premises consisting of Twenty Percent (20%) or more of the total leaseable square footage of office, retail and other commercial space or of the total number of residential units within the Lease Premises.



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1.1.81 "**Metro Facilities**" means all improvements, structures, infrastructure components, tangible property and areas required in the judgment of WMATA, for the use, operation, access, maintenance, repair, servicing, replacement or removal of any and all of the following: structures and supports, any and all access, parking, operation and service facilities and areas relating to WMATA's operations or activities, including, without limitation, all rail stations (including, without limitation, the Metro Station), tunnels, rails, tracks, bus stations, bus transfer areas, supervisor kiosks, employee bathrooms, electric substations, conduits and lines, pedestrian traffic, waiting and shelter areas, facilities serving persons with disabilities, cooling towers, chiller plants, vent and fan shafts, bicycle rack and locker areas, and all other associated facilities notwithstanding that the foregoing may have been constructed by or at the expense of Developer.

1.1.82 "**Metro Station**" means the Shaw Howard U rail transit station of WMATA.

1.1.83 "**Minimum Project Completion Milestone Requirements**" means the requirements set forth in Exhibit _____.

1.1.84 "**Notice**" shall have the meaning set forth in Section 29.5.

1.1.85 "**Nullification Notice**" shall have the meaning set forth in Section 18.2.

1.1.86 "**Occupant**" means any Person occupying or proposing to occupy any portion of the Lease Premises under any lease, Sublease, license, sublicense, occupancy agreement or otherwise.

1.1.87 "**Operating Year**" shall have the meaning set forth in Section 5.12.

1.1.88 "**Partial Taking**" shall have the meaning set forth in Section 23.2.

1.1.89 "**Payment and Performance Bond**" means the completion, payment and performance bond required to be provided for the benefit of WMATA in connection with development of and construction of the Project and as contemplated by the JDA, this Lease, and the Approved Development Plan. The applicable Payment and Performance Bond shall be released by WMATA upon Final Completion of the Project.

1.1.90 "**Permitted Exceptions**" means those exceptions or conditions permitted to encumber the title to the Lease Premises in accordance with the provisions of Section 22.1.

1.1.91 "**Person**" means any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association or any other legal entity, or any federal, state, county or municipal government, or any bureau, department or agency thereof, and any fiduciary acting in such capacity on behalf of any of the foregoing.



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1.1.92 "**Pre-Stabilization Period Payments**" shall mean the Developer's payments due to WMATA during the Pre-Stabilization Period, as described in Section 3.2 of the JDA.

1.1.93 "**Project**" means a mixed use development project consisting of a minimum of 130,014 FAR gross square feet, including not less than 104 dwelling units, approximately 11,750 gross square feet of retail/arts use, plus associated residential and retail parking, estimated at 47 below-grade spaces to be built in a single phase on the Lease Premises.

1.1.94 "**Project Concept Plan**" means a preliminary plan sheet consistent with the requirements set forth in Sections 7.6 of the JDA and any additional requirements set forth in Exhibit _____, depicting the conceptual program for the improvements and infrastructure to be constructed in accordance with the Approved Development Plan, the JDA, and this Agreement including their locations, uses and densities.

1.1.95 "**Project Schedule**" shall have the meaning set forth in Section 11.8 of the JDA.

1.1.96 "**Property**" means the Land and all rights of WMATA relating to the Land, including without limitation, any right, title and interest of WMATA, if any, in and to (i) any strips and gores adjacent to the Land and any land lying in the bed of any street, road, or avenue opened or proposed, in front of or adjoining the Land, to the center line thereof; and (ii) all of the easements, rights, privileges, and appurtenances belonging or in any way appertaining to the Property.

1.1.97 "**Qualified Team**" shall have the meaning set forth in Section 2.2.1 and 2.2.2.

1.1.98 "**Reconstruction Activity(ies)**" shall have the meaning set forth in Section 16.1.

1.1.99 "**Rent**" shall have the meaning set forth in Section 5.2.

1.1.100 "**Repair**" shall have the meaning set forth in Section 20.1.1.

1.1.101 "**Replacement Facilities**" means new facilities, structures, physical improvements and components, design features and requirements to fully and adequately replace, in compliance with WMATA's then existing standards, all Existing Improvements (including, without limitation, all facilities of WMATA relating to any and all of the ownership, use and operation of the Metro Facilities, Metro Station, driveways and turnarounds accommodating the circulation of buses, vans and passenger vehicles, parking lots and kiss-and-ride facilities, bus bays, bus loading and circulation facilities, short term parking, and kiss-and-ride facilities) or any portion thereof located on the Property.



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1.1.102 "**Scope of Work**" shall have the meaning set forth in Section 27.1.1.

1.1.103 "**Secure**" shall have the meaning set forth in Section 20.1.1.

1.1.104 "**Security Deposit**" shall have the meaning set forth in Section 4.1.

1.1.105 "**Senior Leasehold Mortgagee**" means the Leasehold Mortgagee holding the most senior lien against Developer's interest in the Lease Premises under this Agreement, or in connection with construction of Base Developer Improvements, if there is no such lien, then the entity providing equity or debt financing for such construction.

1.1.106 "**Stabilization**" means the Project achieving 90% occupancy.

1.1.107 "**Sublease**" means any lease of any or all of the Lease Premises and/or Developer Improvements, including a lease, license or other similar agreement, entered into by Developer with another party for the use or occupancy by such other party of space on or within the Lease Premises and/or Developer Improvements.

1.1.108 "**Subleasehold Mortgage**" means a mortgage or deed of trust or other similar security agreement given or made on a Sublease and the interest of a Subtenant thereunder, including Subtenant's interest in the Developer Improvements, and shall be deemed to include a trust indenture under which the Sublease shall have been mortgaged or similarly pledged. The term "Subleasehold Mortgage" shall also include any ancillary instruments required by the Subleasehold Mortgagee, any instruments required in connection with a sale-lease back transaction, and any mortgage of less than all of the subleasehold.

1.1.109 "**Subleasehold Mortgagee**" means the mortgagee, grantee, party secured, or beneficiary under any Subleasehold Mortgage and the successors and assigns of such mortgagee, grantee, party secured, or beneficiary, and shall be deemed to include the trustee under any such Subleasehold Mortgage and the successors and assigns of such trustee.

1.1.110 **"Substantial Completion"** means for the Lease Premises, the last to occur of both (1) the date Developer procures all certificates, permits, approvals and consents with respect to the Project, required under applicable law for the occupancy and use of the Project and (2) the date when the Project is sufficiently complete in accordance with the Approved Design and Construction Documents to allow complete occupancy and utilization of such Project, for its indicated purpose. Developer shall deliver to WMATA copies of all certificates, permits, approvals and consents promptly after its receipt of the same.

1.1.111 "**Subtenant**" means the tenant or licensee under any Sublease.



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1.1.112 "**Taking**" means the act of condemnation, exercise of power of eminent domain or sale in lieu thereof and includes a Partial Taking and a Total Taking, but shall not include any exactions, dedications, fees, use restrictions and the like associated with the Approvals or any grants, concessions, transfers or undertakings for public purposes that may be necessary for the development of the Property and required by the Approvals.

1.1.113 "**Temporary Taking**" shall have the meaning set forth in Section 23.6.1.

1.1.114 "**Term**" means the Term as set forth in Section 2.4.

1.1.115 "**Title Commitment**" shall have the meaning set forth in Section 22.2.

1.1.116 "**Title Commitment Issuer**" shall have the meaning set forth in Section 22.2.

1.1.117 "**Title Policy**" shall have the meaning set forth in Section 22.2.

1.1.118 "**Total Taking**" shall have the meaning set forth in Section 23.1.

1.1.119 "**Transaction Documents**" means this Agreement, the JDA, any and all separate right of entry agreements relating to either, the Development Covenants, the Covenants, Conditions and Restrictions, the Guaranty and the Payment and Performance Bonds.

1.1.120 "**Transit-Oriented Development**" shall have the meaning set forth in Section 8.3.

1.1.121 "**Use Type**" shall have the meaning set forth in Section 3.1.1.

1.1.122 "**WMATA**" **or** "**WMATA**" means the Washington Metropolitan Area Transit Authority, a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of D.C. Board of Commissioners adopted November 15, 1966, having a principal business address at 600 Fifth Street, NW, Washington, DC 20001.

1.1.123 **"WMATA Adjacent Construction Design Manual"** means WMATA's Adjacent Construction Design Manual, Revision 2, dated April 2006, as amended from time to time.

1.1.124 "**WMATA's Adjacent Property**" means any real estate owned by WMATA that is adjacent to the Lease Premises, but not including the WMATA's Reserved Areas and Interests, or WMATA's Residual Property.

1.1.125 "**WMATA Compact**" means the Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as same may be amended.



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1.1.126 "**WMATA's Reserved Areas and Interests**" means and includes all land areas and improvements of or within the Lease Premises required in the judgment of WMATA reasonably exercised for the exclusive use, operation, access, maintenance, repair, servicing, replacement or removal of any Metro Facilities that are reasonably capable of being segregated from other land areas and improvements of or within the Lease Premises, including, without limitation, the Metro Station, all other Metro Facilities that are not integrated into improvements to be constructed by Developer, those additional areas designated as "WMATA's Reserved Areas and Interests" as of the Effective Date in Exhibit _____ and those additional areas that are or may be designated as "WMATA's Reserved Areas and Interests" in the Approved Development Plan.

1.1.127 "**WMATA's Residual Property**" means and includes both any portion of the Property owned by WMATA that has not been leased by Developer and any portion of the Property owned by WMATA that is not to be leased by Developer.

1.1.128 "**WMATA's Unconditional Approval Matters**" means any and all matters that in the judgment of WMATA reasonably exercised would have an adverse impact on any or all of the following: (i) the schedule for performance of Developer's obligations as set forth in this Agreement, (ii) the scope of Developer's obligations set forth in this Agreement, (iii) the functionality, efficiency, safety, operation, maintenance, legal compliance, cost or profitability of WMATA's business, operations or activities, (iv) the WMATA's transit customers, (v) any of the Existing Improvements, contemplated to remain and not to be demolished, rebuilt or relocated by the terms of this Agreement, (vi) the Metro Station, (vii) the other Metro Facilities, (viii) the WMATA's Reserved Areas and Interests, WMATA's Residual Property, the Interim Replacement Facilities or the Replacement Facilities, (ix) the WMATA's Adjacent Property, or (x) ingress or egress relating to any of the foregoing.

1.1.129 "**Zoning Ordinance**" shall have the meaning set forth in Section 3.2.

## 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 for the Rent herein reserved to be paid in the amounts and at the times determined as set forth in this Lease. Such lease and any and all development and construction rights granted under this Lease shall be subject to any and all easements and other reserved rights reasonably required by WMATA in connection with its use, operation, access, maintenance, repair, servicing, replacement or removal of any Metro Facilities or with WMATA's operations and business generally, whether expressly provided for or reasonably contemplated by this Lease, which easements and other



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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 are acknowledged by Developer:

2.2.1 This Lease shall be deemed to be in the nature of a personal services contract and Developer acknowledges that WMATA has entered into this Lease on the basis of its trust and special confidence in Banneker Ventures, LLC, a District of Columbia limited liability company; the District Development Group, LLC, a District of Columbia limited liability company; and Metropolis Development Company, LLC, a District of Columbia limited liability company. Developer represents, warrants and covenants that Banneker Ventures, LLC, District Development Group, LLC, and Metropolis Development Company, LLC has, and shall continue to maintain until satisfaction of all Lease Obligations, primary and substantial involvement in the Project and performance of the obligations under this Lease, including, without limitation, selection and maintence of a Qualified Team, as provided below. Further, Developer represents, warrants and covenants that until all obligations of Developer under this Lease are fully satisfied, Developer shall be under the Control of Banneker Ventures, LLC, District Development Group, LLC, and Metropolis Development Company, LLC.

2.2.2 Developer represents, warrants and covenants that it has or shall obtain when needed, required or contemplated by this Lease and thereafter shall continue to maintain until satisfaction of all obligations under this Lease a team of, as applicable, officers, directors, partners, members, employees and contractors who, specifically and in the aggregate, clearly have the skills, experience, knowledge, and reputation requisite to perform and accomplish the intended objectives of this Lease (each such team a "Qualified Team"). In order to achieve and maintain the status of a "Qualified Team," such Qualified Team shall have, without limitation, extensive skills, experience and knowledge and a generally recognized reputation specifically relating to development of the type, scope and complexity contemplated by this Lease.



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2.2.3 Developer represents, warrants and covenants that it has and shall have the capacity and experience to satisfy and shall satisfy the Minimum Project Completion Milestone Requirements.

The above inducements and agreements are confirmed herein as material obligations of Developer.

2.3 **Confirmation of WMATA's Unsubordinated Fee Simple Rights.** WMATA's fee simple right, title, and interest in the Lease Premises shall be and remain in WMATA for and during the term of this Lease, without any subordination whatsoever. On the expiration or other termination of this Lease (by lapse of time or otherwise), sole ownership of the Lease Premises, including, without limitation, ownership and rights relating to use of any and all Improvements thereon, shall automatically pass to and be vested in WMATA, whereupon the entirety of Developer's ownership and rights in and relating to any and all Improvements (including, but not limited to, Developer Improvements) shall automatically terminate.

2.4 **Term.**

2.4.1 **Term.** Unless sooner terminated earlier in accordance with the provisions of this Lease, the term (the "**Term**") of this Lease shall be for a period of sixty (60) years, commencing on the Effective Date.

2.4.2 This Lease shall terminate on the first to occur of the following: (a) the end of the Term of this Lease or (b) as otherwise provided under this Lease, including, but not limited to, as a result of a Developer's Default, provided that WMATA's remedies for any such Default, and any and all obligations and liabilities of Developer accrued as of or relating to actions or inactions of Developer prior to the date of termination, or which this Lease states shall survive the termination hereof (including interest on any and all of such obligations and liabilities), shall survive any termination of this Lease. Nothing contained in this Lease shall be deemed to constitute a release of Developer in respect of any liability or indemnity obligations under this Lease.

2.4.3 Developer, at WMATA's request and expense (except as otherwise provided in this Lease), shall perform such acts and shall execute, acknowledge, and deliver such documents and instruments as WMATA may reasonably request to evidence any termination of this Lease and of the rights and interests of Developer under this Lease and with respect to the Lease Premises.

2.5 **Pre-Stabilization Period**. The Pre-Stabilization Period commenced upon _____ (the effective date of the JDA) and shall terminate upon the earlier of Stabilization of the Project or 45 months after the Effective Date (the "**Pre-Stabilization Period**").

## ARTICLE 3
## USE OF LEASE PREMISES

3.1 **Developer Improvements.**



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3.1.1 As provided in the Approved Development Plan, Developer shall be obligated to construct all of the Developer Improvements to be constructed on the Lease Premises, which Developer Improvements shall be not less than the following stated minimum number of units or square feet, as applicable (such number, the "Density" or "Densities") for each of the following types of uses (each, a "Use Type") to be developed within the Lease Premises:

| Use Types | Densities |
|---|---|
| Residential: | 104 units |
| Retail/Arts: | 11,750 square feet |
| Below-grade parking spaces | 47 |

3.2 **Developer's Use.** Developer, and all Occupants of the Lease Premises, shall use the Lease Premises, and any Improvements as may exist thereon at any time, solely for those uses which are permitted under this Lease, the JDA, the Approved Development Plan, the Covenants, Conditions and Restrictions, the then governing master plan and the District of Columbia Zoning Regulations (the "**Zoning Ordinance**"), provided that the aggregate of all such uses shall constitute a Transit-Oriented Development.

3.3 **WMATA's Reserved Areas and Interests.** Developer shall have no rights in respect of the WMATA's Reserved Areas and Interests or any portion thereof except as expressly provided in this Lease.

3.4 **Compliance with Lease and Certificate of Occupancy.** Developer shall not use or occupy the Lease Premises, Developer Improvements, or any part thereof, for any unlawful purpose, or in violation of any certificate of occupancy or any of the Covenants, Conditions and Restrictions. Additionally, Developer shall cause each Occupant to abide by and to enforce all covenants, conditions and restrictions contained in its Sublease which are applicable to: (1) activities and conditions that are unsafe, harmful to the Lease Premises, dangerous or constitute a nuisance, (2) activities that would make void or voidable any insurance required to be maintained by Developer, (3) compliance with and violations of any of the Covenants, Conditions or Restrictions and (4) use or occupancy for any unlawful purpose or in violation of any applicable certificate of occupancy.

## ARTICLE 4
## SECURITY DEPOSIT

4.1 **Security Deposit.** Pursuant to the terms of the JDA, WMATA is holding a security deposit, in the amount of Two Hundred Fifty Thousand Dollars (the "Security Deposit") ($250,000.00), in cash, as security for the faithful performance of the terms and conditions of the JDA and this Lease.

4.2 **Release of the Security Deposit.** WMATA shall return the Security Deposit, pursuant to the terms of the JDA, to Developer within twenty (20) Business Days of WMATA's receipt of a copy of the Certificate of Occupancy for the Project.



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## ARTICLE 5
## RENT, FINANCIAL STATEMENTS, AND AUDITS

5.1 **Payments.** All rent and all other sums owed to WMATA pursuant to this Lease (collectively, "Rent") shall be paid by Developer without notice or demand, condition (including, without limitation, Force Majeure), deduction, offset, or counterclaim. Payments shall be sent to:

Office of Treasury
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

5.2 **Rent.** Rent shall include all amounts payable by Developer (whether to WMATA or to third parties) pursuant to this Lease, whether or not expressly designated in this Lease as Rent or Additional Rent, including but not limited to Base Rent, Escalation Rent, Density Adjustment Rent, Pre-Stabilization Period Payments, Periodic Base Rent Adjustment, and Capital Event Participation Rent, as such terms are used or defined in this Lease.

5.3 **Base Rent.**

5.3.1 Base Rent payments shall begin upon the end of the Pre-Stabilization Period.

5.3.2 Base Rent shall be payable in equal quarterly installments, in advance, on January 1, April 1, July 1 and October 1 of each lease year.

5.4 **Initial Base Rent.**

5.4.1 Within fourteen (14) calendar days of the end of the Pre-Stabilization Period, Developer shall pay to WMATA the first quarterly installment of the Base Rent, in the amount of $149,250.00. The date payment is received will be the "**Base Rent Effective Date**".

5.4.2 The Base Rent for the first year following the Base Rent Effective Date shall be an annual amount equal to Five Hundred Ninety Seven Thousand Dollars ($597,000.00).

5.5 **Escalation Rent.**

5.5.1 **Escalation Factor**. Commencing on the first (1st) anniversary of the Base Rent Effective Date, and continuing on each anniversary of the Base Rent Effective Date thereafter, Base Rent shall be increased annually (but never decreased), in accordance with the terms in this Section 5.5. In no event will any Base Rent payment be less than the Base Rent payment for the preceding year.

5.5.2 **Initial Escalation Factor**. Commencing on the first (1st) anniversary of the Base Rent Effective Date, and continuing through the tenth (10th) anniversary



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of the Base Rent Effective Date, Base Rent shall be increased annually (but never decreased) by one and one-half percent (1.5%) over the previous year's Base Rent.

5.5.3 **Subsequent Escalation Factor**. Commencing on the eleventh (11th) anniversary of the Base Rent Effective Date, and continuing thereafter, except as determined under this Lease, Base Rent shall be increased annually (but never decreased) by three percent (3%) over the previous year's Base Rent.

5.6 **Periodic Base Rent Adjustment.**

5.6.1 Base Rent will also be periodically adjusted pursuant to the terms of this Section 5.7 (the "Periodic Base Rent Adjustment"). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

5.6.2 **The Appraised Land Value**. For purposes of changes to the Base Rent due to Periodic Base Rent Adjustment under this Section 5.7, the Property value shall be derived through a three-appraiser process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use (the "**Appraised Land Value Process**").

5.6.3 **Capital Event Base Rent Adjustment**. At the time of any Capital Event as defined herein, Base Rent will be reset at seven percent (7%) of the Property value, as determined through the Appraised Land Value Process. Base Rent will never decrease from the then payable Base Rent as a result of any Capital Event Base Rent Adjustment.

5.6.4 **Periodic Base Rent Adjustment**. Every tenth anniversary of either 1) the Base Rent Effective Date or 2) a Capital Event Base Rent Adjustment, the Base Rent will be adjusted to seven percent (7%) of Project land value established through the Appraised Land Value Process. Base Rent will never decrease from the then payable Base Rent as a result of any Periodic Rent Revaluation.

5.7 **Capital Event Participation Rent.** Upon the occurrence of a Capital Event, WMATA shall receive ten percent (10%) of the Adjusted Gross Capital Event Proceeds of such event, which shall be known as "Capital Event Participation Rent".

5.7.1 Capital Event Participation Rent shall be payable within five (5) Business Days after Developer realizes such Net Proceeds.

5.7.2 **Adjusted Gross Capital Event Proceeds**. The Adjusted Gross Capital Event Proceeds are the total gross transaction revenues received by the Developer, and any affiliated entities receiving income from such event, from a Capital Event, less (i) the payoff of remaining original Project debt secured by the Developer Improvements and (ii) repayment of the original equity to Developer not yet repaid.



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5.7.3 **Confirmation of Developer's Debt and Equity**. Within thirty (30) calendar days of the Base Rent Effective Date, the Developer shall provide documentation to WMATA confirming the Developer's Project debt and equity. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs.

5.8 **Density Adjustment Rent.**

5.8.1 **Increase in Density**: If, at any time after the Effective Date of the JDA, Developer applies for and receives final approval for an increase in the density approved for the Lease Premises (a "**Density Increase**"), from that density described in Section 3.1.1, or from that for which Developer has previously paid additional Base Rent pursuant to this section, then upon commencement of construction of Developer Improvements implementing such increase in density, Developer shall pay to WMATA additional Base Rent for the remainder of the Term.

5.8.2 **Additional Density Approved Prior to the Effective Date of the Lease**. If, prior to the Effective Date of this Lease, the Developer receives approval for a Density Increase, the Base Rent shall be increased by an amount equal to seven percent (7%) of the product of the additional FAR square footage multiplied by sixty dollars ($60.00) (the "**Additional Density Rate**"). The Additional Density Rate shall be increased by three percent (3%) per year from _____ (the effective date of the JDA).

5.8.3 **Additional Density Approved After the Effective Date of the Lease**. Upon a Density Increase approved subsequent to the Effective Date, Base Rent will be reset at seven percent (7%) of the Property value, as determined through the Appraised Land Value Process. Base Rent will still be subject to all other terms herein, including, but not limited to, adjustments due to Escalation Factor(s), Capital Event(s), and Periodic Base Rent Adjustments. Notwithstanding anything to the contrary, additional Base Rent that has been paid shall not be subject to any rollback, refund, rebate, apportionment, or reduction. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

5.9 **Conversion to Calendar Year Computations.** If the Base Rent Effective Date is not on the first (1st) day of January, as of the beginning of the Lease Year following the execution of this Lease, all periodic payments of rent and similar amounts to WMATA (and any investigations or audits by WMATA related thereto) shall be on a calendar year basis, with any quarterly payments due being payable in advance on January 1, April 1, July 1, and October 1. Any amounts due WMATA for the period prior to the first quarterly due date shall be prorated and paid in advance to the next quarterly payment date. For the last year of the term of this Lease which does not end on December 31, whether by expiration of the term of this Lease or otherwise, all rent or similar amounts owed by Developer to WMATA shall be pro rated to the actual date of termination.



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5.10 **Late Charge.** In the event that any payment of Rent due under this Lease shall not be received by WMATA for a period of five (5) Business Days from the specified due date, Developer shall pay to WMATA as Additional Rent a late charge equal to twenty percent (20%) of the delinquent amount. In addition, any amount of Rent due hereunder which is not paid within thirty (30) days of the date due shall bear interest at the Default Rate of Interest, compounded annually, from the original due date to the date of payment, on the sum overdue. The above late charge and interest shall be payable by Developer without demand, offset or counterclaim concurrently with payment of the overdue payment. If WMATA undertakes collection efforts or brings suit for collection of any Rent overdue hereunder, Developer agrees to pay attorney's fees and all other collection costs WMATA may incur.

5.11 **Re-characterizing Income or Expenses.** Developer shall not re-characterize rents, fees, receipts, revenues, or costs of managing, leasing, licensing, servicing, or operating the Lease Premises or Developer Improvements so as to result in a diminution of the Rent payable to WMATA.

5.12 **Financial Statements.** Developer hereby represents and warrants to WMATA that Developer's fiscal year for accounting purposes with respect to the operation of the Lease Premises is the twelve (12)-month period beginning _____. Within one hundred twenty (120) calendar days after the end of each fiscal year during the Term of this Lease, Developer shall submit to WMATA a reviewed annual financial statement prepared in accordance with generally accepted accounting principles by an independent certified public accountant; provided, that if Developer is required to submit an audited annual financial statement to any person or entity, the annual financial statement delivered to WMATA pursuant to this Section 5.12 shall be an audited financial statement rather than a reviewed financial statement. Each financial statement shall report, without being limited to: (a) Net Operating Income for such fiscal year; (b) Net Proceeds, if any, for such fiscal year; (c) Developer's Project debt and equity changes for such fiscal year; and (d) all interests that any of Developer's Affiliates had in Developer, the Project, or the Improvements at any time during such fiscal year.

5.13 **Inspection of Developer's Books and Independent Audits.**

5.13.1 WMATA may, during normal business hours and upon at least five (5) Business Days advance written notice to Developer, inspect, take extracts from, and make copies of the books and records of Developer (and any management company managing the Lease Premises and the Developer Improvements) for the purpose of verifying any financial statement submitted to WMATA pursuant to Article 5 of this Lease. Any inspection undertaken by WMATA must be initiated within a period of three (3) years after Developer submits such financial statement. WMATA shall be limited to four (4) inspections per calendar year at its sole cost and expense, provided that such limitation shall not prevent WMATA from conducting an audit pursuant to Article 5 in the same calendar year that WMATA undertakes an inspection. Developer shall also make copies of all leases between Developer and any Subtenants available for inspection by WMATA or its agents. Developer's



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failure to provide financial information to WMATA pursuant this Article 5, or to allow WMATA and its agents access to its books, records, and leases pursuant to Section 5.7.4 and this Section 5.13.1, shall constitute a Default by Developer. WMATA shall conduct any such inspection in a manner that does not materially disturb or interfere with the operations of the Developer, its management company or the Developer Improvements. WMATA shall not be required to compensate Developer or the management company for Developer for any expenses incurred in assisting WMATA's inspection.

5.13.2 WMATA may, by written notice to Developer, conduct or cause to be conducted an independent audit of the operation of the Lease Premises and Developer Improvements and/or any payment of Capital Event Participation Rent, or any other amount due to WMATA under this Lease, provided, no single audit by WMATA pursuant to this Section 5.13.2 may cover an examination of more than three (3) complete years (fiscal or calendar, whichever pertains to the Developer's method of tax reporting) of operation of the Lease Premises and Developer Improvements next preceding the date of WMATA's notice that an audit will be conducted. If WMATA's audit shall disclose that the actual amount of Capital Event Participation Rent or any other amount due WMATA under this Lease for any period is in excess of the amount previously paid by Developer to WMATA for such period or event, then Developer, upon receipt of a notice from WMATA setting forth in reasonable detail the amount due and the calculations used in making the determination, shall forthwith pay to WMATA the amount of such excess; and in addition, if the aggregate of such amounts due from Developer to WMATA exceeds the aggregate of such amount actually received by WMATA from Developer by five percent (5%) or more, then Developer also shall pay to WMATA interest on such excess at the rate of twenty percent (20%) per annum from the date payment was originally due WMATA until payment (in good funds) is received by WMATA. If Developer disputes the calculations provided by WMATA, Developer shall so advise WMATA in writing, and the parties shall meet and attempt to resolve the dispute before instituting any action under Article 24 of this Lease. If WMATA's audit shall disclose that the actual amount of Capital Event Participation Rent, or any other amount due WMATA under this Lease for any period is less than the amount previously paid by Developer to WMATA for such period or event, then Developer shall be entitled to a credit against Rent in the amount of such difference. Any dispute between WMATA and Developer with respect to the results of any such audit shall be resolved pursuant to the provisions of Article 24. WMATA shall not be required to compensate Developer or the management company for Developer for any expenses incurred in assisting WMATA's audit.

5.13.3 All information and materials provided by Developer or WMATA pursuant to Sections 5.7, 5.12, 5.13.1 and 5.13.2 hereof (including, but not limited to, all financial statements provided by Developer to WMATA) shall be confidential and shall not be disclosed by WMATA or Developer, whether through any of



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its employees, independent contractors, agents or otherwise, to any third party, other than (i) pursuant to a subpoena or court order or (ii) in litigation, insolvency proceedings of any type, mediation, or arbitration with or involving Developer concerning a dispute to which such information or materials is or are materially germane or (iii) to the extent disclosure is required pursuant to WMATA's public access to records policies or applicable Laws. However, nothing in this Section 5.13.3 shall be deemed to limit any employees, officers, or directors of WMATA, or any auditors, attorneys, or other consultants hired by WMATA or by any such auditors or attorneys, or their respective employees, from reviewing and analyzing the information and/or materials obtained, and discussing and sharing such information and materials among themselves and with Developer or any representatives of Developer.

## ARTICLE 6
## TRIPLE NET LEASE; ADDITIONAL RENT

6.1 **Triple Net Lease.** Developer acknowledges and agrees that this Lease is intended by the parties to yield to WMATA irrevocably and unconditionally the Rent as and when due hereunder absolutely free or net of all expenses, costs, charges, liabilities, obligations, claims, demands, fees, fines, penalties, taxes, premiums, interest and other sums, which are in any manner associated with this Lease and the development, subleasing, construction, operation, use, management, insuring, protecting, repairing, maintaining or replacing of the Lease Premises, of whatever kind or nature, however characterized, foreseeable or unforeseeable, ordinary or extraordinary, and whether or not expressly identified in this Lease as an obligation or liability of Developer (unless expressly identified as an obligation of WMATA), all of which such payment and performance obligations and liabilities (collectively, the "Lease Obligations") shall be paid and performed by Developer, as and when due, without notice, demand, condition, offset, deduction or counterclaim.

6.2 **Construction Related Obligations.** The Lease Obligations include, without limitation, payment and performance of all obligations incurred by or for the benefit of Developer or any Occupant for or in connection with the design, permitting, contracting, construction, development, installation, and placing into service of the Developer Improvements in accordance with the requirements of the Approved Development Plan and otherwise as set forth in this Lease (collectively, the "Construction Related Obligations").

## ARTICLE 7
## PAYMENT OF TAXES, ASSESSMENTS, ETC.

7.1 **Developer's Obligation to Pay Impositions.**

7.1.1 Developer shall pay or cause to be paid all Impositions before any fine, penalty, interest or cost may be added thereto or become due or be imposed by operation of law for the nonpayment.



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7.1.2 If, at any time during the Term, due to changes after the date hereof in Laws, Developer becomes entitled to the benefit of WMATA's tax exemption, so that Developer is relieved of liability for payment of any Imposition on the Lease Premises, Leasehold Interest or Developer Improvements, without a substitute Imposition or increase in another Imposition being implemented in place thereof, Developer shall pay to WMATA the savings resulting therefrom (after payment or reimbursement of all costs of effecting such savings), from time to time as such savings are realized, on the date or dates on which the Imposition from which Developer has been so relieved of liability would have been due and payable.

7.2 **Payment of Impositions in Installments.**

7.2.1 If by law, any Imposition may be paid in installments (regardless whether interest shall accrue on the unpaid balance of such Imposition), Developer may exercise the option to pay timely the Imposition and any accrued interest on the unpaid balance in installments. Those installments which are to become due and payable after the expiration or sooner termination of the Term, but which relate to a fiscal period fully included in the Term, shall be paid in full by Developer at or before the expiration or sooner termination of the Term.

7.2.2 Any Imposition which relates to a fiscal period partly occurring within the Term of this Lease and partly occurring prior to or after the expiration of the Term, shall be adjusted between WMATA and Developer. Developer shall pay only that portion of such Imposition which relates to that part of the fiscal period included in the Term. WMATA, subject to any exemption to which it may be entitled, shall pay such Impositions as would otherwise be payable by a non-tax-exempt owner, Developer or operator of the Lease Premises after the expiration of the Term, and WMATA retains the right to contest the payment of such Impositions.

7.3 **Challenge to Impositions.** Developer shall have the right, but not the obligation, to contest the amount or validity, in whole or in part, of any Imposition, by appropriate proceedings diligently conducted in good faith, but only after payment, or securing payment as permitted under Laws, of such Imposition. However, if such payment or securing payment, whether under protest or otherwise, would operate as a bar of such contest or interfere materially with the prosecution thereof, Developer may postpone or defer payment or securing payment of such Imposition if:

7.3.1 Neither the Developer Improvements and/or the Lease Premises, nor any part thereof, would by reason of such postponement or deferment be in danger of being forfeited or lost; and

7.3.2 Neither WMATA nor any officer, director or employee of WMATA would be in jeopardy of incurring any payment obligation whatsoever, nor of receiving any fine, penalty or other sanction (civil or criminal) nor would any such fine,



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penalty or sanction be applied to the Lease Premises or become a lien or charge applicable thereto as a result of such delay (unless in the case of imposition of a civil fine or money penalty only, Developer includes such amount in the escrow provided for in Section 7.3.3); and

7.3.3 Developer establishes an escrow account with a sound and recognized financial institution, or deposits a bond or other security (with an obligor and containing such terms both as are reasonably approved by WMATA) with the Title Company, 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



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any taxes or Impositions relating to this Lease or the transactions contemplated by this Lease or the other Transaction Documents. Any and all taxes and other Impositions resulting solely from any and all activities of Developer shall be its sole responsibility and obligation and not that of WMATA. From and after the Effective Date, other than such Impositions as WMATA has routinely paid and is legally required to pay with respect to the Property on and before the Effective Date, Developer (and not WMATA) shall be responsible for the payment of any and all taxes and Impositions, including, without limitation, real estate taxes, relating to the Lease Premises.

## ARTICLE 8
## COMPLIANCE WITH LAWS AND FTA APPROVAL

8.1 **Developer's General Compliance with Laws.** Developer, at its sole cost, risk, and expense, shall comply with all Laws to which Developer is subject regarding the Lease Premises or the Developer Improvements and Developer's use and operation thereof, shall include in each Occupant's Sublease, license agreement, or other occupancy agreement the requirement that such occupancy shall comply with all Laws to which such occupancy may be subject, and shall require any Occupant(s) of the Lease Premises to comply with all Laws to which such Occupant(s) may be subject. In that connection, Developer shall make or cause to be made such repairs, replacements, alterations, and improvements from time to time as may be required to make the Lease Premises or the Developer Improvements comply with Laws. Developer agrees that due to the length of the Term, changes in Laws may from time to time require alterations, improvements, and upgrades to the Lease Premises or the Developer Improvements, and that significant capital expenditures may be required in any such event and that Developer shall be solely responsible for the costs and expenses relating thereto.

8.2 **Right to Contest.**

8.2.1 WMATA shall have the right but not the obligation, at its sole cost, to contest the application or validity, in whole or in part, of any Law purported to be applied to the Lease Premises or Developer Improvements or any part thereof during the Term of this Lease, by appropriate proceedings diligently conducted in good faith, and Developer may participate therein. No such contest shall diminish, abrogate or affect to the detriment of Developer any of WMATA's obligations under this Lease.

8.2.2 Developer shall have the right but not the obligation, at its sole cost, to contest the application or validity, in whole or in part, of any Law purported to be applied to the Lease Premises or Developer Improvements or any part thereof during the Term of this Lease, by appropriate proceedings diligently conducted in good faith, and WMATA may participate therein. No such contest shall diminish, abrogate or affect to the detriment of WMATA any of Developer's obligations under this Lease.

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



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portion of the Lease Premises or any interest of WMATA or Developer therein to be in danger of being forfeited or lost; or (b) place any party to this Lease, or any officer, director, member, partner, or employee of such party, in jeopardy of receiving any fine, penalty, or other sanction (civil or criminal).

8.3 **Transit-Oriented Development.** In accordance with FTA requirements (including, without limitation, FTA Circular 9300. 1A, Appendix B), Developer warrants and covenants that the Project to be designed and to be constructed on the Lease Premises shall constitute a "Transit-Oriented Development". In addition, Developer warrants and covenants that it shall maintain a "Continuing Transit Orientation" each as defined below. The requirements of this Section shall be among the Covenants, Conditions and Restrictions. Developer and its heirs, successors and assigns shall cause the Lease Premises at all times to maintain a "Continuing Transit Orientation" for so long as a metrorail station is open and in operation on or about the Property or any WMATA's Adjacent Property, (or to the extent required by FTA regulations or other applicable Laws) within reasonable proximity thereof. The terms "Transit-Oriented Development" and "Continuing Transit Orientation" mean respectively, as applicable to design and construction of the Project and as to its subsequent maintenance and operation, satisfaction of each of the following, each as reasonably determined by WMATA: (a) provision of convenient pedestrian and vehicular access to a transit station; (b) incorporation of private investment and office, commercial or residential development; (c) design which enhances the effectiveness of a mass transit project and is physically or functionally related to the mass transit project; and (d) creation of non-vehicular capital improvements that are designed to result in increased transit usage.

8.4 **FTA Project Approval.** WMATA and Developer acknowledge that the Project is subject to approval by the FTA ("FTA Project Approval").

8.5 **Disclaimer.** WMATA shall have no obligation to make any change, demolition or improvement of or to the Lease Premises, WMATA's Residual Property, WMATA's Adjacent Property or any other portion of the Property, including without limitation, to comply with Applicable Laws, except as expressly set forth in this Lease.

8.6 **Americans with Disabilities Act.** All improvements constructed by Developer on the Lease Premises shall comply with Title II and III of the Americans With Disabilities Act, 42 U.S.C. 12101, et seq., as amended, and any regulations promulgated thereunder ("ADA"), to the extent applicable. If as a result of such improvements, or any subsequent alteration, addition or modification thereto, ADA-related improvements to the Metro Station or any Metro Facilities are required, Developer shall be solely responsible for the cost of all such improvements and shall pay or reimburse WMATA for all such costs on demand.

8.7 **Use of WMATA Compact.** Developer understands and agrees that in no event shall Developer claim or assert for its own benefit, or attempt to claim or assert, an exemption or immunity available to WMATA under the Washington Metropolitan Area Transit 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 Station or any Metro Facilities. A provision to this effect shall be included in all Subleases entered into by Developer.

8.9 **No Interference.** Developer shall not interfere or permit any interference with any of WMATA's operations or the free flow of pedestrian traffic to and from the Metro Station, Metro Facilities, or the WMATA's Reserved Areas and Interests. Developer shall not conduct or permit any activities to be conducted that would interfere with or diminish WMATA's ability to realize transit revenues in, on or about the Property.

8.10 **Officials Not To Benefit.**

8.10.1 No member (i.e., Representative or Senator) of, or delegate to Congress, or any similar official, or any member of such person's family, shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom; but this provision shall not apply if this Lease is made with a corporation or other entity with which such official or family member has only a de minimis (in WMATA's sole opinion) contractual or ownership interest. Developer and any Consultant warrants, represents, and agrees that as of the date of this Lease, no person described in this Subparagraph, nor any entity with which such person is affiliated, has any such interest in Developer or any Consultant. Developer and any Consultant shall forthwith deliver written notice to WMATA of any breach of the foregoing warranty, representation, and agreement, and shall make reasonable inquiries from time to time to determine whether any such breach has occurred.

8.10.2 No member, officer, or employee of WMATA or of a local public body during his/her tenure or one year thereafter shall have any interest, direct or indirect, in this Lease.

8.11 **Gratuities.** In connection with this Lease, or any amendments or modifications thereto, the giving of, or offering to give, gratuities (in the form of entertainment, gifts or otherwise) by the Developer or any Consultant, or any agent, representative, or other person deemed to be acting on behalf of the Developer or any Consultant, or any contractor, subcontractor or supplier furnishing material to or performing work under this Lease, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any director, officer or employee of WMATA, or to any director, officer, employee or agent of any of WMATA's agents, consultants or representatives, with a view toward securing an agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to performance under this Lease or any agreement that will be negotiated, is expressly forbidden. The terms of this Section shall be strictly construed and enforced in the event of violation hereto.



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## ARTICLE 9
## ENVIRONMENTAL MATTERS

9.1 **WMATA's Covenants.**

9.1.1 Subject to the remaining provisions of this Article 9, WMATA shall be solely responsible for compliance of the WMATA's Reserved Areas and Interests with all Laws relating to Hazardous Materials. As between WMATA and Developer, nothing in this Lease shall be deemed (1) to prevent the entry and parking of motor vehicles carrying flammable liquids solely for the purpose of their own propulsion, (2) to prohibit storage and use on WMATA's Reserved Areas and Interests of any liquid or material typically used in the construction, operation or maintenance of facilities of the type comprising Metro Facilities, or (3) to prohibit storage and use on the WMATA's Reserved Areas and Interests, in accordance with the requirements of applicable Environmental Law, of any Hazardous Material by any occupant of WMATA's Reserved Areas and Interests in connection with the conduct of its business.

9.1.2 During the Term of this Lease, WMATA shall notify Developer promptly upon receiving notice (whether from a governmental authority or any other Person) with respect to, or becoming actually aware of, any release, on or from WMATA's Reserved Areas and Interests of any Hazardous Material in violation of applicable Law affecting the Lease Premises.

9.2 **Developer's Covenants.**

9.2.1 During the Term of this Lease, Developer shall be solely responsible for compliance of the Lease Premises, the Developer Improvements and the activities thereon of Developer, Occupants and all third parties (other than those of WMATA, its employees, agents and contractors) with all Laws relating to Hazardous Materials. Developer shall not install, use, generate, store, transport or dispose of any Hazardous Material, on, below or about the Lease Premises or the Developer Improvements or suffer the same to occur (other than by WMATA, its employees, agents and contractors), except only, in accordance with the requirements of applicable Environmental Laws.

9.2.2 Developer shall notify WMATA promptly upon receiving notice (whether from a governmental authority or any other person) with respect to, or becoming actually aware of, any release, on or from the Lease Premises or the Developer Improvements of any Hazardous Material during the Term of this Lease, in violation of applicable Law.

9.2.3 Developer hereby agrees to indemnify, defend and hold WMATA harmless from and against any and all loss, cost, liability, damage or expense which WMATA may incur or sustain or which may be asserted against WMATA by reason of any liability WMATA may incur for clean-up, restoration costs, fines, or penalties resulting from Developer's breach of the covenants



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contained in this Article 9 or from the violation of any Law relating to Hazardous Materials released on or from the Lease Premises occurring after the Effective Date of this Lease.

9.2.4 Developer acknowledges that Developer has assumed all risk, liability, costs and responsibility for the environmental condition of the Lease Premises existing on the Effective Date to the fullest extent permitted under applicable Laws, including, without limitation, the obligation to remediate, to the extent required by applicable Laws, any and all Hazardous Materials located thereon. In the event Developer receives notice of, or otherwise becomes aware of, the presence or release of Hazardous Materials in, on or about the Leased Premises, Developer shall promptly notify WMATA thereof, and if Developer fails to cause same to be investigated and remedied, as the case may be, in accordance with the requirements of applicable Laws and this Lease, WMATA shall have the right, but not the obligation to do any and all of the following: (1) to enter upon the Lease Premises; and (2) to so investigate, including, without limitation, conducting such tests, studies, investigations and evaluations thereof as WMATA reasonably shall deem necessary at Developer's cost and expense as Additional Rent; and (3) to remediate at Developer's cost and expense as Additional Rent; or (4) to require Developer to do any or all of the foregoing for the benefit of WMATA, using contractors and consultants approved by WMATA.

9.2.5 The provisions of this Section 9.2 shall survive the expiration or any earlier termination of the Term.

## ARTICLE 10
## INSURANCE REQUIREMENTS

10.1 **Scope and Limits of Required Insurance Coverage.** Beginning on the Effective Date and throughout the Term of this Lease, Developer and each of its contractors and subcontractors and every Person directly or indirectly employed by any of them and every Person for whose acts any of them may be liable (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:

10.1.1 **General Liability Insurance.** One or more commercial general liability insurance policies issued to and covering the liability of the Insurance Obligors for all activities and obligations under or in connection with this Lease and the other Transaction Documents. Such coverage shall include, without limitation, completed operations and contractual liability insurance,



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explosion, collapse and underground liability coverage of not less than the following limits:

10.1.1.1 Personal Injury and Property Damage Liability for Non-Construction Activities and Obligations: $5,000,000 Combined Single Limit Each Occurrence.

10.1.1.2 Personal Injury and Property Damage Liability for Construction Activities and Obligations: $10,000,000 Combined Single Limit Each Occurrence.

10.1.2 **Commercial Property Insurance**. One or more special form insurance policies, which in the aggregate cover one hundred twenty percent (120%) of the full replacement cost of all Improvements on the Property.

10.1.3 **Builder's Risk Coverage**. To the extent not fully covered by the policies required under subsection 10.1.1, one or more policies of builder's risk insurance on the Improvements, buildings and materials, equipment and supplies on or about the Lease Premises that have been or are to be incorporated into the Project. Such insurance shall also include those Project materials, equipment, and supplies owned by WMATA and stored off-site. This insurance shall include the interests of WMATA and the Insurance Obligors. Such insurance shall be written on a replacement cost basis and shall afford coverage at least equivalent to an "all-risk" builder's risk policy form as customarily defined within the insurance industry. One or more insurance policies in such amounts as shall be reasonably required by WMATA in respect of all construction, installation, alteration and other similar construction activities of the Insurance Obligors.

10.1.4 One or more insurance policies, which in the aggregate fully comply with all applicable worker's compensation, disability benefit and other similar employee benefit statutes, regulations and requirements, including, without limitation, those of District of Columbia, and with all requirements of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, Admiralty Laws, or the Federal Employers' Liability Act. Such policies, without limitation, shall conform to all applicable statutory limits and, to the extent not specified to the following minimum coverage limits:

| | |
|---|---|
| Employers' Liability: | $1,000,000 |
| Each Accident: | $1,000,000 |
| Disease Policy Limits: | $1,000,000 |
| Disease-Each Employee: | $1,000,000 |

10.1.5 **Automobile Liability Insurance**. One or more insurance policies covering the use of all owned, non-owned, hired, rented or leased vehicles having coverage scopes and limits not less than as required by all applicable motor



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vehicle laws, including, without limitation, of the District of Columbia, to the extent not fully covered by the policies required under subsection 10.1.1. In no event shall the coverage under such policies shall have a combined single limit for bodily injury liability and property damage liability of less than $5,000,000 per occurrence.

10.1.6 **Pollution Legal Liability Insurance**. One or more insurance policies covering contractors' pollution legal liability, including, without limitation, the liability of the Insurance Obligor occasioned by environmental testing and release, removal, storage, transport and disposal of Hazardous Materials. The policy shall include coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, solid, liquid or gas, waste materials or other irritants, contaminants or pollutants from, into or upon the Property, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The coverage under such an insurance policies shall have limits not less than $3,000,000 per occurrence of claims made.

10.1.7 **Railroad Protective Liability Insurance**. One or more insurance policies covering the liability of any and all of the Insurance Obligors for any and all personal injuries, deaths and any and all damage to property, equipment and facilities caused by work performed by the Insurance Obligor on, above, below, adjacent or within fifty (50) feet of an of the Metro Facilities. The coverage under such policies shall have limits not less than $5,000,000 combined single limit for bodily injury and property damage with a $10,000,000 aggregate.

10.1.8 One or more insurance policies covering the liability of the Insurance Obligors for any and all indemnification obligations and indemnification liabilities under this Lease and the Transaction Documents.

10.1.9 Rent insurance with all risk coverage in an amount equal to one (1) year's current annual Base Rent plus the aggregate amount of Impositions and insurance premiums payable to WMATA for one (1) year.

10.1.10 At the request of WMATA, such other insurance in such amounts as may from time to time be reasonably required by WMATA against such other insurable hazards as at the time are commonly insured against in the case of premises similarly situated, due regard being given to the type of the Improvements, its construction and its use and occupancy.

10.2 If, by reason of changed circumstances or economic conditions, the insurance amounts referred to in this Lease become in WMATA's reasonable judgment inadequate, Developer shall increase the amounts of such insurance promptly upon WMATA's reasonable request, which increased amounts shall be consistent with that customarily



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carried with respect to premises similarly situated to the Lease Premises, giving due regard to the type of Improvements and its construction, use and occupancy.

10.3 **WMATA's Interests.** Each of the Insurance Obligors 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; and (vii) shall provide for a deductible or self insured retention not to exceed $10,000. Neither the issuance of any insurance policies required hereunder, nor the minimum limits specified herein with respect to the Insurance Obligors' insurance coverages, shall be deemed to release, limit or restrict in any way the Insurance Obligors' liability arising under or out of this Lease or otherwise.

10.4 **Verification of Coverage.** With respect to each and every one of the insurance policies herein required to be procured by the Insurance Obligors, 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



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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.

10.5 **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.

10.6 **Compliance with Insurance Requirements.** The Developer shall not itself and shall not suffer any of the Insurance Obligors to do or permit to be done or omit to do any act or thing upon the Lease Premises that will invalidate or be in conflict with any insurance policies covering the Lease Premises or any part thereof, including all common areas or fixtures and property therein, or any other insurance policies or coverage referred to above; and Developer shall itself and shall cause each of the Insurance Obligors to promptly comply with all rules, orders, regulations or requirements relating to such insurance policies, including all rules, orders, regulations, requirements and insurance regulations, and shall not do, or permit anything to be done, in, on or about the Property, or bring or keep anything therein, which shall increase the rate of fire insurance on the Lease Premises or on any property, including all common areas, located therein, or increase the rate or rates of any other insurance referred to in this Lease. If any act or omission of any of the Insurance Obligors, its or their agents, employees or contractors shall result directly in any increase in the premium rates applicable to any such insurance policies carried by WMATA, or other increased costs to WMATA in order to comply with insurance regulations, in excess of the premium rates or such costs in effect, then the Developer shall reimburse WMATA for the amounts of any such increased rates or costs on account of such act or omission (with joint and several liability therefor) within fifteen (15) days after receipt of a statement therefor from WMATA.

10.7 **Minimum Qualifications of Insurance Companies.** Insurance companies providing the coverages required by this Article 10 shall be rated by A.M. Best or a comparable rating company and carry at least an "A" rating and a "Financial Size Category" of at least "X" or better or, if such ratings are not then in effect, the equivalent thereof or such other financial and size rating as WMATA may at any time consider appropriate. All insurance shall be procured from insurance companies authorized to do business in the jurisdiction in which the Lease Premises is located. WMATA's approval or failure to



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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.

10.8 **Survival of Insurance and Indemnification Covenants.** The obligations arising under this Article 10 shall survive the expiration or termination of this Lease and shall be included in the Covenants, Conditions and Restrictions.

## ARTICLE 11
## DEVELOPMENT RIGHTS AND OBLIGATIONS

11.1 **Obligation to Commence and Complete Construction.** Promptly following the Effective Date, and pursuant to the terms of the JDA and this Lease, Developer shall expeditiously commence and timely complete the development of and construction of the Project and all improvements relating thereto in a first class and workmanlike manner in accordance with all applicable health, safety and insurance requirements), free of defects and liens for labor or materials, in accordance with the JDA, this Lease, the Approved Development Plan, the Design and Construction Documents as approved by WMATA, the Construction Drawings and Specifications as approved by WMATA, the Construction Approvals and all other applicable legal requirements. It is the intention of the parties that Developer shall at its sole cost and expense provide all items necessary for the proper execution and completion of the Project, including, without limitation, securing and paying for all building permits and all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Project. Developer shall deliver to WMATA copies of all certificates, permits, approvals and consents promptly after its receipt of the same.

11.2 **Developer Construction Damage or Interference of Metro Facilities.** If the Developer damages, impedes access to, or otherwise interferes with Metro Facilities, Developer shall repair such damage within five (5) days after the occurrence thereof, except that in the case of emergencies or if such damage causes serious disruption to the operations of any part the Metrorail system, Developer's obligation to repair shall be immediate.

11.3 **Inspections.**

11.3.1 **Inspector(s).** WMATA shall designate in writing an employee(s) or representative(s) ("WMATA's Inspector") who shall have full escorted access to the Lease Premises and Developer's construction for the purposes set forth below. WMATA's Inspector shall be under the direction of a registered professional engineer. Such person(s) shall have the absolute authority to stop construction of Developer Improvements that impact or materially affect Metro Facilities, if in WMATA's sole but reasonable opinion, Developer's contractor(s) or subcontractor(s) is/are working in (a) a dangerous or unsafe manner, or (b) not in conformance with the approved Construction Drawings and Specifications. The authority of WMATA's Inspector to stop



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construction work shall be incorporated into all of Developer's construction contracts.

11.3.2 **Purposes**. WMATA's inspector shall have full escorted access to the Lease Premises and Developer's construction of the Developer Improvements for the following purposes.

11.3.2.1 To determine the safety of operations of Developer's contractor with regard to Developer Improvements that impact or materially affect Metro Facilities;

11.3.2.2 To determine if the construction is in conformance with the approved Construction Drawings and Specifications; and

11.3.2.3 To inspect Developer Improvements that impact or materially affect Metro Facilities as determined by WMATA.

11.3.3 **Notification to Developer and Developer's Responsibility**. WMATA shall immediately notify Developer in writing of any work that is not in conformance with the approved Construction Drawings and Specifications. Developer shall direct its contractor to remove the defective work, construction, material, structure, facility, equipment, or installation, and replace it in accordance with the approved Construction Drawings and Specifications for Developer Improvements that impact or materially affect Metro Facilities. Failure of Developer's contractor to timely comply with said direction shall not relieve Developer of its own obligation to remove and replace the defective work. Developer's failure to remove and replace, or cause to have removed and replaced, the defective work shall be an Event of Default under this Lease.

11.3.4 **Disclaimer of Liability.** By inspecting, having the right to inspect, or requiring the correction of any construction undertaken pursuant to this Lease, WMATA accepts no liability for any construction defects, flaws or mistakes, and waives none of its legal rights. No inspection conducted by WMATA shall be construed to be a warranty, guarantee, or assurance of the adequacy of the contractor's work or of the Improvements constructed. The inspection conducted is for WMATA's sole benefit, and is for no other party's benefit, including that of the Developer.

11.3.5 **Coordination**. WMATA's Inspector shall be notified of and shall have the right to attend scheduled job progress meetings and, upon request, shall receive copies of the meeting minutes, if any.

11.4 **Developer As-Built Drawings**. Developer shall require its contractor(s) to maintain "As-Built" drawings during the construction of the Developer Improvements on the Lease Premises. Within thirty (30) days following the date Substantial Completion is achieved, or earlier termination of this Lease, Developer shall provide WMATA with two (2) copies of the As-Built Drawings (mylar) and an electronic media copy of the



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drawings in AutoCAD R14 or Auto CAD 2000 format or other format acceptable to WMATA.

11.5 **Local Codes, Laws, Regulations and Ordinances, Etc.**

11.5.1 **Compliance.** Developer agrees that the Developer Improvements to be erected, and all uses thereof, shall comply with this Lease, the local zoning regulations and building codes and other applicable laws, regulations and ordinances then in effect, and that it shall be Developer's responsibility to obtain the requisite building permits and/or approvals for the construction of the Developer Improvements.

11.5.2 **WMATA's Cooperation.**

11.5.2.1 WMATA agrees to cooperate with Developer in connection with obtaining permits and approvals, including the timely execution of documents as may be required for the construction of the Developer Improvements, provided WMATA shall not incur liability by reason of such support or execution of such documents for which it cannot be indemnified.

11.5.2.2 WMATA agrees, subject to any limitations under the WMATA Compact and the provisions of this Lease, to join with Developer in applications for permits, subdivisions, licenses, or other authorizations required by any governmental or other body claiming jurisdiction in connection with the initial construction of the Developer Improvements, or any modification, remodeling, expansion, rebuilding, alteration, or reconstruction thereof that Developer may perform in accordance with this Lease.

11.5.2.3 Any and all costs of the aforesaid applications and the prosecution thereof shall be at Developer's sole cost and expense.

11.6 **Interference with Metro Facilities.** Developer's development and use of the Lease Premises and Developer Improvements and rights set forth herein shall not adversely interfere with the operations of Metro Facilities except as provided for in this Lease.

11.7 **Diligent Prosecution and Completion of Developer Improvements.**

11.7.1 **Time for Substantial Completion.** Developer's construction of the Developer Improvements will be substantially complete and ready for occupancy prior to the end of the Pre-Stabilization Period.

11.7.2 **Diligent Prosecution.** Developer shall use Best Commercially Reasonable Business Practices to insure timely completion of the Developer Improvements in accordance with the provisions set forth in this Lease and the JDA. 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



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the manner provided, or should fail to prosecute the work diligently and expeditiously, or should unnecessarily delay the same, WMATA shall have the right to take such action against Developer or against the surety on its bond or against both of them, to insure completion of the Developer Improvements in accordance with the provisions of this Lease and the JDA, including cancellation of this Lease if in WMATA's sole but reasonable discretion the Developer Improvements cannot be timely completed. If WMATA cancels this Lease under this Section 11.7.2, and provided that WMATA is not then in default under or breach of any provision of this Lease, then WMATA shall have the free use of any and all Project development plans and approvals (if and to the extent Developer has an assignable interest therein) existing as of the date of such termination.

11.8 **Compliance with WMATA's Standards and all Legal Requirements**. Construction shall comply in all circumstances to the WMATA Adjacent Construction Design Manual. In addition Developer shall comply with and give all notices required by all laws, ordinances, rules, regulations or building codes and statutes bearing on performance of the work relating to the Project. If Developer knows that any work would be at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, Developer shall promptly notify WMATA in writing thereof and effect corrections to rectify such circumstances in a manner reasonably satisfactory to WMATA (at the sole cost and expense of Developer) before commencing any work at variance with such laws, statutes, ordinances, building codes, rules and regulations.

11.9 **Maintenance of Infrastructure**. Developer acknowledges that Developer, and not WMATA, shall have a continuing obligation with respect to the maintenance, operation, repair and replacement of any and all infrastructure constructed on the Lease Premises by Developer, except only to the extent that such infrastructure constitutes a part of the WMATA's Residual Property or WMATA's Reserved Areas and Interests that are set apart from and not integrated with other infrastructure areas.

11.10 **Davis Bacon Requirements.** Developer shall comply with the "Davis-Bacon Act," 40 U.S.C. §276a, et seq. and with Section 64 of the WMATA Compact and the "Fair Labor Standards Act," 29 U.S.C.A. §201, et seq. (1978) as amended in connection with all construction activities relating in whole or in part to any or all of the WMATA's Reserved Areas and Interests on the Lease Premises.

## ARTICLE 12
## INDEMNIFICATION

12.1 **Indemnity.**

12.1.1 Notwithstanding any policy or policies of insurance required of Developer, Developer shall indemnify, defend (at Developer's cost) and save harmless WMATA, its officers, directors, employees, departments, agents and representatives from and against any and all actions, claims, demands, liabilities, suits at law, in equity or before administrative tribunals, damages,



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losses, expenses, and costs of every kind and nature, due in whole or in part to the negligence, alleged negligence, or intentional wrongful acts of Developer and its Consultants, officers, directors, members, partners, employees, agents and contractors or arising from or related to occurrences on the Lease Premises, WMATA's Reserved Areas and Interests, WMATA's Adjacent Property, WMATA's Residual Property, or adjoining sidewalks, curbs, streets or roadways, including, but not limited to, damage to Metro Facilities and regardless of whether such liabilities, suits, actions, claims, demands, damages, losses, expenses, and costs be against or be suffered or sustained by WMATA, its officials, employees, departments, agents, and representatives, or be against or be suffered or sustained by other persons or legal entities to whom WMATA, its officials, employees, agents, and representatives may become liable therefor.

12.1.2 Developer may, and if so requested by WMATA shall, undertake to defend, at Developer's sole cost and expense with attorneys approved by WMATA, any and all suits, actions, claims, or proceedings brought against WMATA, its officials, employees, agents, and representatives in connection with any of the matters covered by Developer's indemnity.

12.2 **Survival.** The provisions of this Article 12 shall survive the termination of the insurance required by this Lease and shall survive the termination of this Lease.

## ARTICLE 13
## OPERATION

13.1 **Rights and Obligations.** WMATA and Developer agree to perform and exercise their rights and obligations under this Lease so as not to unnecessarily or unreasonably interfere with the use, occupancy, or enjoyment by Developer of the Lease Premises or Developer Improvements or by WMATA of Metro Facilities, WMATA's Reserved Areas and Interests and WMATA's rights under the Covenants, Conditions and Restrictions.

13.2 **Interference with Pedestrian Traffic.** WMATA shall not interfere with the free flow of pedestrian traffic to and from Developer Improvements and Developer shall not interfere with the free flow of pedestrian traffic to and from Metro Facilities. Except for security enclosures around the Metro Station entrances and other Metro Facilities reasonably necessary for security or maintenance/repair purposes and in the case of emergency, no fence, or any other structure shall be placed, kept, permitted or maintained in such a fashion as to materially adversely interfere with pedestrian traffic to and from Developer Improvements and to and from the Metro Station and Metro Facilities. Developer may close Developer Improvements and deny access to the public at such times and in such manner as is reasonably deemed necessary by Developer for the construction, operation, alteration, repair or razing of Developer Improvements, provided that, subject to the requirements of Laws or for safety of persons or property, such closing does not adversely WMATA's operations and access to Metro Facilities. The aforesaid shall not



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prevent WMATA from taking the requisite steps to carry out any capital improvement projects on the WMATA's Reserved Areas and Interests.

13.3 **Maintenance and Repair of Utilities.** Developer shall maintain and repair, and is given the right to replace, relocate, and remove, utility facilities necessary for the operation of Developer Improvements; provided that such repair activity does not adversely interfere with the operation, use, safety, integrity, systems or structural components of the Metro Facilities or access to Metro Facilities. Developer shall be responsible for, and shall pay the operating cost of, all utilities required for the operation of Developer Improvements.

13.4 **Signage.**

13.4.1 Subject to WMATA's approval, which shall not unreasonably be withheld, Developer shall be permitted to designate a name or names by which the Lease Premises and Developer Improvements shall be known.

13.4.2 Developer shall be permitted to erect or to permit the erection of signs on the Lease Premises identifying the Lease Premises, Developer Improvements and particular uses therein, including the marketing, financing and construction thereof, as long as such signs comply with all applicable federal, state, municipal and county laws, regulations and ordinances.

13.4.3 The existence, content and location of all signs proposed to be placed on the Property by Developer, or its contractors or Subtenants, and any and all signage that in any way relates or refers to WMATA or Metro Facilities shall be subject to prior written approval by WMATA in its discretion. The existence, content and location of all signs proposed to be placed and placed on the Property by WMATA or its agents, and any and all signage that in any way relates or refers to Developer shall be subject to prior written approval by Developer in its discretion.

## ARTICLE 14
## REPAIRS AND MAINTENANCE, ETC.

14.1 **Developer's Responsibilities.**

14.1.1 Subject to normal wear and tear, damage due to casualty and any Taking (but subject nevertheless to Developer's obligation to repair and rebuild), Developer, at its sole cost and expense, shall (i) keep and maintain the Lease 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,



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connections, ventilation, and stormwater management system, to the extent not maintained by any property owner's association or the jurisdiction in which the Lease Premises is located, and all areas adjoining the same, under Developer's control and in connection with the operation of activities under this Lease, in a clean and orderly condition, free of dirt, rubbish, snow, ice, and unlawful obstructions.

14.1.3 In discharging its obligations under this Section 14.1, Developer shall comply with all requirements of Laws, the Covenants, Conditions and Restrictions and the WMATA Adjacent Construction Design Manual, and shall meet commercially reasonable standards for developed properties comparable to the Lease Premises containing improvements comparable to such Improvements as then exist on the Lease Premises.

## ARTICLE 15
## ENTRY ON LEASE PREMISES

15.1 **Right of Entry by WMATA.** WMATA and its authorized representatives shall have the right to enter the Lease Premises and Developer Improvements at all reasonable times during the Term to inspect Metro Facilities and for compliance by Developer with this Lease; provided that WMATA gives reasonable advance notice to Developer (except in an emergency). Developer may require that WMATA be accompanied on its inspection by Developer's representative.

15.2 **Frequency of Entry and Entry to Security Areas by WMATA.** In exercising the right of entry granted in Section 15.1, WMATA shall whenever reasonably practical, avoid entering bona fide "security areas" of the Lease Premises and Developer Improvements of which it previously has been made aware in writing.

## ARTICLE 16
## CHANGES AND ALTERATIONS BY DEVELOPER

16.1 **Preconditions.** Subject to all of the provisions of this Section 16.1, Developer shall have the right during the Term of this Lease, and at Developer's sole cost, expense, and risk, to modify, remodel, expand, rebuild, alter, and reconstruct Developer Improvements (or any portion thereof), to build out, or cause to be built out, all or portions of the Developer Improvements (or any portion thereof) for Occupants, and to raze Developer Improvements (or any portion thereof), provided any such razing shall be (i) preliminary to and in connection with the rebuilding of new Developer Improvements, or (ii) required by Law, or (iii) related to a casualty or Taking (and then, either to comply with Law or incident to a rebuilding of Developer Improvements), or (iv) of Developer Improvements (or any portion thereof) which have become obsolete, unsafe, unused, or uneconomical, or (v) otherwise necessary or desirable in Developer's good faith business judgment ("**Reconstruction Activity(ies)**"). The following additional conditions apply to any Reconstruction Activity.



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16.1.1 All Reconstruction Activities shall be in accordance with the Zoning Ordinance, as then in effect, all applicable Laws and the WMATA Adjacent Construction Design Manual.

16.1.2 Developer shall submit to WMATA for WMATA's prior review and approval the methods, schedules, plans and Construction Drawings and Specifications for the Reconstruction Activity, all in accordance with (i) the design and construction provisions of Article 11 of this Lease and the terms of the JDA, (ii) the Approved Development Plan and (iii) the Covenants, Conditions and Restrictions. No Reconstruction Activity may begin until Developer has received the prior written approval of WMATA.

16.1.3 No Reconstruction Activity shall impede or restrict the operations of WMATA, or adversely affect the safety and security of any WMATA operations, any Metro Facilities, or any of WMATA's personnel or patrons. Without limiting the generality of the preceding sentence, in all events Developer, at its sole cost and expense, shall maintain full vertical and horizontal support for Metro Facilities.

16.1.4 WMATA's inspection of any Reconstruction Activity shall be governed by the provisions of Article 11 of this Lease.

16.1.5 WMATA accepts no liability and waives no rights under this Lease by reason of its approval of the method, schedule, plans, and construction drawings or specifications for any Reconstruction Activity.

16.2 **No Downward Adjustment in Rent.** Unless specifically provided to the contrary in this Lease, Developer shall not, by reason of any Reconstruction Activity, (a) be entitled to an abatement, allowance, reduction, or suspension of Rent or other payments due WMATA, or (b) be released of or from any other obligations imposed on Developer under this Lease.

## ARTICLE 17
## RIGHT TO ASSIGN AND SUBLEASE

17.1 **Developer's Right to Assign; Conditions and Procedures.** Subject to the terms and conditions of this Article 17, this Lease shall not be assignable by Developer without WMATA's prior written approval. Developer shall not have any right to assign its interest in this least if there exists any Default under this Lease by Developer or circumstances, which with notice or the lapse of time could constitute a Default by Developer hereunder. Developer shall not have any right to assign its interest in this Lease prior to the Final Completion of the Project and the satisfaction by Developer of all of its Construction Related Obligations. All assignments by Developer shall be made expressly subject to the terms, covenants and conditions of this Lease. The assignment shall designate the name of the assignee and the address to which all notices required by this Lease shall be sent. Furthermore, the assignee shall assume all rights and obligations of Developer under this Lease arising on and after the date of assignment, including the



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right to mortgage, encumber and otherwise assign and sublease, subject to all duties and obligations of Developer pertaining to the then unexpired Term of this Lease. No such assignment of Developer's interest in this Lease shall operate to release Developer from any obligation or liability under this Lease accruing prior to the effective date of the assignment, including without limitation, the obligation to complete the construction and development of any Developer Improvements not yet completed by Developer or any assignee of Developer and the obligation to pay any Capital Event Participation Rent, Density Adjustment Rent, Impositions or Additional Rent accruing but unpaid prior to the date of the assignment. No assignment of Developer's interest in this Lease shall be effective unless and until WMATA shall have received a fully executed original counterpart of the approved assignment, which document shall confirm the assignee's agreement to assume and perform all obligations of the assignor under this Lease accruing after the effective date of the assignment.

17.2 **Right to Sublease.** Developer shall have the right to sublease all or any portion of the Lease Premises and Developer Improvements, provided (i) that there shall not exist any Default under this Lease by Developer, or circumstances, which with notice or the lapse of time could constitute a Default by Developer hereunder, and (ii) that no such sublease shall operate to release Developer from any obligation or liability under this Lease. Copies of each and every sublease with a Major Subtenant shall be delivered to WMATA within Ten (10) Business Days following the execution and delivery.

17.3 **WMATA's Right to Collect Rents Under Sublease.** Subject only to the rights of a Leasehold Mortgagee permitted under Article 18, Developer hereby irrevocably and unconditionally assigns to WMATA all rents and other sums of money payable to Developer under any Sublease. Upon and during the continuance of a Default, WMATA may collect rents under any Sublease but such collection shall, in and of itself, not constitute recognition of the Subtenant under such Sublease, nor a waiver of any of WMATA's right to proceed against Developer pursuant to the terms of this Lease.

17.4 **Assignment Transactions; Financial Terms.** Developer shall deliver not less than sixty (60) days' prior written notice to WMATA of any contemplated assignment under this Article 17, together with a complete description of the economic and non-economic terms of such transaction.

17.5 **WMATA's Right to Assign.** WMATA reserves the right to assign its interest in this Lease to any body, corporate and politic, organized pursuant to public law, which 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 Land or the reversionary interest and estate of WMATA in and to the Lease Premises or any part thereof. The granting of a Leasehold Mortgage does not render a Leasehold Mortgagee an assignee for purposes of this Lease. No Leasehold Mortgage shall be valid or of any force or effect (and no mortgage shall constitute a Leasehold Mortgage) unless and until (i) the Leasehold Mortgagee shall have sent to WMATA a true and correct photostatic copy of the original of the Leasehold Mortgage and each loan document referenced in the Leasehold Mortgage, together with written notice specifying the name and post office address of the Leasehold Mortgagee (and the officer of Leasehold Mortgagee then in charge of administering the Leasehold Mortgage, together with his telephone number), and (ii) the Leasehold Mortgage shall contain the following provisions:

18.1.1 "This mortgage is executed upon the condition that no purchaser at any foreclosure sale shall acquire any right, title or interest in or to the Lease hereby mortgaged, unless the said purchaser, or the person, firm or corporation to whom or to which such purchaser's right has been assigned, shall, in the instrument transferring to such purchaser or to such assignee Developer's interest under the said Lease, assume and agree to perform all of the terms, covenants and conditions of said Lease to be observed or performed on the part of Developer accruing thereafter, and moreover, that no further or additional mortgage or assignment of said Lease shall be made, except subject to the provisions contained in ARTICLE 17 and ARTICLE 18 of said Lease, and that a duplicate original of said assumption agreement, in form reasonably satisfactory to WMATA's counsel and duly executed and acknowledged by such purchaser or such assignee, is delivered to WMATA promptly after the consummation of such sale, or, in any event, prior to taking physical possession of the Lease Premises."

18.1.2 "The mortgagee waives all right and option to retain and apply the proceeds of any insurance or the proceeds of any condemnation award toward payment of the sum secured by the mortgage to the extent such proceeds are payable to WMATA or are required to be used for the repair or restoration of the mortgaged premises in accordance with the provisions of the Lease hereby mortgaged."

18.1.3 The inclusion of the foregoing provisions in a Leasehold Mortgage shall not negate or vitiate any of the provisions of Sections 18.2, 18.3 or 18.4. The terms "First Leasehold Mortgage" means (x) at such times as only one



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Leasehold Mortgage exists, such Leasehold Mortgage, and (y) at such times as more than one Leasehold Mortgage exists, the single Leasehold Mortgage which is most senior in lien (as evidenced from time to time by any title report obtained by WMATA from a reputable title company reasonably selected by WMATA), and "First Leasehold Mortgagee" means the holder of record (as evidenced from time to time by any title report obtained by WMATA from a reputable title company reasonably selected by WMATA) at the time in question of the First Leasehold Mortgage. WMATA agrees that so long as any Leasehold Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder thereof to WMATA, the following provisions shall apply:

18.1.4 There shall be no cancellation, surrender or material modification of this Lease without the prior consent in writing of the First Leasehold Mortgagee (but nothing herein shall prevent WMATA from terminating this Lease upon either a Default as provided herein, or pursuant to ARTICLE 11, ARTICLE 20 or ARTICLE 23 and WMATA shall not be required to obtain any prior consent in connection with any such termination for Default).

18.1.5 WMATA shall, upon serving Developer with any notice of default (which notice shall specify the nature of the default) or termination, serve a copy of such notice upon the First Leasehold Mortgagee. The First Leasehold Mortgagee shall thereupon have the same period as provided Developer, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and WMATA shall accept such performance by the First Leasehold Mortgagee as if the same had been done by Developer; provided, however, that the provisions of this Section 18.1.5 shall not extend or otherwise affect any cure period granted to Developer pursuant to ARTICLE 19 or excuse any nonperformance by Developer under this Lease.

18.2 **Nullification Notice.** Notwithstanding anything to the contrary herein contained, if any Default shall occur which pursuant to any provision of this Lease entitles WMATA to terminate this Lease and if, before the expiration of thirty (30) days from the date of service of a copy of the notice of termination upon the First Leasehold Mortgagee pursuant to Section 18.1.5, the First Leasehold Mortgagee shall have notified WMATA of its desire to nullify such notice (such notification from the First Leasehold Mortgagee being herein referred to as a "Nullification Notice"), then in such event WMATA at its election either shall terminate this Lease and offer a new lease to the Leasehold Mortgagee, subject to the terms and conditions of Section 18.4 below or shall not be entitled to terminate this Lease by reason of the default specified in the Nullification Notice and any notice of termination theretofore given shall be void and of no effect, provided that within thirty (30) days after service of the Nullification Notice the First Leasehold Mortgagee shall (all of the following being referred to herein as, collectively, the "Cure Actions"): (i) cure any monetary defaults then existing hereunder (including, without limitation, any interest, penalties and late charges which have accrued thereon), (ii) in the case of non-monetary defaults existing hereunder which are reasonably susceptible of being cured by the First Leasehold Mortgagee without any need for the



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First Leasehold Mortgagee to first obtain possession of the Lease Premises, promptly (but in all events within thirty (30) days) commence to cure all such non-monetary defaults and diligently prosecute same to completion, (iii) in the case of non-monetary defaults existing hereunder which are reasonably susceptible of being cured by the First Leasehold Mortgagee upon the First Leasehold Mortgagee's obtaining possession of the Lease Premises, promptly (but in all events within thirty (30) days) institute, and thereafter diligently prosecute foreclosure and/or other proceedings under its Leasehold Mortgage in order to obtain possession of the Lease Premises as soon as feasible and, upon obtaining such possession, promptly (but in all events within thirty (30) days) commence to cure all such non-monetary defaults and diligently prosecute same to completion, (iv) in the case of non-monetary defaults existing hereunder which are not reasonably susceptible of being cured by the First Leasehold Mortgagee, promptly (but in all events within thirty (30) days) institute, and thereafter diligently prosecute foreclosure and/or other proceedings under its Leasehold Mortgage in order to obtain possession of the Lease Premises as soon as feasible, and (v) use reasonable efforts to prevent the occurrence of any future Default.

18.3 **Nullification.** If WMATA's notice of termination shall have been nullified pursuant to Section 18.2, WMATA shall not have the right subsequently to terminate this Lease, so long as the First Leasehold Mortgagee or its nominee or successor continues to pay all Rent due hereunder and the First Leasehold Mortgagee is performing the Cure Actions in accordance with the requirements of this Lease. The giving of a notice of default or termination by WMATA pursuant to the provisions of this Article does not impair WMATA's right to give, nor impair Developer's and the First Leasehold Mortgagee's right to receive, such notices for other defaults that may arise hereunder and the giving of such notices shall be subject to the provisions of this Article.

18.4 **New Lease.** WMATA agrees that, in the event of a termination of this Lease as a result of a Default, WMATA shall upon request of the First Leasehold Mortgagee (and whether or not a Nullification Notice may have been given) or pursuant to WMATA's own election as contemplated under Section 18.2, enter into a new lease of the Lease Premises with the First Leasehold Mortgagee or its designee for a term equal to what would have been the remainder of the term of this Lease if this Lease had not been terminated, which new lease shall be effective as of the date of such termination and shall be at the same Rent and upon the same terms, provisions, covenants and agreements as are herein contained, subject only (a) to the same conditions of title as this Lease is subject to on the Effective Date and any liens or encumbrances or other matters (i) which were caused or created by Developer, (ii) which are required by law or (iii) which Developer was obligated to discharge under the terms of this Lease and (b) to the rights, if any, of parties then in possession of any part of the Lease Premises, provided that:

18.4.1 The First Leasehold Mortgagee shall make written request upon WMATA for such new lease within forty five (45) days after it receives notice from WMATA that this Lease has been terminated;

18.4.2 The First Leasehold Mortgagee or its designee executes and delivers such new lease within Five (5) Business Days after the execution and delivery of the



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new lease by WMATA to the First Leasehold Mortgagee in response to the request made pursuant to Section 18.4.1 above;

18.4.3 The First Leasehold Mortgagee shall pay to WMATA at the time of the execution and delivery of said new lease any and all sums which would at the time of the execution and delivery thereof be due pursuant to this Lease, but for such termination, including, without limitation, any interest, penalties and late charges which have accrued thereon, together with any costs and expenses, including reasonable attorneys' fees, which WMATA shall have incurred by reason of such termination, less the amount of any rent under subleases actually received and collected by WMATA;

18.4.4 The First Leasehold Mortgagee upon the execution of such new lease cures within thirty (30) days thereof (unless such default requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no default shall be deemed to exist so long as the First Leasehold Mortgagee shall have commenced curing the same within such thirty (30) day period and shall diligently and in good faith prosecute the same to completion) all non monetary defaults of which it has notice (and which are reasonably susceptible of cure by the First Leasehold Mortgagee) remaining uncured under this Lease as of the date of execution and delivery of the new lease; and

18.4.5 Nothing herein contained shall be deemed to impose any obligation on the part of WMATA to deliver physical possession of the Lease Premises or any Developer Improvements and WMATA shall not be required to warrant possession of the Lease Premises to the Developer under the new lease or title thereto (and the new lease shall so provide), but the Developer under such new lease shall have the same right, title and interest, in and to the Lease Premises to the extent, if any, that Developer had therein and thereto prior to the termination of this Lease, subject, however, to all Leasehold Mortgages and the rights of the holders thereunder.

18.4.6 Such new lease shall be made expressly subject to the rights, if any, of Developer under the terminated lease (provided, however, the foregoing shall not constitute an acknowledgment or implication of the existence of any such rights).

18.5 **Costs and Expenses; Attornment.** The First Leasehold Mortgagee receiving any new lease pursuant to the provisions of this Article shall pay all of WMATA's costs and expenses (including reasonable attorneys' fees) incident to WMATA's entering into such new lease.

18.6 **No Merger.** So long as any Leasehold Mortgage exists, the fee title to the Lease Premises and the leasehold estate created hereunder shall not merge, but shall always be kept separate and distinct, notwithstanding the union of said estates either in WMATA,



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Developer, any Leasehold Mortgage or its nominee, or other person, provided, however, the foregoing shall not negate or vitiate any of WMATA's rights or remedies under or with respect to this Lease, including, without limitation, WMATA's right to terminate this Lease.

18.7 **No Obligation to Restore.** Except for the above limited provision regarding execution of a new lease, WMATA shall have no obligation of restoring to any party or parties, their respective interest or status in the Lease Premises and Developer Improvements which was possessed by it or them prior to the termination of this Lease. However, such parties, among themselves, may execute and deliver such new instruments, including new mortgages and new subleases, as the case may be, and make such payments and adjustments among themselves, as shall be necessary and proper for the purpose of restoring to each of such parties as nearly as reasonably possible, the respective interest and status in the Lease Premises and Developer Improvements which was possessed by it prior to the termination of this Lease.

18.8 **No Warranty.** Upon the execution and delivery of a new lease pursuant to this Article, the Developer Improvements, and all Subleases and other agreements pertaining to the Lease Premises and the Developer Improvements which theretofore may have reverted to WMATA upon termination of this Lease and which have not terminated shall be transferred to the extent transferable, without any warranty or recourse whatsoever, by WMATA to the Developer and assumed by Developer under such new lease. Such Developer shall as a condition to the effectiveness of such new lease agree to indemnify and hold WMATA harmless against all losses, costs, expenses and liabilities relating to all such transferred subleases and agreements, and all payment and performance obligations relating thereto, arising with respect to the period after such transfer.

18.9 **Subrogation.** Any Leasehold Mortgagee, Subleasehold Mortgagee or Subtenant which cures a Default by Developer shall be subrogated to any and all rights of WMATA against Developer with respect to such Default.

18.10 **Survival.** The provisions of this ARTICLE 18 shall survive any termination of this Lease.

## ARTICLE 19
## TERMINATION AND DEFAULT PROVISIONS

19.1 **Developer Default.** The following shall constitute a "Default" by Developer under this Lease:

19.1.1 If Developer defaults in the due and punctual payment of any Rent due to WMATA under this Lease, or in the due and punctual payment of any 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;



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19.1.2 If Developer fails to comply with or adhere to any obligations under Article 10 (Insurance Requirements), and such failure is not cured within five (5) Business Days after receipt of Notice from WMATA;

19.1.3 If Developer fails to comply with or adhere to any obligations under Article 17 (Right to Assign and Sublease) and such failure is not cured within five (5) Business Days after receipt of Notice from WMATA;

19.1.4 If Developer fails to comply with or adhere to any obligations under Section 2.2.1 (maintaining Qualified Team) and such failure is not cured within fifteen (15) Business Days after receipt of Notice from WMATA;

19.1.5 If Developer fails to undertake Commercially Reasonable Best Efforts as and when required by the terms of this Lease and such failure is not cured within ten (10) Business Days after receipt of Notice from WMATA;

19.1.6 If Developer fails to comply with or adhere to any obligations under Article 11 in accordance with any deadlines set forth therein, or, as to any obligation for which no deadline has been set in such Article 11 within twenty (20) Business Days after receipt of Notice from WMATA;

19.1.7 If Developer fails to comply with or adhere to any obligations under the JDA, within twenty (20) Business Days after receipt of Notice from WMATA;

19.1.8 If Guarantor shall breach any covenant of Guarantor contained in the Guaranty, or any other Transaction Document to which Guarantor is a party or by which Guarantor is bound, if any, and such breach continues beyond the expiration of any applicable notice and cure period specified in the Guaranty or such other Transaction Document;

19.1.9 If Developer makes any material misrepresentation in this Lease or any of the other Transaction Documents, or if Guarantor makes any material misrepresentation in the Guaranty, or if any of them make any material misrepresentation in any other material submission to WMATA;

19.1.10 If Developer or Guarantor make any material misrepresentation to any governmental authority for or in connection with the transactions contemplated by this Lease;

19.1.11 If Developer or Guarantor files a voluntary petition in bankruptcy, or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future applicable federal or state law, or Developer or Guarantor seeks or consents to, or acquiesces, in the appointment of any trustee, receiver or liquidator of such Developer or Guarantor, or of all or any substantial part of its or their assets, or of the ownership interests of Developer or Guarantor under this Lease;



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19.1.12 If there occurs the filing of a petition by or against Developer or Guarantor (i) in any bankruptcy or other insolvency proceeding with respect to Developer or Guarantor; (ii) seeking any relief under any state or federal debtor relief law with respect to Developer or Guarantor; (iii) for the appointment of a liquidator or receiver for all or substantially all of Developer or Guarantor's property or for Developer's interest in this Lease; or (iv) for the reorganization of Developer or Guarantor or for modification of Developer's or Guarantor's capital structure and Developer or Guarantor, as the case may be, fails to have the proceedings initiated by such petition stayed or dismissed within sixty (60) days after the filing thereof; and

19.1.13 If Developer shall breach any other material covenant of Developer contained in this Lease or in any right of entry agreement between Developer and WMATA or fail to perform any other material obligation and such failure is not cured within twenty-one (21) Business Days after receipt of Notice, so long as Developer immediately commences cure of such Default following such Notice from WMATA and thereafter diligently prosecutes such cure to completion.

19.2 **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



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specified, the Term and the estate hereby granted and all rights of Developer hereunder shall expire and terminate as if such date were the date hereinabove fixed for the expiration of the Term.

19.2.5 WMATA may re-enter the Lease Premises and relet the Lease Premises and Developer Improvements, or any part thereof, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) for such rent, on such conditions (which may include concessions or free rent) and for such uses as WMATA, in its reasonable business judgment, may determine; and WMATA shall collect and receive any rents payable by reason of such reletting. The rents received on such reletting shall be applied (A) first to the expenses of such reletting and collection, including necessary renovation and alterations of the Lease Premises, reasonable and actual attorneys' fees and any reasonable and actual real estate commissions paid, and (B) thereafter toward payment of all sums due or to become due WMATA hereunder. If a sufficient amount to pay such expenses and sums shall not be realized or secured, then Developer shall pay WMATA any such deficiency monthly, and WMATA may, but shall not be required to, bring an action therefor as such monthly deficiency shall arise. WMATA shall not, in any event, be required to pay Developer any sums received by WMATA on a reletting of the Lease Premises in excess of the Rent provided in this Lease, but such excess shall reduce any accrued present or future obligations of Developer hereunder. WMATA's re-entry and reletting of the Lease Premises without termination of this Lease shall not preclude WMATA from subsequently terminating this Lease as set forth in Section 19.2.4. Developer agrees to pay WMATA, as Additional Rent, immediately upon demand, all reasonable expenses incurred by WMATA in obtaining possession and in reletting any of the Lease Premises, including, without limitation, fees and commissions of attorneys, architects, agents and brokers. WMATA shall in no way be responsible or liable for any failure to relet the Lease Premises and Developer Improvements, or any part thereof, or for any failure to collect any rent due for any such reletting.

19.3 **No Developer Redemption Rights.** Developer hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds (except as to creditors and Subtenants to the extent expressly provided in this Lease), any right and privilege which it or any of them may have under any present or future Law to redeem any of the Leased Premises or to have a continuance of this Lease after termination of this Lease or of Developer's right of occupancy or possession pursuant to any court order or any provision hereof. The provisions of this Section are not intended in any way to diminish the rights of any Leasehold Mortgagee, Subleasehold Mortgagee or Subtenant to the extent expressly set forth under Article 18.

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



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in equity. In addition to the other remedies provided in this Lease, WMATA shall be entitled, to the extent permitted by applicable Law, to injunctive relief in case of the violation or attempted or threatened violation of any of the provisions of this Lease, or to specific performance of any of the provisions of this Lease.

19.5 **No Waiver.** No delay or failure by WMATA to insist upon the strict performance by the other of any of the terms of this Lease, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance by WMATA from Developer of full or partial rent during the continuance of any such breach by Developer, shall constitute a waiver of any such breach or of any of the terms of this Lease. None of the terms of this Lease to be kept, observed or performed by WMATA or by Developer and no breach thereof, shall be waived, altered or modified except by a written instrument executed by WMATA or by Developer, whichever the case may be. No waiver of any default of Developer shall be implied from any omission by the other to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by WMATA shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition by the other.

## ARTICLE 20
## DAMAGE AND DESTRUCTION

20.1 **Developer's Rights, Duties and Obligations.**

20.1.1 If the Lease Premises and/or Developer Improvements, or any part thereof, become damaged or destroyed by fire or other casualty, Developer shall (1) repair, alter, change, substitute for, restore, replace or rebuild the same, to such extent, condition and character as Developer shall determine, in its reasonably exercised business judgment, taking into account, inter alia, then existing market conditions ("Repair"), or (2) only if and to the extent there is no material adverse impact on the Lease Premises or the WMATA's Reserved Areas and Interests, make safe, secure and sightly the damaged or destroyed Lease Premises and Developer Improvements, removing any of the Developer Improvements as Developer shall reasonably determine ("Secure") until (x) such time as Developer may elect to proceed under clause (1) or (y) such time as the continuing failure to Repair results in a material adverse impact on the Lease Premises or the WMATA's Reserved Areas and Interests. Upon the earlier to occur of (x) or (y) above, Developer shall proceed expeditiously to effect a Repair. All costs to Repair and Secure shall be borne by Developer, regardless of whether such casualty loss is covered by insurance and whether the insurance proceeds are sufficient to cover Developer's expenses; provided, however, all insurance proceeds shall be made available to and shall be under Developer's control for such purposes. Such Repairs shall be made subject to and in conformity with the provisions of this Lease regarding the development and construction of the Improvements and the Approved Development Plan, including, without limitation, all provisions requiring the approval or consent of WMATA with respect thereto.



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20.2 **Performance of Work.** Except as otherwise provided in this Article, the conditions under which any Repair work is to be performed, and the methods of proceeding with and performing the same, shall be governed by this Lease, including, without limitation, ARTICLE 11, to the extent applicable. Any such Repairs shall be completed free and clear of mechanics' and materialmen's liens in compliance with this Lease.

20.3 **Surrender of Lease.** Except as herein provided, no destruction or damage to the Lease Premises and/or Developer Improvements, or any part thereof, by fire or any other casualty, shall permit Developer to surrender this Lease or shall relieve Developer from its obligations under this Lease.

20.4 **Interference with Metro Facilities.** Developer shall not allow the Lease Premises and/or Developer Improvements, or any part thereof, to remain damaged so as to interfere with the safe use of Metro Facilities and/or access thereto. Should such damaged Lease Premises and/or Developer Improvements, or part thereof, adversely impact on Metro Facilities and/or access thereto, such damage shall be repaired to the extent necessary to alleviate such adverse impact within a reasonable time, considering the circumstances, after the occurrence of the damage.

20.4.1 If any Metro Facilities which, with any Developer Improvements, comprise an integral unit, or which provide any Developer Improvements with any structural or other physical support or service, or any part of such Metro Facilities, become damaged or destroyed by fire or other casualty, WMATA, at its sole cost and expense, but subject to appropriation if WMATA is WMATA (provided that failure of WMATA to obtain such appropriation shall not relieve WMATA of its obligations under this Section 20.4), shall promptly repair, alter, restore, replace or rebuild the same as nearly as reasonably possible to its condition and character prior to such casualty. WMATA shall have said obligation to repair, alter, restore, replace or rebuild provided the insurance proceeds are sufficient to cover WMATA's expenses. Such repairs, alterations, restorations, replacements or rebuilding shall include any changes or alterations that WMATA may elect to make to the Metro Facilities, provided such changes and alterations do not deprive any Developer Improvements of any aforesaid integrity, support or service, and are in conformity with the provisions of this Lease and Laws, and any temporary repairs for the protection of other property, including the Lease Premises and Developer Improvements, pending the completion of said work. Said work shall comply with all applicable requirements of this Lease and Laws.

## ARTICLE 21
## LIENS

21.1 **Lease Premises to Be Kept Free and Clear.** Developer shall keep the Lease Premises and the Developer Improvements free and clear of mechanics', materialmen's and other liens for or arising out of, or in connection with, work or labor done, services performed, or materials or appliances used or furnished in connection with Developer's construction, maintenance, and operations. Any work or construction, by, for or permitted by



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Developer on the Lease Premises and/or any Developer Improvements, and any obligation therefor incurred by Developer, or any claims upon which any such lien may or could be based, shall be promptly and fully paid and discharged or otherwise satisfied, bonded, or similarly provided for by Developer, prior to WMATA's being exposed to imminent danger of loss due thereto, subject to Developer's right to contest the same and bond off such mechanics, materialmen's and other liens in accordance with the procedures specified in Section 21.4, below. Developer shall indemnify, defend, and save WMATA harmless against any loss, damage, or cost (including but not limited to reasonable counsel fees) as a result of any such liens, claims of liens, suits, or other proceedings relating thereto, pertaining to the Lease Premises and/or Developer Improvements and arising out of Developer's acts or failures to act.

21.2 **Additions and Alterations.** Any alterations, improvements, additions, or repairs which Developer may make or permit or cause to be made on the Lease Premises and/or the Developer Improvements shall comply with the requirements of this Article 21.

21.3 **To Advise WMATA.** For lien protection purposes, Developer shall give WMATA no less than thirty (30) days advance written notice of the commencement of any construction, alteration, addition or improvement, and such oral (in the case of emergency) or written (and in advance, if practicable) notice as is reasonable in the circumstances of any repair, to Base Developer Improvements estimated to cost in excess of $_____ (adjusted by the CPI Adjustment), and shall post appropriate notices of WMATA's non responsibility.

21.4 **In Contesting Liens.** Notwithstanding anything to the contrary contained herein, Developer may contest any lien by all legally permissible means. If Developer desires to contest any lien in excess of $_____, it shall notify WMATA of its intention within thirty (30) days after Developer receives notice of the filing of such lien. In such case, Developer shall protect WMATA by posting a good and sufficient surety bond, or providing other reasonably satisfactory security, against such lien and any cost, liability, or damage arising out of such contest. WMATA shall not be required to make demand for such bond or security. Upon the final determination of the validity of the lien by a court of competent jurisdiction, Developer shall satisfy and discharge such lien to the extent held valid within sixty (60) days of said determination. In the event of any contest, Developer shall protect and indemnify WMATA against all loss, reasonable expenses and attorney's fees, and damage resulting therefrom.

21.5 **Survival.** The provisions of this ARTICLE 21 shall survive any termination or expiration of this Lease.

## ARTICLE 22
## QUIET ENJOYMENT

22.1 **Rights, Responsibilities and Duties.** Developer, upon paying the Rent and acting in compliance with the terms of this Lease, shall quietly enjoy the Lease Premises without hindrance or molestation by WMATA or by anyone claiming by, under or through WMATA, and WMATA agrees to defend Developer's right to such occupancy, use and



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enjoyment and the leasehold title to the Lease Premises against the claims of any and all persons whomsoever claiming the same, or any part thereof, subject, however, in each case to: (a) the exceptions, reservations and conditions of this Lease and the Transaction Documents; (b) the Zoning Ordinance; (c) all applicable Laws and governmental rules and regulations; (d) those items listed as exceptions to title in the Title Commitment (the "Permitted Exceptions"); and (e) rights of parties with respect to the Leased Premises under unrecorded agreements with WMATA or easements contemplated to be granted by WMATA but not yet of record, as listed in Exhibit 22.1.

22.2 **Title Insurance.** Developer has received and reviewed a Commitment for Title Insurance, No. _____ issued by _____, as agent for _____ (the "Title Commitment Issuer"), a copy of which is attached hereto as Exhibit C (the "Title Commitment"), and accepts the risk of obtaining such Leasehold Title Insurance Policies and Mortgagee Title Insurance Policies during the Term, for the Lease Premises and Developer Improvements, as Developer may desire to obtain for itself or for any Subtenant, Leasehold Mortgagee or Subleasehold Mortgagee (each a "Title Policy"), reflecting the state of title reflected in the Title Commitment.

## ARTICLE 23
## CONDEMNATION

23.1 **Total Taking.** If during the Term of this Lease, there should be a Taking of the Lease Premises and Developer Improvements (a "Total Taking"), such Taking shall be deemed to have caused this Lease to terminate and expire on the date of such Taking.

23.2 **Partial Taking**

23.2.1 If the Taking involves less than all of the Lease Premises but materially involves or impairs any Developer Improvements or the operation thereof, available parking or access to the Lease Premises (a "Partial Taking") and that portion of the Lease Premises remaining, in Developer's reasonable business judgment, cannot be adequately restored, replaced or reconfigured so as to constitute a complete architectural or business unit of substantially the same usefulness, design, construction, and economic feasibility, or to provide reasonably comparable parking or access as existed or was contemplated before such Taking, then Developer shall have the right to terminate this Lease or partially release such portion from the operation of this Lease upon written notice to WMATA within one hundred twenty (120) days after the date to the Taking. Said notice shall state the date of termination or partial release, which shall not be earlier than the date of the Taking.

23.2.2 If this Lease is not terminated in its entirety by Developer upon a Partial Taking, then as to the portion of the Lease Premises and Developer Improvements taken in such condemnation proceedings, or partially released by Developer, this Lease shall terminate. Developer, at its sole cost and expense, shall proceed to make an adequate restoration, repair or



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reconstruction of the part of the Lease Premises not taken; provided, however, Developer's condemnation proceeds, less Developer's Condemnation Costs (which shall be reimbursed to Developer from such proceeds), shall be sufficient for and shall be made available to and shall be under Developer's control for such purposes. Such Repairs shall include any temporary Repairs for the protection of other property pending the completion of said work. Such work shall comply with all applicable requirements of this Lease. Any remaining condemnation proceeds shall be made available to and shall be under Developer's control for any costs incurred by Developer to Repair and/or Secure any of the Developer Improvements not taken.

23.3 **Date of Taking.** For the purpose of this Article, the date of Taking shall be the date on which title vests in the condemnor. All obligations under this Lease properly allocable solely to that portion of the Lease Premises taken in the Taking, shall be prorated through the effective date of termination, except that no prepaid Base Rent shall be refunded to Developer. WMATA and Developer shall execute and deliver to each other such documents as may be reasonably necessary to evidence such termination or partial release. Thereafter, neither shall have any further obligation to the other under the terms of this Lease, to the extent of such termination or partial release.

23.4 **Intervention.** In the event that the Lease Premises and/or Developer Improvements, or any part thereof, shall be the subject of a proposed Taking as provided in this Article, WMATA and Developer each shall be entitled to intervene in the proceeding and claim their respective distributive share as provided in Section 23.5. WMATA and Developer shall each bear their respective costs, attorney and expert fees, and all other expenses incurred in the determination and collection of such an award ("Condemnation Costs"), subject to reimbursement pursuant to Section 23.5 or Section 23.6, as the case may be..

23.5 **Distribution of Proceeds.** The condemnation proceeds for a Taking under Section 23.1 or Section 23.2 (but subject to use as provided in Section 23.2.2), as the case may be shall be divided between WMATA and Developer in the following order of priority:

23.5.1 First, WMATA and Developer shall receive, on a pari passu basis, amounts equal to their respective Condemnation Costs; and

23.5.2 Second, WMATA shall be entitled to a sum equal to the hard and soft costs of relocating, designing and constructing in conformity with WMATA's requirements any and all Metro Facilities that in whole or in part were included in or integrated within or among the Developer Improvements affected by the Taking.

23.5.3 Third, WMATA and Developer shall be entitled to receive from the remaining condemnation proceeds, pari passu as to the three categories immediately following:

23.5.4 Developer, the sum of: (1) the fair market value of the Leasehold Interest, as determined by a qualified appraiser, mutually agreed upon by the parties, and



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(2) the fair market value of the Developer Improvements, as determined by a qualified appraiser, mutually agreed upon by the parties; and

23.5.5 To the extent of any proceeds remaining after making the distributions above, WMATA shall receive the fair market value of WMATA's residual interest in the Developer Improvements taken, if any, as determined by a qualified appraiser mutually agreed upon by the parties; and

23.5.6 To the extent of any proceeds remaining after making the distributions above, WMATA and Developer shall share any such balance in a ratio of Ten Percent (10%) to WMATA and Ninety Percent (90%) to Developer for those portions of the remaining condemnation proceeds as are reasonably allocated to the Term of this Lease; and

23.5.7 To the extent of any condemnation proceeds remaining after making the distributions above the full amount of such remaining condemnation proceeds shall vest in WMATA, and Developer hereby irrevocably assigns to WMATA any and all of Developer's rights in such remaining condemnation proceeds and Developer shall have no right thereto.

23.5.8 The provisions of this Section 23.5 shall survive any termination of this Lease or partial release pursuant to this Article.

23.6 **Temporary Taking.**

23.6.1 If a Taking (whether Total or Partial) is solely for temporary use or occupancy (a "Temporary Taking"), and if such Taking shall involve a material portion of the Lease Premises for more than sixty (60) days, Developer, at its option, shall be entitled to terminate this Lease or release portions of the Lease Premises in a manner consistent with Sections 23.1 and 23.2, in which event, as to the released portions, the provisions of Section 23.3 and Section 23.5 shall apply, or to continue with this Lease, in which event, except to the extent that WMATA and Developer may be prevented from so doing pursuant to the terms of the order of the condemning authority, each shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of each to be performed and observed, as though such Taking had not occurred.

23.6.2 The condemnation proceeds for a Temporary Taking under Section 23.6.1, with respect to the Lease Premises (if this Lease is not terminated by Developer), or with respect to any portion of the Lease Premises not released by Developer (if a portion is so released), shall be divided between WMATA and Developer in the following order of priority:

23.6.2.1 First, Developer shall receive an amount equal to its Condemnation Costs.



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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



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may agree upon) to decide the disputed issue. The disputed issue shall be resolved, by not less than a majority vote of the Dispute Review Panel, within thirty (30) days after the date of the selection of the third representative. Fees of, and expenses incurred by, the representative of a party in connection with the dispute resolution shall be borne by such party, and of the third (3rd) representative, equally by both parties.

24.1.2 If the Dispute Notice (a) does not specify a monetary amount, or (b) specifies that the matter in dispute cannot be reduced to monetary terms, or (c) specifies a monetary amount equal to or greater than $_____, or if the parties do not elect to be bound by the decision and award of the Dispute Review Panel, any party the Aggrieved Party shall file a demand with the American Arbitration Association in Washington, D.C. simultaneously with delivering the Alternative Dispute Notice to the other party. Such arbitration shall be conducted in Washington, D.C. in accordance with the applicable rules of the American Arbitration Association (the "AAA Rules") by a panel of not less than three (3) arbitrators. The arbitrators shall be selected in accordance with the AAA Rules from the roll maintained by the American Arbitration Association in Washington, D.C., and shall be sworn faithfully and fairly to determine the dispute in question. Fees of, and expenses 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 or such Occupant, which shall be applicable, shall repair or restore the Developer Improvements to their condition immediately preceding the removal of such furniture, furnishings, trade fixtures, business equipment and/or other similar items, or pay or cause to be paid to WMATA the cost of repair or restoration necessitated by such removal.

25.3 **Personal Property and Trade Fixtures Not Removed.** Any personal property of Developer or any Occupant which shall remain in or on the Lease Premises and the Developer Improvements after the termination or expiration of this Lease shall be deemed to have been abandoned, and either may be retained by WMATA as its property or disposed of without accountability in such manner as WMATA may see fit.

25.4 **WMATA's Responsibility.** In no event shall WMATA be responsible for any loss or damage occurring to any property owned by Developer or any Occupant which is not removed at or prior to the termination or expiration of this Lease.

25.5 **Survival of Article.** The provisions of this Article 25 shall survive any termination or expiration of this Lease.

## 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 **Procedures for Determining Fair Market Value.**

27.1.1 Whenever a determination of the Fair Market Value is required under this Lease, the Designated Representative of each of WMATA and Developer shall convene and attempt to determine a mutually agreeable Fair Market Value. If the Designated Representatives of WMATA and Developer are unable to agree on the Fair Market Value within thirty (30) days of their convening, then within twenty (20) days after the expiration of such thirty (30) day period, the Designated Representative of each WMATA and Developer shall select, at its respective expense, an appraiser, who is a disinterested person with at least ten (10) years professional experience as a real estate appraiser, and who is a member of the Appraisal Institute, has an "MAI" certification, or is a member of or has a comparable certification from any successor association (or any association of comparable standing). The two selected appraisers shall then select a third appraiser. Each of the three appraisers shall complete an appraisal in accordance with the Scope of Work.



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Each party shall pay for its own appraisal by its selected appraiser. The parties shall split the costs of the third appraiser, if necessary. The two appraisals that are closest in their determination of fair market value shall be averaged to arrive at the Fair Market Value.

27.1.2 Each party shall require its appraiser, and such appraisers shall require the third, to prepare and deliver its appraisal to the parties within fifty (50) days after the appraiser's appointment. If either party fails to appoint its appraiser, or if its appraiser fails to prepare and timely deliver its appraisal, such appraisal shall be deemed to be the one rejected by the other party. If either party fails to appoint its appraiser, the appointed appraiser need not select a "third" appraiser, and the appraisal of such appointed appraiser shall determine the Fair Market Value.

## ARTICLE 28
## REPRESENTATIONS AND WARRANTIES AND COVENANTS OF WMATA AND DEVELOPER

28.1 **Representations And Warranties Of WMATA.** For the purpose of inducing Developer to enter into this Lease and to consummate the lease of the Lease Premises in accordance herewith, WMATA hereby represents and warrants to Developer the following as of the Effective Date:

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 Land, subject to encumbrances and other matters of record and existing site conditions;

28.1.4 There are no adverse or other parties in possession of the Lease Premises;

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



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terms and conditions of this Lease or for WMATA to fulfill WMATA's other obligations subject to and in conformity with the terms and conditions of this Lease;

28.1.6 To WMATA's knowledge, WMATA has not received any written notice from any governmental authority having jurisdiction over WMATA and the Lease Premises of any violation of the Lease Premises of any applicable Laws that remains pending and uncured or from any insurance company of any violation of the Lease Premises of applicable insurance requirements that would require corrective work to be performed with respect to the Lease Premises that remains pending and uncured; and

28.1.7 To WMATA's knowledge, there are no actions, proceedings, litigation, governmental investigations or condemnation actions either pending or threatened against the Lease Premises.

28.2 **As Is, Where Is Terms.** Except for the representations and warranties expressly set forth above in Section 28.1, this Lease is being executed and the Lease Premises is expressly being leased to Developer "AS IS," "WHERE IS," and "WITH ALL FAULTS." The terms and conditions set forth herein are the result of arm's-length bargaining between entities familiar with transactions of this kind, and the terms and conditions reflect the fact that, other than the representations and warranties expressly set forth above in Section 28.1, Developer shall have the benefit of, and is relying upon, no information provided by WMATA and no statements, representations or warranties, express or implied, made by or enforceable directly against WMATA, including, without limitation, any relating to the value of the Lease Premises, the feasibility, suitability, physical or environmental condition of the Lease Premises for the construction, development or installation of any Developer Improvements or for Developer's intended uses, compliance or lack of compliance of the Lease Premises with any state, federal, county or local law, ordinance, order, permit or regulation, or any other attribute of or matter relating to the Lease Premises. Developer represents and warrants that as of the date hereof it has reviewed and conducted such independent analyses, studies, reports, investigations and inspections as it deems appropriate in connection with the Lease Premises.

28.2.1 If WMATA provides or has provided any documents, opinions or work product of consultants, surveyors, architects, engineers, title companies, governmental authorities or any other person or entity with respect to the Property, Developer and WMATA agree that WMATA has done so or shall do so only for the convenience of Developer, Developer shall not rely thereon and the reliance by Developer upon any such documents, opinions or work product shall not create or give rise to any liability of or against WMATA, WMATA's Affiliates or any of their respective partners, officers, directors, participants, employees, contractors, attorneys, consultants, representatives, agents, successors, assigns or predecessors-in-interest.



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28.2.2 Developer shall rely only on any title insurance obtained by Developer with respect to title to the Lease Premises and to any matter as to which a title policy endorsement is available in the jurisdiction where the Lease Premises is located.

28.2.3 Developer acknowledges and agrees that no representation has been made and no responsibility is assumed by WMATA with respect to current and future applicable zoning or building code requirements; the Lease Premises's compliance with any other laws, rules, ordinances or regulations; or the Lease Premises's financial earning capacity or expense history.

28.2.4 WMATA and Developer agree that those representations contained in Section 28.1 shall not survive the expiration or termination of this Lease. In 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 **Developer, LLC** is a District of Columbia limited liability company duly formed, validly existing and in good standing under the laws of the District of Columbia;

28.3.2 Developer, acting through any of its or their duly empowered and authorized officers, partners or members, has all necessary power and authority to own and use its properties and to transact the business in which it is engaged, and has full power and authority to enter into this Lease, to execute and deliver the documents and instruments required of Developer herein, and to perform its obligations hereunder; and no consent of any of Developer's officers, partners or members is required to so empower or authorize Developer;



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001699

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,



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001700

which WMATA hereby waives. As used herein, the term "Designated Representative" as it relates to Developer shall refer to _____. Developer represents that each of Developer's Designated Representative under this Section 28.3.7 is an individual to whom material facts relevant to the matters covered by the representations and warranties of Developer that are set forth in this Lease would be reported in the ordinary course of business.

## ARTICLE 29
## MISCELLANEOUS

29.1 **Recitals, Exhibits And Schedules.** All Recitals, Exhibits and Schedules annexed hereto are incorporated herein and made a part of this Lease for all purposes.

29.2 **Binding Effect.** This Lease shall be binding upon and inure to the benefit of WMATA and Developer, and their respective successors, heirs and permitted assigns.

29.3 **Captions.** The captions, headings and arrangements used in this Lease are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

29.4 **Number And Gender Of Words.** Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

29.5 **Notices**

29.5.1 All notices, demands, requests and other communications required pursuant to or in connection with the provisions of this Lease ("Notice") shall be in writing and shall be deemed to have been properly given or served for all purposes (i) if sent by Federal Express or the nationally recognized overnight carrier for next business day delivery, on the actual date of delivery by such carrier, or (ii) if personally delivered, on the actual date of delivery or (iii) if sent by certified mail, return receipt requested postage prepaid, on the Fifth (5th) Business Day following the date of mailing addressed as follows:

| | |
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| If to Developer: | |
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| And with a copy to: | |
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FOIA CONFIDENTIAL TREATMENT REQUESTED

| | |
|---|---|
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| | |
| If to WMATA: | Washington Metropolitan Avenue<br>Transit Authority<br>600 Fifth Street, NW<br>Washington, D.C. 20001<br>Attn: Director of Station Area Planning<br>and Asset Management<br>Phone:202-962-2616<br>Fax: |
| | |
| And with a copy to: | Washington Metropolitan Avenue<br>Transit Authority<br>600 Fifth Street, NW<br>Washington, D.C. 20001<br>Attn: Rosalyn Doggett<br>Phone:202-962-2208<br>Fax: |
| | |
| And with a copy to: | Washington Metropolitan Avenue<br>Transit Authority<br>600 Fifth Street, NW<br>Washington, D.C. 20001<br>Attn: Carol O'Keeffe<br>Phone: _____<br>Fax:_____ |

29.5.2 Any of the parties may designate a change of address by Notice in writing to the other parties in conformity with this Section. Whenever in this Lease the giving of Notice by mail or otherwise is required, the giving of such Notice may be waived in writing by the person or persons entitled to receive such Notice.

29.6 **Governing Law And Venue.** The laws of the District of Columbia shall exclusively govern the validity, construction, enforcement and interpretation of this Lease, unless otherwise specified herein, except for the conflict of laws provisions thereof. All claims, disputes and other matters in question arising out of or relating to this Lease, or the breach thereof, shall be decided by proceedings instituted and litigated in the United States District Court for the district in which the Lease Premises is situated, and the parties hereto expressly consent to the venue and jurisdiction of such court.

29.7 **Entirety And Amendments.** This Lease, the JDA, and the Transaction Documents, embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Lease Premises and may be amended or



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001702

supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

29.8 **Severability.** If any provision of this Lease is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable. The Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Lease and the remaining provisions of this Lease shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Lease.

29.9 **Multiple Counterparts.** This Lease may be executed in a number of identical counterparts. If so executed, each of such counterparts is deemed an original for all purposes and all such counterparts shall, collectively, constitute one Agreement. In making proof of this Lease, it shall not be necessary to produce or account for more than one such counterpart.

29.10 **Further Acts.** In addition to the acts and deeds recited herein and contemplated to be performed, executed or delivered by WMATA and Developer, WMATA and Developer agree to perform, execute or deliver or cause to be performed, executed or delivered any and all such further acts, deeds and assurances as may be reasonably necessary or appropriate to consummate the transactions contemplated in this Lease.

29.11 **Disadvantaged Business Enterprises; Non-Discrimination Obligation.** In accordance with WMATA's voluntary minority business enterprise program, Developer acknowledges WMATA's fifteen percent (15%) aspirational goal for hiring minority contractors, with such aspirational goal to be sought using race neutral methods only. This is an aspirational goal only, and failure to achieve minority hiring goals shall not be a default hereunder. In addition, Developer agrees that it will not discriminate on the basis of race, color, national origin, sex, or any other unlawful basis in the award and performance of contracts or subcontracts.

29.12 **Sovereign Immunity; Anti Deficiency Clause.** Subject to the provisions of this Section 29.12, WMATA shall be liable for its contractual obligations to Developer under this Lease in accordance with the law of the District of Columbia (including rules on conflict of laws) and the WMATA Compact. Except to the limited and specific extent set forth in the preceding sentence, nothing in this Lease, any other related document or circumstance shall in any way waive or be deemed or construed to waive any immunity of WMATA with respect to this Lease, whether such immunity arises under the WMATA Compact, the Constitution of the United States or any Amendment thereto, any statute or regulation of the District of Columbia, the State of Maryland, the Commonwealth or Virginia, common or decisional law, or otherwise. Developer agrees that all obligations of WMATA under this Lease that directly or indirectly require, or may require, WMATA's expenditure of any of its funds are, and shall be, subject to the appropriation and availability of funding through WMATA's normal and customary budgetary procedures.

29.13 **Construction.** No provision of this Lease shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Lease;



FOIA CONFIDENTIAL TREATMENT REQUESTED 

both parties, being represented by counsel, having fully participated in the negotiation of the terms of this Lease.

29.14 **Confidentiality.** Developer shall not disclose the terms and conditions contained in this Lease and shall keep the same confidential, provided that Developer may disclose the terms and conditions of this Lease (i) as required by law; (ii) to consummate the terms of this Lease, or any financing relating thereto; or (iii) to Developer's or WMATA's lenders, attorneys, accountants and the like. Any information provided by WMATA to Developer under the terms of this Lease is for informational purposes only. In providing such information to Developer, WMATA makes no representation or warranty, express, written, oral, statutory or implied, and all such representations and warranties are hereby expressly excluded. Developer shall not in any way be entitled to rely upon the accuracy of such information. Such information is also confidential and Developer shall be prohibited from making it public to any other person or entity, other than Developer's agents and legal representatives, without WMATA's prior written authorization, which may be granted or denied in WMATA's sole discretion.

29.15 **Time Of The Essence.** The parties agree that time is of the essence under this Lease.

29.16 **Cumulative Remedies And Waiver.** Except as otherwise provided in this Lease, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any right or power or be construed as a waiver thereof, but any such right and power may be exercised from time to time and as often as deemed expedient. No waiver, amendment, release or modification of this Lease shall be established by conduct, custom or course of dealing.

29.17 **Litigation Expenses.** In the event either party hereto commences litigation against the other to enforce its rights hereunder, the prevailing party in such litigation shall be entitled to recover from the other party its reasonable attorneys' fees and expenses incidental to such litigation.

29.18 **Time Periods.** Should the last day of a time period fall on a Saturday, Sunday, Federal holiday or legal holiday in the District of Columbia, Virginia or Maryland, the next Business Day thereafter shall be considered the end of the time period.

29.19 **Third Parties.** There shall be no third party beneficiaries of this Lease, and no third party may rely on or assert that any provision or statement herein contained is an admission of any party hereto.

29.20 **Memorandum of Termination.** Upon any termination of this Lease, WMATA shall have the right to record a Memorandum of Termination of this Lease. Developer shall execute and deliver to WMATA on the Effective Date in recordable form a memorandum of termination, which WMATA is authorized to record following the occurrence of any termination. Developer shall pay any and all recording fees and charges to record the



FOIA CONFIDENTIAL TREATMENT REQUESTED 

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.

29.21 **[Insert Provisions Required Under Local Jurisdiction]**

**IN WITNESS WHEREOF**, the parties have caused this Lease to be executed as an instrument under seal, as of the date first above written.

| | |
|---|---|
| ATTEST OR WITNESS: | [DEVELOPER] |
| _____[SEAL] | _____ |
| | By:_____ |
| | Name:_____ |
| | Title:_____ |
| ATTEST/WITNESS: | WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY |
| _____[SEAL] | By: _____ |
| | Title: Contracting Officer |



FOIA CONFIDENTIAL TREATMENT REQUESTED

ACKNOWLEDGEMENTS

STATE OF _____) ss:
COUNTY OF _____)

I, _____, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, as Contracting Officer of the Washington Metropolitan Area Transit Authority, who is known to me to be the same person whose name is subscribed to the foregoing instrument in such capacity, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as the free and voluntary act and deed of the said Washington Metropolitan Area Transit Authority, for the uses and purposes therein set forth.

GIVEN under my hand and seal this ____ day of _____, 200___.

_____
Notary Public

My commission expires: _____.

STATE OF _____) ss:
COUNTY OF _____)

I, _____, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____ [insert name of person signing], who is the _____ [insert title of signer] of _____ [insert name of managing member of Phase Developer], who is known to me to be the same person whose name is subscribed to the foregoing instrument in such capacity, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as the free and voluntary act and deed of the said [insert name of Phase Developer] for the uses and purposes therein set forth.

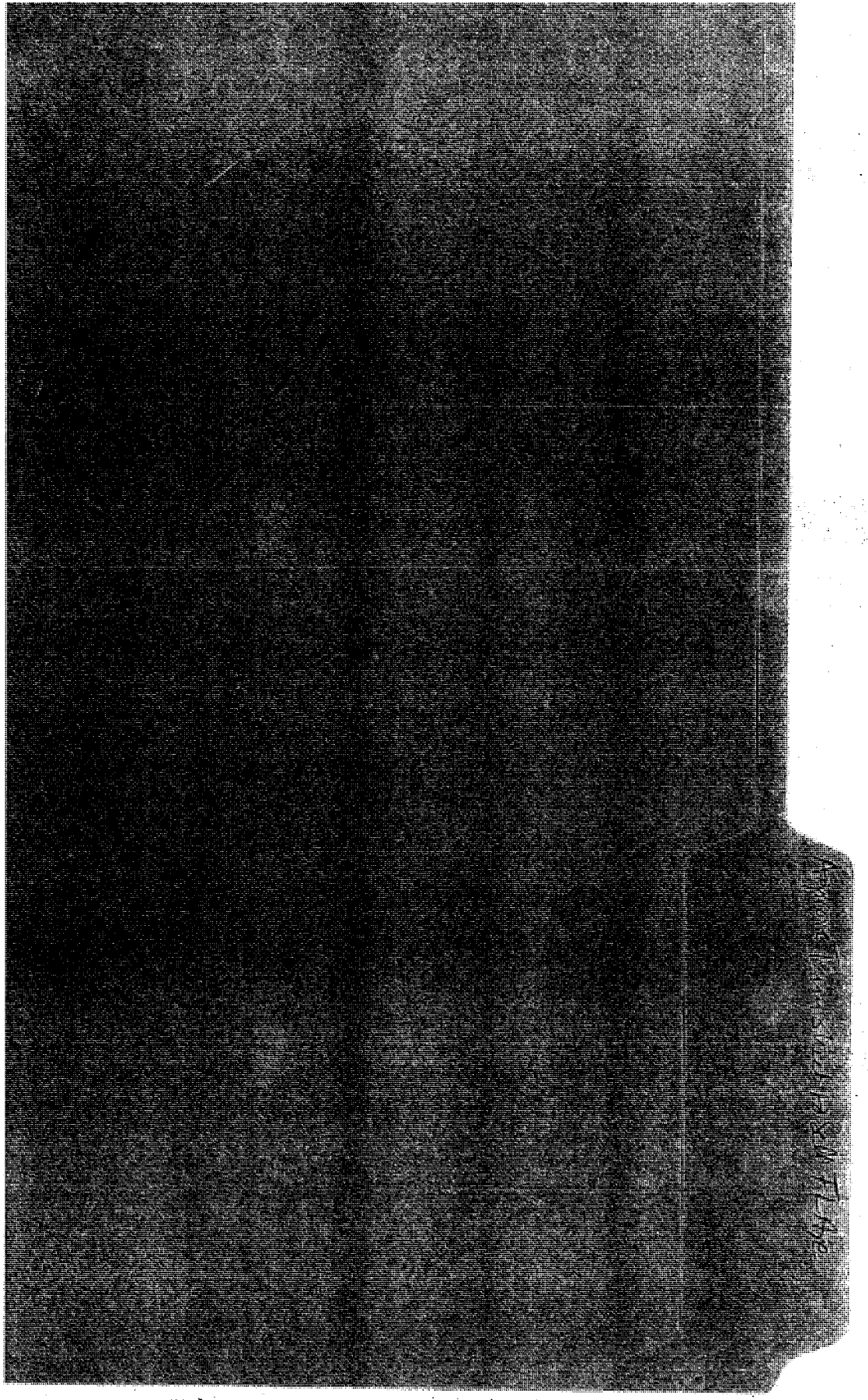
GIVEN under my hand and seal this ____ day of _____, 200___.

_____
Notary Public

My commission expires: _____.

**ATTACHED EXHIBITIONS LIST:**

A. PROPERTY DESCRIPTION
B. JDA
C. APPROVED DEVELOPMENT PLAN
D. COVENANTS, CONDITIONS, AND RESTRICTIONS
E. PROJECT SCHEDULE
F. FORM OF GUARANTY
G. LEASE PREMISES
H. MINIMUM PROJECT COMPLETION MILESTONE REQUIREMENTS
I. PROJECT CONCEPT PLAN
J. WMATA RESERVED AREAS AND INTERESTS
K. TITLE COMMITMENTS
L. DEVELOPMENT COVENANTS



FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Approve Term Sheet for Sale of Shaw-Howard U./Florida Avenue Joint Development Site

**Executive Session**

**Planning, Development & Real Estate Committee**

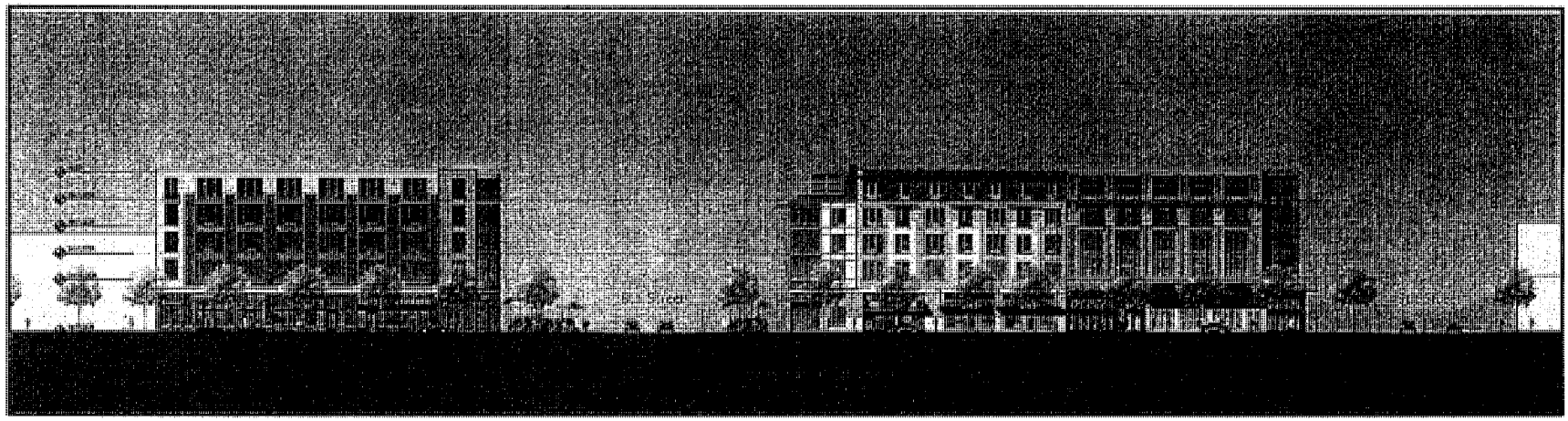
**October 22, 2009**

WMATA-INV 001709

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Obtain approval of the term sheet for sale of the Shaw-Howard U station/Florida Avenue joint development site and authorization for staff to negotiate an agreement for sale of the site.





WMATA-INV 001710

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

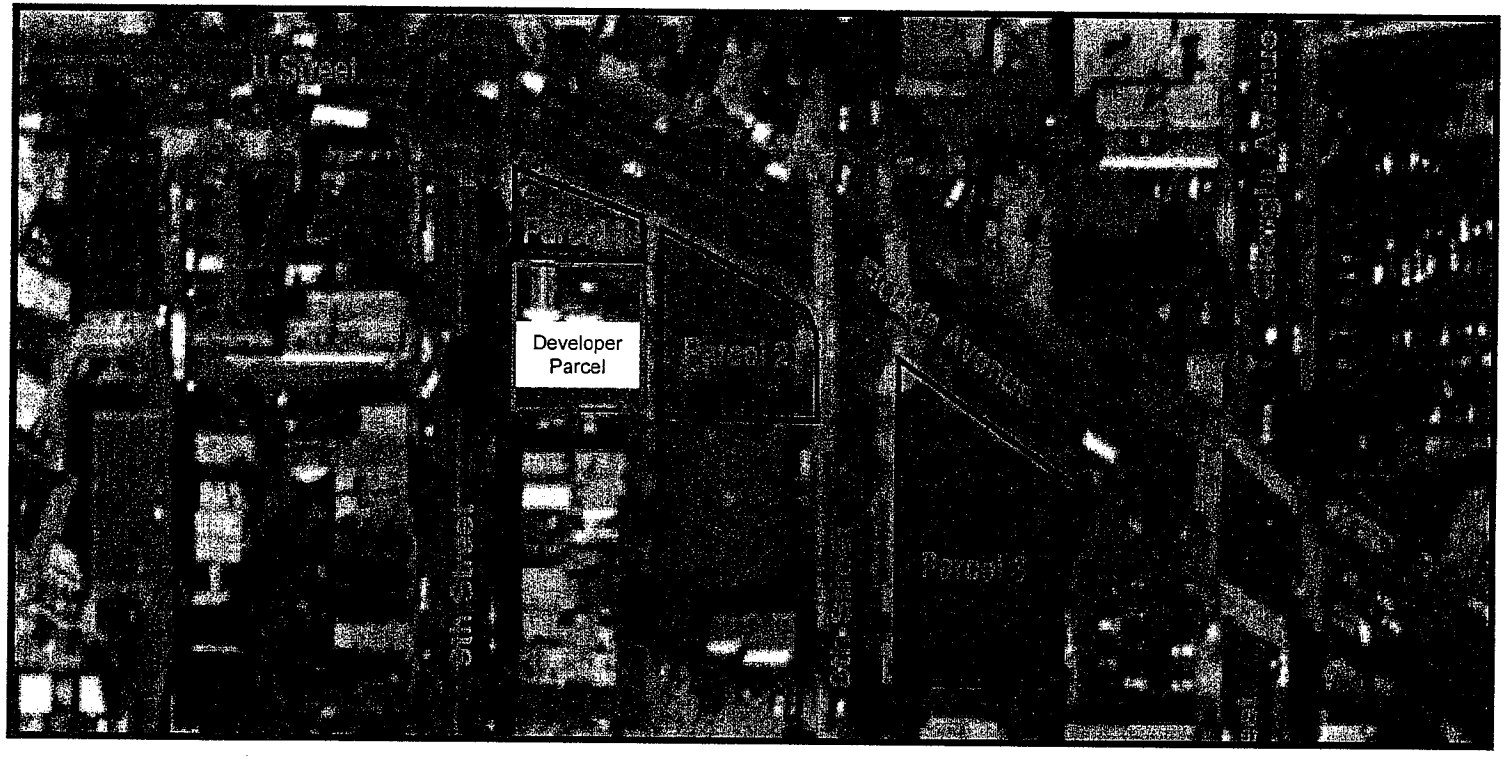
| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate a revised term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate a term sheet and joint development agreement. |



WMATA-INV 001711

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action




Sale will allow developer to combine Metro's 3 parcels with developer-controlled adjacent parcel to create a unified project.



WMATA-INV 001712

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

- Term sheet reflects current appraised value, which includes adjustments for inclusion of affordable housing under mandatory Inclusionary Zoning and extraordinary cost of constructing facilities over Metro tunnels
- After negotiation, staff will request Board approval of an agreement by December 2009



WMATA-INV 001713

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

Obtain approval of the term sheet for sale of the Shaw-Howard U. station/Florida Avenue joint development site and authorization for staff to negotiate an agreement for sale of the site.



WMATA-INV 001714

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Approve Term Sheet for Sale of Shaw-Howard U./Florida Avenue Joint Development Site

**Executive Session**

**Planning, Development & Real Estate Committee**

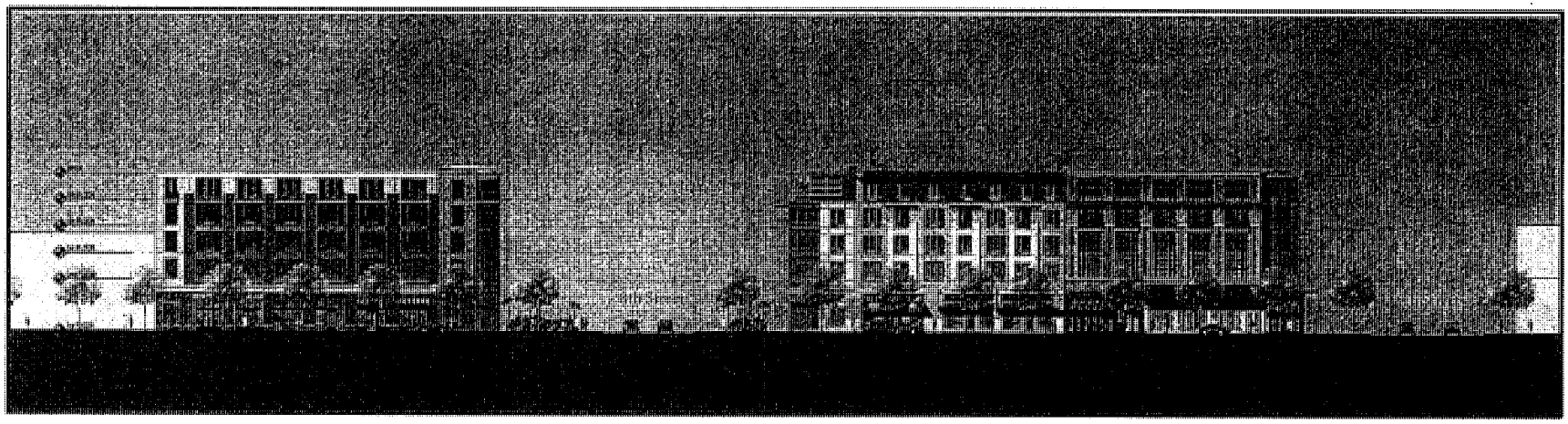
**October 22, 2009**

WMATA-INV 001715

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Obtain approval of the term sheet for sale of the Shaw-Howard U station/Florida Avenue joint development site and authorization for staff to negotiate an agreement for sale of the site.





WMATA-INV 001716

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

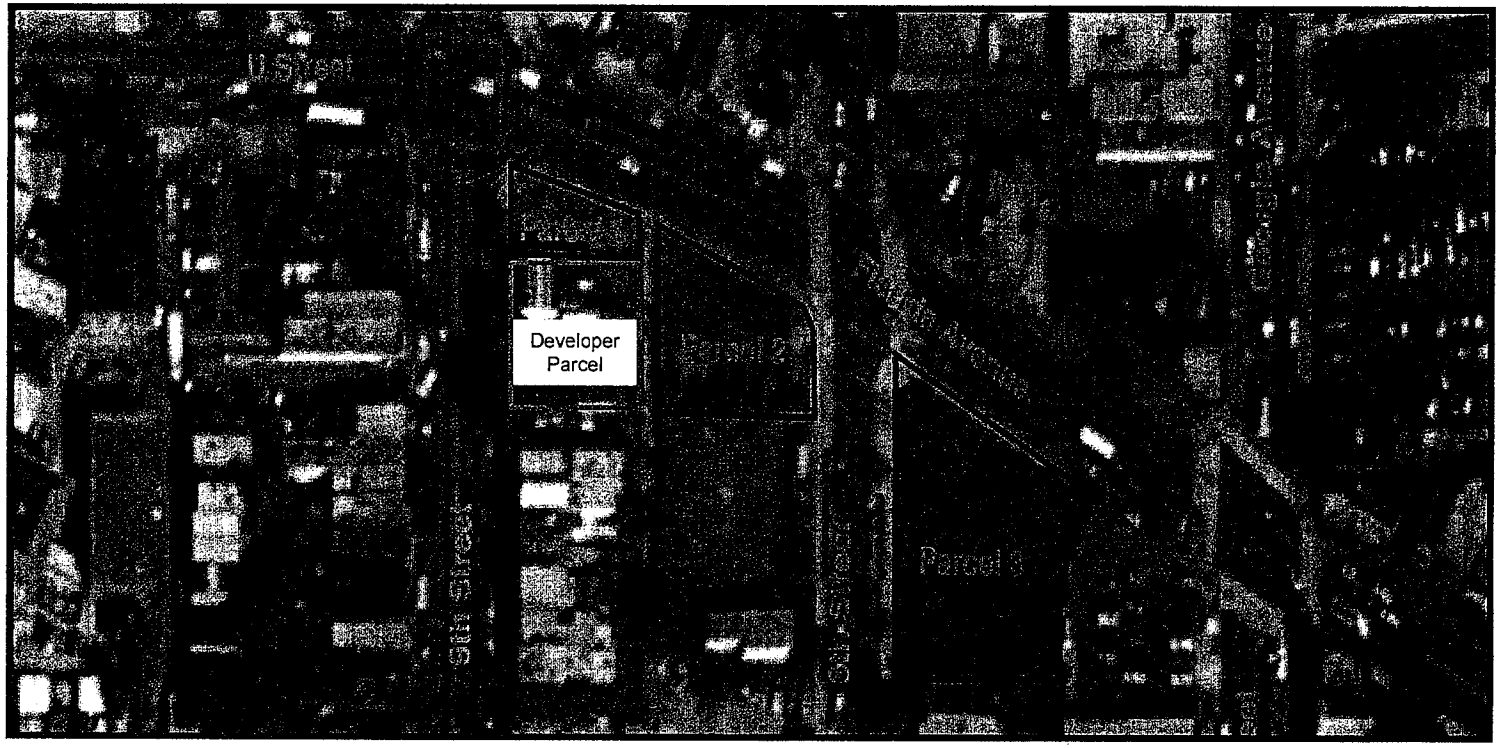
| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate a revised term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate a term sheet and joint development agreement. |



WMATA-INV 001717

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action




Sale will allow developer to combine Metro's 3 parcels with developer-controlled adjacent parcel to create a unified project.



WMATA-INV 001718

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

- Term sheet reflects current appraised value, which includes adjustments for inclusion of affordable housing under mandatory Inclusionary Zoning and extraordinary cost of constructing facilities over Metro tunnels
- After negotiation, staff will request Board approval of an agreement by December 2009



WMATA-INV 001719

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

Obtain approval of the term sheet for sale of the Shaw-Howard U. station/Florida Avenue joint development site and authorization for staff to negotiate an agreement for sale of the site.



WMATA-INV 001720

FOIA CONFIDENTIAL TREATMENT REQUESTED

**CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2009**

| CATEGORY | Developer: The Jazz @ Florida Avenue, LLC (Banneker Ventures LLC and Banc of America Community Development Corporation as principals) |
|---|---|
| Site Description | The 28,376 sf site consists of three separate parcels on the south side of Florida Avenue, NW , between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by Metro. |
| Developer's Proposal | On the Metro site, a minimum 100,711 sf of development with ground floor retail along Florida Avenue and approximately 80,000 sf of residential use on four stories above the retail. A portion of the Metro site is proposed to be combined with 7,720 contiguous sf controlled by the development team. With an alley closing, the combined site is proposed at 157,000 sf of development with 124,000 sf on Metro property. At least 8% of the residential units will be affordable. |
| Proposed Contract | Sale |
| Construction Schedule | Closing: 20 months after sales agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Security Deposit | $250,000 |
| Option Fee | $100,000 (non-refundable, already paid) |
| Additional Density | WMATA to receive 79% of value of bonus density from combined Metro site and developer-controlled site: $50/sf for every FAR sf over 100,711 sf generated by Metro property; $80/sf deduction for every affordable housing FAR sf over 6,414 sf generated by Metro property. |
| Sale Price Increase | 5.8% annually if Closing does not occur within 20 months of sales agreement execution |
| Reversion | Reversion of sale if no construction start within three years after sales agreement execution. |
| Appraised Market Value<br>$2,200,000 land value<br>(hold price for 18 months or more)<br><br>Appraisal by Harps & Harps 8/09 | NPV to WMATA<br>$2,300,000<br>(with 20 month price hold) |

WMATA-INV 001721

FOIA CONFIDENTIAL TREATMENT REQUESTED

| CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2008 | |
|---|---|
| **CATEGORY** | **Developer: An LLC to be formed by Banneker Ventures LLC, the District Development Group, LLC and Metropolis Development Company LLC** |
| Site Description | The 28,892 sf site consists of three separate parcels on the south side of Florida Avenue, NW , between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA. |
| Developer's Proposal | 104 apartments with 11,750 sf ground floor retail/arts uses (total 130,000 sf of development) |
| Proposed Contract | Lease - 60 years |
| Construction Schedule | Lease Closing: 20 months after development agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Performance Security | $250,000 |
| Option Fee | $!00,000 upon Term Sheet approval |
| Pre-stabilization Rent | $100,000/year upon development agreement execution rising to $130,000 |
| Additional Density | Prior to closing, $4.20/year/additional gross FAR sf. Thereafter by appraisal. |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date |
| Base Rent Escalation | For first 10 years base rent escalates at 1.5%/year, thereafter at 3%/year |
| Base Rent Revaluation | Every 10 years |
| Capital Event Participation | 10% of net proceeds |
| Appraised Market Value<br>$7,500,000 land value<br>$525,000 rental value | NPV to WMATA over Term of Lease<br>$14 million |
| Appraisal by Integra Realty 8/07 | |

Shaw-Howard FL AVE Confidential 2008.rtf

WMATA-INV 001722

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Approve Term Sheet for Sale of Shaw-Howard U./Florida Avenue Joint Development Site

**Executive Session**

**Planning, Development & Real Estate Committee**

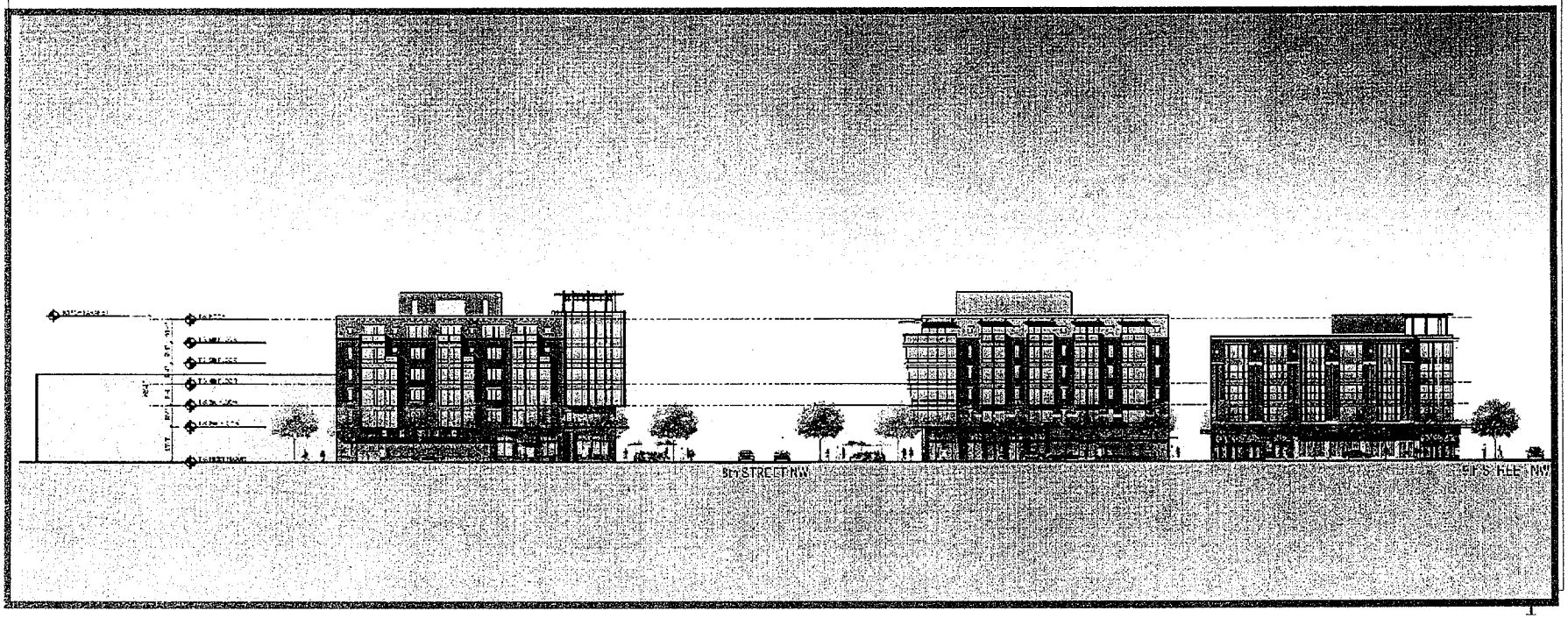
**October 22, 2009**

WMATA-INV 001723

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

**Approve a term sheet for sale of the Shaw-Howard Florida Avenue development site and authorize staff to negotiate an agreement for sale as excess property to bring to the Board in December.**






WMATA-INV 001724

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included |
| April 2009 | After change of development team members Board approved extension of period to negotiate a revised term sheet with affordable housing included |
| September 2009 | Board approved extension to December to negotiate a term sheet and joint development agreement. |



WMATA-INV 001725

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

- Sale required to allow combining WMATA sites with developer-controlled adjacent property and to develop a unified project.
- Terms reflect current appraisal values that includes costs of affordable housing under mandatory Inclusionary Zoning and extraordinary costs of building over WMATA tunnels.



WMATA-INV 001726

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

**Approve a term sheet for sale of the Shaw-Howard Florida Avenue development site and authorize staff to negotiate an agreement for sale as excess property to bring to the Board in December.**



WMATA-INV 001727

# M E M O R A N D U M

DATE: October 9, 2009

SUBJECT: Florida Avenue Adjacent Property Timeline

FROM: COUN – Josh Montague

TO: COUN – Carol B. O'Keeffe
COUN – Bruce P. Heppen

Here is a chronological listing of issues related to the Florida Avenue properties:

1. Spring 2007: WMATA issued a Joint Development Solicitation (JDS). The JDS addressed this topic in two areas:

    a. The JDS declared that lease offers would be preferred over sale offers (Section 1.1 and others).
    b. Developers who intended to incorporate adjacent properties were supposed to disclose such plans so WMATA could review the technical requirements (Section 2.3(X)).

2. 7/2008: The Term Sheet is approved by the WMATA Board. The Developer made no mention of the adjacent parcels in any of the development specifications submitted or at any time during Term Sheet negotiation.

3. 10/2008: Developer informally told Counsel (in an elevator) that they were purchasing the adjacent parcels and intended to build a building which would traverse WMATA's smaller parcels and said adjacent parcels. At next meeting, Counsel asked Developer how relationship would work for WMATA. Developer did not effectively respond.

4. 11/2008: Met with Carol O'Keeffe and Bruce Heppen to discuss the Developer's intention to build a building that spans WMATA's parcels and adjacent parcels. Afterwards, reached out to the Developer's attorney to inform Developer that the adjacent building idea was:

    a. Not part of the agreed Term Sheet; and
    b. Not a feasible option for WMATA as a landlord.

    The Developer's attorney asked if we would first listen to their proposal before rejecting it, to which I agreed.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

5. 12/2008: Rosalyn Doggett met with Neil Albert. In their meeting, Mr. Albert mentioned that he "would not be adverse" to the Developer building on our land and the adjacent land.

6. 12/2008: During meeting, Counsel asked Developer for adjacent property terms. Developer said would get us something soon.

7. 3/2009: During meeting, Counsel asked Developer for adjacent property terms. Developer said would get us something soon. SAAM asked for proof of control of adjacent parcels, Developer was reluctant to provide.

8. 4/2009: Developer proposed solution where WMATA would have an option to purchase the Developer's portion of the adjacent building/property at FMV, in the event that Developer defaults on lease. Advised Developer that this was not a solution that WMATA would be interested in.

9. 5/2009: During meeting, Counsel asked Developer for adjacent property terms. Developer said would get us something soon.

10. 6/2009: COUN restated objections to adjacent property idea. Developer again stated that they thought they could make this beneficial to both parties. Developer promised to provide a detailed description of beneficial relationship within two weeks.

11. 8/2009: Despite WMATA never agreeing to the adjacent parcels issue, Developer provided updated project drawings which showed the project extending to adjacent parcels.

12. 9/2009: Developer proposed a Co-Tenancy agreement in their comments to the WMATA draft of the Joint Development Agreement. Developer did not provide any details of the Co-Tenancy agreement. COUN objected to this arrangement at a meeting on 9/11/09.

13. 9/17/2009: Developer's attorney provided an outline of the proposed Co-Tenancy Agreement.

14. 9/18/2009: During meeting with Developer, Nat Bottigheimer stated that Counsel thought the Co-Tenancy agreement was a non-starter and stated that a sale would be the only way that a building could be built on both our parcels and their parcels. Transaction turned from lease negotiation to sale negotiation.

# M E M O R A N D U M

DATE: October 9, 2009

SUBJECT: Florida Avenue Adjacent Property Comparison of Risks

FROM: COUN – Josh Montague

TO: COUN – Carol B. O'Keeffe
COUN – Bruce P. Heppen

**Lease:**

First, it is important to note the following while reviewing the risks associated with the proposed lease arrangement:

1. The Developer has not responded to the WMATA draft of the Lease. The Developer has only provided (i) comments to the Joint Development Agreement and (ii) an outline of the proposed Co-Tenancy Agreement.

2. One of Developer's main arguments in favor of this arrangement will likely be that Developer's lenders will not let a default under the lease occur. But, the Developer has not provided any comments related to their lender, including (i) what their lender will require to be included/excluded from our lease and (ii) what happens if the lender does not step in.

The following is the list of risks under the current Lease and Co-Tenancy arrangement:

1. Other bidders - The other bidders could sue because the NPV of the Developer's current bid is so far below the NPV of the losing bids.

2. Rent payments – Although the Base Rent will be capitalized, the following payments may still be due under the Lease:
   a. Participation rent – a set percent of the Developer's Effective Gross Income will be paid to WMATA annually.
   b. Capital Event rent – Developer is to pay 10% of the net income of certain defined capital events (e.g., refi, membership sale, etc.).
   c. Additional density – if the Developer adds additional density after lease closing, the Developer is to pay WMATA additional Base Rent, based on a defined formula (e.g., $50/sf).
   d. Subsequent Base Rent – If Developer exercises its option (additional 33 years), Developer will begin paying annual Base Rent during the extended term.
   e. Late fees and other penalties.

**CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES**

3. Costs – WMATA will need to ensure that costs are accurately attributed to the WMATA and non-WMATA portions of the project for purposes of Participation rent, Capital Events, and under a Co-Tenancy arrangement.

4. One of the most powerful ways a Landlord can ensure that a Tenant complies with the essential terms of the Lease is through the threat of termination. Under the agreement, the essential terms include:

    a. Approved Project Completion - Developer fails to (i) let WMATA inspect the construction; or (ii) build the project as approved; or (iii) timely finish the project.
    b. Change of control – Developer sells or assigns its interest without required WMATA approvals.
    c. Financial Statements – to ensure that Developer is meeting its Participation Rent and Capital Event Rent obligations, Developer must disclose certain financial records. Additionally, WMATA must have the right to audit the Developer's financial records.
    d. Unauthorized construction – to ensure that Developer does not perform any construction over our tunnel without our approval.
    e. Insurance - Developer fails to maintain the proper insurance to protect the tunnel during construction and/or operations.
    f. Indemnification – Developer fails to indemnify WMATA as required under the Lease.
    g. Bankruptcy – if Developer files for, or gets dragged involuntarily into, bankruptcy.
    h. Gratuities or other bad acts unique to WMATA as a public agency.
    i. Lender fails to exercise rights to cure Default – in today's market, it is a possibility that a lender may not have the means to timely cure a tenant default.

5. Co-Tenancy Agreement – the following is a summary of the basic problems with the Co-Tenancy arrangement:

    a. Lot 416 – The Developer is trying to include the separate lot/building in Co-Tenancy arrangement.
    b. Costs – WMATA agrees to split costs with co-tenant. Presumably these costs come out of the rent generated by the Project. But, this will be a failed project and so may not be able to cover costs.
    c. Partnership with failed developer – <u>All</u> actions could only be taken pursuant to a unanimous vote.
    d. Marketable title - Co-Tenancy arrangement will severely limit WMATA's right to sell or re-lease the Property.
    e. Taxes – the Project may face foreclosure due because of unpaid taxes.
    f. Insurance – Co-Tenancy agreement requires WMATA to procure

certain insurance policies upon Default.

g. Management company – WMATA to share costs of management company.
h. Indemnification – WMATA must agree to indemnify the co-tenant and the management company.

**Sale**

The following is the list of risks under the Sale arrangement:

1. Other bidders - The other bidders could sue because the bidding process was unfair due to WMATA discouraging sales bids.

2. Construction - Lose power to evict Developer if Developer performs construction activity over tunnel without WMATA permission.

Banneker/Florida Avenue Background

1. A summary of the offer made by Banneker when selected by the Board in ~~June 2008~~ Aug 07 ~~is attached~~. When the Board approved Banneker, it specifically asked for "an affordable housing component" to be included in the project. Board did not define level/amount of affordable.
2. Omar Karim, who was only very reluctantly supported by CM Graham, spoke with Mr. Graham (staff was not allowed to) and said CM Graham wanted 20% affordable. Mr. Karim subsequently focused on 4% tax credits for 20% of units at 50% AMI and later claimed that this was mandatory; ~~only~~ recently ~~has~~ he backed down and seemingly tacitly accepted that Inclusionary Zoning for approximately 8% FAR at 80% of AMI is mandatory. (However, he essentially wants the same target land value as for 20% at 50% AMI.)
3. Omar Karim nor Banneker has ever developed a commercial or residential development project in its own right. His selection by the Board depended on an experienced development partner, first Donatelli, then Metropolis, both of whom completed WMATA joint development projects, and now Banc of America Community Development Corporation. The first two dropped out, said they could not work with Banneker. BACDC (Maurice Perry) is trying to restart activity in DC; Perry is reasonably well regarded by those who have worked with him.
4. Why ~~has~~ the negotiation taken so long?
   a. Banneker affordable hsg. pro forma in 10/08 was for ¼ of offer at Board selection in 6/08.
   b. WMATA had always deducted land value only for affordable housing per jurisdiction's regs., up to 15% of land value for @ 80% AMI. Staff prepared a policy memo for the Board saying this is all the subsidy it would do as more would deprive WMATA of needed transit funds. Board said instead it wanted to look at housing on a case by case basis. ~~Feb 2009~~. 2/09
   c. After Metropolis dropped out, Board asked staff for ~~thorough~~ due diligence on BACDC. ~~March 2009~~ 3/09
   d. In April, staff asked for extension to August to redo term sheet with affordable housing. Since appraisal was out of date—over a year old-- also needed to redo appraisal. ~~July~~ 7/8/09 ~~Aug 2009~~
   e. Original deal was a lease based on Board preference. Staff in last two weeks determined that WMATA general counsel would not accept a lease that combined WMATA property with developer-owned property (co-tenancy) and is now recommending a sale. The combined site provides a more regular configuration and building.

Current Concessions/Issues

1. Current ~~Sept~~ 09 appraisal discounts value for cost of building over tunnel by $2.3 million. Banneker has accepted this and has acknowledged its own estimate was $1.5 million.
2. When WMATA offered a $1.98 million capitalized rent deal several weeks ago, under duress, Banneker subsequently sent in a ~~Sept~~ 2009 pro forma that incorporates the WMATA offer:
   a. Developer fee increased from March 2009 pro forma ($770k on $28M project to $2.8M on $40M project)
   b. Rent decreased from $2.90/sf to $2.43/sf and increase was projected only at 2%/yr ad infinitum.
   c. An adjustment in any of the first two sets of assumptions would allow a $2M increase in payment to WMATA.
   d. Banneker never answered an e-mail sent to it about these issues.
   e. I also asked for Omar's app for tax credits
3. Banneker is paying **$91 per FAR sf** (we have the Aug 2008 contracts) for two adjacent 9th St 7,700 total sf parcels that it wants to combine with WMATA's. The combined sites will require Historic Preservation Review Board approval because he wants to tear down 2 "contr. buildings" Oldfs.
4. In addition to combining our site with their property, the developer will attempt to combine WMATA's two parcels between 8th and 9th streets by obtaining an alley closing. CM Graham's approval is vital. Though we initially agreed on a price increase to WMATA based on the alley closure under the lease structure we have not yet explicitly discussed it in this sale deal and should. WMATA would contribute 600-900 alley sf x 4.5 FAR at price we would end up with after tunnel deduction, somewhere around $100,000 @ $32/FAR sf.

+based on 20% or 50%

The Issue at Hand

Could WMATA accept a $50/sf FAR value instead of $55? Yes.
A drop in WMATA's earlier appraised value of $57.50/FAR sf by a different outside appraiser ((Integra/Pat Kerr) in @8/08) could probably justifiably come down to $50. This would be a further price reduction roughly of $500,000 for the current 98,000 to 100,000 base FAR sf we agreed on Friday 9/25/09.

Is the decrease warranted? No. In light of Banneker's cherry picking the parts of the appraisal that are favorable to it and disputing the ones it thinks are not and the current concessions/issues, this staff member thinks further decreases are not warranted from a business standpoint. Further, the word on the street is that Banneker gets what it wants. The final result will be no secret. It will be watched by Banneker's competitors and affect WMATA negotiations with others.

N.B. The outside appraiser (Integra/Pat Kerr) who did the first appraisal in @ 2/08 for Florida Ave is preparing a new appraisal for our BCP (Broadcast Center Partners) site at 7th and S streets, another site in which city officials have facilitated a deal with a private developer. The BCP site is 1 ½ blocks from the Florida Avenue parcels and is on the doorstep of the Metro station that the Florida Avenue development residents/customers would use. THE APPRAISAL FAR SF VALUE NUMBER for the BCP site IS DUE WED SEPT 30 according to our in-house appraiser. It would be prudent to have consistency on values for these two proximate sites, and perhaps our in-house appraiser could lean on Integra to get results a day earlier in the a.m.?

FOIA CONFIDENTIAL TREATMENT REQUESTED

**CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2008**

| CATEGORY | **Developer: An LLC to be formed by Banneker Ventures LLC, the District Development Group, LLC and Metropolis Development Company LLC** |
|---|---|
| Site Description | The 28,892 sf site consists of three separate parcels on the south side of Florida Avenue, NW , between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA. |
| Developer's Proposal | 104 apartments with 11,750 sf ground floor retail/arts uses (total 130,000 sf of development) |
| Proposed Contract | Lease - 60 years |
| Construction Schedule | Lease Closing: 20 months after development agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Performance Security | $250,000 |
| Option Fee | $!00,000 upon Term Sheet approval |
| Pre-stabilization Rent | $100,000/year upon development agreement execution rising to $130,000 |
| Additional Density | Prior to closing, $4.20/year/additional gross FAR sf. Thereafter by appraisal. |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date |
| Base Rent Escalation | For first 10 years base rent escalates at 1.5%/year, thereafter at 3%/year |
| Base Rent Revaluation | Every 10 years |
| Capital Event Participation | 10% of net proceeds |
| Appraised Market Value<br>$7,500,000 land value<br>$525,000 rental value | NPV to WMATA over Term of Lease<br>$14 million |
| Appraisal by Integra Realty 8/07 | |

T:\Doggett\ShawHoward\Shaw-Howard FL AVE Confidential.wpd

WMATA-INV 001735

## 1. Define Routing Sequence : MEAD([redacted]) Approve Term Sheet To Lease ShawHoward/FL Ave Site

| Routing Level | Approver(s) | Reviewer(s) |
|---|---|---|
| 1 | *JOHN BOTTIGHEIMER | *LOYDA SEQUEIRA-CASTILLO (SECT) |
| | | *CANDACE SMITH (GM_2) |
| 2 | EMEKA MONEME | *JORGE NEVARES (DBE) |
| | *MATTHEW BROWN (OMBS_OPR) | HELEN LEW (OIG) |
| | *HEATHER OBORA (PRMT) | |
| 3 | JOHN REQUA (PLN_DEV_RE) | |
| | *CAROL KISSAL (FIN ADM OVRST) | |
| 4 | *COUNAPPROVAL PENDING (COUN) | |
| 5 | *GERALD FRANCIS (DGM) | |
| 6 | *LOYDA SEQUEIRA-CASTILLO (BEMR) | |
| | *SHIVA PANT (CHOS) | |
| 7 | *GMGR CEO (GM) | |
| 8 | *BOARD WMATA (BOARD) | |
| 9 | | |

## 2. Initiate Routing

Start routing process now

Banneker/Florida Avenue Background

In late 2007, at the very peak of the real estate market, WMATA received three bids for the subject property: $6 million, $12 million and $14 million. In June of 2008, the Board selected Banneker Development, the high bidder. Their bid did not reflect any affordable housing requirement. When the Board approved Banneker, it specifically asked for "an affordable housing component" to be included in the project, without defining the amount of affordable housing.

When the affordable housing requirement was finalized this year, the negative impact was $700,000. The current appraisal also discounts the purchase price by $2.3 million to reflect the cost of building over our tunnel. This cost estimate was prepared by WMATA's Construction Department.

Taking the $14 million original bid, and subtracting $3 million for the impact of the affordable housing and tunnel construction, leaves a revised price of $11 million. Banneker is paying $2.2 million, leaving a gap of $8.8 million.

In discussions with staff, (since this matter pre-dates my arrival on 9/21/09) the consensus is that the original bid of $14 million was overly aggressive. Neither Omar Karim nor Banneker had ever developed a commercial or residential development project in its own right. Market price at the time was likely $10.67 million, which is the average of the three bids.

Since the original bid at the market peak in late 2007, real estate values for a project with this level of risk have declined by 40%, which would be an additional deduction of $4.268 million. This leaves a remaining gap of $3.4 million.

If we were to use the $10.67 million as what a correct bid should have been in 2007 and deduct the cost impacts as above, we get:

| | |
|---|---|
| $10,670,000 | Original Adjusted Bid (based on average of three actual bids) |
| ($ 700,000) | Affordable housing |
| ($ 2,300,000) | Tunnel construction impact |
| ($ 4,268,000) | Market peak adjustment of 40% |
| $ 3,402,000 | |

| | |
|---|---|
| $ 2,200,000 | Proposed purchase price |
| $ 1,200,000 | Density bonus to WMATA (subject to approvals by the District) |
| $ 3,400,000 | |

10/13/09
Steven E. Goldin
Director, Office of Station Area Planning & Access Management
202-962-2616

# Banneker/JDAC

Goldin, Steven

**Sent:** Tuesday, October 13, 2009 3:34 PM

**To:** Doggett, Rosalyn

---

Roz

If Banneker proceeds, I assume they have to go thru the JDAC process. Since Tom Robinson said this can take six months, don't we need to address this now with Banneker and Tom?

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 001738

# Banneker. Catoe Memo 10.13.09

Goldin, Steven

**Sent:** Tuesday, October 13, 2009 1:29 PM

**To:** Bottigheimer, Nat

**Cc:** Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.; Wallace, Maria A

**Attachments:** Banneker.Catoe Summary 10.~1.doc (35 KB)

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fyi

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 001739

The Washington Post

# D.C. parks contracts bypassed council

## PROJECTS MOVED VIA HOUSING AUTHORITY

By Nikita Stewart
Washington Post Staff Writer
Friday, October 23, 2009

D.C. Mayor Adrian M. Fenty's administration has funneled at least $82 million to the D.C. Housing Authority to build a dozen parks, ballfields and recreation centers, a process that has circumvented D.C. Council oversight and awarded contracts to firms with ties to the mayor.

By law, the council must approve contracts that exceed $1 million. Last month, contracts for as much as $16 million went to various construction companies as part of the mayor's effort to improve the city's parks system.

Banneker Ventures, a firm owned by a Fenty fraternity brother, Omar Karim, is the construction manager on every project, according to a list of the projects compiled by the council. The general contractor on two of the projects is RBK Landscaping and Construction, which is owned by Keith Lomax, a friend of Fenty's who drew attention this year for illegally driving the mayor's city-owned sport-utility vehicle.

Four council members are requesting that City Administrator Neil O. Albert and other members of the administration who had oversight of the projects appear at a round-table meeting Oct. 30 to discuss the matter. Late Thursday, they sent the mayor a letter raising concerns about the process for awarding the contracts.

"It defeats transparency. Let me put it more strongly: It looks sneaky," council member Mary M. Cheh (D-Ward 3) said Thursday in an interview.

Fenty, a triathlete, has made recreation a priority for his administration, holding groundbreaking ceremonies for playgrounds, pools and dog parks nearly every other weekday during the summer. But the mayor's announcements, which some critics have described as little more than campaign events, did not correspond with the recreation capital budget, said council member Harry Thomas Jr. (D-Ward 5), chairman of the Committee on Libraries, Parks and Recreation.

"I asked my staff, 'Why aren't these

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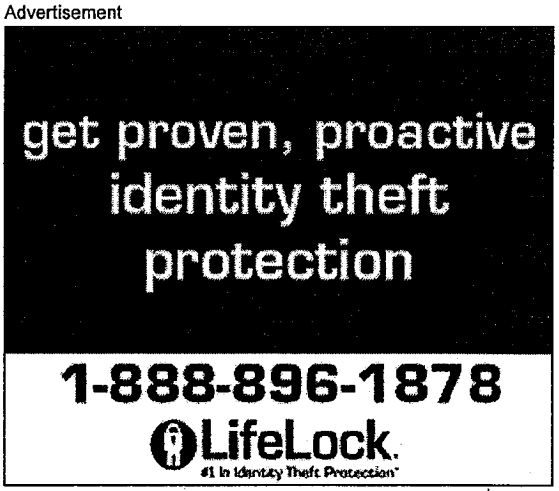




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The Washington Post

# D.C. parks contracts bypassed council

contracts matching up with the scope of work that was going through the committee?' " Thomas said.

Some talks with housing authority and parks officials this week led to the discovery of millions of dollars in projects that the council never approved. Thomas said it appears the money was taken from the Department of Parks and Recreation, given to the Office of the Deputy Mayor for Planning and Economic Development and then passed through the quasi-government agency that operates the city's public housing system.

Thomas said he wanted to know how Banneker received the 12 contracts last month. "There are some real concerns that one contractor could win competitive contracts 100 percent of the time," he said.

Herndon-based Regan Associates is teamed with Banneker in all the projects. Sean M. Regan and Thomas J. Regan, who head the real estate advisory firm, have contributed heavily to Fenty's 2010 campaign.

Dena Michaelson, a spokeswoman for the housing authority, said Thursday that she did not have information about the projects. She also said she did not know whether the contracts had been competitively bid.

But she said it is not unusual for city officials to route money through the housing authority for construction work.

"They tap into us . . . to get the projects off the ground," Michaelson said. "We get projects going fast, and we keep costs low."

The mayor's office did not answer questions about why it went through the housing authority to build the facilities. Late Thursday, spokeswoman Mafara Hobson said in an e-mail: "The District of Columbia Housing Authority (DCHA) is an independent entity with autonomous procurement authority. The Administration values its long standing partnership with the Authority, and defers to DCHA with respect to any statement about its procurement process."

The questioned contracts mark another controversy for the parks department.

The council, led by Thomas, recently rejected Ximena Hartsock as the mayor's pick to be the agency's director. She was the first Fenty Cabinet pick to not be confirmed.

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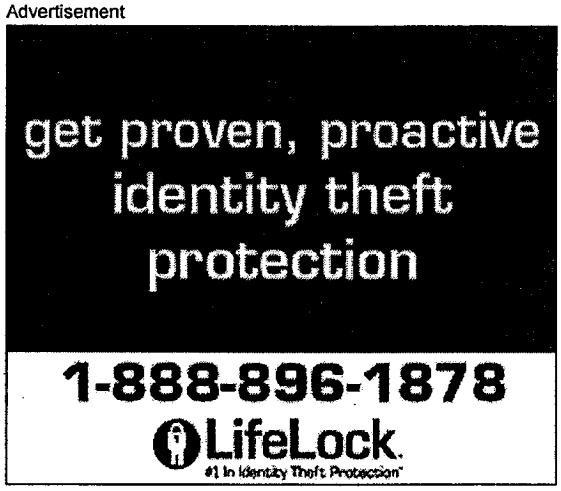




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The Washington Post

# D.C. parks contracts bypassed council

Council members Marion Barry (D-Ward 8) and Kwame R. Brown (D-At Large) joined Thomas and Cheh in sending the mayor the letter about the recreation spending and calling for the round table.

The dozen projects stretch across the city. Among the largest contracts were $16 million for the Rosedale Recreation Center in Northeast, $15 million for the Barry Farm Recreation Center in Southeast and $12 million each for the Fort Stanton Recreation Center in Southeast and Kenilworth Recreation Center in Northwest.

Karim, whose firm managed the projects, did not return a call seeking comment. At one time, Sinclair Skinner, a campaign coordinator in Fenty's 2006 mayoral bid and also a fraternity brother, did community outreach work for Banneker.

Skinner has come under fire for his involvement in donating a firetruck and ambulance to a town in the Dominican Republic, and his role is being investigated by the Inspector General's Office and the council.

Under the Fenty administration, Banneker Ventures has become a major player in development. It is part of a partnership selected to build the long-awaited $700 million Northwest One New Communities project, which will replace the low-income Sursum Corda cooperative and Temple Courts housing complex.

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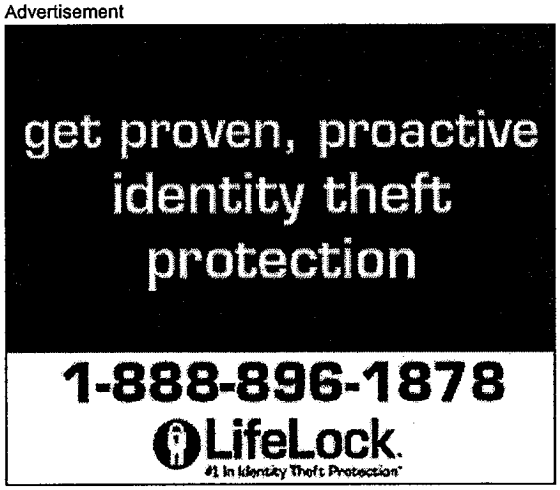




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The Washington Post

# D.C. parks contracts are legal, official says

## Nickles had said housing group broke law in approval process

By Nikita Stewart
Washington Post Staff Writer
Tuesday, October 27, 2009

D.C. Attorney General Peter Nickles said Monday that any past and current contracts awarded without the approval of the D.C. Council are "legal and binding," three days after he had said the D.C. Housing Authority broke city law by awarding $82 million worth of such contracts, most of them to firms with personal and political ties to Mayor Adrian M. Fenty (D).

The apparent reversal enraged council members already angered by what they see as the Fenty administration's continued disregard for the council's role in legislating and overseeing city agencies. Council members also criticized Nickles's judgment as the city's top legal official.

"That's classic Peter Nickles. This is just bad government 101," said council member Kwame R. Brown (D-At Large), who said the council could be forced to sue the Fenty administration to block the contracts.

Nickles's latest opinion came in a letter to the interim executive director of the D.C. Housing Authority, the agency that recently awarded a dozen contracts for the construction of parks, recreation centers and ballfields. The Fenty administration used the housing agency as a development vehicle for the projects.

City law requires that any contract in excess of $1 million be approved by the council. Officials with the housing authority, which is independent of the city government, did not think that law applied to its procurement process. The attorney general told housing authority officials Friday that the law did apply and that they should submit the contracts to the council.

But in an interview Monday, Nickles said his opinion should apply to "future contracts." He cited legal problems with nullifying past and current agreements and said the authority had a long-standing practice of awarding contracts without council approval. "They did not understand until the law was made clear to them," he said Monday.

Council member Harry Thomas Jr. (D-Ward 5), chairman of the Committee on Libraries,

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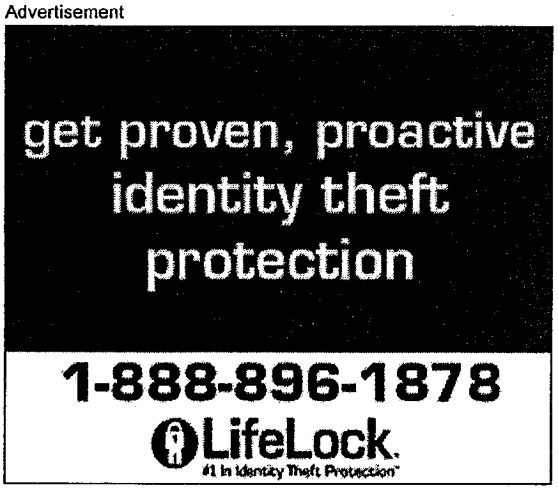




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The Washington Post

# D.C. parks contracts are legal, official says

Parks and Recreation, dismissed Nickles's explanation.

"What he's doing is backpedaling on his opinion Friday. They're trying to protect the people who have already received the contracts," Thomas said. "I guess we're just going to have to go to court."

Council Chairman Vincent C. Gray (D), who consulted the council's general counsel, said he was "perplexed" and "puzzled" by Nickles's opinion. "For the attorney general to give a carte blanche green light to these questionable contracts, even before council hearings or any legislative action, is inappropriate and not in compliance with my reading of the law. If they are required to be submitted, we make no distinction between the past and the future. We expect to receive these contracts," he said.

Nickles said his opinion Monday "clarified" his opinion Friday. "They're perfectly consistent," he said. "The mayor's not happy. The council's not happy, but I'm following the law. This is not an easy job. I call them how I see them."

Four council members, including Brown and Thomas, are holding a public meeting Friday and have requested that City Administrator Neil O. Albert, Chief Financial Officer Natwar M. Gandhi and other members of the administration appear to explain how the contracts were awarded.

Banneker Ventures, owned by Omar Karim, Fenty's fraternity brother, was named construction manager on all 12 projects. His firm partnered with Regan Associates, a major contributor to the mayor's reelection campaign.

Nickles and officials at the Housing Authority said the contracts were competitively bid.

Privately, Fenty supporters questioned whether Nickles hastily issued his opinion Friday and erred in his statements about the contracts.

The city could have a major legal problem on its hands, said experts in procurement law. They said the contracts can be considered "void ab initio," meaning they are voided because they violated city law.

The city has faced the issue previously, said Keith D. Coleman, a former legal adviser in

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The Washington Post

# D.C. parks contracts are legal, official says

the city's Office of Contracting and Procurement. He said the city could void the contracts and pay vendors for services rendered. The vendors "didn't know the District government didn't follow procedure," Coleman said. "They're innocent bystanders, so to speak."

Coleman, a lawyer at Reed Smith, said he recommends ratification, a process in which the contracts get approval after they were already awarded.

Gray said he was aware of the practice, which he said quashes Nickles's opinion that the Housing Authority contracts do not have to go before the council.

The controversy over the contracts comes as Fenty has clashed with local lawmakers by reappointing acting parks director Ximena Hartsock, whom the council rejected in a 7 to 5 vote Oct. 6. Fenty signed an executive order Friday that will keep Hartsock in place for 180 days while he looks for a replacement. Nickles upheld the mayor's order, although some council members said it was illegal.

The council is asking Gandhi to withhold Hartsock's salary. Thomas said he will probably ask Gandhi to also withhold money from the Housing Authority to pay the awarded contracts.

In his first public appearance with Hartsock since he signed the executive order, Fenty took questions from reporters Monday after an announcement about a city program to open recreation centers to public school students who will be out of school Thursday and Friday.

"It's going to be tough to find someone who has her energy, her skill set and her ability to get things done," Fenty said in an interview, hours before Nickles issued his second opinion on the contracts.

The mayor declined to discuss the "ins and outs" of the contracts. When asked about the tension with his colleagues in the legislative branch, Fenty, a former Ward 4 council member said, "This is the best council we've ever had."

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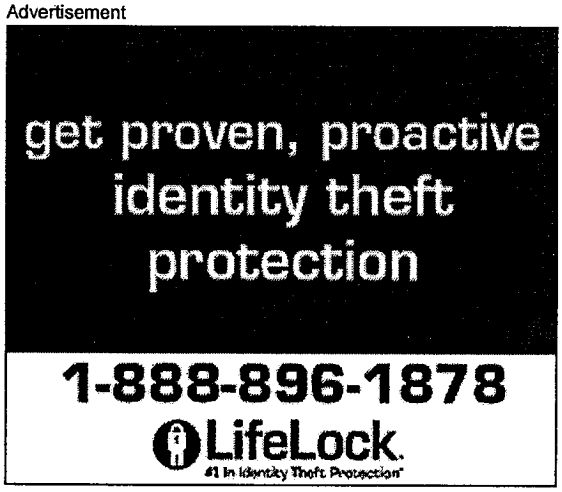




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FOIA CONFIDENTIAL TREATMENT REQUESTED

GENERAL NOTES:

1. Horizontal Datum: Metro Project Datum
2. Vertical Datum: Metro Project Datum
3. Property Zone: "ARTS/C-3-B" Community Business Center-Medium Density Zoning information shown is subject to interpretation by a qualified zoning attorney or personnel practicing in the District of Columbia. Mulsoe, Inc. offers no opinion to zoning related issues affecting the subject property. To verify to zoning compliance please contact the Office of Zoning at 441 4th Street, N.W., Suite 300 South, Washington, DC 20001 (Tel. 202-727-6311).
4. Property shown hereon lies within Flood Zone "C" - Areas of minimal flooding as established by the U.S. Federal Emergency Management Agency, National Flood Insurance Program, Flood Insurance Rate Map, Community Panel No. 110001 0030 D, map effective date November 13,1985.
5. The survey was prepared without the benefit of a Title Report and may not reflect easements, property lines and other restrictions of record.
6. Underground utilities designated by Insight, LLC.

NOTE: . Pipe sizes, inverts and types should be verified with existing asbuilt records.

## TRAVERSE INFORMATION

| NO. | NORTHING | EASTING | ELEVATION (DC DPWD) | DESCRIPTION |
|---|---|---|---|---|
| 101 | 364548.2535 | 793171.5805 | 90.65 | PK NAIL IN CONCRETE |
| 102 | 364575.6979 | 793213.1867 | 90.65 | PK NAIL IN CONCRETE |
| 103 | 364520.0197 | 793371.1844 | 89.01 | PK NAIL IN CONCRETE |
| 104 | 364389.0743 | 793612.0655 | 91.00 | PK NAIL IN CONCRETE |
| 105 | 364327.5359 | 793543.5206 | 90.78 | NAIL & TAGK |
| 106 | 364458.2958 | 793408.7819 | 89.14 | PK NAIL IN CONCRETE |
| 107 | 364420.9232 | 793281.9179 | 89.58 | PK NAIL IN CONCRETE |
| 108 | 364529.8558 | 793283.9751 | 90.25 | PK NAIL IN CONCRETE |

## BENCH MARK INFORMATION

| No. | ELEVATION | DESCRIPTION |
|---|---|---|
| BM#1 | 90.65 | PK Nail (Trav#101 as Shown on Plan) |
| BM#2 | 90.85 | PK Nail (Trav#102 as Shown on Plan) |
| BM#3 | 91.00 | PK Nail (Trav#104 as Shown on Plan) |
| BM#4 | 89.14 | PK Nail (Trav#106 as Shown on Plan) |

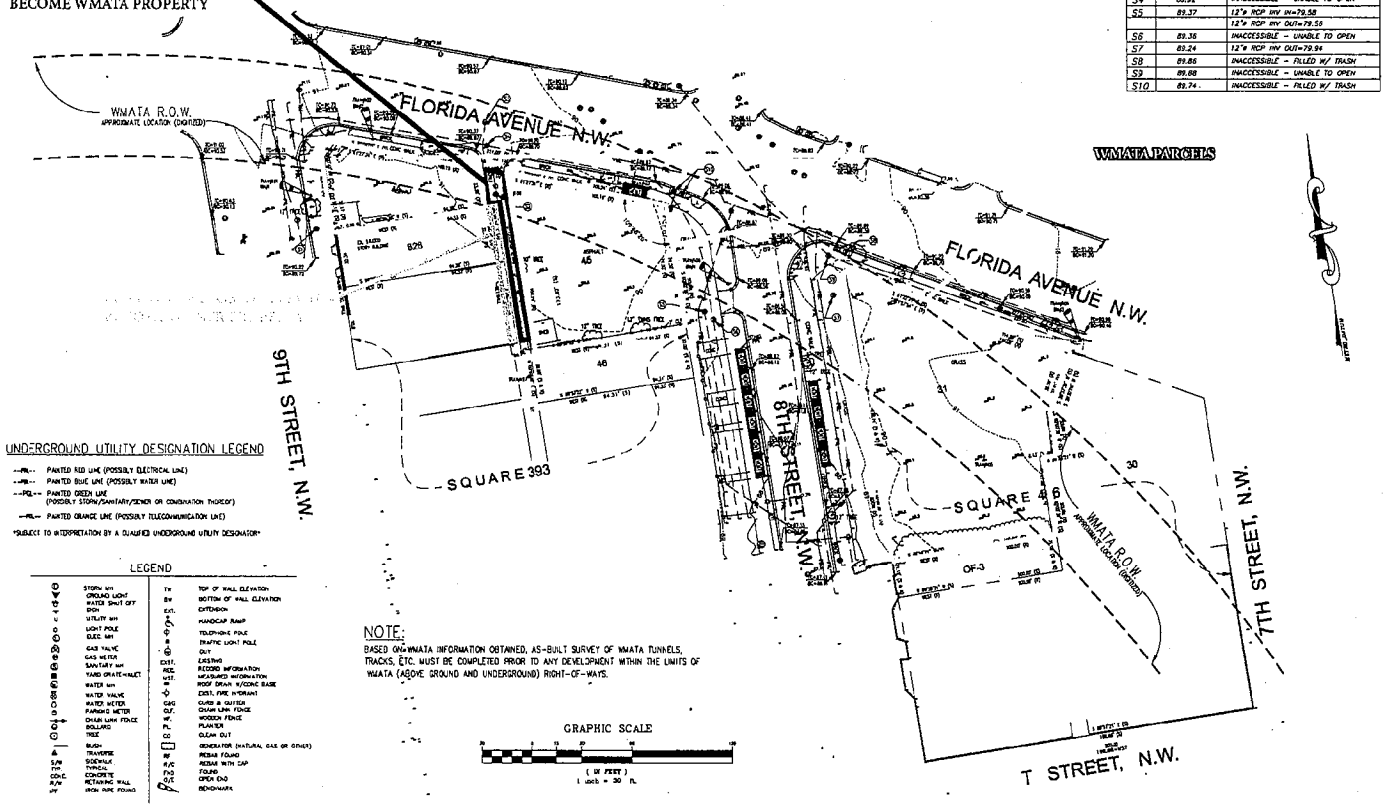
## METRO CONTROL STATIONS

METRO PROJECT DATUM

| NO. | NORTHING | EASTING | ELEVATION | DESCRIPTION |
|---|---|---|---|---|
| E-905 | 365011.8666 | 793109.2840 | 95.263 | METRO DISC - FLORIDA AVENUE, N.W. NEAR 8TH STREET, N.W. |
| E-907 | 364136.4133 | 793148.5650 | 88.410 | METRO DISC - "T" STREET, N.W. AND 10TH STREET, N.W. |

## STRUCTURE TABLE

| NO. | TOP ELEVATION | PIPE |
|---|---|---|
| S1 | 90.52 | 12"PVC INV=80.53 |
| S2 | 90.19 | 12"PVC INV=81.28 |
| S3 | 90.33 | INACCESSIBLE - UNABLE TO OPEN |
| S4 | 88.92 | INACCESSIBLE - UNABLE TO OPEN |
| S5 | 89.37 | 12"ø RCP INV IN=79.58 |
| | | 12"ø RCP INV OUT=79.58 |
| S6 | 89.38 | INACCESSIBLE - UNABLE TO OPEN |
| S7 | 89.24 | 12"ø RCP INV OUT=79.94 |
| S8 | 89.86 | INACCESSIBLE - FILLED W/ TRASH |
| S9 | 89.88 | INACCESSIBLE - UNABLE TO OPEN |
| S10 | 89.74 | INACCESSIBLE - FILLED W/ TRASH |




UNDERGROUND UTILITY DESIGNATION LEGEND

--RU-- PAINTED RED LINE (POSSIBLY ELECTRICAL LINE)
--BU-- PAINTED BLUE LINE (POSSIBLY WATER LINE)
--PG-- PAINTED GREEN LINE (POSSIBLY STORM/SANITARY/SEWER OR COMBINATION THEREOF)
--OR-- PAINTED ORANGE LINE (POSSIBLY TELECOMMUNICATION LINE)

*SUBJECT TO INTERPRETATION BY A QUALIFIED UNDERGROUND UTILITY DESIGNATOR*

LEGEND

| | | | |
|---|---|---|---|
| | STORM MH | TW | TOP OF WALL ELEVATION |
| | GROUND LIGHT | BW | BOTTOM OF WALL ELEVATION |
| | WATER SHUT OFF | EXT. | EXTENSION |
| | IRON | | HANDICAP RAMP |
| | UTILITY MH | | TELEPHONE POLE |
| | LIGHT POLE | | TRAFFIC LIGHT POLE |
| | ELEC. MH | | CUT |
| | GAS VALVE | EXIST. | EXISTING |
| | GAS METER | REC. | RECORD INFORMATION |
| | SANITARY MH | MEAS. | MEASURED INFORMATION |
| | YARD GRATE=INLET | | ROOF DRAIN W/CONC BASE |
| | WATER MH | | EXIST. FIRE HYDRANT |
| | WATER VALVE | GRG | GUTTER & GUTTER |
| | WATER METER | CLF. | CHAIN LINK FENCE |
| | PARKING METER | WF. | WOODEN FENCE |
| | CHAIN LINK FENCE | PL. | PLANTER |
| | BOLLARD | CO | CLEAN OUT |
| | TREE | | GENERATOR (NATURAL GAS OR OTHER) |
| | BUSH | IR | REBAR FOUND |
| | TRAVERSE | R/C | REBAR WITH CAP |
| S/W | SIDEWALK | FND | FOUND |
| TYP. | TYPICAL | O/E | OPEN END |
| CONC. | CONCRETE | | BENCHMARK |
| R/W | RETAINING WALL | | |
| IPF | IRON PIPE FOUND | | |

NOTE:
BASED ON WMATA INFORMATION OBTAINED, AS-BUILT SURVEY OF WMATA TUNNELS, TRACKS, ETC. MUST BE COMPLETED PRIOR TO ANY DEVELOPMENT WITHIN THE LIMITS OF WMATA (ABOVE GROUND AND UNDERGROUND) RIGHT-OF-WAYS.

October 2009

EXHIBIT A TO TERM SHEET

THE JAZZ @ FLORIDA AVENUE

WMATA-INV 001746

FOIA CONFIDENTIAL TREATMENT REQUESTED

GENERAL NOTES:

1. Horizontal Datum: Metro Project Datum
2. Vertical Datum: Metro Project Datum
3. Property Zoned: "ARTS/C-3-B" Community Business Center-Medium Density

   Zoning information shown is subject to interpretation by a qualified zoning attorney or personnel practicing in the District of Columbia. AMTec, Inc., offers no opinion to zoning related issues affecting the subject property. To certify to zoning compliance please contact the Office of Zoning at 441 4th Street, N.W., Suite 200 South, Washington, DC 20001 (Tel. 202-727-6311).
4. Property shown hereon lies within Flood Zone "C" - Areas of minimal flooding as established by the U.S. Federal Emergency Management Agency, National Flood Insurance Program, Flood Insurance Rate Map, Community Panel No. 110001 0020 B, map effective date, November 15,1983.
5. This survey was prepared without the benefit of a Title Report and may not reflect easements, property lines and other restrictions of record.
6. Underground utilities designated by Insight, LLC.

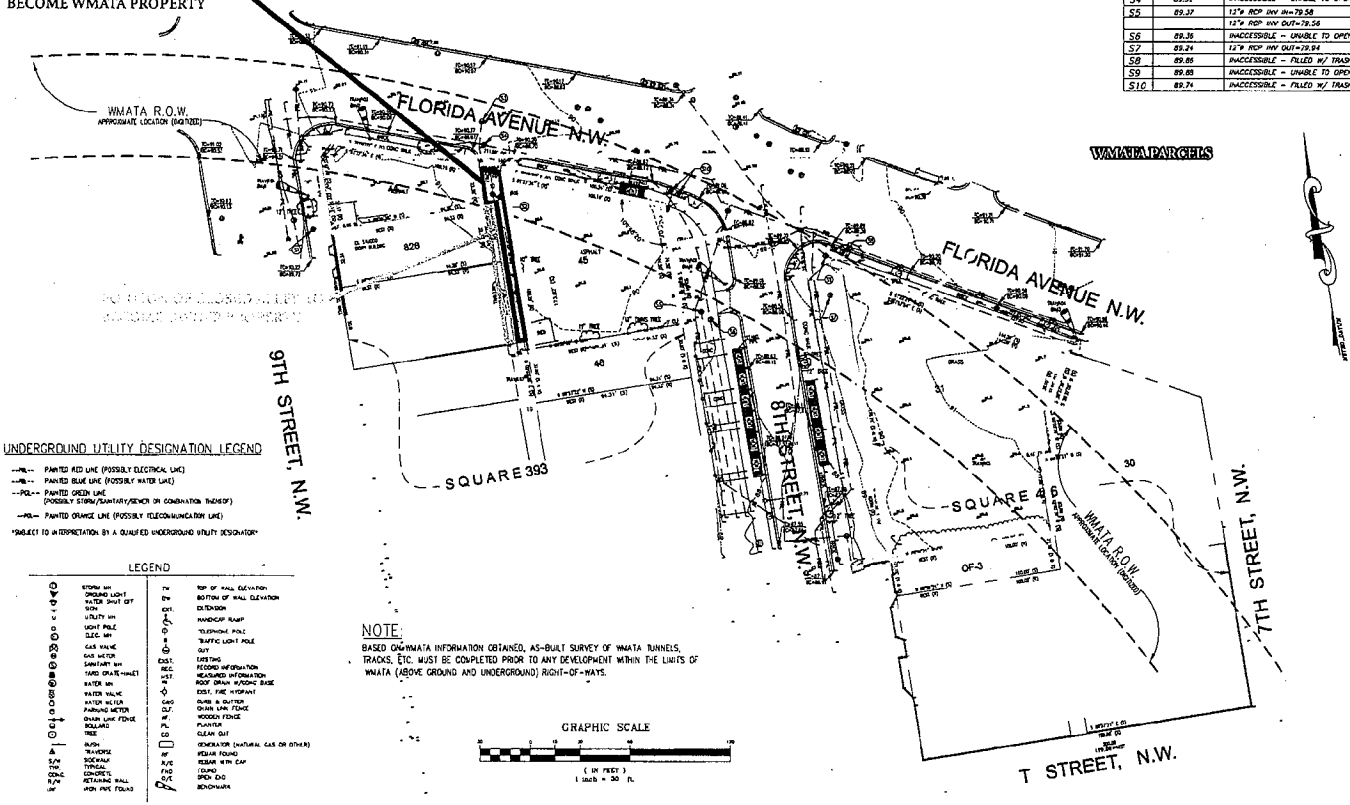
NOTE: Pipe sizes, inverts and types should be verified with existing cadwall records.

| TRAVERSE INFORMATION | | | | |
|---|---|---|---|---|
| NO. | NORTHING | EASTING | ELEVATION (DC DPW&T) | DESCRIPTION |
| 101 | 394548.2535 | 793171.3605 | 90.65 | PK NAIL IN CONCRETE |
| 102 | 394575.6979 | 793213.1867 | 90.85 | PK NAIL IN CONCRETE |
| 103 | 394320.0197 | 793371.1844 | 89.81 | PK NAIL IN CONCRETE |
| 104 | 394369.0743 | 793612.0655 | 91.00 | PK NAIL IN CONCRETE |
| 105 | 394327.5369 | 793543.5266 | 90.78 | HUB & TACK |
| 106 | 394456.2958 | 793408.7819 | 89.14 | PK NAIL IN CONCRETE |
| 107 | 394420.9232 | 793281.8178 | 89.58 | PK NAIL IN CONCRETE |
| 108 | 394529.8568 | 793283.9751 | 90.25 | PK NAIL IN CONCRETE |

| BENCH MARK INFORMATION | | |
|---|---|---|
| No. | ELEVATION | DESCRIPTION |
| BM#1 | 90.65 | PK Nail (Traq#101 as Shown on Plan) |
| BM#2 | 90.85 | PK Nail (Traq#102 as Shown on Plan) |
| BM#3 | 91.00 | PK Nail (Traq#104 as Shown on Plan) |
| BM#4 | 89.14 | PK Nail (Traq#105 as Shown on Plan) |

| METRO CONTROL STATIONS<br>METRO PROJECT DATUM | | | | |
|---|---|---|---|---|
| NO. | NORTHING | EASTING | ELEVATION | DESCRIPTION |
| (-905) | 394001.8868 | 793100.2940 | 88.293 | METRO DMC - FLORIDA AVENUE, N.W. NEAR 8TH STREET, N.W. |
| (-907) | 394134.6132 | 791944.5058 | 89.410 | METRO DMC - "T" STREET, N.W. AND 10TH STREET, N.W. |

| STRUCTURE TABLE | | |
|---|---|---|
| NO. | TOP ELEVATION | PIPE |
| S1 | 90.52 | 12"WPC INV=80.53 |
| S2 | 90.19 | 12"WPC INV=81.28 |
| S3 | 90.33 | INACCESSIBLE - UNABLE TO OPEN |
| S4 | 89.92 | INACCESSIBLE - UNABLE TO OPEN |
| S5 | 89.37 | 12"# RCP INV IN=79.58 |
| | | 12"# RCP INV OUT=79.56 |
| S6 | 89.36 | INACCESSIBLE - UNABLE TO OPEN |
| S7 | 89.24 | 12"# RCP INV OUT=79.94 |
| S8 | 89.86 | INACCESSIBLE - FILLED W/ TRASH |
| S9 | 89.88 | INACCESSIBLE - UNABLE TO OPEN |
| S10 | 89.74 | INACCESSIBLE - FILLED W/ TRASH |




UNDERGROUND UTILITY DESIGNATION LEGEND

--RED-- PAINTED RED LINE (POSSIBLY ELECTRICAL LINE)
--BLU-- PAINTED BLUE LINE (POSSIBLY WATER LINE)
--GRN-- PAINTED GREEN LINE (POSSIBLY STORM/SANITARY/SEWER OR COMBINATION THEREOF)
--ORN-- PAINTED ORANGE LINE (POSSIBLY TELECOMMUNICATION LINE)

*SUBJECT TO INTERPRETATION BY A QUALIFIED UNDERGROUND UTILITY DESIGNATOR*

LEGEND

| | | | |
|---|---|---|---|
| | STORM MH | TW | TOP OF WALL ELEVATION |
| | GROUND LIGHT | BW | BOTTOM OF WALL ELEVATION |
| | WATER SHUT OFF | EXT. | EXTENSION |
| | SIGN | | HANDICAP RAMP |
| | UTILITY MH | | TELEPHONE POLE |
| | LIGHT POLE | | TRAFFIC LIGHT POLE |
| | ELEC. MH | | GUY |
| | GAS VALVE | EXIST. | EXISTING |
| | GAS METER | REC. | RECORD INFORMATION |
| | SANITARY MH | MST. | MEASURED INFORMATION |
| | YARD DRAIN-INLET | | ROOF DRAIN W/DOWNSPOUT |
| | WATER MH | | EXIST. FIRE HYDRANT |
| | WATER VALVE | CWG | CURB & GUTTER |
| | WATER METER | CLF | CHAIN LINK FENCE |
| | PARKING METER | W.F. | WOODEN FENCE |
| | CHAIN LINK FENCE | PL | PLANTER |
| | BOLLARD | CO | CLEAN OUT |
| | TREE | | GENERATOR (NATURAL GAS OR OTHER) |
| | BUSH | IP | IRON PIPE FOUND |
| | TRANSFORMER | R/C | REBAR WITH CAP |
| S/W | SIDEWALK | FND | FOUND |
| TYP. | TYPICAL | SPK | SPIKE FND |
| CONC. | CONCRETE | | BENCHMARK |
| R/W | RETAINING WALL | | |
| IPF | IRON PIPE FOUND | | |

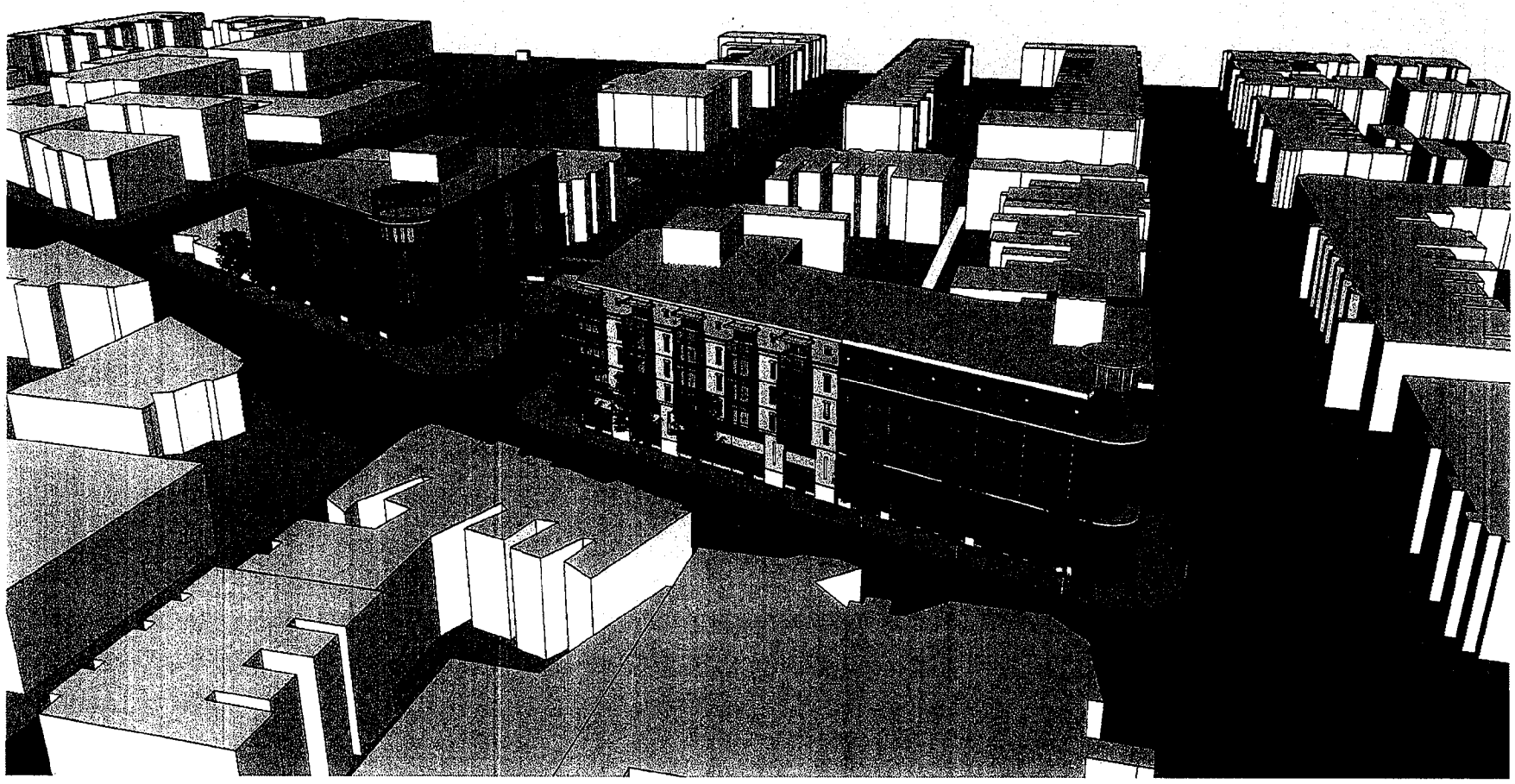
NOTE:
BASED ON WMATA INFORMATION OBTAINED, AS-BUILT SURVEY OF WMATA TUNNELS, TRACKS, ETC. MUST BE COMPLETED PRIOR TO ANY DEVELOPMENT WITHIN THE LIMITS OF WMATA (ABOVE GROUND AND UNDERGROUND) RIGHT-OF-WAYS.

October 2009

EXHIBIT A TO TERM SHEET

THE JAZZ @ FLORIDA AVENUE

WMATA-INV 001747



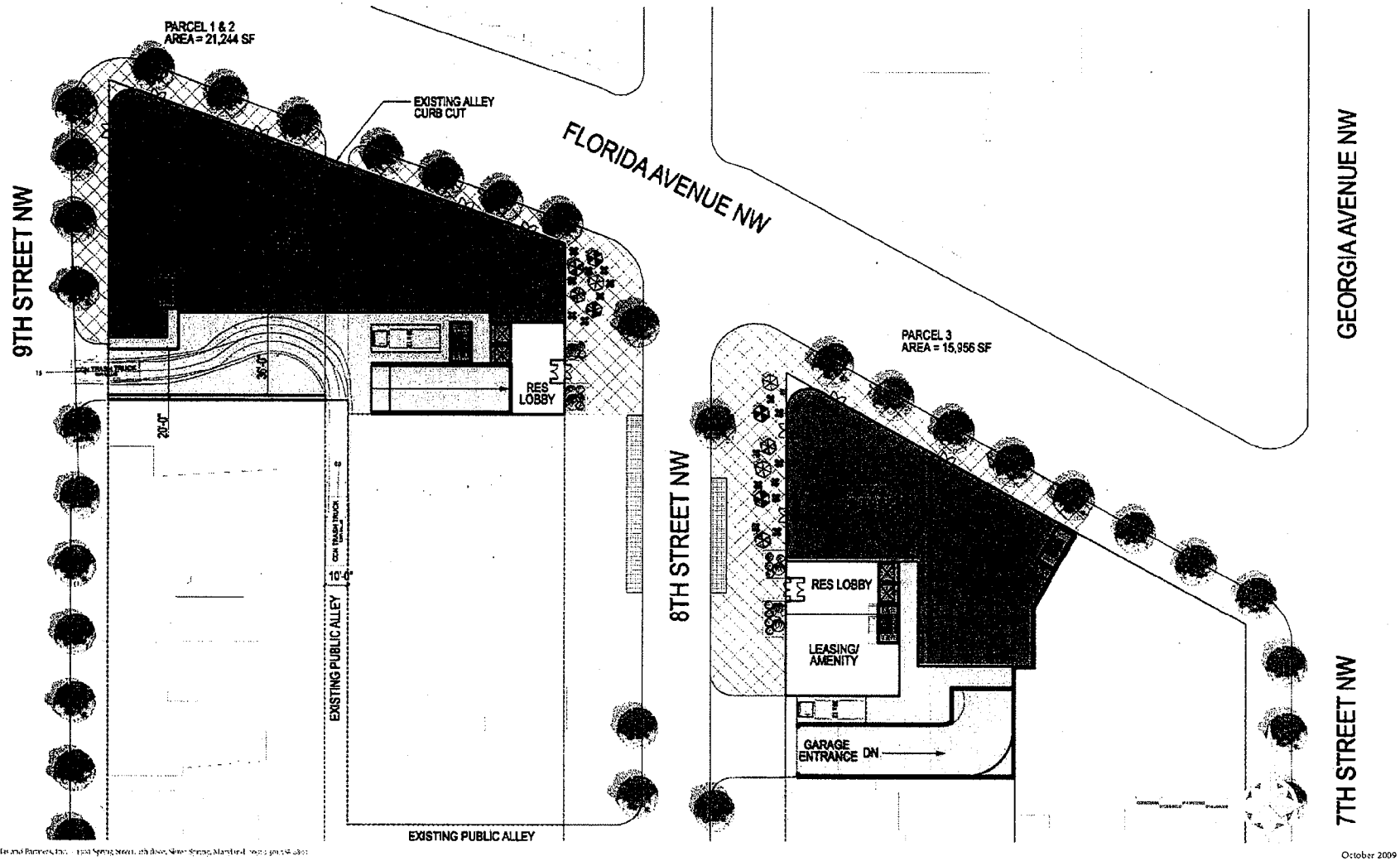
3D View

October 2009

EXHIBIT B TO TERM SHEET

THE JAZZ @ FLORIDA AVENUE

FOIA CONFIDENTIAL TREATMENT REQUESTED




October 2009

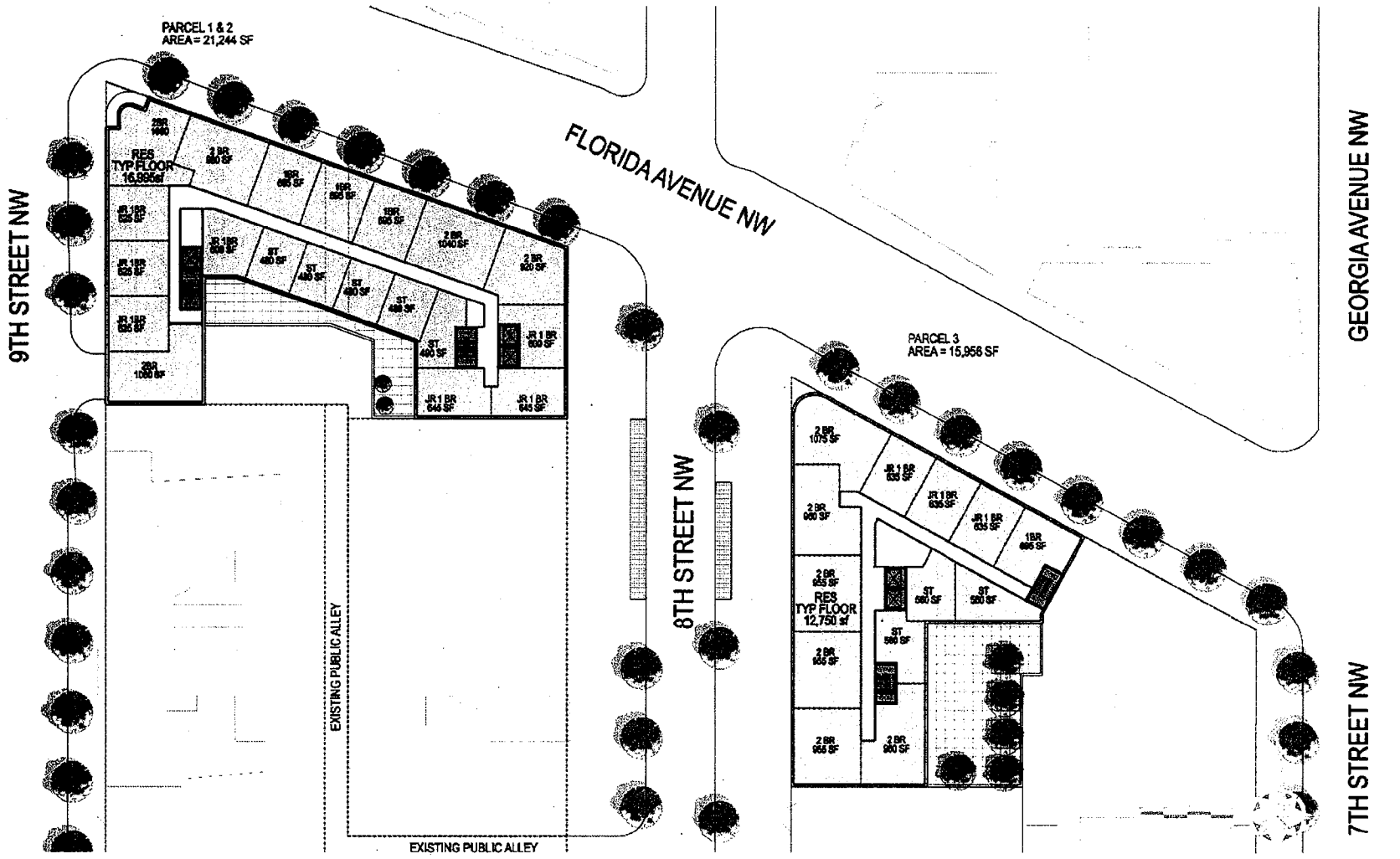
First Floor Plan

EXHIBIT B TO TERM SHEET

THE JAZZ @ FLORIDA AVENUE

WMATA-INV 001749

FOIA CONFIDENTIAL TREATMENT REQUESTED




October 2009

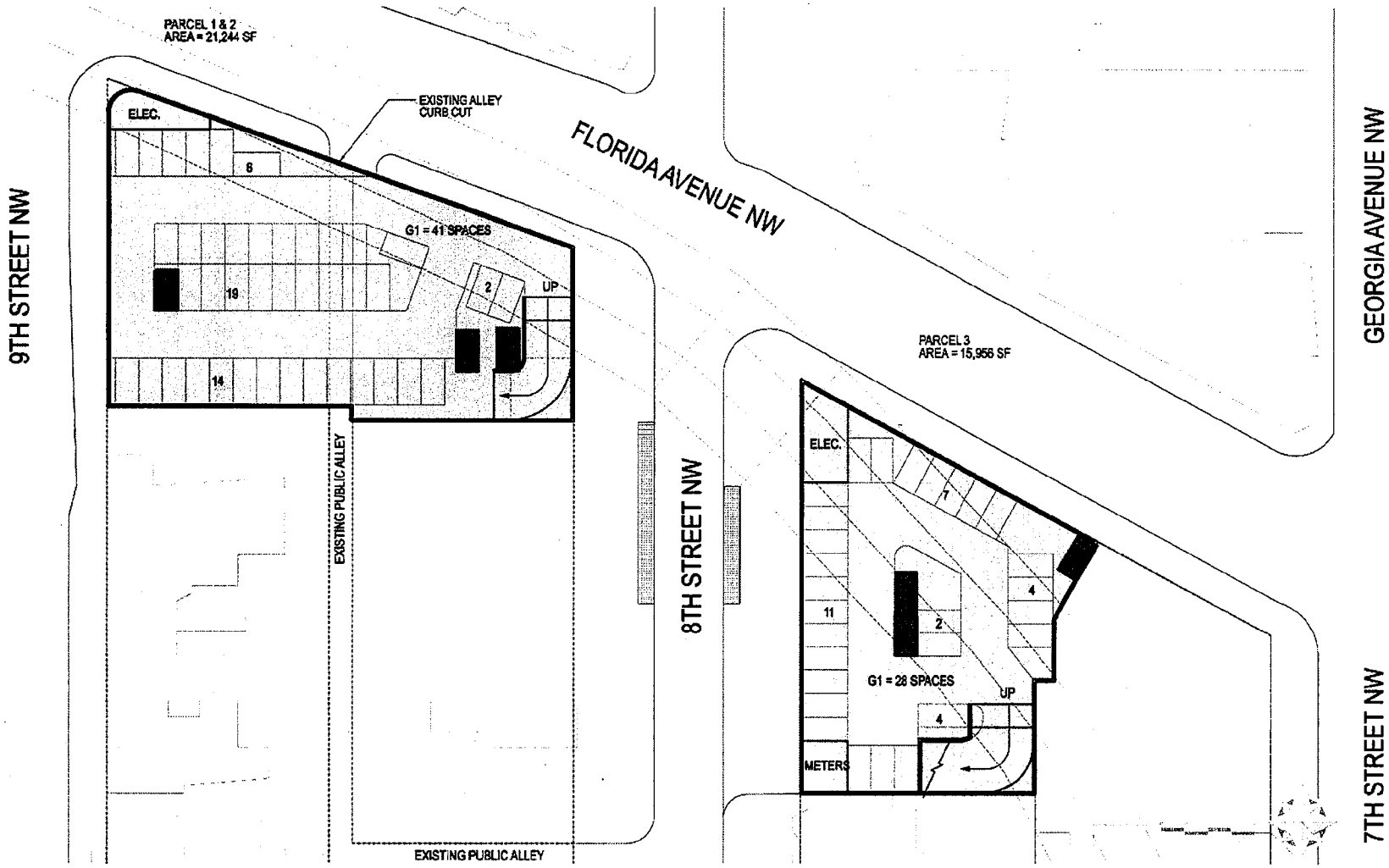
Typical Residential Floor Plan

EXHIBIT B TO TERM SHEET

THE JAZZ @ FLORIDA AVENUE

WMATA-INV 001750

FOIA CONFIDENTIAL TREATMENT REQUESTED




October 2009

Garage Level Plan

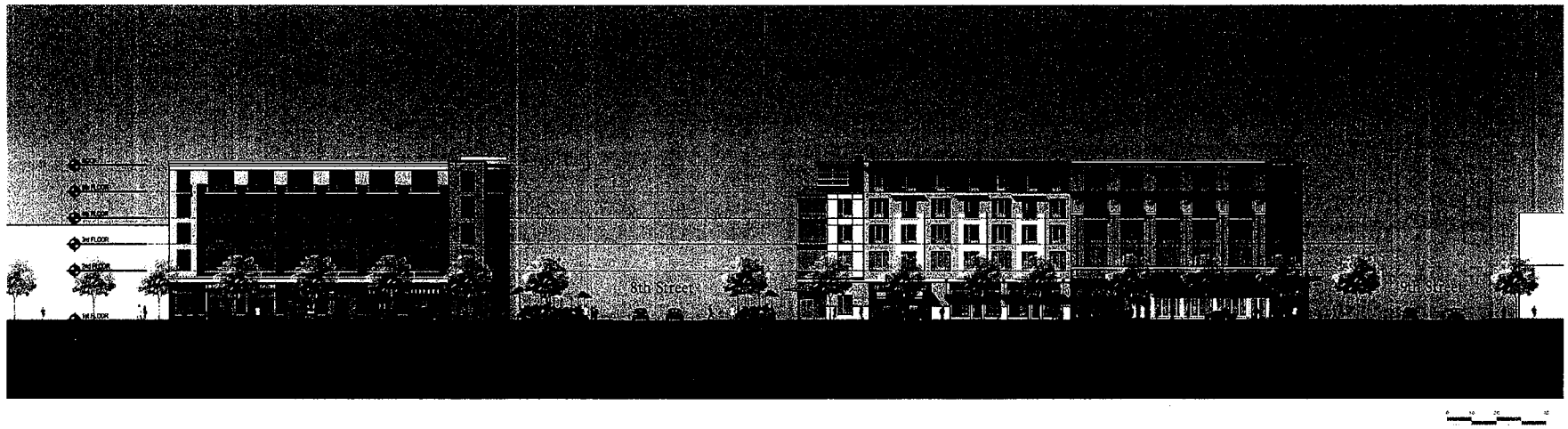
EXHIBIT B TO TERM SHEET

THE JAZZ @ FLORIDA AVENUE

WMATA-INV 001751

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED




Exterior Building Elevation - Florida Avenue

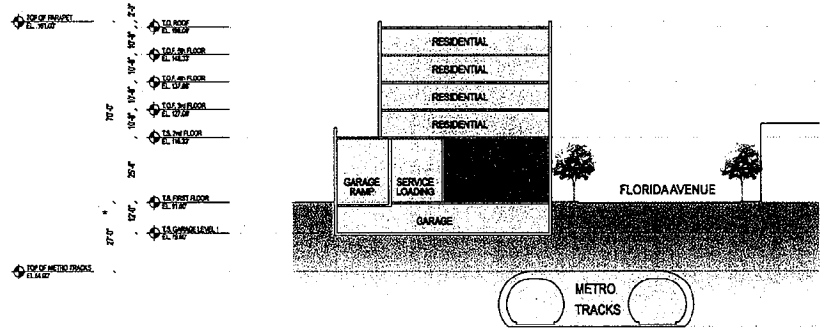
September 9, 2009

BANNEKER VENTURES, LLC / BANC OF AMERICA CDC
TORTI GALLAS AND PARTNERS

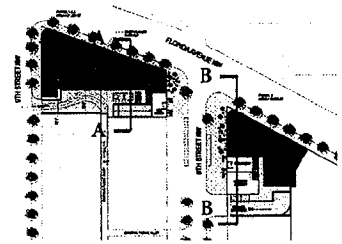
THE JAZZ @ FLORIDA AVENUE

WMATA-INV 001752

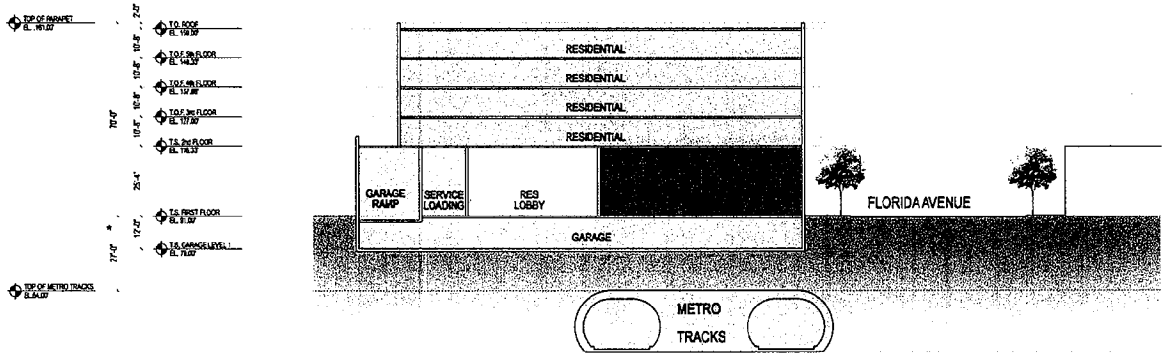
FOIA CONFIDENTIAL TREATMENT REQUESTED




Section A




Key Plan




Section B

0 10 20 40

September 9, 2009

Sections

BANNEKER VENTURES, LLC / BANC OF AMERICA CDC
TORTI GALLAS AND PARTNERS

THE JAZZ @ FLORIDA AVENUE

WMATA-INV 001753

FOIA CONFIDENTIAL TREATMENT REQUESTED

**CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2009**

| CATEGORY | Developer: The Jazz @ Florida Avenue, LLC (Banneker Ventures LLC and Banc of America Community Development Corporation as principals) |
|---|---|
| Site Description | The 28,376 sf site consists of three separate parcels on the south side of Florida Avenue, NW , between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by Metro. |
| Developer's Proposal | On the Metro site, a minimum 100,711 sf of development with ground floor retail along Florida Avenue and approximately 80,000 sf of residential use on four stories above the retail. A portion of the Metro site is proposed to be combined with 7,720 contiguous sf controlled by the development team. With an alley closing, the combined site is proposed at 157,000 sf of development with 124,000 sf on Metro property. At least 8% of the residential units will be affordable. |
| Proposed Contract | Sale |
| Construction Schedule | Closing: 20 months after sales agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Security Deposit | $250,000 |
| Option Fee | $100,000 (non-refundable, already paid) |
| Additional Density | WMATA to receive 79% of value of bonus density from combined Metro site and developer-controlled site: $50/sf for every FAR sf over 100,711 sf generated by Metro property; $80/sf deduction for every affordable housing FAR sf over 6,414 sf generated by Metro property. |
| Sale Price Increase | 5.8% annually if Closing does not occur within 20 months of sales agreement execution |
| Reversion | Reversion of sale if no construction start within three years after sales agreement execution. |
| Appraised Market Value<br>$2,200,000 land value<br>(hold price for 18 months or more)<br><br>Appraisal by Harps & Harps 8/09 | NPV to WMATA<br>$2,300,000<br>(with 20 month price hold) |

WMATA-INV 001754

**Doggett, Rosalyn**

**From:** O'Keeffe, Carol B.
**Sent:** Wednesday, October 21, 2009 3:32 PM
**To:** Bottigheimer, Nat; Goldin, Steven; Montague, Joshua W.; Doggett, Rosalyn
**Cc:** Catoe, John B.

All, these are additional thoughts as to how we could ensure that the Developer actually breaks ground if we proceed with a sale, notwithstanding today's discussions. If the return to the lease concept does not gel, we should put these on the table with the Developer.

(i) keep the public alley closing with the easement as something to be completed pre-Closing to a sufficient degree that the D.C. Surveyor will record the alley closing plat; (ii) require that the Developer receive at least its excavation, sheeting and shoring permit, and if reasonably practical the final building permit, before the Closing; (iii) require that the construction contract for the Total Project be completed and the payment and performance bonds be issued all before Closing; and (iv) require that the Developer issue the order to commence construction (mobilization) to the general contractor at the Closing so it is delivered immediately after the Closing.

The key will be to get the D.C. building department to approve the building permit without the lots being re-subdivided. The deadline for re-subdividing the lots will be before the final certificate of occupancy is issued rather than before the building permit is issued. With that waiver, the building permit can be obtained at the Closing.

This alternative proposal is in case the FHA lender will not accept the reversion condition. Under all circumstances, we might consider keeping the concept that the Term Sheet be revised so the alley closing can be completed pre-Closing to a sufficient degree that the D.C. Surveyor will record the alley closing plat. That materially reduces the risk on all sides and gives WMATA the permanent benefit of owning a portion of the public alley for density purposes with the continued use of the alley area via the easement.

The FHA lender will require a completed construction contract and bonding for the Closing anyway. So the real difference in this proposal is to process the building permit in full or in part before the Closing and before the re-subdivision so construction (excavation) can begin immediately after Closing.



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Doggett, Rosalyn

**From:** Omar A. Karim [okarim@bannekerventures.com]
**Sent:** Wednesday, October 21, 2009 4:05 PM
**To:** Doggett, Rosalyn
**Cc:** thicks@bannekerventures.com; Yohance S. Fuller; 'John Hagner'; Bottigheimer, Nat
**Subject:** WMATA Exhibits
**Attachments:** 091021_Jazz_Exhibit B.pdf; 091021_Jazz_Exhibit A.pdf

**Importance:** High

Roz,

Please let me know if you receive this.

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

| | | | | | | |
|---|---|---|---|---|---|---|
| 4 | O'KEEFFE, CAROL | Approver | 10/19/2009 10:02 am | Approved | 10/19/2009 10:06 am | Suggest that you remove language about reversion b/c it is subject to lenders's appproval. |
| 5 | FRANCIS, GERALD | Approver | 10/19/2009 10:06 am | Approved | 10/20/2009 12:29 pm | |
| 6 | SEQUEIRA-CASTILLO, LOYDA | Approver | 10/20/2009 12:29 pm | Approved | 10/21/2009 11:21 am | |
| | PANT, SHIVA | Approver | 10/20/2009 12:29 pm | ⇒ | *Awaiting approval...* | |
| 7 | CEO, GMGR | Approver | | | | |
| 8 | WMATA, BOARD | Approver | | | | |
| 9 | | | | | | |

Return to previous screen

CMIS

## Routing Status

| | |
|---|---|
| Status: | *This document is currently being routed for approval...* |
| Document: | MEAD(100527) Approve Term Sheet To Sell Shaw-Howard/FL Ave Site |
| Routing Initiated: | 10/14/2009 02:26 pm by ROSALYN DOGGETT (rdoggett@wmata.com) |

| Routing Level | Name | Approver/ Reviewer | Notified by email | Action | Date of Action | Comments |
|---|---|---|---|---|---|---|
| 1 | BOTTIGHEIMER, JOHN | Approver | 10/14/2009 02:26 pm | Approved | 10/14/2009 02:52 pm | |
| | SEQUEIRA-CASTILLO, LOYDA | Reviewer | 10/14/2009 02:26 pm | | No action is necessary | |
| | SMITH, CANDACE | Reviewer | 10/14/2009 02:26 pm | | No action is necessary | |
| 2 | OBORA, HEATHER | Approver | 10/14/2009 02:52 pm | Reassigned | 10/14/2009 03:09 pm | [Reassigned to: ROSALYN DOGGETT, by:ROSALYN DOGGETT] Not a procurement |
| | BROWN, MATTHEW | Approver | 10/14/2009 02:52 pm | Reassigned | 10/14/2009 03:06 pm | [Reassigned to: EMEKA MONEME, by:ROSALYN DOGGETT] To add CAO at level 2 |
| | MONEME, EMEKA | Approver | 10/14/2009 03:06 pm | Approved | 10/15/2009 03:23 pm | |
| | DOGGETT, ROSALYN | Approver | 10/14/2009 03:09 pm | Approved | 10/14/2009 03:11 pm | |
| | NEVARES, JORGE | Reviewer | 10/14/2009 02:52 pm | | No action is necessary | [JORGE NEVARES : 10/14/2009 03:57:50] Non-federal. |
| 3 | REQUA, JOHN | Approver | 10/15/2009 03:23 pm | Approved | 10/15/2009 04:26 pm | |
| | KISSAL, CAROL | Approver | 10/15/2009 03:23 pm | Approved | 10/16/2009 03:39 pm | |
| | BROWN, MATTHEW | Approver | 10/15/2009 03:23 pm | Reassigned | 10/16/2009 03:38 pm | [Reassigned to: CAROL KISSAL, by:ROSALYN DOGGETT] Matt Brown out sick |
| | KISSAL, CAROL | Approver | 10/16/2009 03:38 pm | Approved | 10/16/2009 03:39 pm | |
| | PENDING, COUNAPPROVAL | Approver | 10/16/2009 03:39 pm | Reassigned | 10/19/2009 10:02 am | [Reassigned to: CAROL O'KEEFFE, by:COUNAPPROVAL PENDING] for sign off |

He agreed to a 99 year lease with John and Jim

Metro is fine with a co-tenancy agreement

Use RI Avenue as the deal; do an agreement in 2 weeks

Need an updated lease appraisal

1. They've cobbled lot across 8th St into "~~contiguity~~ Joint Premises" the 416 Square is NOT incorporated

p.3 2. Additional IZ density over 4.5 - where does it go?

. 36 FAR [4.86 x 28,400 = 138,024

now increased to 4.86 - 124,000

14,024

- 12,400

p 3 3. 2.2.4 - 50% of AMI CAN NOT be eliminated

4. 2.2.5 - "Single phase" does not mean a single property

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Approve Term Sheet for Sale of Shaw-Howard U./Florida Avenue Joint Development Site

**Executive Session**

**Planning, Development & Real Estate Committee**

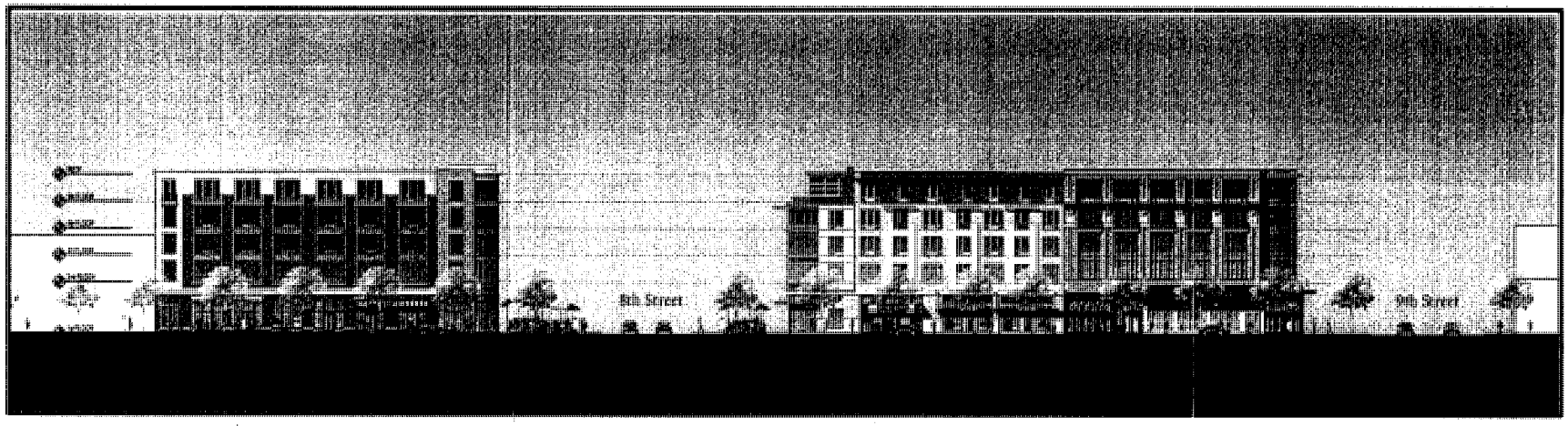
**October 22, 2009**

WMATA-INV 001761

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Obtain approval of the term sheet for sale of the Shaw-Howard U station/Florida Avenue joint development site and authorization for staff to negotiate an agreement for sale of the site.






WMATA-INV 001762

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate a revised term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate a term sheet and joint development agreement. |



WMATA-INV 001763

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

Sale will allow developer to combine Metro's 3 parcels with developer-controlled adjacent parcel to create a unified project.



WMATA-INV 001764

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

- Term sheet reflects current appraised value, which includes adjustments for inclusion of affordable housing under mandatory Inclusionary Zoning and extraordinary cost of constructing facilities over Metro tunnels
- After negotiation, staff will request Board approval of an agreement by December 2009



WMATA-INV 001765

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

Obtain approval of the term sheet for sale of the Shaw-Howard U. station/Florida Avenue joint development site and authorization for staff to negotiate an agreement for sale of the site.



WMATA-INV 001766

Washington Metropolitan Area Transit Authority

# METRO ELECTRONIC ACTION DOCUMENT

MEAD ID: 100527

| DESCRIPTION | |
|---|---|
| TITLE: | ApproveTerm Sheet to Sell Shaw-Howard/FL Ave Site |
| SUBJECT: | Approve term sheet to sell Shaw-Howard U./FL Ave. site and authorize negotiation of sale agreement |
| PURPOSE: | Approve a term sheet for the Shaw-Howard U./Florida Avenue joint development site to the development team of Banneker Ventures, LLC, and Banc of America Community Development Corporation and authorize negotiation of a sale agreement. |

Washington Metropolitan Area Transit Authority

# METRO ELECTRONIC ACTION DOCUMENT

DESCRIPTION:

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project will feature ground floor retail along Florida Avenue, with four stories of housing above, for a minimum of 100,000 sf. If additional density can be achieved, Metro will be compensated. At a minimum, the project will include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built); however, the developer is exploring financing to extend affordabilty.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated a term sheet for disposition of the development site.

The project was initially proposed as a lease; however, the development team subsequently gained control of additional adjacent land on 9th Street and proposes to combine that land with the two of the three Metro parcels between 8th and 9th streets. The combined site will allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. The sale of the site will also allow the three sites to be financed and developed as one project. While these advantages would hold also for a lease, in the event of a lease default there is a high risk disadvantage to Metro, namely, that Metro could not gain effective control of Metro land under a portion of the building constructed on combined Metro land and development team land. For this reason, a sale is preferable.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities will be reserved in perpetuity for Metro.

A sale will provide for reversion of the property to Metro in the event that the developer does not commence construction of the project within seven years.

Metro will receive 79% (its share of the total size of the development parcel) of the value of any bonus density granted the development team by the District of Columbia.

The negotiated sale agreement will be brought to the Board for approval within the extension period which ends in December 2009.

FUNDING IMPACT:

Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

PRIOR APPROVALS:

The Board approved the selection of a development team, led by Banneker Ventures, LLC, in June 2008. It approved time extensions to renegotiate a term sheet incorporating affordable housing in Apri 2009 and September 2009.

RECOMMENDATION:

Approve a term sheet for the sale of the Shaw-Howard/Florida Avenue joint development site to

the development team of Banneker Ventures, LLC, and Banc of America Community Development Corporation and authorize negotiation of a sale agreement.

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100527 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Approve Term Sheet To Sell Shaw-Howard/FL Ave Site

**PURPOSE:**

Approve a term sheet for the sale of the Shaw-Howard U./Florida Avenue joint development site to the development team of Banneker Ventures, LLC, and Banc of America Community Development Corporation and authorize negotiation of a sale agreement.

**DESCRIPTION:**

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project will feature ground floor retail along Florida Avenue, with four stories of housing above, for a minimum of 100,000 sf. If additional density can be achieved, Metro will be compensated. At a minimum, the project will include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built); however, the developer is exploring financing to extend affordabilty.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated a term sheet for disposition of the development site. An updated appraisal of the site that takes into account the effect of the District`s new mandatory Inclusionary Zoning regulations for affordable housing on site value has been used in developing the sale terms, ~~which are summarized in the attached Confidential Statement.~~

The project was initially proposed as a lease; however, the development team subsequently gained control of additional adjacent land on 9th Street and proposes to combine that land with the two of the three Metro parcels between 8th and 9th streets. The combined site will allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore

Washington Metropolitan Area Transit Authority

# METRO ELECTRONIC ACTION DOCUMENT

MEAD ID: 100527

| DESCRIPTION | |
|---|---|
| TITLE: | Approve Term Sheet To Sell Shaw-Howard/FL Ave Site |
| SUBJECT: | Approve term sheet to sell Shaw-Howard U./FL Ave. site and authorize negotiation of sale agreement |
| PURPOSE: | Approve a term sheet for the sale of the Shaw-Howard U./Florida Avenue development site to the development team of Banneker Ventures, LLC, and Banc of America Community Development Corporation and authorize negotiation of a sale agreement. |

Washington Metropolitan Area Transit Authority

# METRO ELECTRONIC ACTION DOCUMENT

DESCRIPTION:

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project will feature ground floor retail along Florida Avenue, with four stories of housing above, for a minimum of 100,000 sf. If additional density can be achieved, Metro will be compensated. At a minimum the project will include affordable housing required by the District of Columbia's new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built). However, the developer is exploring financing to extend affordabilty.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated a term sheet for disposition of the development site. An updated appraisal of the site that takes into account the effect of the District's new mandatory Inclusionary Zoning regulations for affordable housing on site value has informed the sale terms, which are summarized in the attached Confidential Statement.

The project was initially proposed as a lease. However, the development team subsequently gained control of additional adjacent land on 9th Street and proposes to combine that land with the two Metro parcels between 8th and 9th streets. The combined site will allow potentially greater density on Metro's land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. The sale of the site will also allow the three sites to be financed and developed as one project. While these advantages would hold also for a lease, in the event of a lease default there is a high risk disadvantage to Metro, namely, that Metro could not gain effective control of Metro land or the portion of the building constructed on combined Metro land and development team land. For this reason, a sale is recommended.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities will be reserved in perpetuity for Metro.

The negotiated sale agreement will be brought to the Board for approval within the extension period which ends in December.

FUNDING IMPACT:

The project will have no immediate impact on funding. Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

PRIOR APPROVALS:

The Board approved the selection of a development team, led by Banneker Ventures, LLC, in June 2008. It approved time extensions to renegotiate a term sheet incorporating affordable housing in Apri 2009 and September 2009.

RECOMMENDATION:

Approve a term sheet for sale of the Shaw-Howard U./Florida Avenue development site to the development team of Banneker Ventures, LLC, and Banc of America Community Development Corporation and authorize negotiation of a sale agreement.

## 1. Define Routing Sequence : MEAD(100527) Approve Term Sheet To Sell Shaw-Howard/FL Ave Site

Help

| Routing Level | Approver(s) | Reviewer(s) |
|---|---|---|
| 1 | *JOHN BOTTIGHEIMER | *LOYDA SEQUEIRA-CASTILLO (SECT) |
| | | *CANDACE SMITH (GM_2) |
| 2 | *HEATHER OBORA (PRMT) | *JORGE NEVARES (DBE) |
| | *MATTHEW BROWN (OMBS_OPR) | |
| 3 | JOHN REQUA (PLN_DEV_RE) | |
| | *CAROL KISSAL (FIN_ADM_OVRST) | |
| 4 | *COUNAPPROVAL PENDING (COUN) | |
| 5 | *GERALD FRANCIS (DGM) | |
| 6 | *LOYDA SEQUEIRA-CASTILLO (BEMR) | |
| | *SHIVA PANT (CHOS) | |
| 7 | *GMGR CEO (GM) | |
| 8 | *BOARD WMATA (BOARD) | |
| 9 | | |

## 2. Initiate Routing

Help

Start routing process now

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100426 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Extend Negotiating Period for Shaw-Howard U/FL Ave

**PURPOSE:**

Extend the negotiating period for the Shaw-Howard U./Florida Avenue joint development site by 120 days, from August 2009, to allow negotiation of a term sheet and joint development agreement to be brought to the Board in December 2009.

**DESCRIPTION:**

In April 2009, the Board approved a 120-day period to renegotiate a term sheet for the Shaw-Howard U./Florida Avenue joint development site, which consists of three separate parcels totaling 28,892 sf located between 7th and 9th streets NW in Washington, DC. The development team, led by Banneker Ventures, LLC, proposed to lease the site from Metro for 60 years and build a minimum of 104 housing units over ground floor retail space of approximately 11,750 sf.

Upon approving the development team in June 2008, the Board requested that an affordable housing component be included in the project. The development team then amended its financial offer to Metro to include a substantial reduction in rent to reflect its affordable housing component.

The extension approved in April 2009 was to allow for conclusion of term sheet negotiations that would take into account the affordable housing in the project; however, upon review, it became clear that it was also necessary to update the August 2007 third party appraisal for the site to meet Federal Transit Administration requirements for timeliness. The updated appraisal will reflect new District of Columbia mandatory Inclusionary Zoning regulations for affordable housing scheduled to take effect in mid-August 2009 and examine whether the developer`s recent assertion that the maximum number of housing units that can be accommodated on the site is less than the previously proposed 104 is valid.

An appraiser has been engaged, but will not complete its assignment in time for

conclusion of term sheet negotiations and a Board decision in September 2009. Accordingly, and in light of the fact that the development team and staff have been reviewing a draft joint development agreement, staff proposes instead to conclude negotiations on the term sheet and joint development agreement and bring both to the Board for its consideration in December 2009.

**FUNDING IMPACT:**

This action will have no immediate impact on funding. Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

Extend the negotiation period for the Shaw-Howard U./Florida Avenue joint development site by 120 days to allow a proposed term sheet and joint development agreement to be brought to the Board in December 2009.

10/14 Version 0 corrected by hand ~~Corrected~~

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Approve Term Sheet for Sale of Shaw-Howard U./Florida Avenue Joint Development Site

**Executive Session**

**Planning, Development & Real Estate Committee**

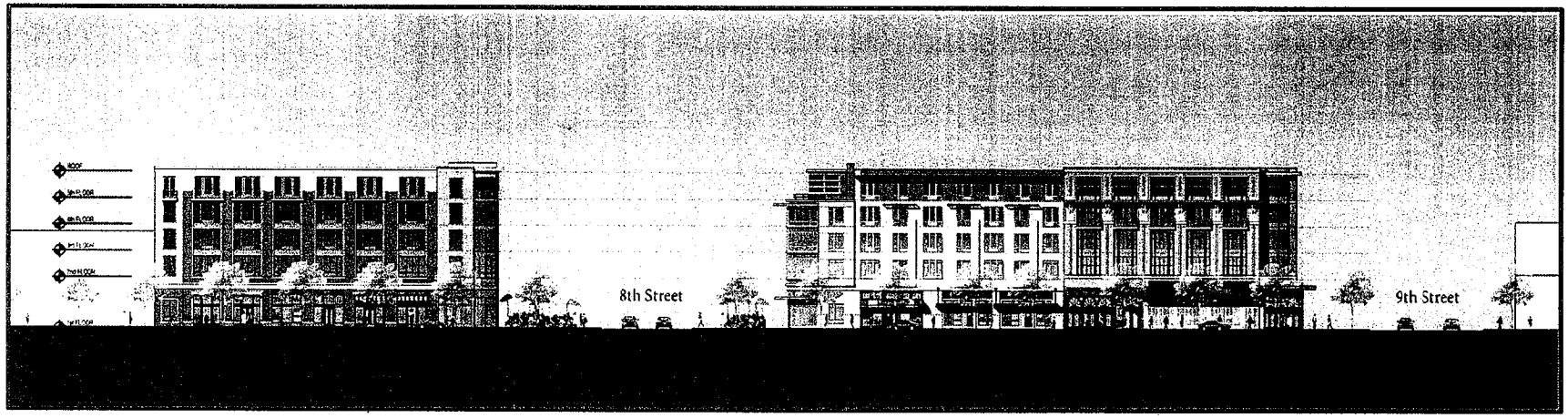
**October 22, 2009**

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

**Obtain approval of the term sheet for sale of the Shaw-Howard U station/Florida Avenue development site and authorization for staff to negotiate an agreement for sale of the site.**






WMATA-INV 001777

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate a revised term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate a term sheet and joint development agreement. |

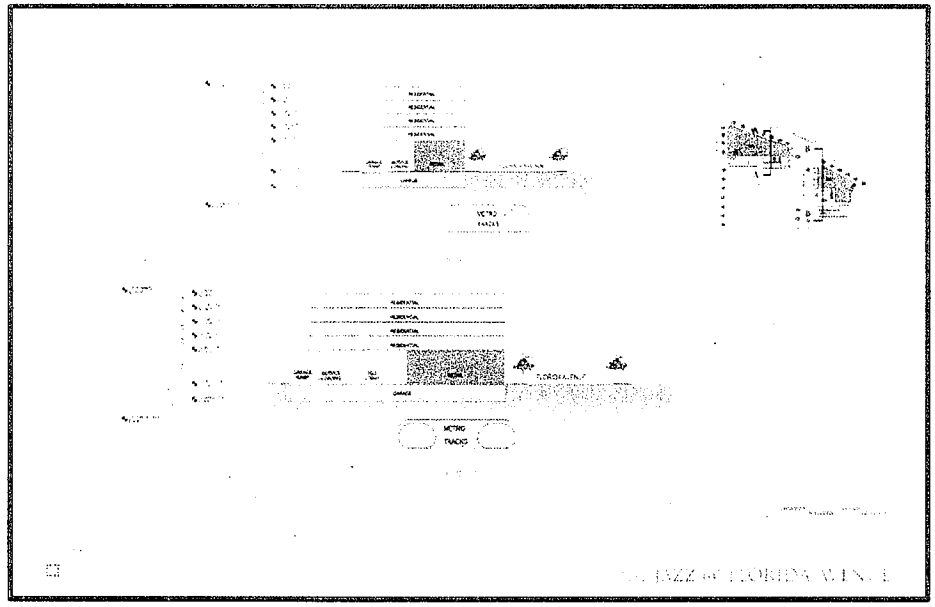


WMATA-INV 001778

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

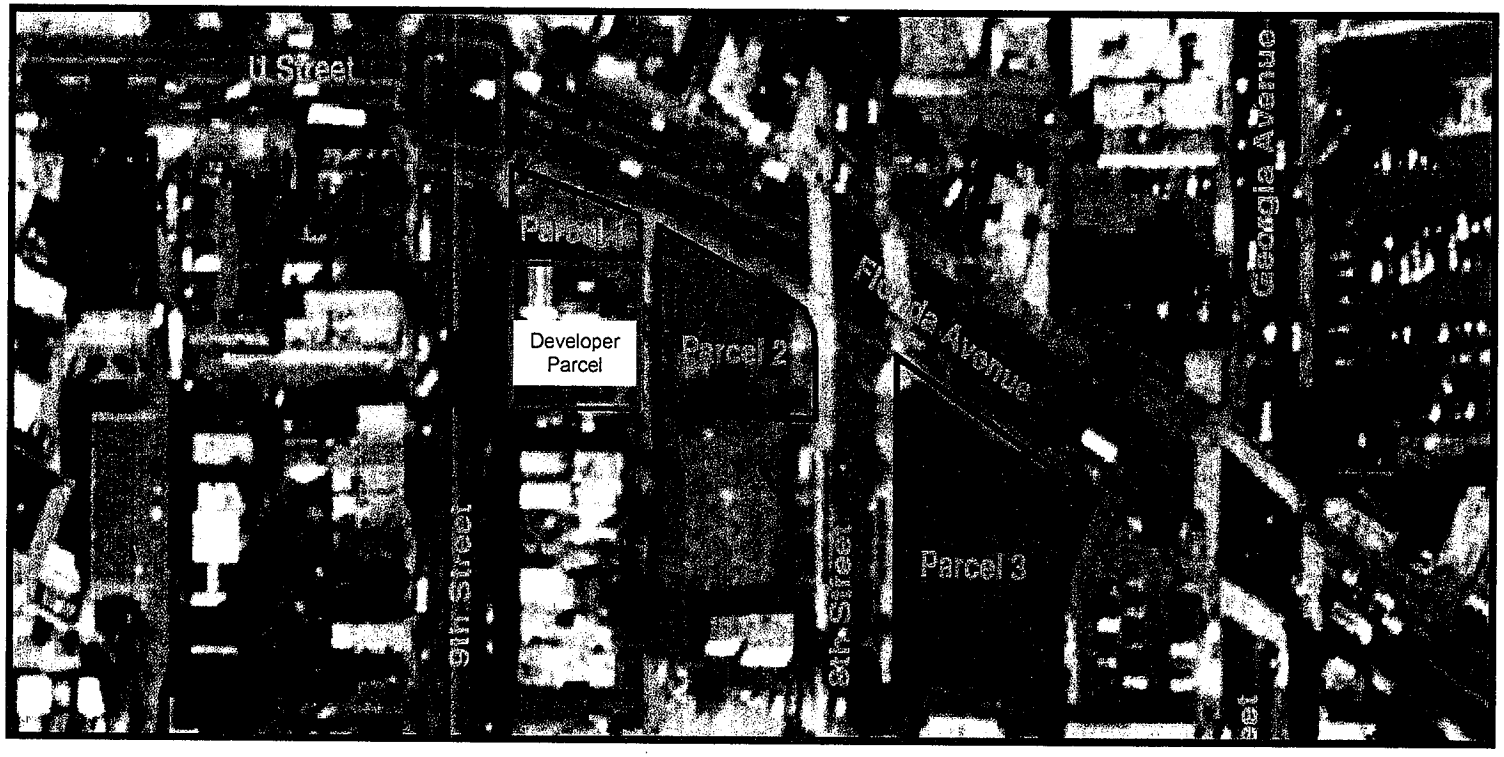
- **Sale is required to allow combining Metro sites with developer-controlled adjacent property to facilitate creation of a unified project**





WMATA-INV 001779

# Basis for Proposed Action






FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001780

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

- Term sheet reflects current appraised value, which includes adjustments for inclusion of affordable housing under mandatory Inclusionary Zoning and extraordinary cost of constructing facilities over Metro tunnels
- After negotiation, staff will request Board approval of an agreement ~~in~~ December 2009

by



WMATA-INV 001781

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

**Approve the term sheet for sale of the Shaw-Howard U./Florida Avenue joint development site and authorize staff to negotiate an agreement for sale of the site.**



WMATA-INV 001782

Nov Dec Board large packages

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Approve Term Sheet for Sale of Shaw-Howard U./Florida Avenue Joint Development Site

**Executive Session**

**Planning, Development & Real Estate Committee**

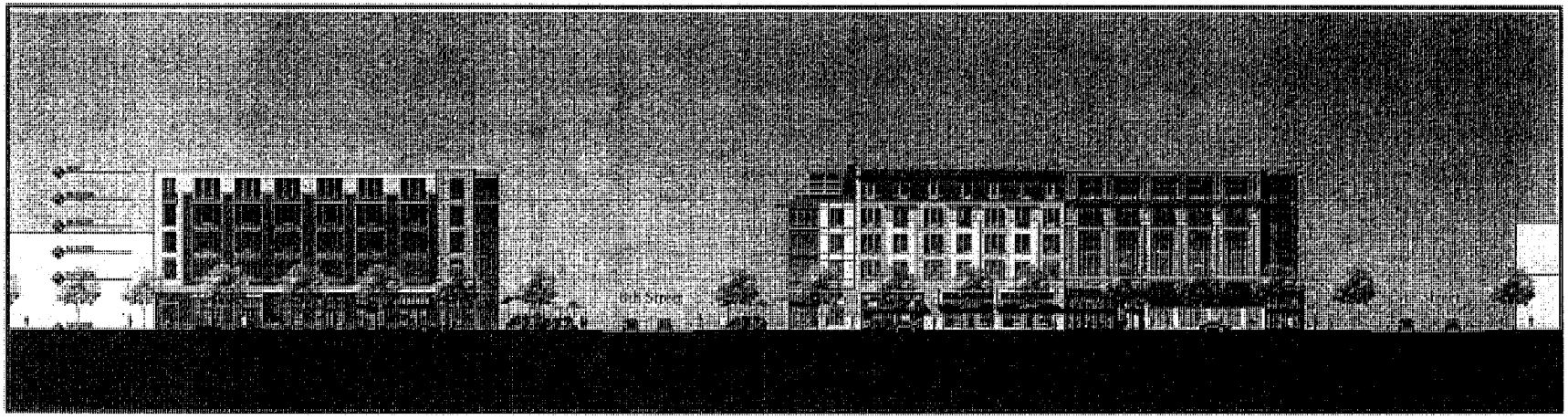
**November 5, 2009**

WMATA-INV 001784

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

**Obtain approval of the term sheet for sale of the Shaw-Howard U station/Florida Avenue development site and authorization for staff to negotiate an agreement for sale of the site as excess property.**





WMATA-INV 001785

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate a revised term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate a term sheet and joint development agreement. |

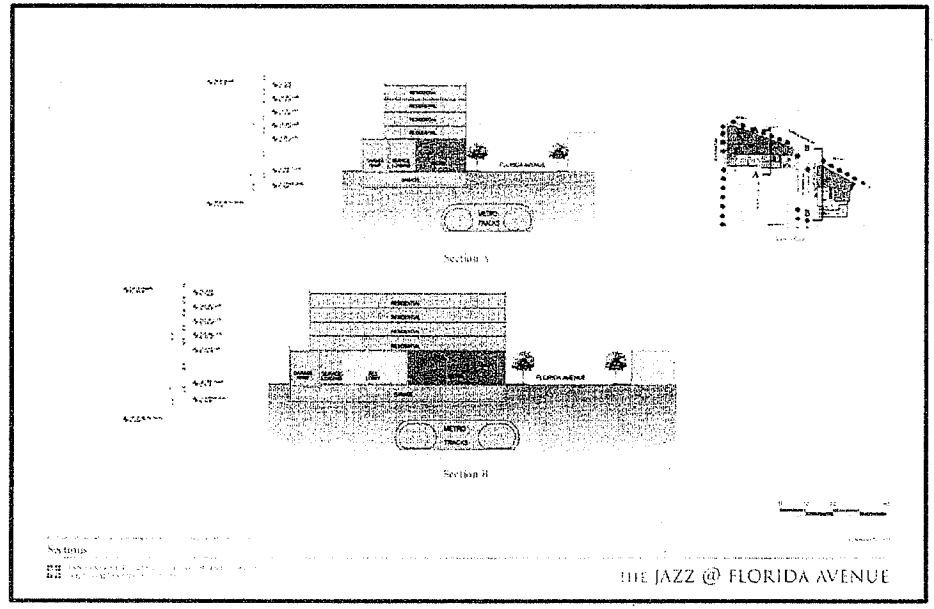


WMATA-INV 001786

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

- **Sale is required to allow combining Metro sites with developer-controlled adjacent property to facilitate creation of a unified project**






WMATA-INV 001787

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

WMATA-INV 001788

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

- Term sheet reflects current appraised value, which includes adjustments for inclusion of affordable housing under mandatory Inclusionary Zoning and extraordinary cost of constructing facilities over Metro tunnels
- After negotiation, staff will request Board approval of an agreement in December 2009



WMATA-INV 001789

FOIA CONFIDENTIAL TREATMENT REQUESTED

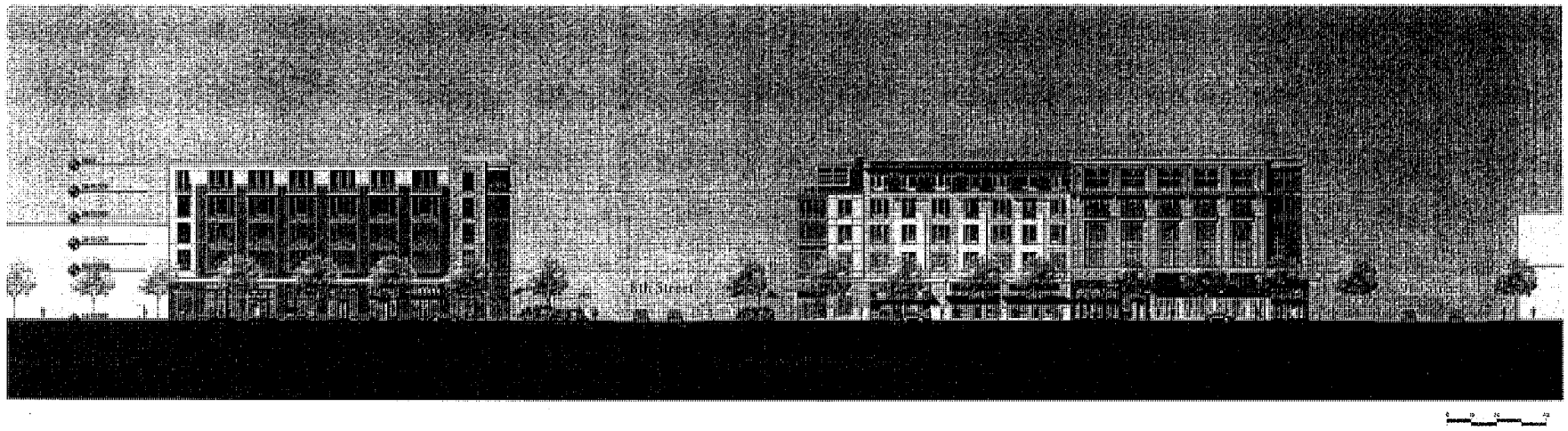
# Recommendation

**Approve the term sheet for sale of the Shaw-Howard U./Florida Avenue joint development site and authorize staff to negotiate an agreement for sale of the site as excess property.**



WMATA-INV 001790

FOIA CONFIDENTIAL TREATMENT REQUESTED



Exterior Building Elevation - Florida Avenue

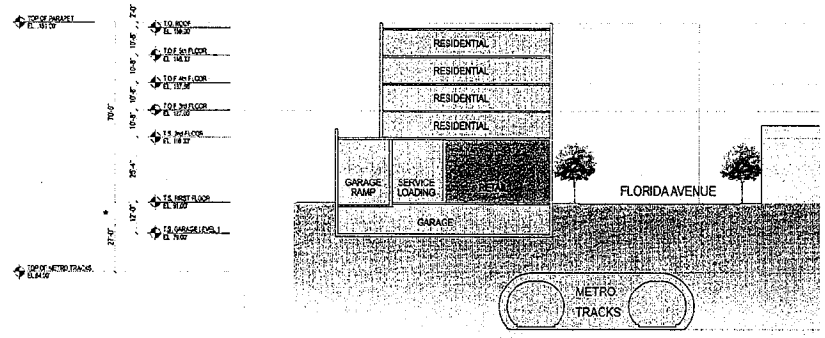
September 9, 2009

BANNEKER VENTURES LLC / BANC OF AMERICA CDC
TORTI GALLAS AND PARTNERS

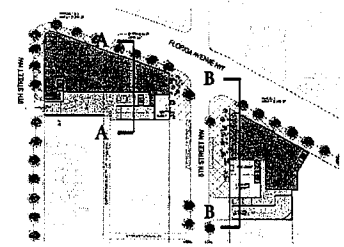
THE JAZZ @ FLORIDA AVENUE

WMATA-INV 001791

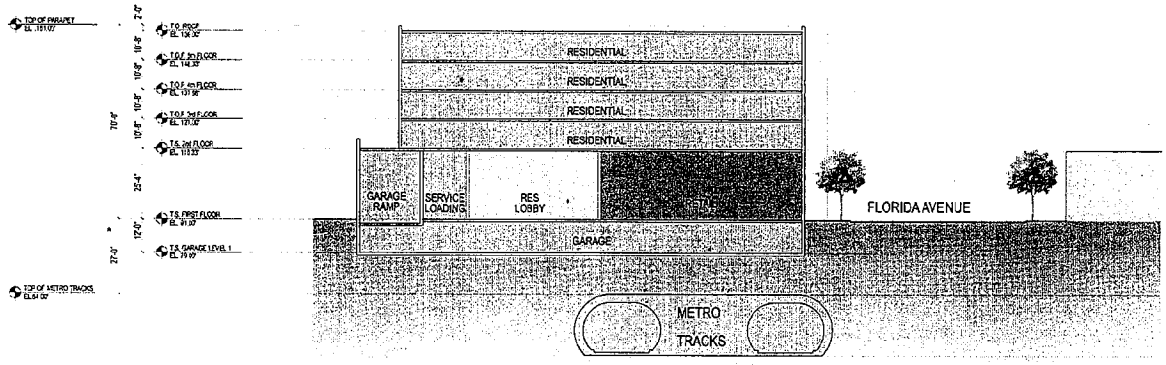
FOIA CONFIDENTIAL TREATMENT REQUESTED




Section A




Key Plan




Section B

0 10 20 40

September 11, 2009

Sections

BANNEKER VENTURES, LLC / BANC OF AMERICA CDC
FORTI GALLAS AND PARTNERS

THE JAZZ @ FLORIDA AVENUE

WMATA-INV 001792

**SCOPE OF WORK [DRAFT]**

**FLORIDA AVENUE SITE**

| | |
|---|---|
| OWNER: | WMATA |
| LOCATION: | Florida Avenue, NW |
| LAND AREA: | 28,892 sq. ft. |
| ZONING: | C-2-B in Arts Overlay Zone |
| LEGAL DESCRIPTION: | Square 416, Lots 18 and 31 and<br>Square 393, Lots 44 and 45 |
| IMPROVEMENTS: | Existing sf of actual improvements |
| TYPE OF REPORT: | Summary Appraisal Report |
| REQUIREMENTS: | The appraiser shall provide the fair market value of the above property and the fair market rental value of the property based on the existing improvements on the property. |
| COMMENTS: | The appraisal shall provide a fair market value per sf for each type of land use on the site. The appraisal shall further indicate the fair market rental value per sf for each type of existing land use on the site. The appraisal shall take into account any affordable housing existing on the site as required by the District of Columbia. |

Purchase Price and Terms Florida Avenue Parcels 9-30-09

| | | |
|---|---|---|
| 100,711 | buildable sf at 5 stories | source: Eric Colbert, AIA |
| $5,035,550 | price at $50/sf | source: Harps & Harps, MAI |
| -$2,300,000 | deduct for extraordinary cost of building over tunnel | source: WMATA cost estimator |
| -$513,120 | deduct for Inclusionary Zoning affordable housing @ 80% AMI | source: Harps & Harps, MAI |
| $2,222,430 | purchase price | |

add $50/FAR sf for any city-approved density above 100,711 sf generated by WMATA parcels
deduct $80/FAR sf for any city IZ requirements above 6,414 sf generated by WMATA parcels
$100,000 Option Fee is not credited toward purchase price (per executed term sheet)

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.

**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.

**2. Definitive Agreement**

The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within one month of Board Term Sheet approval, will be a Purchase and Sale Agreement ("definitive Agreement"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The sale ("Closing") will take place at the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement or the start of construction of the Project.

**3. Property to Be Sold To Developer**

WMATA will sell to DEVELOPER approximately 28,476 sf 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 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 15,956 sf in Square 416, lot 31. The Sale Property shall not include those property interests necessary for protection of WMATA's Transit Facilities.

**4. Project**

DEVELOPER will construct improvements on the Sale Property (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will



FOIA CONFIDENTIAL TREATMENT REQUESTED

consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 100,711 FAR gross square feet including approximately 80,169 sf for residential apartment units per District of Columbia ("District") approvals and approximately 20,542 gross square feet of retail/arts use plus associated residential and retail parking, estimated at ___ below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Sale Property.

4.2 intentionally deleted

**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 into the Sale 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 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 terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

**6. Security Deposit**

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00), (the "Security Deposit") to secure DEVELOPER's performance. The $100,000 Proposal



FOIA CONFIDENTIAL TREATMENT REQUESTED 

Security previously received by WMATA in cash 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 upon the acceptance (not to be unreasonably withheld, delayed or conditioned) by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

6.5 WMATA shall return the Security Deposit plus interest to DEVELOPER within twenty (20) business days following the Closing.

**7. Consideration**

7.1 Option Fee: DEVELOPER has previously paid WMATA $100,000 (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 $2,200,000.

7.3 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within one month following Board Term Sheet Approval (as provided in Section 2 above), WMATA will refund DEVELOPER's full Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER within twenty (20) business days.

7.4 WMATA Delays: The maximum length of 20 months to Closing will be extended, on a day-for-day basis, for delays caused by WMATA actions or failure



FOIA CONFIDENTIAL TREATMENT REQUESTED 

to act, including obtaining FTA Approval in accordance with Section 8.5 below. 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.

7.5 Force Majeure Delays: The maximum length of 20 months to Closing may be extended, subject to an increase in the Purchase Price as provided in Section 7.6 in order to maintain the net present value of the Definitive Agreement to WMATA, for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement. The agreements we have done so far are too loose on Force Majeure. Maybe we should have as an outside date, no Force Majeure extensions of more than 6 months.

7.6 Additional Density: If prior to Closing or completion of the Project, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will adjust the Purchase Price as follows: a) an upward adjustment in the Purchase Price by $50/ gross FAR sf for additional density generated by the Sale Property for market rate housing and for retail over 94,297 sf (subject to true-up of 3% per year from the execution of the Definitive Agreement if Closing or additional density occurs later than 20 months from execution of the Definitive Agreement) and b) a downward adjustment in the Purchase Price by $80/gross FAR sf for additional density generated by the Sale Property for affordable housing over 6,414 sf, as required by District of Columbia mandatory Inclusionary Zoning regulations [need citation]. Such additional density shall include any gross FAR sf attributable to WMATA properties border the alley beween portions of the Sale Property located between 8th and 9th streets, NW.

7.7 Reversion of Sale: If DEVELOPER has not commenced construction within 12 months of Closing, the Sale Property shall revert to WMATA ownership.

**8. Conditions to Definitive Agreement Consummation**

If each of the following conditions is not satisfied within the timeframes provided below therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001798

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

8.6 Financing Contingency: Developer shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Project and as shall otherwise be reasonably satisfactory to Developer and WMATA.

## 9. Special Considerations

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA to apprise such groups of the Project and provide WMATA with a written report naming each group



FOIA CONFIDENTIAL TREATMENT REQUESTED 

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. [should we keep this provision? A Nat question]

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, alley closings, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Approvals") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the 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.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the applicable District agency or agencies an Approvals 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—2007 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards"). 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 Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten (10) calendar days prior to commencement of construction of the DEVELOPER Improvements. Delete?

9.7 Interim Improvements: intentionally omitted

9.8 Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin. The adequacy of security and need for this Guarantee to be further discussed in Definitive Agreement. Delete?

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law, which can be found at 72 FR 5788.

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.



FOIA CONFIDENTIAL TREATMENT REQUESTED 

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

**10. Indemnification**

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to WMATA Transit Facilities located under the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

**11. Insurance Requirements**

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

**12. Non-Binding Intent**

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.



FOIA CONFIDENTIAL TREATMENT REQUESTED

Agreed this _____ day of _____, 2009, 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

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Approve Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

**Executive Session**

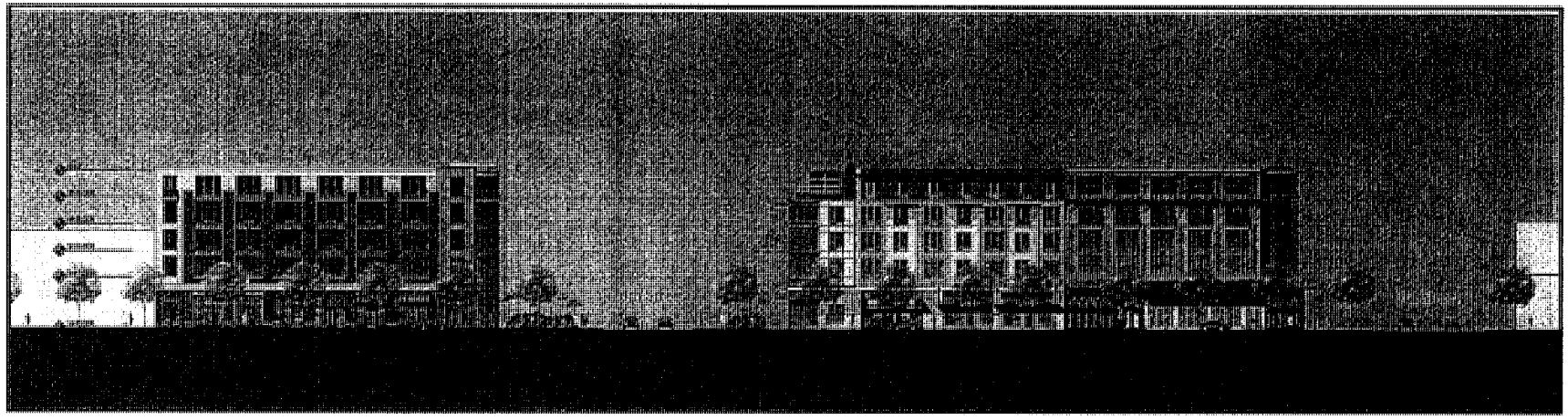
**Planning, Development & Real Estate Committee**

**November 5, 2009**

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Obtain approval of a term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site and authorization for staff to negotiate a joint development agreement and lease.





WMATA-INV 001805

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

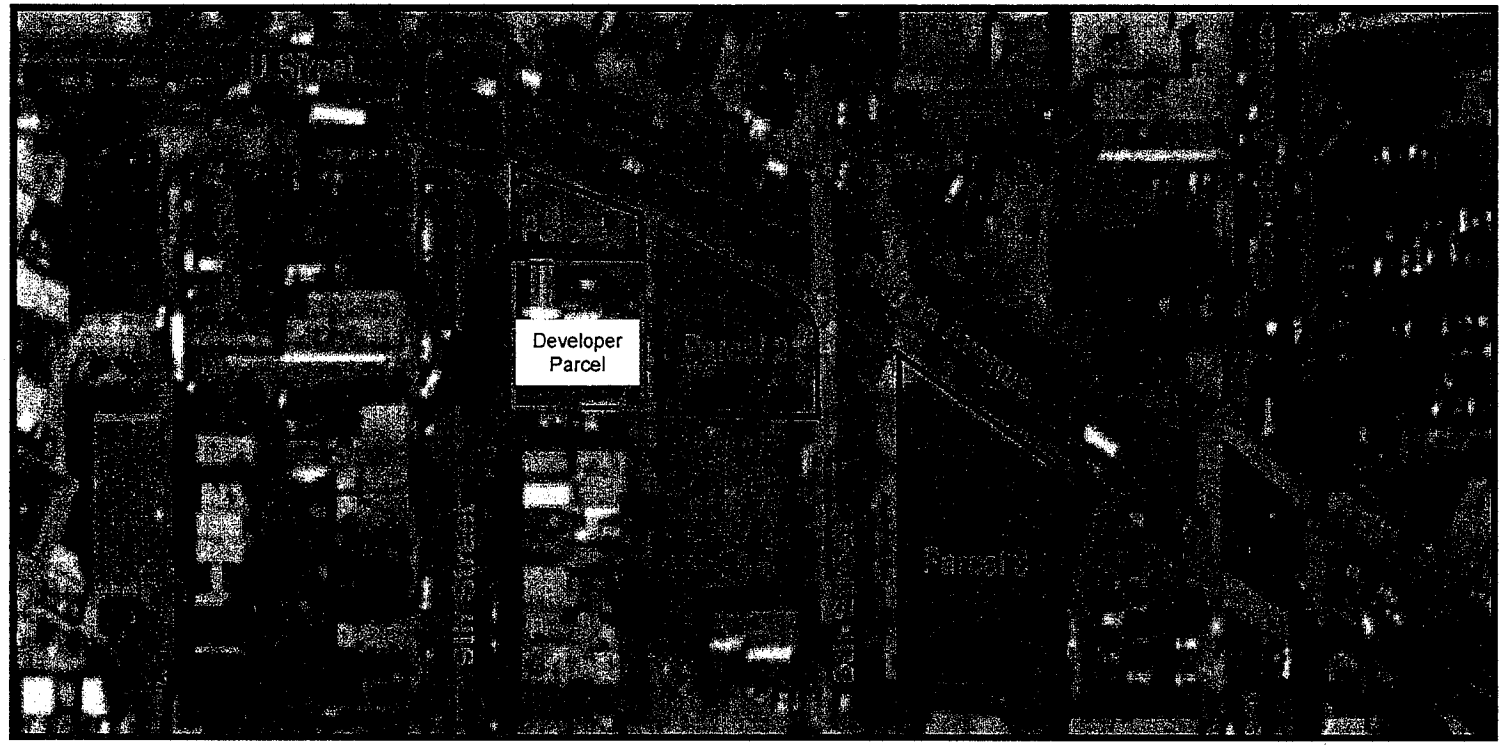
| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate a revised term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate a term sheet and joint development agreement. |



WMATA-INV 001806

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action




Developer will combine Metro's 3 parcels with developer-controlled adjacent parcel to create a unified project.



WMATA-INV 001807

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

- Term sheet reflects current appraised value, which includes adjustments for inclusion of affordable housing under mandatory Inclusionary Zoning and extraordinary cost of constructing facilities over Metro tunnels
- After negotiation, staff will request Board approval of an agreement by December 2009



WMATA-INV 001808

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

Approve a term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site and authorize staff to negotiate a joint development agreement and lease.



WMATA-INV 001809

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100527 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

ApproveTerm Sheet to Lease Shaw-Howard/FL Ave Site

**PURPOSE:**

Approve a term sheet for the lease of the Shaw-Howard U./Florida Avenue joint development site to the development team of Banneker Ventures, LLC, and Banc of America Community Development Corporation and authorize negotiation of a joint development agreement and lease.

**DESCRIPTION:**

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project will feature ground floor retail along Florida Avenue, with four stories of housing above, for a base amount of 100,000 sf. If additional density can be achieved, Metro will be compensated. At a minimum, the project will include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built); however, the development team is exploring financing to extend affordability.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated a term sheet for a 60-year lease of the site with an option to renew for an additional 39 years at market terms.

The development team has gained control of adjacent land on 9th Street and proposes to combine that land with the two Metro parcels that are located between 8th and 9th streets. The combined site will allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. Metro will receive 79% of the value of any additional bonus density granted bythe District of Columbia; this

represents Metro`s share of the combined parcels` size.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities will be reserved in perpetuity for Metro.

The negotiated joint development agreement and lease will be brought to the Board for approval within the extension period which ends in December 2009.

**FUNDING IMPACT:**

Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

Approve a term sheet for the lease of the Shaw-Howard/Florida Avenue joint development site to the development team of Banneker Ventures, LLC, and Banc of America Community Development Corporation and authorize negotiation of a joint development agreement and lease.

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100538 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Approve Term Sheet To Lease ShawHoward/FL Ave Site

**PURPOSE:**

To obtain Board approval of a term sheet for lease of the Shaw-Howard U./Florida Avenue joint development site to the development team of Banneker Ventures, LLC and Banc of America Community Development Corporation and authorization to negotiate a joint development agreement and lease.

**DESCRIPTION:**

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet and negotiate an agreement, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site. The site consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project will include ground floor retail along Florida Avenue, with four stories of housing above, for a base amount of 100,000 sf on the Metro site. At a minimum, the project will include affordable housing required by the District of Columbia's new mandatory Inclusionary Zoning regulations (approximately 8% of the housing that is built); however the development team is exploring financing to extend affordability.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated a term sheet for a 60-year lease of the site with an option to renew for an additional 39 years at market terms.

The development team has gained control of adjacent land on 9th Street and proposes to combine that land with the two Metro parcels that are located between 8th and 9th streets. The combined site will allow potentially greater density on Metro's land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. Metro will receive 79% of the value of any additional bonus density granted by the District of Columbia; this

represents Metro`s share of the combined parcels` size.

Metro facilities on the site consist of two underground rail tunnnels and a vent shaft opening to 8th Street. These facilities will be reserved for Metro.

The negotiated joint development agreement and lease will be brought to the Board for approval within the extension period which ends in December 2009.

**FUNDING IMPACT:**

Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

Approve a term sheet for lease of the Shaw-Howard U./Florida Avenue joint development site to the development team of Banneker Ventures, LLC and Banc of America Community Development Corporation and authorize negotiation of a joint development agreement and lease.

7.2 DEVELOPER shall make a lump sum Initial Capitalized Lease Payment of $x,xxx,xxx at Closing. This payment represents the entire rent for the project for the 60-year base term of the lease as long as the original HUD insurance for the project remains in effect. Upon termination of HUD insurance for the project, the property will be reappraised through the three-appraiser method and rent adjusted accordingly, including taking into account appropriate additional annual rent payments and escalations at 3% per annum. In no event will any part of the Initial Capitalized Lease Payment be refunded.

7.3 Participation Rent at 1.5% of Effective Gross Income shall be paid starting 45 months after the Effective Date, with 1% unsubordinated and .5% paid in accordance with HUD requirements. Any Participation Rent not paid in a given year shall accumulate with interest at 5.8 % and be paid from next annual cash flow or from Capital Event proceeds prior to any return on or return of equity. At all times during the Initial Lease Term, the debt service coverage ratio on any senior loans, other than HUD-insured senior loans or public subsidies, shall be no less than 1.2%

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.)

Status: The developer has the JDA plus items 1-4 drafted by WMATA. The developer is in the process of drafting a co-tenancy agreement, which would not have been necessary under a sale. The other items, with a sales agreement instead of a lease, would be needed under either type of disposition.

Our counsel and Banneker's have agreed that once we have agreed to a Term Sheet, they will mark up the JDA and items 1-4 (note: Banneker has previously provided provisional comments to the JDA, but not the other documents). We are uncertain of the timing by Banneker's counsel to send us the initial draft of item 5.

Banneker's counsel would like to draft a new lease based on the Rhode Island Ave lease, instead of working with the lease draft we sent to Banneker. However, our counsel does not agree because that is a different situation. So that is an impasse currently.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Amended Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

Executive Session

Planning, Development and Real Estate Committee

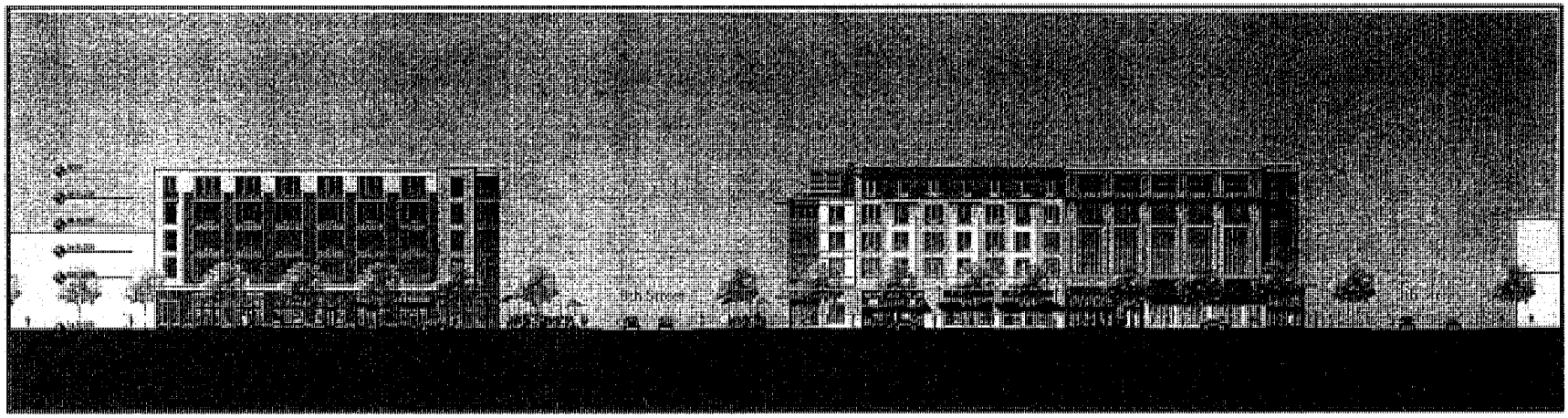
November 19, 2009

WMATA-INV 001816

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Obtain Board action on an amended term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site, and obtain Board direction on next steps.



WMATA-INV 001817

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate an amended term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate an amended term sheet and joint development agreement. |

WMATA-INV 001818

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

Developer proposes to combine three Metro parcels with an adjacent, developer-controlled parcel.

WMATA-INV 001819

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

- Term sheet reflects current appraised value, and reflects a mandatory Inclusionary Zoning adjustment for affordable housing, and extraordinary costs of constructing facilities over Metro tunnels
- Additional revenues to Metro may be generated through increased density, and through participation in gross revenue and capital events
- Current land values could appreciate significantly upon market recovery

WMATA-INV 001820

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Status

- Decision on transaction timing is a policy matter for Board deliberation and action
- Consider amended term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site and provide staff direction on whether to move forward with negotiation of joint development agreement and lease.

FOIA CONFIDENTIAL TREATMENT REQUESTED

| CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2009 | |
|---|---|
| **CATEGORY** | **Developer: The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principals are Banneker Ventures LLC, and Banc of America Community Development Corporation.** |
| Site Description | The 28,376 sf site consists of three separate parcels on the south side of Florida Avenue, NW between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA. WMATA site to be combined with Developer's adjacent 7,720 sf parcels on 9th St. |
| Developer's Proposal | 100,711 base sf on WMATA site with @ 10,000 sf ground floor retail and housing above. Approximately 8% of housing to be affordable at maximum 80% AMI. Total development on combined sites currently estimated @ 157,000 sf following proposed alley closing and site consolidation. WMATA to receive @ 79% of value of total project. |
| Proposed Contract | Lease - 60 years with option to renew for an additional 39 years at market rate by appraisal |
| Construction Schedule | Lease Closing: 600 days after development agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Performance Security | $150,000 |
| Option Fee | $!00,000 upon Term Sheet approval (already paid) |
| Pre-Closing Rent | $50,000/year upon development agreement execution, $65,000 in second year and $80,000 thereafter |
| Additional Density | $74.55/FAR sf with $46.59/FAR sf deduction for Inclusionary Zoning affordable housing. After completion of current project, by appraisal. |
| Capitalized Lease Payment | $2,050,000 paid at Closing |
| Participating Rent | 1.5% of Effective Gross Income |
| Base Rent Revaluation | None until HUD insurance is no longer in force; thereafter by appraisal |
| Capital Event Participation | 10% of net proceeds |
| Appraised Market Value<br>$2,050,000 Capitalized Lease Value<br><br>Appraisal by Harps & Harps 8/09 and Integra Realty Resources 10/09 | NPV to WMATA over Term of Lease<br>$TBD - will be Pre-Closing Rent ( yr. 1 $50k, yr. 2 $65k) + Capitalized Lease Payment (600 days after development agreement execution) |

Shaw-Howard FL AVE Confidential 2009.rtf

WMATA-INV 001822

FOIA CONFIDENTIAL TREATMENT REQUESTED

Shaw-Howard FL AVE Confidential 2009.rtf

WMATA-INV 001823

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Approve Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

**Executive Session**

**Planning, Development & Real Estate Committee**

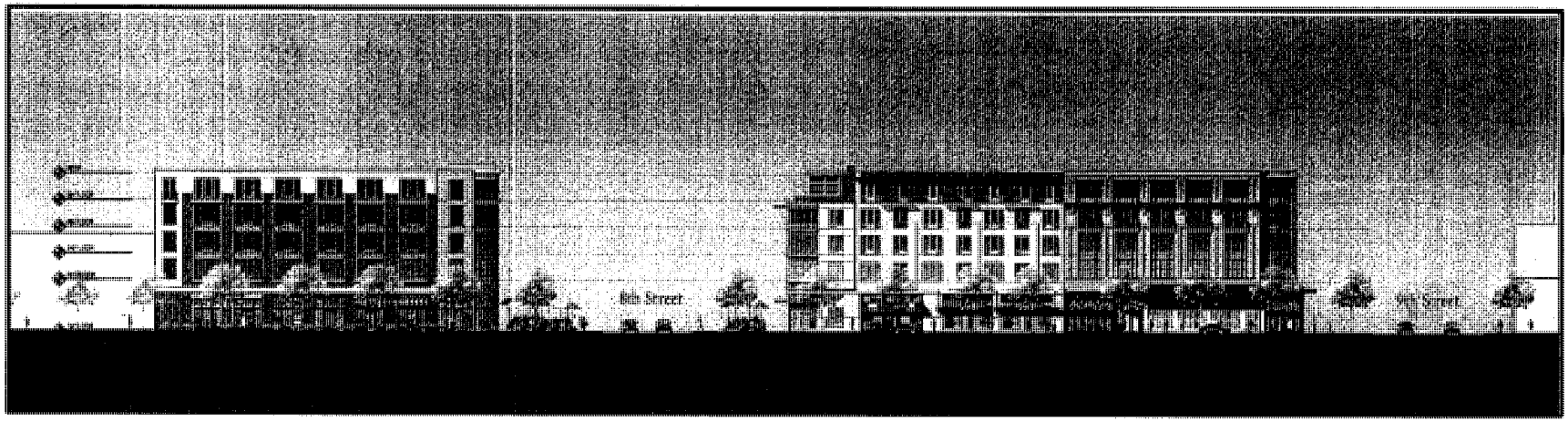
**November 5, 2009**

WMATA-INV 001824

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Obtain approval of a term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site and authorization for staff to negotiate a joint development agreement and lease.





WMATA-INV 001825

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate a revised term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate a term sheet and joint development agreement. |



WMATA-INV 001826

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

Developer will combine Metro's 3 parcels with developer-controlled adjacent parcel to create a unified project.



WMATA-INV 001827

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

- Term sheet reflects current appraised value, which includes adjustments for inclusion of affordable housing under mandatory Inclusionary Zoning and extraordinary cost of constructing facilities over Metro tunnels
- After negotiation, staff will request Board approval of an agreement by December 2009



WMATA-INV 001828

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

Approve a term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site and authorize staff to negotiate a joint development agreement and lease.



WMATA-INV 001829

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Approve Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

**Executive Session**

**Planning, Development & Real Estate Committee**

**November 5, 2009**

WMATA-INV 001830

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Obtain approval of a term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site and authorization for staff to negotiate a joint development agreement and lease.

WMATA-INV 001831

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

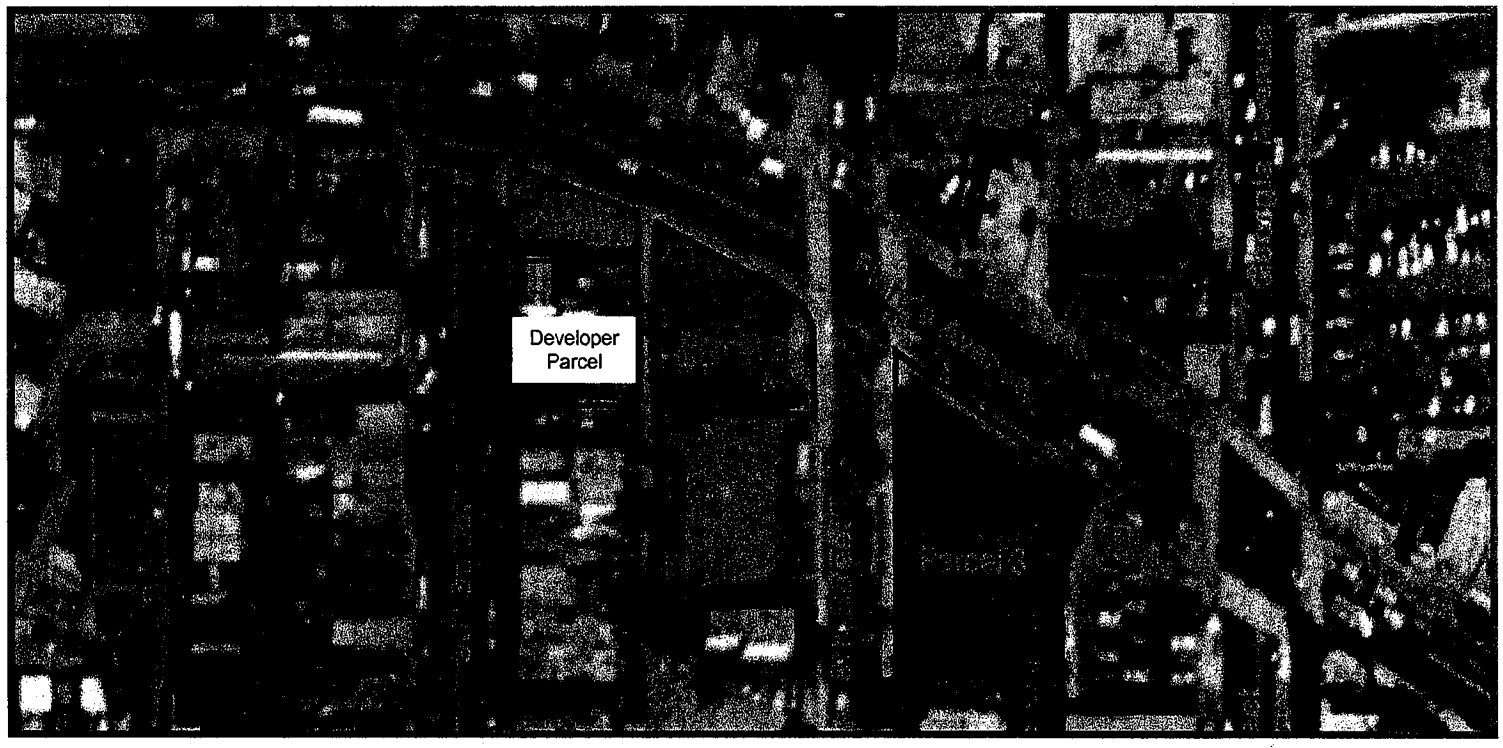
| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate a revised term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate a term sheet and joint development agreement. |



WMATA-INV 001832

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action




Developer will combine Metro's 3 parcels with developer-controlled adjacent parcel to create a unified project.



WMATA-INV 001833

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

- Term sheet reflects current appraised value, which includes adjustments for inclusion of affordable housing under mandatory Inclusionary Zoning and extraordinary cost of constructing facilities over Metro tunnels
- After negotiation, staff will request Board approval of an agreement by December 2009



WMATA-INV 001834

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

Approve a term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site and authorize staff to negotiate a joint development agreement and lease.



WMATA-INV 001835

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100527 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

ApproveTerm Sheet to Lease Shaw-Howard/FL Ave Site

**PURPOSE:**

Approve a term sheet for the lease of the Shaw-Howard U./Florida Avenue joint development site to the development team of Banneker Ventures, LLC, and Banc of America Community Development Corporation and authorize negotiation of a joint development agreement and lease.

**DESCRIPTION:**

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project will feature ground floor retail along Florida Avenue, with four stories of housing above, for a base amount of 100,000 sf. If additional density can be achieved, Metro will be compensated. At a minimum, the project will include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built); however, the development team is exploring financing to extend affordability.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated a term sheet for a 60-year lease of the site with an option to renew for an additional 39 years at market terms.

The development team has gained control of adjacent land on 9th Street and proposes to combine that land with the two Metro parcels that are located between 8th and 9th streets. The combined site will allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. Metro will receive 79% of the value of any additional bonus density granted bythe District of Columbia; this

represents Metro`s share of the combined parcels` size.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities will be reserved in perpetuity for Metro.

The negotiated joint development agreement and lease will be brought to the Board for approval within the extension period which ends in December 2009.

**FUNDING IMPACT:**

Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

Approve a term sheet for the lease of the Shaw-Howard/Florida Avenue joint development site to the development team of Banneker Ventures, LLC, and Banc of America Community Development Corporation and authorize negotiation of a joint development agreement and lease.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Approve Joint Development Agreement and Lease for Shaw-Howard U./Florida Avenue Joint Development Site

**Executive Session**

**Planning, Development & Real Estate Committee**

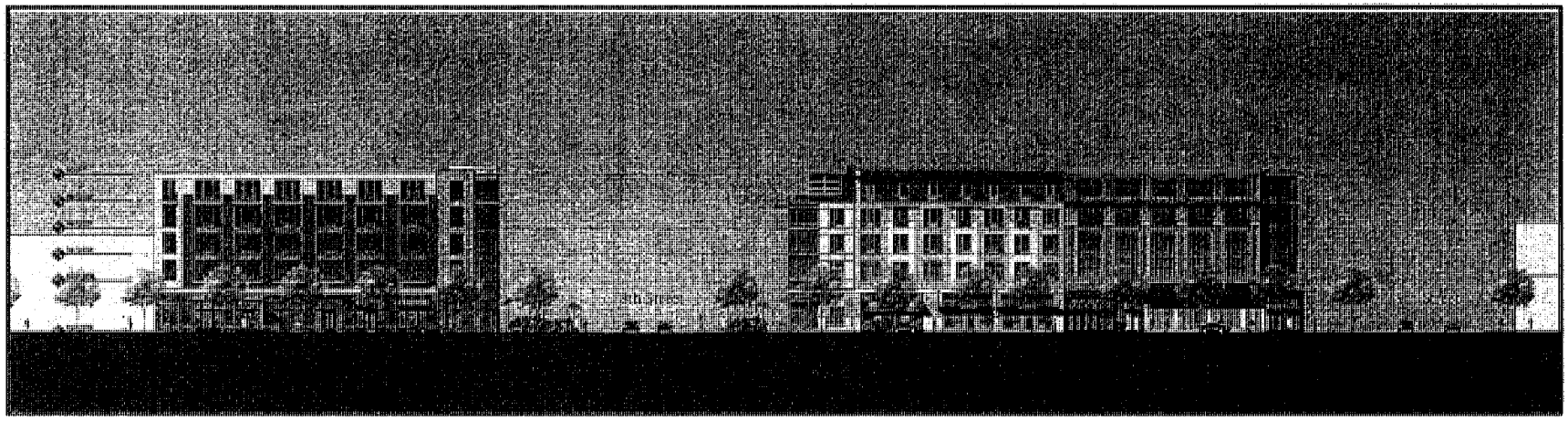
**December 3, 2009**

WMATA-INV 001838

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Obtain approval of a joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site.





WMATA-INV 001839

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

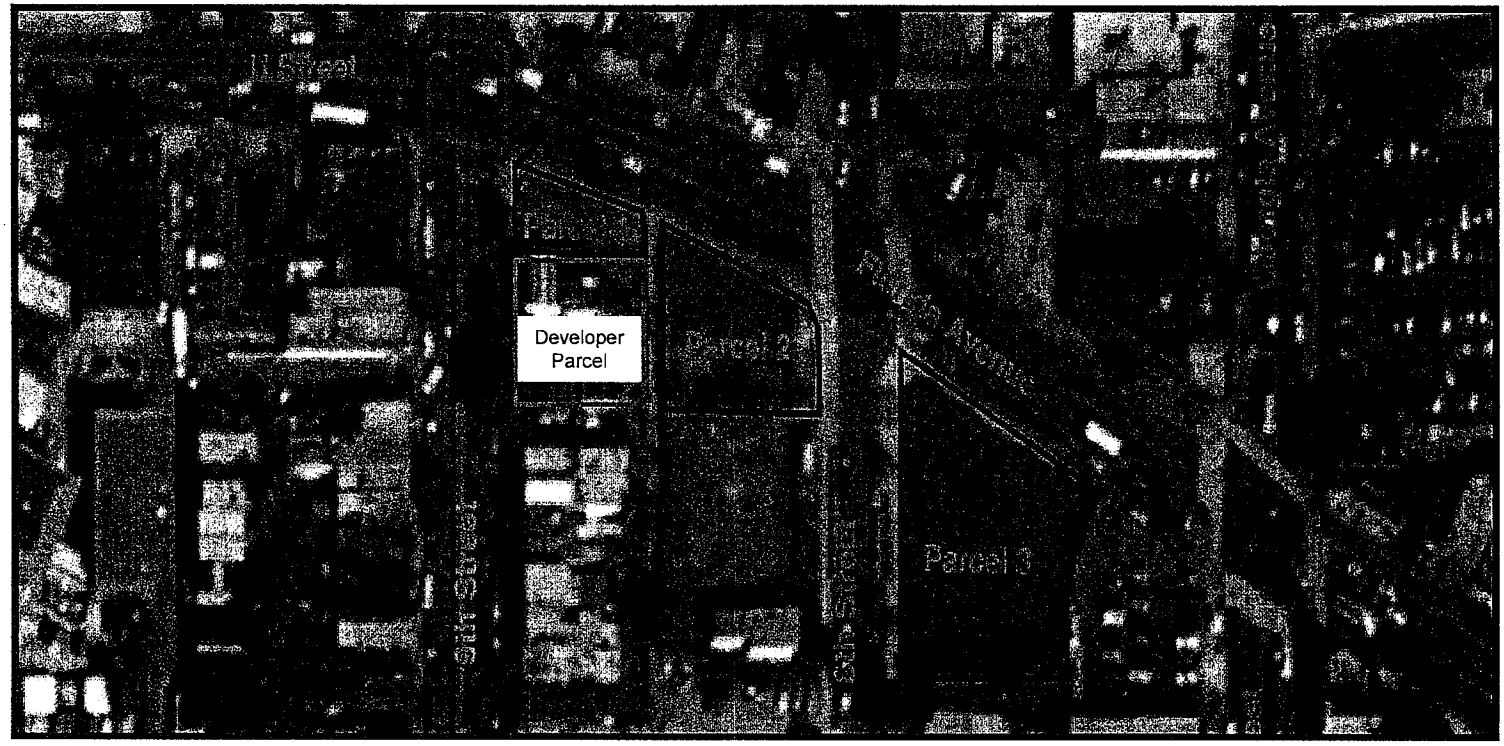
| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included. |
| April 2009 | After change of development team members, Board approved extension of period to negotiate an amended term sheet with affordable housing included. |
| September 2009 | Board approved extension to December 2009 to negotiate an amended term sheet and joint development agreement. |
| November 2009 | Board approved amended term sheet. |



WMATA-INV 001840

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Project




Developer will combine Metro's 3 parcels with developer-controlled adjacent parcel to create a unified retail and residential project.



WMATA-INV 001841

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

- Joint development agreement and lease reflect amended term sheet approved in November 2009
- 99-year lease with periodic rent adjustment
- Co-tenancy with targeted Metro decision-making authority



WMATA-INV 001842

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

Approve a joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site.



WMATA-INV 001843

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100538 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Approve JDA and Lease for ShawHoward/FL Ave Site

**PURPOSE:**

To obtain Board approval of a Joint Development Agreement and lease for the Shaw-Howard U./Florida Avenue joint development site to a development team led by Banneker Ventures, LLC.

**DESCRIPTION:**

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet and negotiate a Joint Development Agreement and lease, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site. The site consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project will include ground floor retail along Florida Avenue, with four stories of housing above, for a base amount of 100,000 sf on the Metro site. At a minimum, the project will include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning regulations (approximately 8% of the housing that is built); however the development team is exploring financing to extend affordability.

The development team has gained control of adjacent land on 9th Street and proposes to combine that land with the two Metro parcels that are located between 8th and 9th streets. The combined site will allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. Metro will receive 79% of the value of any additional bonus density granted by the District of Columbia; this represents Metro`s share of the combined parcels` size.

One of the project`s proposed buildings will be built on land owned by Metro and the development team. The Joint Development Agreement and lease include a co-tenancy agreement thatprovides Metro with a majority role in any decision-making affecting such property in the event of a default.

Metro facilities on the site consist of two underground rail tunnnels and a vent shaft opening to 8th Street. These facilities will be reserved for Metro.

Staff and Banneker Ventures, LLC, negotiated a term sheet for a 99-year lease of the site with periodic rent revaluation. The Board approved the term sheet on November 19, 2009. The Joint Development Agreement and lease conform to the term sheet.

**FUNDING IMPACT:**

Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

Approve a Joint Development Agreement and lease for the Shaw-Howard U./Florida Avenue joint development site to a development team led by Banneker Ventures, LLC.

FOIA CONFIDENTIAL TREATMENT REQUESTED

COMPARISON OF TERMS - SHAW-HOWARD SITE

| | Original Terms (2008) | Revised Terms (2009) |
|---|---|---|
| Developer: | A LLC to be formed by Banneker Ventures, the District Group, LLC & Metropolis Development Co. | The Jazz at Florida Avenue, a District of Columbia LLC, whose initial principals are expected to be Banneker Ventures LLC & Banc of America Community Development Corporation |
| Site Description: | The 28,376 SF site consists of 3 separate parcels on the south side of Florida Ave. between 7th & 9th Streets, NW in Washington, DC. The parcels are undeveloped & were used for construction of the Green Line tunnel, which lies partially beneath each parcel. The sites are no longer needed by WMATA. | Same, except that the WMATA parcels are expected to be combined with the developer's adjacent 7,720 SF parcels on 9th St. Developer intends to construct a building which will straddle the WMATA parcels and the adjacent parcels |
| Developer's Proposal: | 104 apartments with 11,750 SF of ground floor retail-arts uses totaling 130,000 SF of above-grade development | 100,711 SF attributed to WMATA site consisting of 10,000 SF of ground floor retail-arts with housing above. At least 8% of housing is expected to be affordable at maximum 80% AMI per District IZ regs. The total development for the combined sites is estimated at 157,000 SF following an alley closing & site consolidation. WMATA is estimated to receive 79% of the value of the combined project. |

*Terms & Conditions of Proposed Ground Lease:*

| | | |
|---|---|---|
| Lease Term: | 60 years | 99 years |
| Lease Closing: | 20 months after development agreement execution | 600 days after development agreement execution |
| Const. Completion | 18 months after lease closing | Same |
| Performance Security: | $250,000 | $250,000 |

WMATA-INV 001846

FOIA CONFIDENTIAL TREATMENT REQUESTED

*Terms & Conditions of Proposed Ground Lease (Continued):*

| | | |
|---|---|---|
| Option Fee: | $100,000 upon Term Sheet approval | Same |
| Pre-Closing Rent: | $100,000/year upon development agreement rising to $130,000/year | $50,000 for 1st year after development agreement; $65,000 for 2nd year; $80,000/year thereafter |
| Additional Density: | $4.20/year rent for additional FAR prior to closing; To be determined by appraisal after closing. | $46.59/FAR with $74.55/FAR deduction for any added Inclusionary Zoning (IZ) affordable housing prior to closing; To be determined by appraisal after closing. |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date | $2,050,000 capitalized lease payment to be paid at closing less Additional Costs Credit TBD |
| Base Rent Escalation: | 1.5%/year for 1st 10 years, then 3%/year thereafter | None |
| Base Rent Revaluation: | Every 10 years | On 60th year, property is appraised to determine monthly rent; monthly rent escalates 3% every year; monthly rent is re-set every 10 years via appraisal. |
| Participating Rent: | None | 1.5% of effective gross income |
| Capital Event Participation: | 10% of net proceeds | 2% of gross for sale or assignment & 2% of adjusted gross on refinance |
| Market Valuation: | $14,000,000 NPV of Developer's offer<br>$7,500,000 Appraised Land Value<br>$525,000 Base 1st Year Rent<br>(Appraisal by Integra in 8/07) | $2,050,000 NPV of Developer's offer<br>$2,050,000 Capitalized Lease Value for first 60 years<br>(Appraised by Harps & Harps in 8/09<br>& Integra in 10/09) |

WMATA-INV 001847

EXTEND SHAW HOWARD NEG. PD 9109

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001848

Washington Metropolitan Area Transit Authority

# Agenda
## Planning, Development and Real Estate Committee
## September 10, 2009
## 9 a.m.

**I. Call to Order**

**II. Motion for Executive Session**
A. Amended Sale of Arlington Bus Garage Property (N. Bottigheimer)
B. Extension of Negotiating Period for Shaw-Howard University Station/Florida Avenue Parcels (N. Bottigheimer)

**III. Reconvene in Public Session**

**IV. Approval of Agenda**

**V. Approval of Minutes of June 11, 2009**

**VI. Action Items**
A. Action on Matters Arising from Executive Session
B. Initiate New On-Call A-E Contracts (J. Requa)
C. Initiate First Orange/Blue Line System Rehabilitation Contract (J. Requa)
D. Initiate Rail Yard Infrastructure Rehabilitation Contract (J. Requa)
E. Approval of the Public Hearing Staff Report for Cinder Bed Road Bus Garage (J. Requa)

**VII. Subsequent Planning, Development and Real Estate Committee Agendas**

**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

Jund?

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Extend Negotiation Period for Shaw-Howard U./Florida Avenue Joint Development Site

*Presented to the Board of Directors*

**Executive Session**

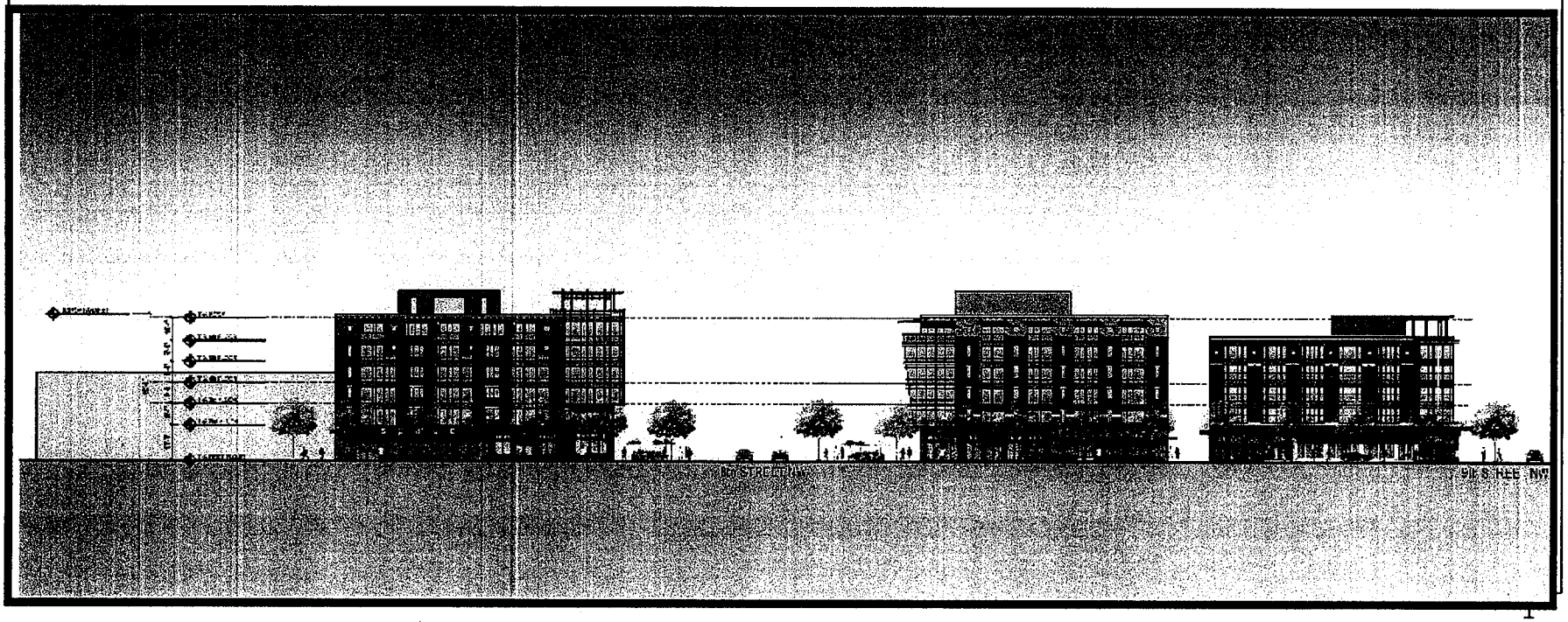
**Planning, Development & Real Estate Committee**

**September 10, 2009**

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

**Approve a 120-day extension to December 2009 for negotiating a term sheet and joint development agreement for the Shaw-Howard U./Florida Avenue joint development site.**





FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001851

FOIA CONFIDENTIAL TREATMENT REQUESTED

metro

# Prior Board Action

**June 2008** Board Approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included

**April 2009** After change of development team members Board approved extension of period to negotiate a revised term sheet with affordable housing included



WMATA-INV 001852

FOIA CONFIDENTIAL TREATMENT REQUESTED

metro

# Basis for Proposed Action

**Extension to December 2009 provides time for updated appraisal per FTA requirements:**

- **Appraisal will reflect new DC Inclusionary Zoning regulations for affordable housing**
- **Appraisal will inform term sheet negotiations**
- **Extra time will allow conclusion of term sheet and joint development agreement negotiations**



WMATA-INV 001853

FOIA CONFIDENTIAL TREATMENT REQUESTED

metro

# Recommendation

**Approve a 120-day extension to December 2009 for negotiating a term sheet and joint development agreement for the Shaw-Howard U./Florida Avenue joint development site.**



WMATA-INV 001854

Final ?

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Extend Negotiation Period for Shaw-Howard U./Florida Avenue Joint Development Site

*Presented to the Board of Directors*

Executive Session

Planning, Development & Real Estate Committee

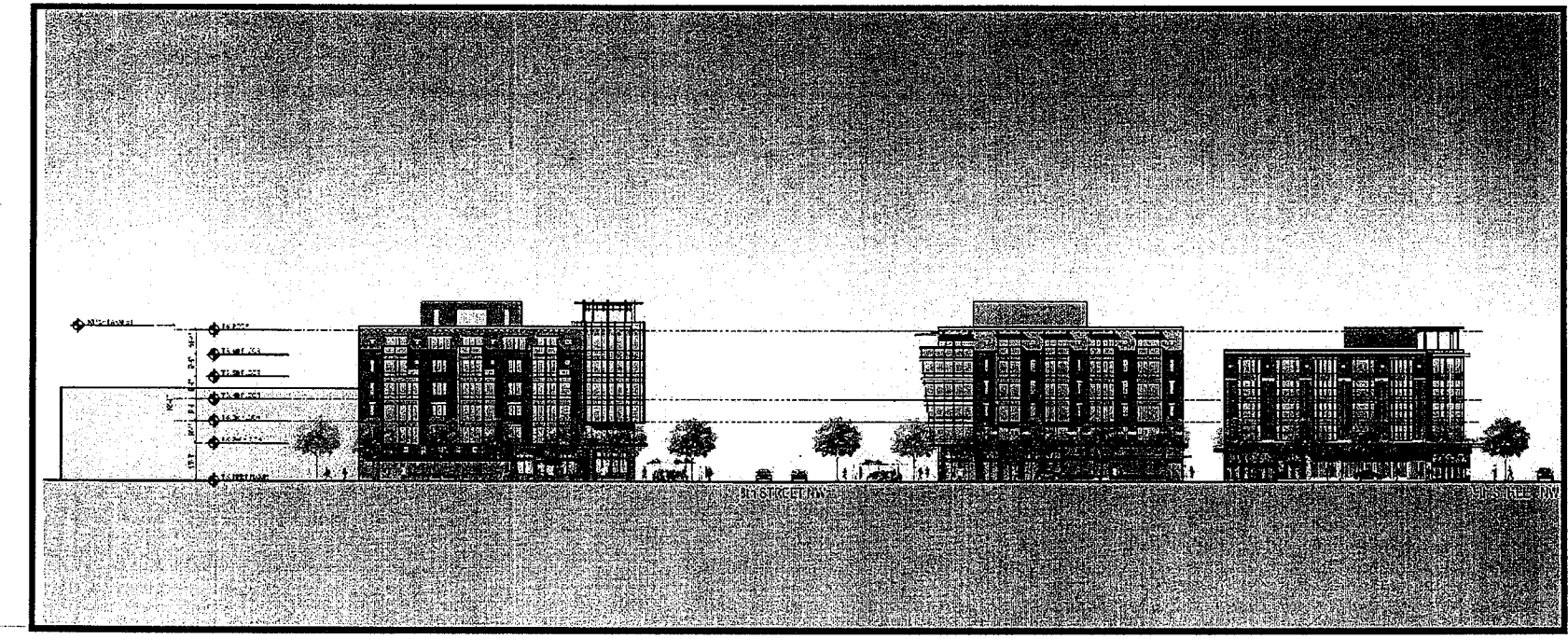
September 10, 2009

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

**Approve a 120-day extension to December 2009 for negotiating a term sheet and joint development agreement for the Shaw-Howard U./Florida Avenue joint development site.**





WMATA-INV 001856

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

| | |
|---|---|
| June 2008 | Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included |
| April 2009 | After change of development team members Board approved extension of negotiation period to negotiate a revised term sheet with affordable housing included |
| Extension to December 2009 | Provides time for updated appraisal per FTA requirements<br>• Appraisal will reflect new DC Inclusionary Zoning regulations for affordable housing<br>• Appraisal will inform term sheet negotiations<br>• More time will allow conclusion of term sheet and joint development agreement negotiations |



WMATA-INV 001857

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

**Approve a 120-day extension to December 2009 for negotiating a term sheet and joint development agreement for the Shaw-Howard U./Florida Avenue joint development site.**



WMATA-INV 001858

FOIA CONFIDENTIAL TREATMENT REQUESTED

CONTRACT NO. 3Z812Q-016

| | | | |
|---|---|---|---|
| DESIGNED N/A | N/A DATE | | |
| DRAWN N/A | N/A DATE | | |
| CHECKED N/A | N/A DATE | | |
| APPROVED N/A | N/A DATE | | |

PLOT DATE: 10/31/03
PROJECT PATH: C:\PROJECTS\E4-F5_TASK16_3Z812Q\DWG\E4-F5.dwg

| REFERENCE DRAWINGS | | REVISIONS | | |
|---|---|---|---|---|
| NUMBER | DESCRIPTION | DATE | BY | DESCRIPTION |
| | WMATA SURVEY REQUEST: N/A | | | |
| | FIELD SURVEY DATE: N/A | | | |

metro

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SUBMITTED BY VIKA

ENGINEERS PLANNERS LANDSCAPE ARCHITECTS & SURVEYORS GPS SERVICES
VIKA INCORPORATED
10251 GERRATT BLVD., SUITE 200 • GAITHERSBURG, MD 20879
(301) 948-4100 FAX (301) 948-2242

APPROVED

# SYSTEMWIDE UTILITY OUTGRANTS

## GREENBELT ROUTE

## SECTION E1 – STA 54+00 TO STA 64+00

SCALE 20 0 20 40

DRAWING NO. E01_54+00-54+00

SHEET 006

WMATA-INV 001859

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100426 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Extend Negotiating Period for Shaw-Howard U/FL Ave

**PURPOSE:**

Extend the negotiating period for the Shaw-Howard U./Florida Avenue joint development site by 120 days, from August 2009, to allow negotiation of a term sheet and joint development agreement to be brought to the Board in December 2009.

**DESCRIPTION:**

In April 2009, the Board approved a 120-day period to renegotiate a term sheet for the Shaw-Howard U./Florida Avenue joint development site, which consists of three separate parcels totaling 28,892 sf located between 7th and 9th streets NW in Washington, DC. The development team, led by Banneker Ventures, LLC, proposed to lease the site from Metro for 60 years and build a minimum of 104 housing units over ground floor retail space of approximately 11,750 sf.

Upon approving the development team in June 2008, the Board requested that an affordable housing component be included in the project. The development team then amended its financial offer to Metro to include a substantial reduction in rent to reflect its affordable housing component.

The extension approved in April 2009 was to allow for conclusion of term sheet negotiations that would take into account the affordable housing in the project; however, upon review, it became clear that it was also necessary to update the August 2007 third party appraisal for the site to meet Federal Transit Administration requirements for timeliness. The updated appraisal will reflect new District of Columbia mandatory Inclusionary Zoning regulations for affordable housing scheduled to take effect in mid-August 2009 and examine whether the developer's recent assertion that the maximum number of housing units that can be accommodated on the site is less than the previously proposed 104 is valid.

An appraiser has been engaged, but will not complete its assignment in time for

conclusion of term sheet negotiations and a Board decision in September 2009. Accordingly, and in light of the fact that the development team and staff have been reviewing a draft joint development agreement, staff proposes instead to conclude negotiations on the term sheet and joint development agreement and bring both to the Board for its consideration in December 2009.

**FUNDING IMPACT:**

This action will have no immediate impact on funding. Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

Extend the negotiation period for the Shaw-Howard U./Florida Avenue joint development site by 120 days to allow a proposed term sheet and joint development agreement to be brought to the Board in December 2009.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Jrnl ?

metro

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Extend Negotiation Period for Shaw-Howard U./Florida Avenue Joint Development Site

**Executive Session**

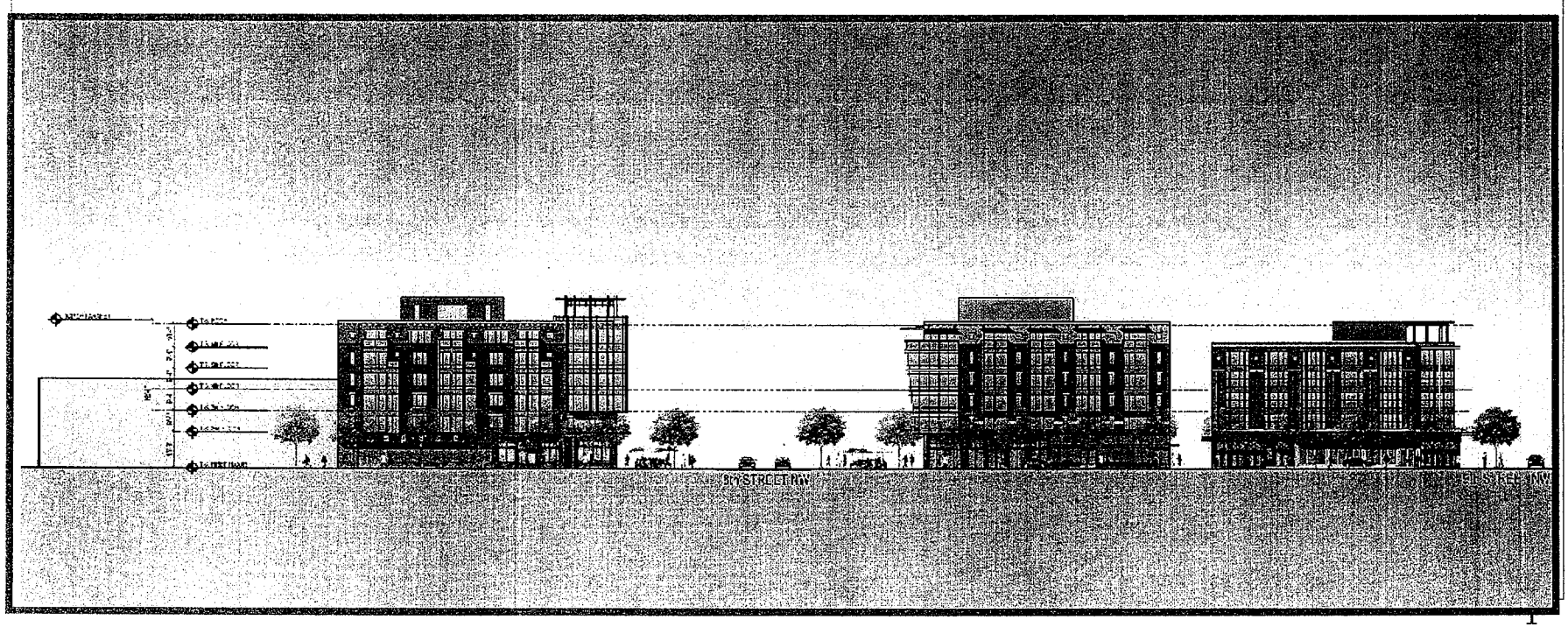
**Planning, Development & Real Estate Committee**

**September 10, 2009**

WMATA-INV 001862

# Purpose

**Approve a 120-day extension to December 2009 for negotiating a term sheet and joint development agreement for the Shaw-Howard U./Florida Avenue joint development site.**






FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001863

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Prior Board Action

**June 2008** Board Approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included

**April 2009** After change of development team members Board approved extension of period to negotiate a revised term sheet with affordable housing included



WMATA-INV 001864

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Basis for Proposed Action

**Extension to December 2009 provides time for updated appraisal per FTA requirements:**

- **Appraisal will reflect new DC Inclusionary Zoning regulations for affordable housing**
- **Appraisal will inform term sheet negotiations**
- **Extra time will allow conclusion of term sheet and joint development agreement negotiations**



WMATA-INV 001865

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

**Approve a 120-day extension to December 2009 for negotiating a term sheet and joint development agreement for the Shaw-Howard U./Florida Avenue joint development site.**



WMATA-INV 001866

**Shaw Howard/Florida Avenue 2009 Time Line**

Background Note: In June 2008, the Board selects the Banneker development team to build a residential/retail project at the three Florida Avenue sites; authorizes staff to negotiate a joint development agreement (jda) which is normally brought to the Board for approval within 180 days; and calls for the inclusion of an affordable housing component in the project. Affordable is not defined. A draft jda and a draft lease are delivered to Banneker at the beginning of October 2008.

***January-February***: Though it provides pro formas with different rent scenarios starting in October 2008, Banneker basically requests an @ 50% rent reduction from that at Developer Selection. The ostensible reason is a recommendation in the Council-adopted "Duke" small area plan that publicly owned sites have 20-30 % affordable housing. "Affordable" is not defined, and Banneker proposes 20% of units at 50% of median income, requiring steep rent decreases absent any other subsidy. Since, the steep reduction is at odds with past joint development practice (maximum 15% reduction in rents), staff researches affordable housing policies of local jurisdictions and prepares a proposed WMATA affordable housing policy for all jurisdictions to be presented to the Board in March.

***March:*** The PD&RE Committee indicates that a case by case review of affordable housing is preferred over an agency-wide policy. Further, owing to Banneker's informing WMATA in late February that its construction partner, Metropolis Development, had left the team, the Board instructed staff to research the development/construction capability of the newly announced substitute partner, Bank of America Community Development Corporation (BACDC).

***April:*** Staff researches BACDC and concludes that it will be a competent construction/development partner. It requests an additional 120 days to renegotiate a term sheet, which the Board approves.

***May***: Staff continues to negotiate and narrow differences on term sheet matters that do not involve rent. A May pro forma from Banneker is compared to WMATA's August 2007 outside appraisal for the site and appears to result in an acceptable net present value given adjustments by WMATA's chief appraiser to account for 20% affordable housing and today's lower market values. Staff is directed to continue negotiating and to obtain an updated outside appraisal required by FTA for a project of this scope.

***June-July:*** The appraisal is to take into account not only the Duke plan but also the city's new mandatory Inclusionary Zoning regulations scheduled to take effect in mid-August or shortly thereafter. The appraiser who prepared the 2007 appraisal is initially responsive but fails to provide a proposal. It proves difficult to find an alternative appraiser familiar with Florida Avenue market area and capable of dealing with affordable housing issues and build-out issues on site since the developer also contends its stick built project will be more economically feasible at almost 10% less than the allowable FAR. On July 14, Harps & Harps is engaged to deliver a draft appraisal by the end of July and a final report by mid-August.

***August:*** Staff proposes to prepare in July and circulate a MEAD for Board approval in September requesting an additional 120 days to negotiate not only a revised term sheet but also a jda for Board approval in December. To achieve this staff will need to finalize a jda (which COUN is currently revising to simpifly) and all exhibits including a lease (already prepared but which COUN is currently simplifying), along with WMATA easement reservations, covenants, a survey and metes and bounds descriptions and any lesser related legal documents. While the MEAD is circulating, WMATA staff and Banneker will

need to negotiate the term sheet by mid-August and the other jda and lease provisions in late August and September. Other items can be prepared/negotiated in October-November.

Caveats:

- It cannot be automatically assumed that rents will meet the new outside appraisal rent and our npv tests. An issue in the first selection was that, though npv was initially ok, rents proposed by the developer five years out were the same as those in the appraisal for year one. We made changes in the original term sheet to account for this (including taking out 10% workforce affordable housing). This is where additional city subsidies come into play if the 20% at 50% scenario continues to hold (loans, tax abatement) and, though Banneker has resisted in discussions dealing with our frequent suggestions to go this route, these are issues that are still to be resolved. Recently, Banneker balked at coming up with (committed) sources and uses of funds (didn't want to deal with WMATA requests any more) whereas BACDC understood that the Board needed to be assured on these matters.

- We need to figure out if it is feasible to combine our smallest parcel with properties they appear to control.

- If HUD housing insurance is used as anticipated (and as it was in PGP and will be in RI Ave) it limits some of our choices and will require some heavy thinking/negotiating. Hopefully, the earlier projects cleared most of the brush away but I anticipate Banneker attempting to take gold and leave WMATA with the dross. Not a lot new here but some developers are more reasonable.

- Banneker did not want to commit a lot of legal time and expense on the documents if we did not have a deal. I think that we can achieve enough by mid August to let their lawyers loose then if not before.

- Lastly, there are always unanticipated items that surface.

Also, note that Board members justified approving the 120-day extension in April in Board Member Graham's absence because it was for a term sheet only.

***September:*** Final lease and term sheet negotiations.

***October:*** Remaining documents preparation. MEAD preparation.

***November:*** Documentation finalization. MEAD circulation.

***December:*** PD&RE and Board approvals.

## Routing Status

| | |
|---|---|
| Status: | *This document is currently being routed for approval...* |
| Document: | MEAD(100426) Extend Negotiating Period for Shaw-Howard U/FL Ave |
| Routing Initiated: | 08/04/2009 10:36 am by ROSALYN DOGGETT (rdoggett@wmata.com) |

| Routing Level | Name | Approver/ Reviewer | Notified by email | Action | Date of Action | Comments |
|---|---|---|---|---|---|---|
| 1 | BOTTIGHEIMER, JOHN | Approver | 08/04/2009 10:36 am | Approved | 08/04/2009 04:00 pm | |
| | SEQUEIRA-CASTILLO, LOYDA | Reviewer | 08/04/2009 10:36 am | | No action is necessary | |
| 2 | MONEME, EMEKA | Approver | 08/04/2009 04:00 pm | Approved | 08/10/2009 03:25 pm | |
| 3 | OBORA, HEATHER | Approver | 08/10/2009 03:25 pm | Approved | 08/11/2009 08:17 am | |
| | GRISWOLD, RAYMOND | Approver | 08/10/2009 03:25 pm | Reassigned | 08/10/2009 03:25 pm | Alternate approver (HEATHER OBORA) was automatically assignec for this reviewer. |
| | KRUKOWSKI, CHAD | Approver | 08/10/2009 03:25 pm | Approved | 08/11/2009 09:54 am | |
| | NEVARES, JORGE | Reviewer | 08/10/2009 03:25 pm | | No action is necessary | |
| 4 | REQUA, JOHN | Approver | 08/11/2009 09:54 am | Approved | 08/11/2009 10:01 am | |
| | KISSAL, CAROL | Approver | 08/11/2009 09:54 am | Approved | 08/11/2009 11:33 am | |
| 5 | PENDING, COUNAPPROVAL | Approver | 08/11/2009 11:33 am | | *Awaiting approval...* | |
| 6 | FRANCIS, GERALD | Approver | | | | |
| 7 | SEQUEIRA-CASTILLO, LOYDA | Approver | | | | |
| | PANT, SHIVA | Approver | | | | |

**Agenda**
**Planning, Development and Real Estate Committee**
**September 10, 2009**
**9 a.m.**

**I. Call to Order**

**II. Motion for Executive Session**
A. Amended Sale of Arlington Bus Garage Property (N. Bottigheimer)
B. Extension of Negotiating Period for Shaw-Howard University Station/Florida Avenue Parcels (N. Bottigheimer)

**III. Reconvene in Public Session**

**IV. Approval of Agenda**

**V. Approval of Minutes of June 11, 2009**

**VI. Action Items**
A. Action on Matters Arising from Executive Session
B. Advertisement for New On-Call A-E Contracts (J. Requa)
C. Advertise Rail Yard Infrastructure Rehabilitation Contract (J. Requa)
D. Initiate First Orange/Blue Line System Rehabilitation Contract (J. Requa)
E. Approval of the Public Hearing Staff Report for Cinder Bed Road Bus Garage (J. Requa)
F. Leesburg Pike Metrobus Line Restructuring (M. Victoria)
G. Veirs Mill Road Metrobus Line Restructuring (M. Victoria)

**VII. Subsequent Planning, Development and Real Estate Committee Agendas**

**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

Washington Metropolitan Area Transit Authority

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100426 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Extend Negotiating Period for Shaw-Howard U/FL Ave

**PURPOSE:**

Extend the negotiating period for the Shaw-Howard U./Florida Avenue joint development site by 120 days, from August 2009, to allow negotiation of a term sheet and joint development agreement to be brought to the Board in December 2009.

**DESCRIPTION:**

In April 2009, the Board approved a 120-day period to renegotiate a term sheet for the Shaw-Howard U./Florida Avenue joint development site, which consists of three separate parcels totaling 28,892 sf located between 7th and 9th streets NW in Washington, DC. The development team, led by Banneker Ventures, LLC, proposed to lease the site from Metro for 60 years and build a minimum of 104 housing units over ground floor retail space of approximately 11,750 sf.

Upon approving the development team in June 2008, the Board requested that an affordable housing component be included in the project. The development team then amended its financial offer to Metro to include a substantial reduction in rent to reflect its affordable housing component.

The extension approved in April 2009 was to allow for conclusion of term sheet negotiations that would take into account the affordable housing in the project; however, upon review, it became clear that it was also necessary to update the August 2007 third party appraisal for the site to meet Federal Transit Administration requirements for timeliness. The updated appraisal will reflect new District of Columbia mandatory Inclusionary Zoning regulations for affordable housing scheduled to take effect in mid-August 2009 and examine whether the developer`s recent assertion that the maximum number of housing units that can be accommodated on the site is less than the previously proposed 104 is valid.

An appraiser has been engaged, but will not complete its assignment in time for

conclusion of term sheet negotiations and a Board decision in September 2009. Accordingly, and in light of the fact that the development team and staff have been reviewing a draft joint development agreement, staff proposes instead to conclude negotiations on the term sheet and joint development agreement and bring both to the Board for its consideration in December 2009.

**FUNDING IMPACT:**

This action will have no immediate impact on funding. Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

Extend the negotiation period for the Shaw-Howard U./Florida Avenue joint development site by 120 days to allow a proposed term sheet and joint development agreement to be brought to the Board in December 2009.

**Agenda**
**Planning, Development and Real Estate Committee**
**September 10, 2009**
**9 a.m.**

**I. Call to Order**

**II. Motion for Executive Session**
A. Amended Sale of Arlington Bus Garage Property (N. Bottigheimer)
B. Extension of Negotiating Period for Shaw-Howard University Station/Florida Avenue Parcels (N. Bottigheimer)

**III. Reconvene in Public Session**

**IV. Approval of Agenda**

**V. Approval of Minutes of June 11, 2009**

**VI. Action Items**
A. Action on Matters Arising from Executive Session
B. Initiate New On-Call A-E Contracts (J. Requa)
C. Initiate Rail Yard Infrastructure Rehabilitation Contract (J. Requa)
D. Initiate First Orange/Blue Line System Rehabilitation Contract (J. Requa)
E. Approval of the Public Hearing Staff Report for Cinder Bed Road Bus Garage (J. Requa)
F. Leesburg Pike Metrobus Line Restructuring (M. Victoria)
G. Veirs Mill Road Metrobus Line Restructuring (M. Victoria)

**VII. Subsequent Planning, Development and Real Estate Committee Agendas**

**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

Washington Metropolitan Area Transit Authority



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001873

**Minutes**
**Planning, Development and Real Estate Committee**
**June 11, 2009**

The meeting was called to order at 9:12 a.m. Present were:

**Committee members:**

Mr. Neil Albert, Chair
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

The Committee meeting was called to order at 9:12 a.m. Mr. Albert moved, seconded by Mr. Zimmerman, that the Committee convene in Executive Session at 9:13 a.m. The Committee voted unanimously in favor of the motion.

The Committee meeting reconvened in the Meeting Room at 9:26 a.m.

**Approval of Agenda**

The agenda was approved.

**Approval of Minutes**

Mr. Albert moved, seconded by Mr. Benjamin, to approve the May 14, 2009 minutes as submitted. The Committee voted unanimously in favor of the motion.

**Action Items**

**A. Lease of Easement Rights at Shaw-Howard University Station**

Staff sought Board approval of a lease to Broadcast Center Partners, LLC with option to purchase various easement rights from Metro at the Shaw-Howard University Metrorail station north entrance.

Mr. Albert moved, seconded by Mr. Linton, to approve a lease to Broadcast Center Partners, LLC with option to purchase various easement rights from Metro at the Shaw-Howard University Metrorail station north entrance. The Committee voted unanimously in favor of the motion.



FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 001874

## B. Approval to Hold a Public Hearing for Cinder Bed Road Bus Garage

Staff sought concurrence from the Planning, Development and Real Estate Committee and approval from the Board to authorize staff to conduct a Public Hearing for a new bus facility.

Mr. McKay moved, seconded by Mr. Giancola to authorize staff to contact a Public Hearing for a new bus facility at Cinder Bed Road. The Committee voted unanimously in favor of the motion.

## C. Authorization to Negotiate and Execute a Memorandum of Understanding with Montgomery County for Wheaton Redevelopment

Staff sought Board authorization to (1) inclusion of Metro properties at Wheaton Station in a Montgomery County solicitation similar to Metro's Request for Qualifications process in which a developer is selected to help plan an ultimate redevelopment, and (2) execution of a Memorandum of Understanding with Montgomery County defining the basic ground rules under which the Metro property would be included.

Mr. Benjamin moved, seconded by Mr. McKay authorization to inclusion of Metro properties at Wheaton Station in a Montgomery County solicitation similar to Metro's Request for Qualifications process in which a developer is selected to help plan an ultimate redevelopment, and execution of a Memorandum of Understanding with Montgomery County defining the basic ground rules under which the Metro property would be included. The Committee voted unanimously in favor of the motion.

## D. Bus Facility Plan

Staff brought to the Committee an information item that the Committee Members voted on and approved to forward to the Board for authorization (1) to hold a public hearing on the Cinder Bed Road replacement facility for Royal Street bus garage, (2) to initiate and award contracts for the demolition and site cleanup of the DC Village site once site acquisition is finalized, (3) to issue a solicitation to the private development community for the replacement, joint development or other proposals with the intent of relocating bus operations from the Northern facility, (4) for the General Manager to develop a long range plan for bus facilities to meet the needs for rehabilitation, replacement and bus service expansion, and (5) for the General Manager to provide a request for resources to accomplish the tasks identified herein and with the bus facility plan.

The meeting adjourned at 10:36 a.m.



FOIA CONFIDENTIAL TREATMENT REQUESTED

Planning, Development and Real Estate Committee

Board Action Item VI-A

September 10, 2009

# Action on Matters Arising from Executive Session



FOIA CONFIDENTIAL TREATMENT REQUESTED

## VI. Action Items

### A. Action on Matters Arising from Executive Session

### A1. Amended Sale of Arlington Bus Garage Property

- To request Board approval to amend the Sale of Development Agreement with Ashton Park Associates, LLC to allow for a phased sale of the Arlington Bus Garage property.

### A2. Extension of Negotiating Period for Shaw-Howard University Station/Florida Avenue Parcels

- To request Board approval to extend the negotiating period for the Shaw-Howard University/Florida Avenue joint development site by 120 days from August 2009, to allow negotiation of a term sheet and joint development agreement to be brought to the Board in December 2009.



FOIA CONFIDENTIAL TREATMENT REQUESTED

Planning, Development and Real Estate Committee

Board Action Item VI-B

September 10, 2009

# Initiate New On-Call A-E Contracts



FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# Extend Negotiation Period for Shaw-Howard U./Florida Avenue Joint Development Site

*Presented to the Board of Directors*

**Executive Session**

**Planning, Development & Real Estate Committee**

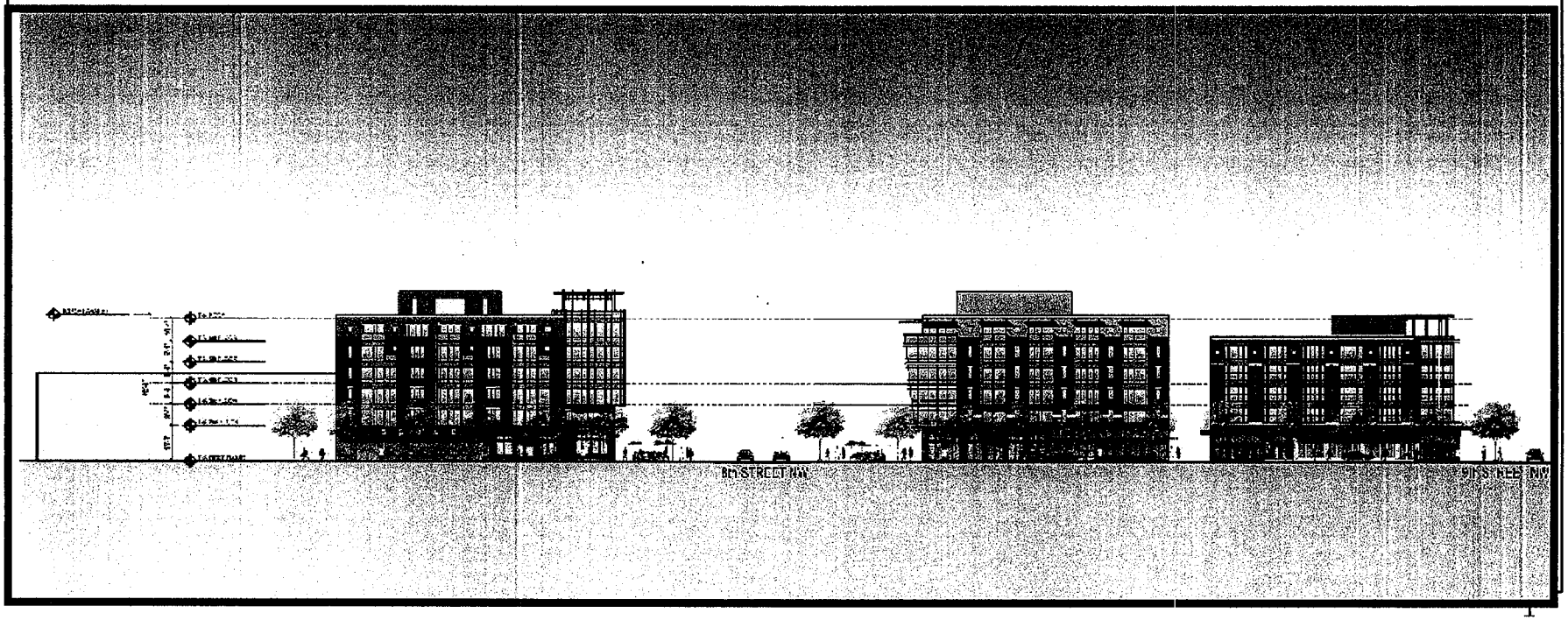
**September 10, 2009**

WMATA-INV 001879

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

**Approve a 120-day extension to December 2009 for negotiating a term sheet and joint development agreement for the Shaw-Howard U./Florida Avenue joint development site.**






WMATA-INV 001880

FOIA CONFIDENTIAL TREATMENT REQUESTED

metro

# Prior Board Action

**June 2008** Board Approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included

**April 2009** After change of development team members Board approved extension of period to negotiate a revised term sheet with affordable housing included



WMATA-INV 001881

FOIA CONFIDENTIAL TREATMENT REQUESTED

metro

# Basis for Proposed Action

**Extension to December 2009 provides time for updated appraisal per FTA requirements:**

- **Appraisal will reflect new DC Inclusionary Zoning regulations for affordable housing**
- **Appraisal will inform term sheet negotiations**
- **Extra time will allow conclusion of term sheet and joint development agreement negotiations**



WMATA-INV 001882

FOIA CONFIDENTIAL TREATMENT REQUESTED

metro

# Recommendation

**Approve a 120-day extension to December 2009 for negotiating a term sheet and joint development agreement for the Shaw-Howard U./Florida Avenue joint development site.**



WMATA-INV 001883

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉ Action ○ Information | MEAD Number: 100426 | Resolution: ○ Yes ◉ No |
|---|---|---|

**TITLE:**

Extend Negotiating Period for Shaw-Howard U/FL Ave

**PURPOSE:**

Extend the negotiating period for the Shaw-Howard U./Florida Avenue joint development site by 120 days, from August 2009, to allow negotiation of a term sheet and joint development agreement to be brought to the Board in December 2009.

**DESCRIPTION:**

In April 2009, the Board approved a 120-day period to renegotiate a term sheet for the Shaw-Howard U./Florida Avenue joint development site, which consists of three separate parcels totaling 28,892 sf located between 7th and 9th streets NW in Washington, DC. The development team, led by Banneker Ventures, LLC, proposed to lease the site from Metro for 60 years and build a minimum of 104 housing units over ground floor retail space of approximately 11,750 sf.

Upon approving the development team in June 2008, the Board requested that an affordable housing component be included in the project. The development team then amended its financial offer to Metro to include a substantial reduction in rent to reflect its affordable housing component.

The extension approved in April 2009 was to allow for conclusion of term sheet negotiations that would take into account the affordable housing in the project; however, upon review, it became clear that it was also necessary to update the August 2007 third party appraisal for the site to meet Federal Transit Administration requirements for timeliness. The updated appraisal will reflect new District of Columbia mandatory Inclusionary Zoning regulations for affordable housing scheduled to take effect in mid-August 2009 and examine whether the developer's recent assertion that the maximum number of housing units that can be accommodated on the site is less than the previously proposed 104 is valid.

An appraiser has been engaged, but will not complete its assignment in time for

conclusion of term sheet negotiations and a Board decision in September 2009. Accordingly, and in light of the fact that the development team and staff have been reviewing a draft joint development agreement, staff proposes instead to conclude negotiations on the term sheet and joint development agreement and bring both to the Board for its consideration in December 2009.

**FUNDING IMPACT:**

This action will have no immediate impact on funding. Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

Extend the negotiation period for the Shaw-Howard U./Florida Avenue joint development site by 120 days to allow a proposed term sheet and joint development agreement to be brought to the Board in December 2009.

FOIA CONFIDENTIAL TREATMENT REQUESTED

| CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2008 | |
|---|---|
| **CATEGORY** | **Developer: An LLC to be formed by Banneker Ventures LLC, the District Development Group, LLC and Metropolis Development Company LLC** |
| Site Description | The 28,892 sf site consists of three separate parcels on the south side of Florida Avenue, NW , between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA. |
| Developer's Proposal | 104 apartments with 11,750 sf ground floor retail/arts uses (total 130,000 sf of development) |
| Proposed Contract | Lease - 60 years |
| Construction Schedule | Lease Closing: 20 months after development agreement execution<br>Construction completion: 18 months after lease closing |
| Developer's Offer<br>Performance Security | $250,000 |
| Option Fee | $!00,000 upon Term Sheet approval |
| Pre-stabilization Rent | $100,000/year upon development agreement execution rising to $130,000 |
| Additional Density | Prior to closing, $4.20/year/additional gross FAR sf. Thereafter by appraisal. |
| Base Rent | $597,000/year upon the earlier of stabilization or 45 months from development agreement date |
| Base Rent Escalation | For first 10 years base rent escalates at 1.5%/year, thereafter at 3%/year |
| Base Rent Revaluation | Every 10 years |
| Capital Event Participation | 10% of net proceeds |
| Appraised Market Value<br>$7,500,000 land value<br>$525,000 rental value | NPV to WMATA over Term of Lease<br>$14 million |
| Appraisal by Integra Realty 8/07 | |

T:\Doggett\ShawHoward\Shaw-Howard FL AVE Confidential.wpd

WMATA-INV 001886

Affordable Housing Policy
Economic Development
FL Ave Extension

3109
Board Actions

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001887

Planning, Development and Real Estate Committee

Board Information Item I-A

March 12, 2009

# Impact of the Economic Downturn on Joint Development Projects

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ○Action ◉Information | MEAD Number: | Resolution: ○Yes ◉No |
|---|---|---|

**TITLE:**

Impact of Economic Downturn on Joint Dev. Projects

**PURPOSE:**

Update the Board on the impact of the economic downturn on Joint Development projects including developer requests for relief, beyond provisions of existing agreements, because of the current finacial crisis

**DESCRIPTION:**

Current economic conditions and lack of lending in capital markets are manifested in joint development projects by loss of major tenants, reduction in rents, restrictive financing criteria, general softening of the real estate leasing and sales market across all land uses with a corresponding reduction in land values. This condition has caused a number of developers of joint development projects to request extensions of property take downs and construction periods, abatement or reduction of rents, changes in development land use mix, and termination of agreement. The result for Metro is potential lowering of near term revenues from the joint development projects including a reduced inflow to the Transit Infrastructure Investment Fund (TIIF).

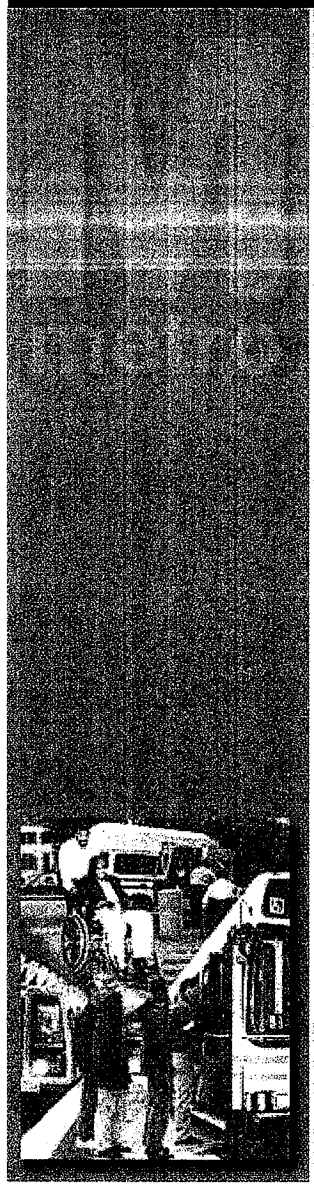
**FUNDING IMPACT:**

There is a potential impact on funding, but it is not readily quantifiable.

**RECOMMENDATION:**

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority



# Impact of the Economic Downturn on Joint Development Projects

***Presented to the Board of Directors***

**Planning, Development and Real Estate Committee**
**Executive Session**

March 12, 2009

WMATA-INV 001890

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

**Update the Board on the impact of the economic downturn on joint development projects including developer requests for relief, beyond provisions of existing agreements, because of current financial crisis.**

WMATA-INV 001891

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Market Situation

- Current economic conditions and lack of lending in capital markets are manifested in joint development projects by loss of major tenants, reduction in tenant rents, restrictive financing criteria, general softening of the real estate leasing and sales market across all land uses with a corresponding reduction in land values

- This condition has caused a number of developers of joint development projects to request extensions of property take downs and construction schedules, abatement or reduction of ground lease rents, substitutions of agreed upon land uses, and termination of agreement

- The result for Metro is potential lowering of near term revenues from the joint development projects including a reduced inflow to the TIIF

- Current practice allows staff to make changes to joint development agreements that do not materially reduce the project's net present value (NPV)

WMATA-INV 001892

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Delay

- **Projects under construction with joint development agreements requesting delayed completions and/or changes in pre-development rent:**
  - **Twinbrook**
  - **Prince George's Plaza**
  - **Huntington**
- **Sale and lease projects with Board approved joint development agreements requesting delayed closing:**
  - **Rhode Island Avenue-Brentwood**
  - **Dunn Loring-Merrifield**
- **Proposed staff actions: if staff believes the projects is fundamentally viable, staff may, without Board action:**
  - **Delay closing one year with no reduction in price or rent (corresponding reduction in NPV because of time delay)** Dunn Loring RI
  - **Delay one year and forgo pre-development rent for that period (corresponding reduction in NPV because of time delay and lost rent)** Hunt PGP ++

WMATA-INV 001893

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Rent Abatement

- **Completed project with older joint development agreement requesting temporary rent abatement:**

  500K/year
  may run 2d quarter

  - **McPherson Square (1400 Eye Street) – major tenant moved out. Developer has invested in upgrading the building, but the rental market is extremely slow**

- **Proposed staff action: Staff may, without Board action:**

  - **Recast older ground lease to allow scaling of rents. Staff would offer up to one year abatement in exchange for a later increase in ground rent, yielding a greater NPV over the lease term. There would, however, be a near term reduction of inflow to the operating budget**

WMATA-INV 001894

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Change Land Use

- **Projects under construction with joint development agreements requesting substitution of land uses with greater market potential:**
  - **White Flint** hotel vs office
  - **Prince George's Plaza**
- **Proposed staff action: Permit the substitution of land uses without Board approval provided that:**
  - **Total payment to Metro is not reduced**
  - **Resultant uses are permitted under the applicable jurisdictional master plan or zoning regulations for the site**
  - **Jurisdictional Metro directors have no objection**

WMATA-INV 001895

NCHRP Public/Private Synthesis 391

3/16/09
Nat Debrief

1. ECONOMIC IMPACT

Board: (a) we want you to come back with everything and don't terminate them without telling them

no one on Board was exercised about land use change

(b) bel: if Carol agrees we don't have to go to the Board is it ok? Nat: be careful

2. AFFORDABLE HOUSING

- Too complicated
- Chris: not adequate table

Board: no outcome

3. FLORIDA AVENUE

- Devel qualifications
- Carry on....

4. BCP - 7th & S

Ball is in DC/Developer cost

5. DC VILLAGE

Board excoriated DC

Neil/Graham said "you are right;" we should not unilaterally have said we won't pay deadhead

Exec Session
3/12/08

① AFFHSG

Carol: clear + even playing field going in

② FL. AVE

Jim: ~~bg~~: Why did Metropolis drop out

Neil: What is B of A development expectation - Staff find out

- development capacity
- affhsg
- lease length ....

Continue negotiating for next 30 days &
report back to the Board in April

③ BCP

Jim wants an agenda item downstairs
$300K + $372K action item

Board refused to accept

Ⓐ Downtown
Ⓑ Affordable

## Doggett, Rosalyn

**From:** Bottigheimer, Nat
**Sent:** Tuesday, March 31, 2009 9:32 PM
**To:** Mohsberg, Sid; Doggett, Rosalyn; Moneme, Emeka
**Subject:** RE: Extension of Development Agreement Negotiation Period for Florida Ave Joint Development Project
**Attachments:** Board Memo 4-2-09 Florida Ave[1].doc

Thank you for preparing this, Sid. My edits are in track changes mode.

Emeka, do you have thoughts before this goes out?

Thanks,

Nat

---

**From:** Mohsberg, Sid
**Sent:** Tuesday, March 31, 2009 6:18 PM
**To:** Bottigheimer, Nat; Doggett, Rosalyn
**Subject:** Extension of Development Agreement Negotiation Period for Florida Ave Joint Development Project

Nat and Roz,

Attached is the latest draft.

I responded to all of Leen'da's concerns except two:

6th bullet (on page 2): Leen'da: Will the Board know what "new, stick built housing on a podium" means? Can this be explained further?
Sid: Would there be any harm done if we were to simply delete these words? Such techie talk usually bewilders general audiences and raises their suspicions if not their ire.

Last bullet (on page 3): Leen'da: Whose interpretation is "gain control of the development process".
Sid: Do we need this bullet since the Metropolitan Development Company is no longer a player?

Your comments please – on the overall draft, not just the above two points.

Thanks.

Sid



FOIA CONFIDENTIAL TREATMENT REQUESTED

1. Firm agreement with capable, experienced development partner
2. Renewal of equity financing commitment
3. Written documentation of
   a. Affordable housing AMI and % required by city (basis for)
   b. Inability to obtain any financing or other financial assistance from the city for affordable housing, e.g., grants, loans from DCHCD, tax abatement or other assistance

## Doggett, Rosalyn

**From:** O'Keeffe, Carol B.
**Sent:** Friday, March 06, 2009 1:44 PM
**To:** Doggett, Rosalyn
**Subject:** RE: Affordable Housing Resolution and Conforming MEAD Modifications

I don't know. I suppose the Board would have to decide what to accept as an offsetting contribution.

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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**From:** Doggett, Rosalyn
**Sent:** Friday, March 06, 2009 1:10 PM
**To:** Bottigheimer, Nat; O'Keeffe, Carol B.
**Cc:** Mohsberg, Sid
**Subject:** RE: Affordable Housing Resolution and Conforming MEAD Modifications

Carol, I have made changes to the MEAD (100290) to conform to the edited resolution. Please approve the MEAD if you find the changes ok. I am concerned that the "offsetting contributions" language in the revised resolution is a little vague, but perhaps that is what was intended. For example could a local government provision of bus shelters offset a reduction in land value beyond 15%?

---

**From:** Bottigheimer, Nat
**Sent:** Friday, March 06, 2009 11:04 AM
**To:** O'Keeffe, Carol B.
**Cc:** Mohsberg, Sid; Doggett, Rosalyn
**Subject:** Affordable Housing Resolution

Carol—

I've modified the resolution to address the two issues we discussed this morning. It clarifies that we're talking about impacts to fair market value and not about the number of units; that we only care about reduction in land value, not the share of the project comprised by affordable housing; and that if a local jurisdiction wants a greater than 15% reduction in the value of our land as a result of affordable housing requirements, we're ok with that but the locals will need to make up the difference between the impact of the local requirement and the 15% we're willing to accept.

Can you review and approve this please (with or without your modifications), and let Sid, Roz, and me know when you've done this. Sid and Roz will make sure the approved language flows through the MEAD and Powerpoint.

Thanks very much,

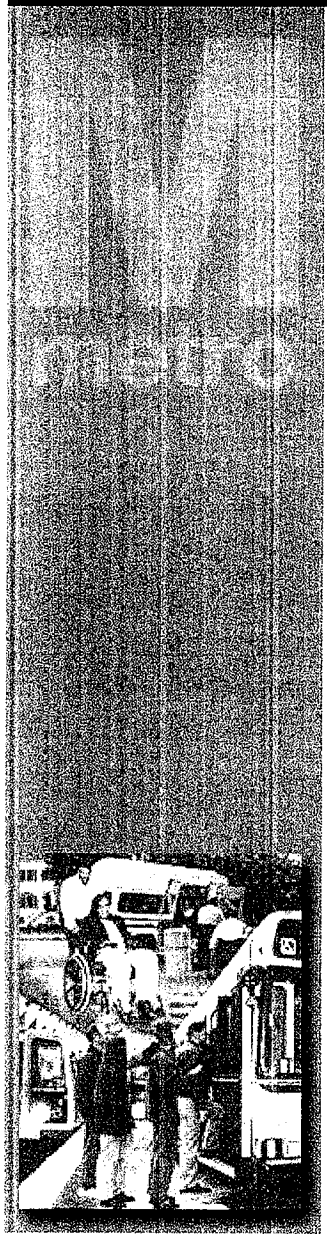
Nat



FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority



# Joint Development Affordable Housing Policy

***Presented to the Board of Directors***

**Planning, Development and Real Estate Committee**
**Executive Session**

March 12, 2009

WMATA-INV 001902

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

**Adopt a policy establishing a maximum land value write down for affordable housing in joint development projects at 15% of total market rate residential land value.**



WMATA-INV 001903

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Background

- In the past, to meet locally legislated requirements, Metro has written down the value of joint development land for affordable housing by up to 15% of the market value of residential land
- Metro anticipates future requests for writing down land value to reflect more stringent local affordable housing requirements



WMATA-INV 001904

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Issue

- As a transit agency, Metro's priority is to conserve revenue from joint development projects to fund transit operations and capital projects
- Deeper subsidies for affordable housing will dilute funds needed for transit purposes



WMATA-INV 001905

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Proposed Policy

- Continued support is affirmed for affordable housing of all types including work force housing in joint development projects that comply with local laws and requirements
- In no case may the total market rate residential land value be written down more than 15% for affordable housing
- Non-residential land value may not be written down for affordable housing



WMATA-INV 001906

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

**Adopt a policy establishing a maximum land value write down for affordable housing in joint development projects at 15% of total market rate residential land value.**



WMATA-INV 001907

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Appendix: Affordable Housing/Inclusionary Zoning Requirements By Jurisdiction

| Jurisdiction: | Set-aside Requirement: | Incentive: | Notes: |
|---|---|---|---|
| District of Columbia* | Steel/concrete buildings: 8% at or 50% of bonus density<br>Stick built buildings:<br>10% or 75% of bonus density | • Up to 20% density bonus | • Trigger: 10 units<br>• Income Target for Steel/concrete: 80% AMI (Area Median Income)<br>• Income Target for Stick built: 50% at 50% AMI, 50% at 80% AMI<br>• Final regulations to be published @ 3/1/09, effective 60 days later; Title 11, Chapter 26 of the DC Zoning Regulations |
| Montgomery County | 12.5% Moderately Priced Dwelling Units (MPDU's) | • Up to 22% density bonus | • Trigger: 20 units<br>• MPDU Target: 65-70% AMI |
| | 10% work force housing in Metro Station Policy Areas (areas near Metro stations) | • Up to 10% residential FAR or density increase but not more than maximum height for zone | • Trigger: 35 units<br>• Work force target: 80-120% AMI |

*The District of Columbia also has legislative requirements for affordable housing in the disposition of city-owned land in the Anacostia Waterfront Area and city-owned land formerly in the National Capital Revitalization Corporation's portfolio: 15% housing at 30% AMI and 15% housing at 60% AMI. The office of the Deputy Mayor for Planning and Economic Development includes these same requirements in its RFP's for disposition of other city-owned property.



WMATA-INV 001908

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Appendix: Affordable Housing/Inclusionary Zoning Requirements By Jurisdiction

| Jurisdiction: | Set-aside Requirement: | Incentive: | Notes: |
|---|---|---|---|
| Fairfax County | 6.25%-12.5% affordable dwelling units (ADU's) single family and multifamily low rise (3 stories or less) | • Up to 10 to 20% density bonus (sliding scale depending on ADU number) | • Trigger: 50 units<br>• ADU Target: 70% AMI |
| | 5%-6.25% ADU's multifamily 4 stories and more | • Up to 17% density bonus (sliding scale depending on ADU number and % structured parking) | • Trigger: 50 units<br>• ADU Target 70% AMI |
| | 12% Work force housing in steel & concrete buildings where ADU's are not required | • Up to 20% (residential or non residential) | • Target: Up to 120% AMI<br>• Enacted to date in amended Comp Plan (9/22/08)<br>• In certain mixed use centers |
| Rockville | 15% MPDU's in Town Center and MXT zones at Metro stations | No density bonus | • Trigger: 50 units<br>• Target: 60% AMI |
| Arlington County | 5% of Gross Floor Area over 1.0 FAR (no requirement under 1.0 FAR) for ADU's<br><br>Alternative: provide a) ADU's off-site with conditions or b) cash donation to housing fund | • 10 to 20% density bonus | • Trigger: 1.0 FAR<br>• ADU Target: 60% AMI<br>• Duration: 30 years |



WMATA-INV 001909

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Appendix: Affordable Housing/Inclusionary Zoning Requirements By Jurisdiction

| Jurisdiction: | Set-aside Requirement: | Incentive: | Notes: |
|---|---|---|---|
| Alexandria | Tier 1: Voluntary contributions for "by right" development | • No density bonus | • Trigger: None |
| | Tier 2: For certain density, height or FAR increases, voluntary contribution plus $4.00/sf of GFA above "by right" base | • Density bonus varies | • Trigger: FAR, height or density increase over "by right" |
| | Tier 3: Tier 1 and 2 as applicable PLUS Affordable Housing Units (AHU's) equal to 33% of housing units made possible by density bonus | • Increased density bonus For Tier 3 | • AHU Target: 60% AMI<br>• AHU's may be provided off-site by mutual agreement between city and developer<br>• Zoning ordinance to be amended to reflect Tier 3 bonus density |
| Prince George's County | None | None | Revoked in 1996 |



WMATA-INV 001910

SUBJECT: JOINT DEVELOPMENT AFFORDABLE HOUSING POLICY

PROPOSED
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, Among the goals of Metro's joint development program is to provide mixed-use development, including housing, in compliance with local laws and requirements; and

WHEREAS, Local laws and requirements for housing, including affordable housing of all types, vary by local jurisdiction, and joint development projects comply with those laws and requirements; and

WHEREAS, In the past, Metro has written down the value of residential land for joint development projects with affordable units, but only for the portion of land value that is attributable to those units; and

WHEREAS, Metro anticipates future requests for writing down land value to reflect affordable housing requirements more stringent than those experienced in the past; and

WHEREAS, Metro's responsibility as a transit agency is to use revenue from joint development projects to support transit operations and capital projects; and

WHEREAS, Metro's priority is to conserve revenue for transit purposes rather than to use it for additional non-transit purposes; now, therefore be it

*RESOLVED,* That the Board of Directors continues to promote Transit-Oriented Development by giving priority to joint development proposals that have mixed-use development, including housing, in compliance with local laws and requirements; and be it further

*RESOLVED,* That the Board of Directors affirms its support for including affordable housing of all types including work force housing in joint development projects; and be it further

*RESOLVED,* That the Board of Directors approves a joint development project whose fair market value is reduced as a consequence of complying with legislated affordable

housing requirements in a local ordinance or a legislatively adopted small area plan; and be it further

*RESOLVED,* That the Board of Directors approves a joint development project irrespective of the share of the project comprised by affordable housing units, but that the fair market value of a joint development project's residential component may not be reduced by more than fifteen percent (15%) as a result of complying with legislated affordable housing requirements in a local ordinance or a legislatively adopted small area plan without offsetting local contributions that limit the reduction in the project's residential land value to no more than fifteen percent (15%); and be it further

*RESOLVED,* That the value of non-residential land in a joint development project may not be written down to support affordable housing; and be it finally

*RESOLVED,* That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

Carol B. O'Keeffe

Carol B. O'Keeffe
General Counsel



FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority

# METRO ELECTRONIC ACTION DOCUMENT

MEAD ID: 100290

| DESCRIPTION | |
|---|---|
| TITLE: | Joint Development Affordable Housing Guidance |
| SUBJECT: | To obtain Board approval of a policy on joint development land write downs for affordable housing. |
| PURPOSE: | To obtain Committee concurrence and Board approval of a Resolution establishing a maximum land value write down for affordable housing in joint development projects at 15% of total residential market rate land value. |

Washington Metropolitan Area Transit Authority

# METRO ELECTRONIC ACTION DOCUMENT

DESCRIPTION:

Staff is seeking Board guidance on the extent to which Metro land value for residential projects may be written down (discounted) to support affordable housing of all types, including work force housing.

To meet locally legislated requirements in previous projects in local jurisdictions, Metro has written down the value of joint development land for affordable units, generally to zero. In other words, it has totally discounted the value of residential land attributable to affordable units only. This practice has been supported by third party appraisals. To date the reduction in residential land value has not exceeded 15%.

At this time, however, we anticipate requests for writing down land value to reflect affordable housing requirements that are more stringent than those experienced in the past. To address such requests, we are recommending that the Board adopt a policy of a maximum 15% discount from market-based land values. The policy recommended for adoption in the attached Resolution is:

"Residential land in joint development projects may be written down to accommodate affordable housing in conformance to legislated requirements in a local ordinance or a legislatively adopted small area plan. In no case, however, may the total market rate residential land value of a joint development project be written down more than fifteen percent (15%). Further, the land value of non-residential land may not be written down to support affordable housing."

Since Metro is a transit agency, and any money applied to affordable housing will necessarily reduce that which is available for transit purposes, it is timely to address requests to use Metro property value reductions to subsidize affordable housing. Therefore, staff is seeking Board guidance as to whether the recommended policy should be adopted, and, if not, what policy should be adopted instead.

FUNDING IMPACT:

No impact on funding

PRIOR APPROVALS:

Not applicable.

RECOMMENDATION:

That the Board approve the attached Resolution establishing a maximum land value write down for affordable housing in joint development projects at 15% of total market rate residential land value.

AFFORDABLE HOUSING/INCLUSIONARY ZONING REQUIREMENTS BY JURISDICTION

| Jurisdiction | Set-aside Requirement | Incentive | Notes |
|---|---|---|---|
| District of Columbia* | Steel/concrete buildings: 8% or 50% of bonus density<br><br>Stick built buildings: 10% or 75% of bonus density | • Up to 20% density bonus | • Trigger: 10 units<br>• Income Target for Steel/concrete: 80% AMI (Area Median Income)<br>• Income Target for Stick built: 50% at 50% AMI, 50% at 80% AMI<br>• Final regulations to be published @ 3/1/09, effective 60 days later; Title 11, Chapter 26 of the DC Zoning Regulations |
| Montgomery County | 12.5% Moderately Priced Dwelling Units (MPDU's) | • Up to 22% density bonus | • Trigger: 20 units<br>• MPDU Target: 65-70% AMI |
| | 10% work force housing in Metro Station Policy Areas (areas near Metro stations) | • Up to 10% residential FAR or density increase but not more than maximum height for zone | • Trigger: 35 units<br>• Work force target: 80-120% AMI |
| Prince George's County | None | None | Revoked in 1996 |
| Fairfax County | 6.25%-12.5% affordable dwelling units (ADU's) single family and multifamily low rise (3 stories or less) | • Up to 10 to 20% density bonus (sliding scale depending on ADU number) | • Trigger: 50 units<br>• ADU Target: 70% AMI |
| | 5%-6.25% ADU's multifamily 4 stories and more | • Up to 17% density bonus (sliding scale depending on ADU number and % structured parking) | • Trigger: 50 units<br>• ADU Target 70% AMI |
| | 12% Work force housing in steel & concrete buildings where ADU's are not required | • Up to 20% (residential or non residential) | • Target: Up to 120% AMI<br>• Enacted to date in amended Comp Plan (9/22/08)<br>• In certain mixed use centers |

FOIA CONFIDENTIAL TREATMENT REQUESTED

| Jurisdiction | Set-aside Requirement | Incentives | Notes |
|---|---|---|---|
| Rockville | 15% MPDU's in Town Center and MXT zones at Metro stations | No density bonus | • Trigger: 50 units<br>• Target: 60% AMI |
| Arlington County | 5% of Gross Floor Area over 1.0 FAR (no requirement under 1.0 FAR) for ADU's<br><br>Alternative: provide a) ADU's off-site with conditions or b) cash donation to housing fund | • 10 to 20% density bonus | • Trigger: 1.0 FAR<br>• ADU Target: 60% AMI<br>• Duration: 30 years |
| Alexandria | Tier 1: Voluntary contributions for "by right" development<br><br>Tier 2: For certain density, height or FAR increases, voluntary contribution plus $4.00/sf of GFA above "by right" base<br><br>Tier 3: Tier 1 and 2 as applicable PLUS Affordable Housing Units (AHU's) equal to 33% of housing units made possible by density bonus | • No density bonus<br><br>• Density bonus varies<br><br>• Increased density bonus For Tier 3 | • Trigger: None<br><br>• Trigger: FAR, height or density increase over "by right"<br><br>• AHU Target: 60% AMI<br>• AHU's may be provided off-site by mutual agreement between city and developer<br>• Zoning ordinance to be amended to reflect Tier 3 bonus density |

*The District of Columbia also has legislative requirements for affordable housing in the disposition of city-owned land in the Anacostia Waterfront Area and city-owned land formerly in the National Capital Revitalization Corporation's portfolio: 15% housing at 30% AMI and 15% housing at 60% AMI. The office of the Deputy Mayor for Planning and Economic Development includes these same requirements in its RFP's for disposition of other city-owned property.

FOIA CONFIDENTIAL TREATMENT REQUESTED

3/6
Not final

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ○ Action ◉ Information | MEAD Number: | Resolution: ◉ Yes ○ No |
|---|---|---|

**TITLE:**

Joint Development Affordable Housing Policy

**PURPOSE:**

To obtain Committee concurrence and Board approval of a Resolution establishing a maximum land value write down for affordable housing in joint development projects at 15% of total fair market residential land value.

**DESCRIPTION:**

Staff is seeking Board approval of a policy on write downs of Metro land value for residential projects to support affordable housing of all types, including work force housing.

To meet locally legislated requirements in previous projects in local jurisdictions, Metro has written down the value of joint development land for affordable units, generally to zero. In other words, it has totally discounted the fair market value of residential land attributable to affordable units only. This practice has been supported by third party appraisals. To date the reduction in residential land value has not exceeded 15%.

At this time, however, we anticipate requests for writing down land value to reflect affordable housing requirements that are more stringent than those experienced in the past. To address such requests, we are recommending that the Board adopt a policy of a maximum 15% discount from fair market-based land values. The policy recommended for adoption is:

"Fair market land value in joint development projects may be written down to accommodate affordable housing in conformance with legislated requirements in a local ordinance or a legislatively adopted small area plan. The Board will approve a joint development project irrespective of the share of the project comprised by affordable housing units; however, the fair market value of the project`s residential component may not be reduced more than 15% without offsetting local contributions that limit the reduction in the project`s residential land value to no more than15%. Further, the land value of non-residential land may not be written down to support affordable housing."

Since Metro is a transit agency, and any money applied to affordable housing will necessarily reduce that which is available for transit purposes, it is timely to address requests to use Metro property value reductions to subsidize affordable housing. The proposed policy recognizes Metro`s interest in providing its share of funding for affordable housing while conserving the greater part of joint development revenue for transit use. Further, it provides consistency across jurisdictions.

**FUNDING IMPACT:**

The proposed policy has no immediate impact on funding. However, over time it is likely to produce more Transit Infrastructure Investment Fund (TIIF) revenue than would be received without the proposed policy.

**RECOMMENDATION:**

Approval to establish a maximum land value write down for affordable housing in joint development projects at 15% of total fair market residential land value.

## Doggett, Rosalyn

**From:** Bottigheimer, Nat
**Sent:** Friday, March 06, 2009 11:04 AM
**To:** O'Keeffe, Carol B.
**Cc:** Mohsberg, Sid; Doggett, Rosalyn
**Subject:** Affordable Housing Resolution
**Attachments:** Aff Hsg JD RES nb edits.doc

Carol—

I've modified the resolution to address the two issues we discussed this morning. It clarifies that we're talking about impacts to fair market value and not about the number of units; that we only care about reduction in land value, not the share of the project comprised by affordable housing; and that if a local jurisdiction wants a greater than 15% reduction in the value of our land as a result of affordable housing requirements, we're ok with that but the locals will need to make up the difference between the impact of the local requirement and the 15% we're willing to accept.

Can you review and approve this please (with or without your modifications), and let Sid, Roz, and me know when you've done this. Sid and Roz will make sure the approved language flows through the MEAD and Powerpoint.

Thanks very much,

Nat



FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Proposed Policy

- **Fair market land value may be reduced for affordable housing of all types including work force housing in joint development projects that comply with local laws and requirements**
- **Irrespective of the amount of affordable housing in a joint development project, the fair market residential land value of the project may not be reduced more than 15% unless there are offsetting local contributions that limit the residential land value reduction to no more than 15%**
- **Non-residential land value may not be written down for affordable housing**

if city contributes bus shelters is that a contribution?

if city abates taxes that have a certain capitalized value, is that a contribution? so that if the cap. value of tax abatement = another 5% can the project land value be reduced by 5%. which is 10% to the developer?



WMATA-INV 001920

WMATA-INV-1K Steel Manhole
Cover Bolted Down
2/10/2 Aug 1109

Washington Metropolitan Area Transit Authority

# Agenda
## Planning, Development and Real Estate Committee
## March 12, 2009

**Executive Session**

**I. Information Items**

A. Impact of the Economic Downturn on Joint Development Projects (N. Bottigheimer)
B. Affordable Housing Policy for Joint Development Projects (N. Bottigheimer)
C. Extension of Development Agreement Negotiation Period for Florida Avenue Parcels (N. Bottigheimer)
D. Broadcast Center Partners at Shaw-Howard Station (N. Bottigheimer)
E. DC village Update (N. Bottigheimer)

**Committee Members**
Catherine Hudgins, Chair
Neil Albert, Vice Chair
Chris Zimmerman
Jim Graham
Peter Benjamin
Elizabeth Hewlett
William D. Euille
Michael Brown
Gordon Linton
Jeff McKay
Anthony Giancola
Marcell Solomon

Planning, Development and Real Estate Committee

Board Information Item I-A

March 12, 2009

# Impact of the Economic Downturn on Joint Development Projects

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ○Action ◉Information | MEAD Number: | Resolution: ○Yes ◉No |
|---|---|---|

**TITLE:**

Impact of Economic Downturn on Joint Dev. Projects

**PURPOSE:**

Update the Board on the impact of the economic downturn on Joint Development projects including developer requests for relief, beyond provisions of existing agreements, because of the current finacial crisis

**DESCRIPTION:**

Current economic conditions and lack of lending in capital markets are manifested in joint development projects by loss of major tenants, reduction in rents, restrictive financing criteria, general softening of the real estate leasing and sales market across all land uses with a corresponding reduction in land values. This condition has caused a number of developers of joint development projects to request extensions of property take downs and construction periods, abatement or reduction of rents, changes in development land use mix, and termination of agreement. The result for METRO is potential lowering of near term revenues from the joint development projects including a reduced inflow to the TIIF.

**FUNDING IMPACT:**

There is a potential impact on funding, but it is not readily quantifiable.

**RECOMMENDATION:**

# Impact of the Economic Downturn on Joint Development Projects

*Presented to the Board of Directors*

**Planning, Development and Real Estate Committee**

March 12, 2009

metro

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Update the Board on the impact of the economic downturn on joint development projects including developer requests for relief, beyond provisions of existing agreements, because of current financial crisis.



WMATA-INV 001926

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Current Market Situation

- Current economic conditions and lack of lending in capital markets are manifested in joint development projects by loss of major tenants, reduction in tenant rents, restrictive financing criteria, general softening of the real estate leasing and sales market across all land uses with a corresponding reduction in land values

- This condition has caused a number of developers of joint development projects to request extensions of property take downs and construction schedules, abatement or reduction of ground lease rents, substitutions of agreed upon land uses, and termination of agreement

- The result for Metro is potential lowering of near term revenues from the joint development projects including a reduced inflow to the TIIF

- Current practice allows staff to make changes to joint development agreements that do not materially reduce the project's net present value (NPV)



WMATA-INV 001927

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Delay

- Projects under construction with joint development agreements requesting delayed completions and/or changes in pre-development rent:
  - Twinbrook
  - Prince George's Plaza
  - Huntington
- Both sale and lease projects with Board approved joint development agreements requesting delayed closing:
  - Rhode Island Avenue-Brentwood
  - Dunn Loring--Merrifield
- Proposed staff actions: if staff believes the projects are fundamentally viable, staff may, without Board action:
  - Delay closing one year with no reduction in price or rent (corresponding reduction in NPV because of time delay)
  - Delay one year and forgo pre-development rent for that period (corresponding reduction in NPV because of time delay and lost rent)



WMATA-INV 001928

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Rent Abatement

- Completed project with older joint development agreement requesting temporary rent abatement:
  - McPherson Square (1400 Eye Street) – major tenant moved out. Developer has invested in upgrading the building, but the rental market is extremely slow
- Proposed staff action: Staff may, without Board action:
  - Recast older ground lease to allow scaling of rents. Staff would offer up to one-year abatement in exchange for a later increase in ground rent, yielding a greater NPV over the lease term. There would, however, be a near term reduction of inflow to operating budget



WMATA-INV 001929

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Change Land Use

- Projects under construction with joint development agreements requesting substitution of land uses with greater market potential:
  - White Flint
  - Prince George's Plaza
- Proposed staff action: Permit the substitution of land uses without Board approval provided that:
  - Total payment to Metro is not reduced
  - Resultant uses are permitted under the applicable jurisdictional master plan or zoning
  - Jurisdictional Metro directors have no objection



WMATA-INV 001930

Planning, Development and Real Estate Committee

Board Information Item I-B

March 12, 2009

# Affordable Housing Policy for Joint Development Projects

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉Action ○Information | MEAD Number: 100290 | Resolution: ◉Yes ○No |
|---|---|---|

**TITLE:**

Joint Development Affordable Housing Policy

**PURPOSE:**

To obtain Committee concurrence and Board approval of a Resolution establishing a maximum land value write down for affordable housing in joint development projects at 15% of total residential market rate land value.

**DESCRIPTION:**

Staff is seeking Board approval of a policy on write downs of Metro land value for residential projects to support affordable housing of all types, including work force housing.

To meet locally legislated requirements in previous projects in local jurisdictions, Metro has written down the value of joint development land for affordable units, generally to zero. In other words, it has totally discounted the value of residential land attributable to affordable units only. This practice has been supported by third party appraisals. To date the reduction in residential land value has not exceeded 15%.

At this time, however, we anticipate requests for writing down land value to reflect affordable housing requirements that are more stringent than those experienced in the past. To address such requests, we are recommending that the Board adopt a policy of a maximum 15% discount from market-based land values. The policy recommended for adoption in the attached Resolution is:

"Residential land in joint development projects may be written down to accommodate affordable housing in conformance to legislated requirements in a local ordinance or a legislatively adopted small area plan. In no case, however, may the total market rate residential land value of a joint development project be written down more than fifteen percent (15%). Further, the land value of non-residential land may not be written down to support affordable housing."

Since Metro is a transit agency, and any money applied to affordable housing will necessarily reduce that which is available for transit purposes, it is timely to address requests to use Metro property value reductions to subsidize affordable housing. The proposed policy recognizes Metro`s interest in providing its share of funding for affordable housing while conserving the greater part of joint development revenue for transit use. Further, it provides consistency across jurisdictions.

**FUNDING IMPACT:**

The proposed policy has no immediate impact on funding. However, over time it is likely to produce more Transit Infrastructure Investment Fund (TIIF) revenue than would be received without the proposed policy.

**RECOMMENDATION:**

That the Board approve the attached Resolution establishing a maximum land value write down for affordable housing in joint development projects at 15% of total market rate residential land value.

# Joint Development Affordable Housing Policy

***Presented to the Board of Directors***

**Planning, Development and Real Estate Committee**
**Executive Session**

March 12, 2009

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

Adopt a policy establishing

~~To obtain Board approval of the attached Resolution establishing~~ a maximum land value write down for affordable housing in joint development projects at 15% of total market rate residential land value.



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001935

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Background

- In the past, to meet locally legislated requirements, Metro has written down the value of joint development land for affordable housing by up to 15% of the market value of residential land

- Metro anticipates future requests for writing down land value to reflect more stringent local affordable housing requirements



WMATA-INV 001936

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Issue

- As a transit agency, Metro's priority is to conserve revenue from joint development projects to fund transit operations and capital projects
- Deeper subsidies for affordable housing will dilute funds needed for transit purposes



WMATA-INV 001937

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Proposed Resolution

- Continued support is affirmed for affordable housing of all types including work force housing in joint development projects that comply with local laws and requirements
- In no case may the total market rate residential land value be written down more than 15% for affordable housing
- Non-residential land value may not be written down for affordable housing



WMATA-INV 001938

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

Adopt a policy

**~~Approve the attached Resolution~~ establishing a maximum land value write down for affordable housing in joint development projects at 15% of total market rate residential land value.**



WMATA-INV 001939

**PRESENTED AND ADOPTED:**

**SUBJECT: JOINT DEVELOPMENT AFFORDABLE HOUSING POLICY**

**PROPOSED**
**RESOLUTION**
**OF THE**
**BOARD OF DIRECTORS**
**OF THE**
**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

WHEREAS, among the goals of Metro's joint development program is to: provide mixed-use development, including housing in compliance with local laws and requirements, and

WHEREAS, local laws and requirements for housing, including affordable housing of all types, vary by local jurisdiction, and joint development projects comply with those laws and requirements, and

WHEREAS, in the past Metro has written down the value of residential land for joint development projects with affordable units, but only for the portion of land value that is attributable to those units, up to a limit of 15% of total units, and

WHEREAS, Metro anticipates future requests for writing down land value to reflect affordable housing requirements more stringent than those experienced in the past, and

WHEREAS, Metro's responsibility as a transit agency is to use revenue from joint development projects to support transit operations and capital projects, and

WHEREAS, Metro's priority is to conserve revenue for transit purposes rather than to use it for additional non-transit purposes, now therefore be it

*RESOLVED,* That the Board of Directors will continue to promote Transit-Oriented Development (TOD) by giving priority to joint development proposals that have mixed-use development, including housing in compliance with local laws and requirements, and be it further

*RESOLVED,* That the Board of Directors affirms its support for including affordable housing of all types including work force housing in joint development projects, and be it further

*RESOLVED,* That the Board of Directors directs staff to write down the value of residential land in joint development projects to accommodate affordable housing in

compliance with legislated requirements in a local ordinance or a legislatively adopted small area plan, and be it further

*RESOLVED,* That In no case may the total market rate residential land value of a joint development project be written down more than fifteen percent (15%), and be it further

*RESOLVED,* That the value of non-residential land in a joint development project may not be written down to support affordable housing, and be it further

*RESOLVED,* That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

_____

Carol B. O'Keeffe
General Counsel

Planning, Development and Real Estate Committee

Board Information Item I-C

March 12, 2009

# Extension of Development Agreement Negotiation Period for Florida Avenue Parcels

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉Action ○Information | MEAD Number: 100284 | Resolution: ○Yes ◉No |
|---|---|---|

**TITLE:**

Extend Agreement Negotiation Period for Shaw-FL Av

**PURPOSE:**

Approve a 120-day extension for negotiating a joint development agreement for the Shaw-Howard University/Florida Avenue parcels.

**DESCRIPTION:**

On June 26, 2008, the Board selected a development team and approved a term sheet for the Shaw-Howard University/Florida Avenue property, which consists of three parcels totaling 28,892 sf located between 7th and 9th streets, NW in Washington, DC. The development team was composed of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC. It proposed to develop a minimum of 104 housing units over ground floor retail of approximately 11,750 sf under a 60-year lease.

In its approval, the Board directed that the final agreement include an affordable housing component. It further directed staff to provide documentation to the Board clarifying the roles and responsibilities of the members of the development team.

Following term sheet and Developer approval, staff prepared a draft development agreement, which it provided to the Developer. The Developer has:

A. Requested a revised business deal reflecting the inclusion of affordable housing. The rent would be substantially reduced from that agreed to at term sheet approval. The amount and type of affordable housing being proposed and the amount of subsidy for affordable housing to be provided by Metro raise issues that are being referred to the Board in a concurrent proposal for an affordable housing policy. Resolution of these questions is a predicate to pursuing renegotiation of the business deal.

B. Lost at least one member of the development team, Metropolis Development Company, which provided the construction and development expertise needed for the proposed project. Banneker, the lead member of the development team, has not yet provided documentation on a suitable replacement and its roles and responsibilities on the team.

C. Requested a 99-year lease instead of a 60-year lease.

The extension being requested is expected to provide enough time for resolution of the items noted above.

**FUNDING IMPACT:**

This action will have no immediate impact on funding although a reduction in land value for affordable housing from that agreed to at term sheet stage will have an impact that will be presented to the Board upon negotiation of a joint development agreement. Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

That the Board approve a 120-day extension for negotiating a joint development agreement for the Shaw-Howard University/Florida Avenue parcels. A negotiated agreement will be brought to the Board for approval.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority

# Shaw-Howard U./Florida Avenue Joint Development Site

# Extend Negotiation Period for Joint Development Agreement

***Presented to the Board of Directors:***

**Planning, Development and Real Estate Committee**

March 12, 2009

WMATA-INV 001945

FOIA CONFIDENTIAL TREATMENT REQUESTED

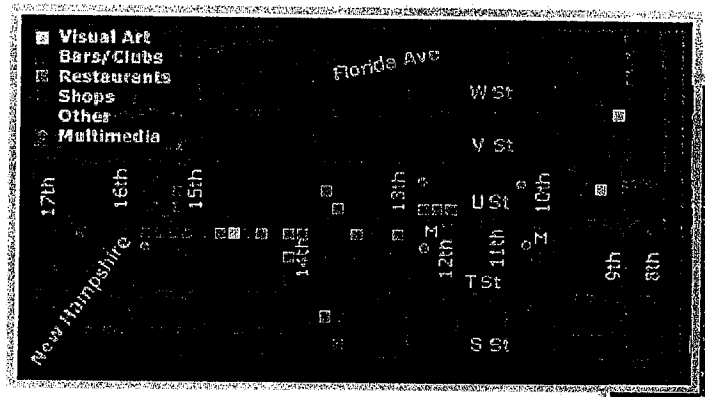
# Purpose

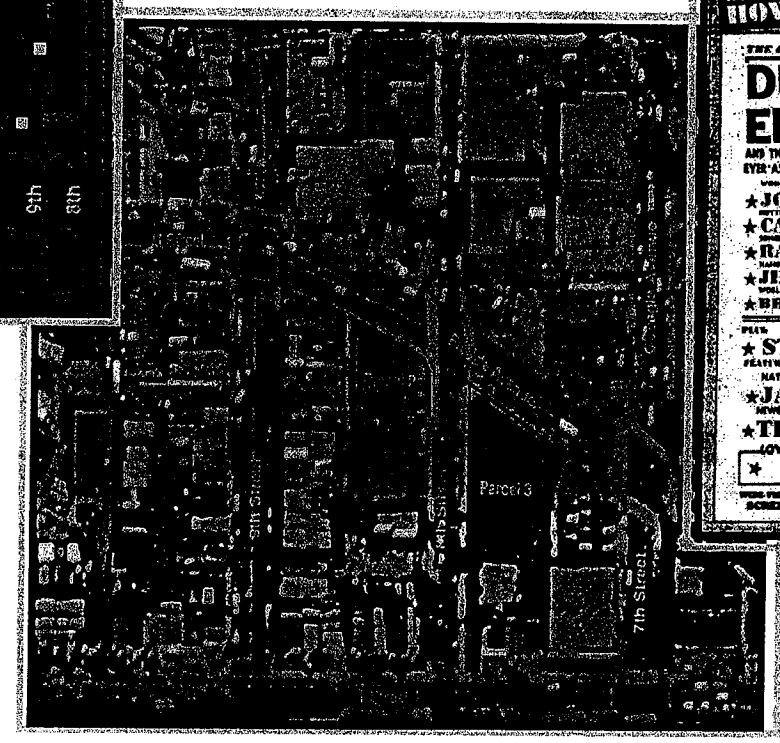
**Approve a 120-day extension for negotiating a joint development agreement.**

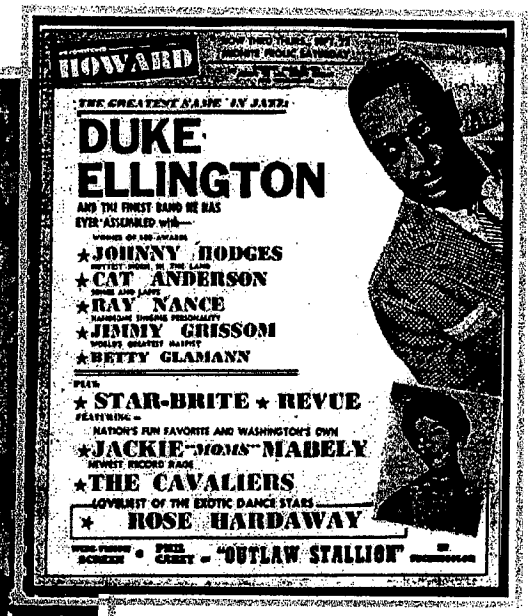
WMATA-INV 001946

# Site

- WMATA has 3 parcels (comprising 28,892 sf) that were used to construct Green Line tunnel
- Washington, DC adopted "Duke" Plan for area in 2005






FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 001947

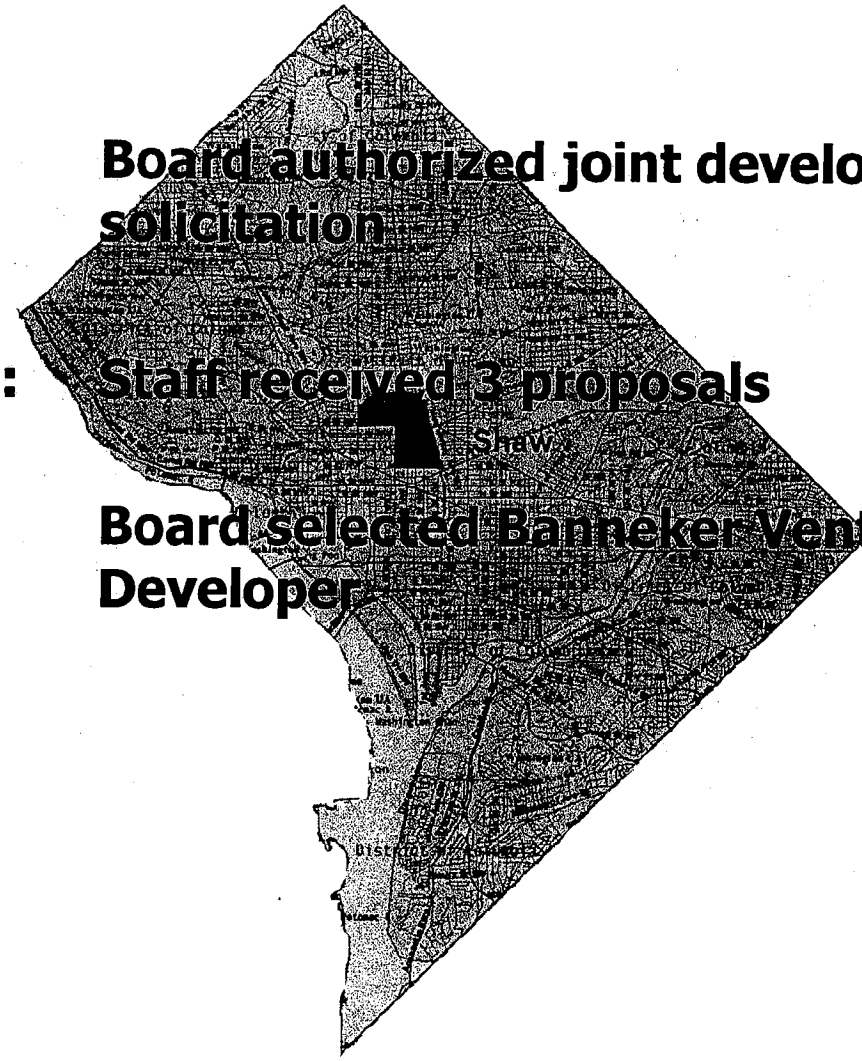
FOIA CONFIDENTIAL TREATMENT REQUESTED

# Background

**July 2006:** Board authorized joint development solicitation

**October 2007:** Staff received 3 proposals

**June 2008:** Board selected Banneker Ventures team as Developer

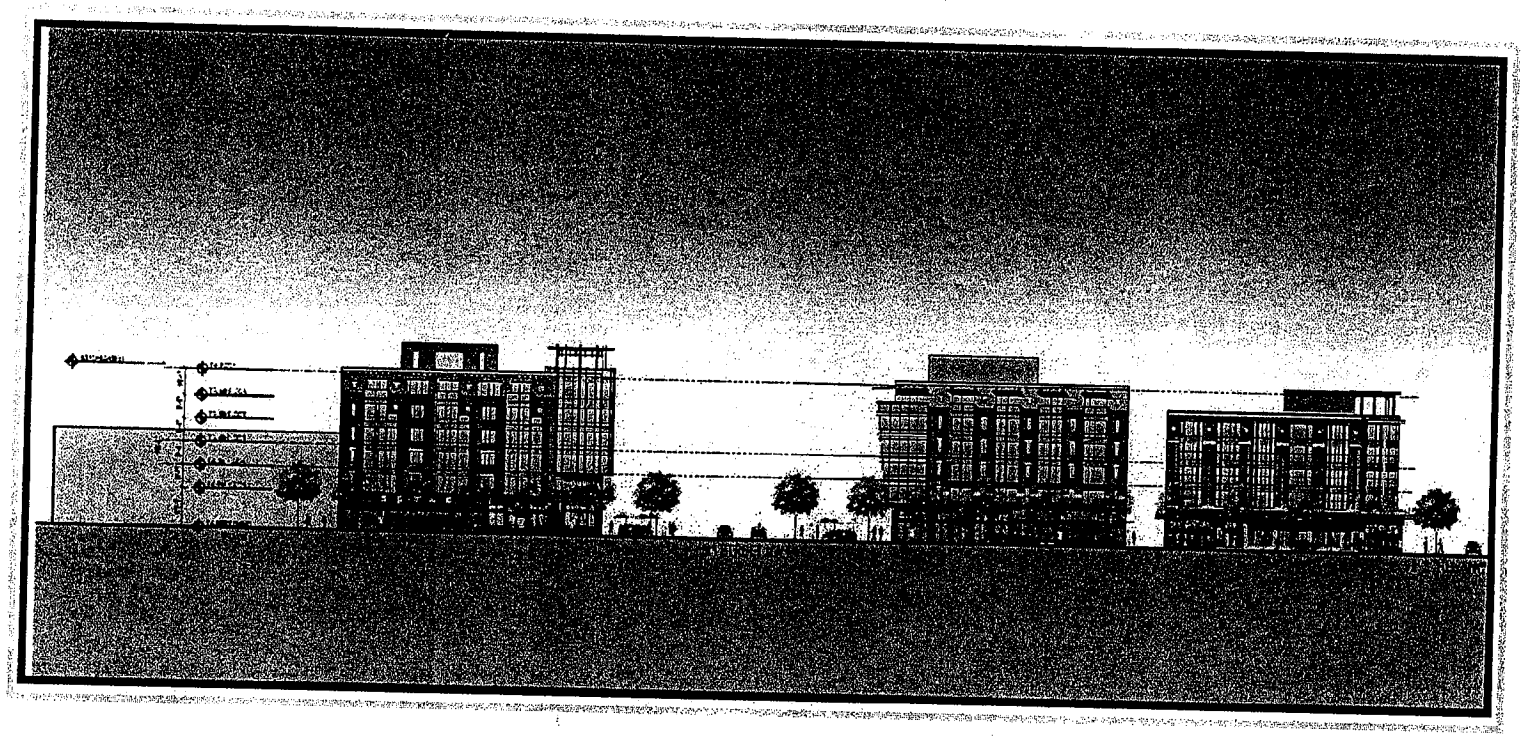





WMATA-INV 001948

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Elevation



- Provides 104 apartments
- Allocates 11,750 sf for retail/arts uses

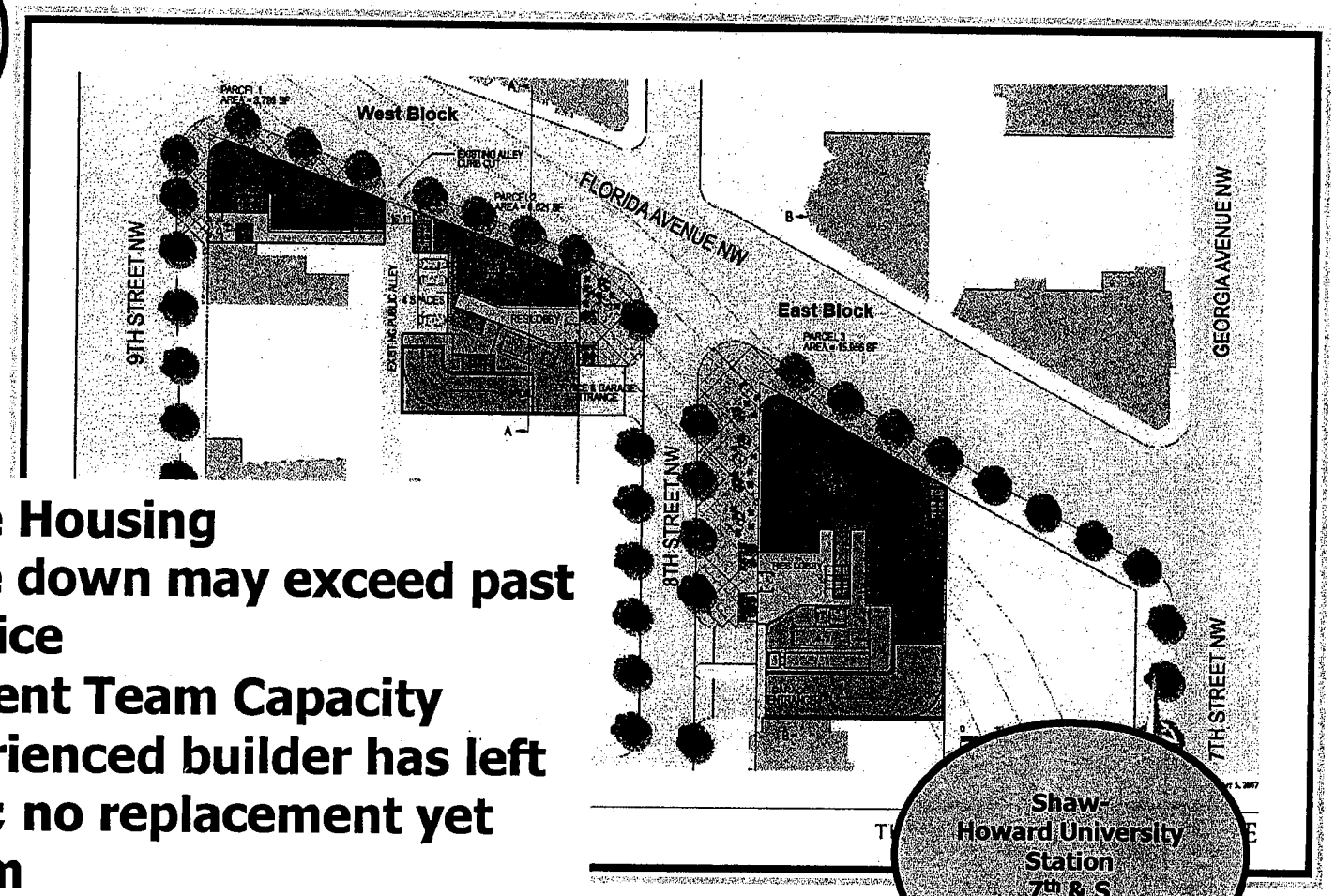


WMATA-INV 001949

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Issues

U Street/
African-American
Civil War
Memorial/Cardozo
Station
U & 10th




Shaw-
Howard University
Station
7th & S

- **Affordable Housing**
  - Write down may exceed past practice
- **Development Team Capacity**
  - Experienced builder has left team; no replacement yet
- **Lease Term**
  - Developer requests 99 years versus 60



WMATA-INV 001950

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

**Approve a 120-day extension for negotiating a joint development agreement.**

WMATA-INV 001951

Planning, Development and Real Estate Committee

Board Information Item I-D

March 12, 2009

# Broadcast Center Partners at Shaw-Howard Station

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ○Action ◉Information | MEAD Number: | Resolution: ○Yes ◉No |
|---|---|---|

**TITLE:**

Shaw-Howard U. N Entrance, Broadcast Center

**PURPOSE:**

Convey to the Board information regarding the disposition of various Metro property rights at Shaw-Howard U. Metrorail station north entrance.

**DESCRIPTION:**

Metro has various property rights at the Shaw-Howard U. Metrorail station, north entrance, 7th & S Streets, NW, Washington, DC -- 4,146 sf of fee simple and 1,660 sf of surface and subsurface easements.

Broadcast Center Partners (BCP), designated developer of the adjacent Radio One project, has offered to purchase easement rights from Metro required by BCP for its development.

BCP`s offering price is significantly lower than Metro`s estimate of value based on a contracted third party appraisal of the real estate interest to be conveyed.

Metro staff recognize the significant public policy benefits to Metro and District of Columbia of economic and transit-oriented development at the Shaw-Howard U. station and seek to promote these objectives.

The joint development program also has an established history of valuing sales and leases that is challenging to reconcile with the District of Columbia`s policy objectives at the Shaw-Howard U. station.

BCP feels its offer is fair if the benefits to Metro from increased ridership and associated revenues estimated at more than $300,000 per year generated by BCP`s adjacent development are considered in the transaction valuation.

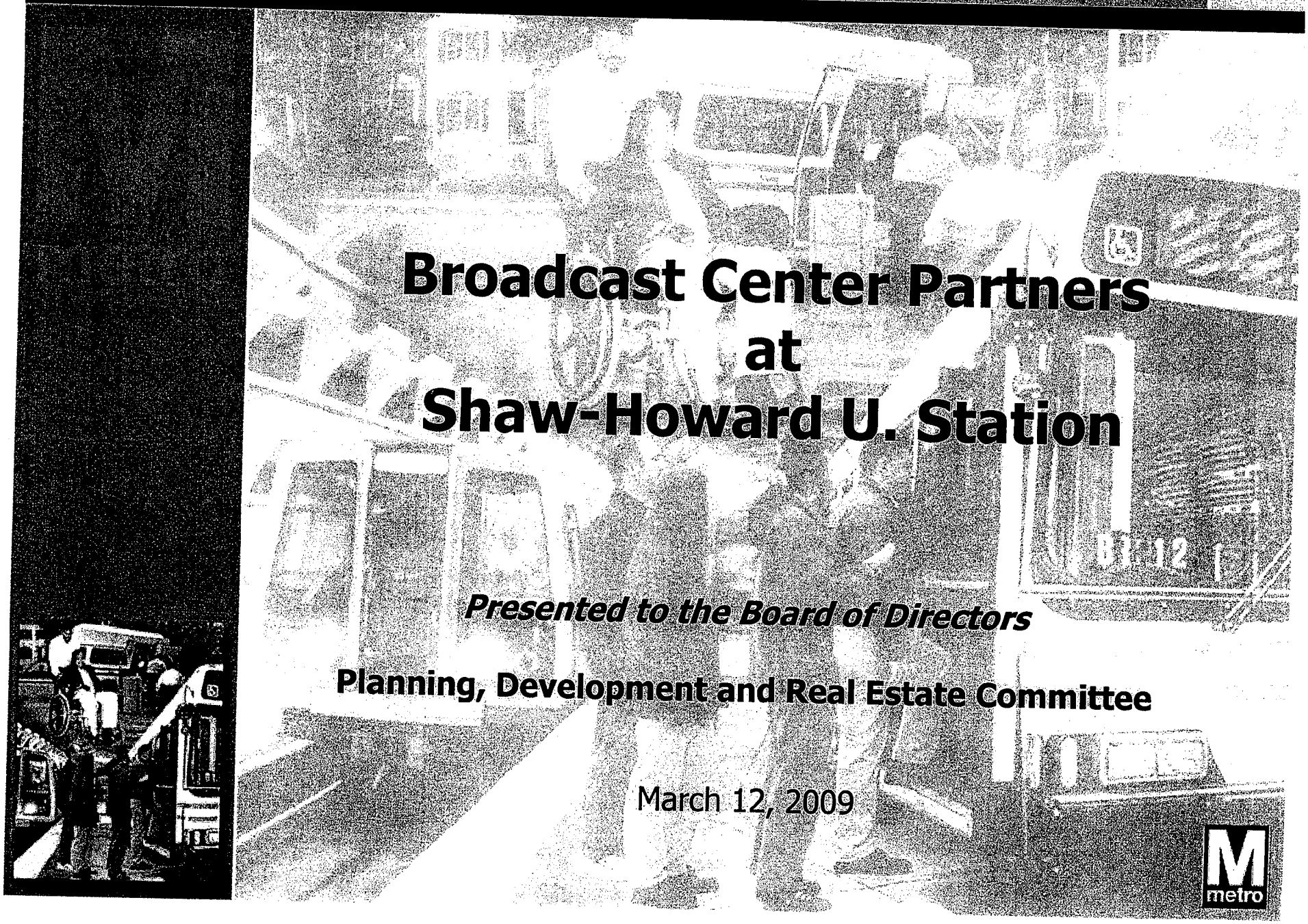
**FUNDING IMPACT:**

Increase in Transit Infrastructure Investment Funding to the District of Columbia if project goes to closing.

**RECOMMENDATION:**

Metro staff are seeking Board guidance on the appropriate balancing of the policy objectives

for transient-oriented development with the joint development established real estate valuation practice for the Shaw-Howard project.



# Broadcast Center Partners at Shaw-Howard U. Station

***Presented to the Board of Directors***

**Planning, Development and Real Estate Committee**

March 12, 2009

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

**Inform the Board concerning the disposition of various Metro property rights at Shaw-Howard U. Metrorail station north entrance.**

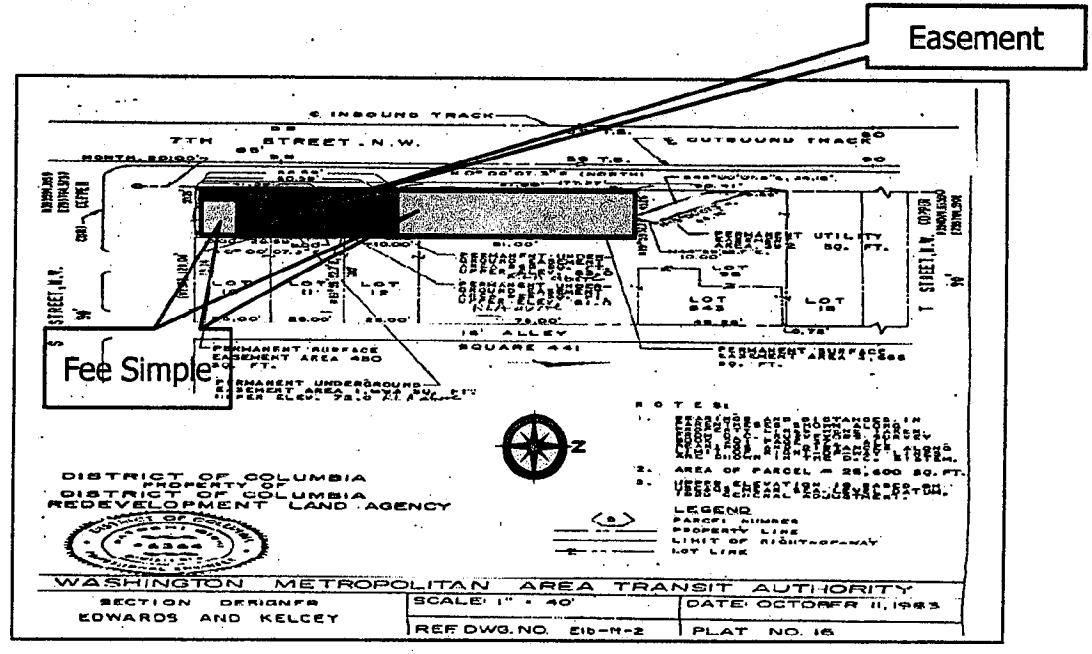
WMATA-INV 001956

FOIA CONFIDENTIAL TREATMENT REQUESTED

# WMATA Property Rights

- Metro site has 4,146 sf of fee simple and 1,660 sf of surface and subsurface easement property rights at the Shaw-Howard U. Metrorail station north entrance at 7th and S Streets, NW

- Development around/over/near Metro facilities (escalators, canopy, elevator and an underground walkway) would require costly construction to avoid interference with Metro's operations



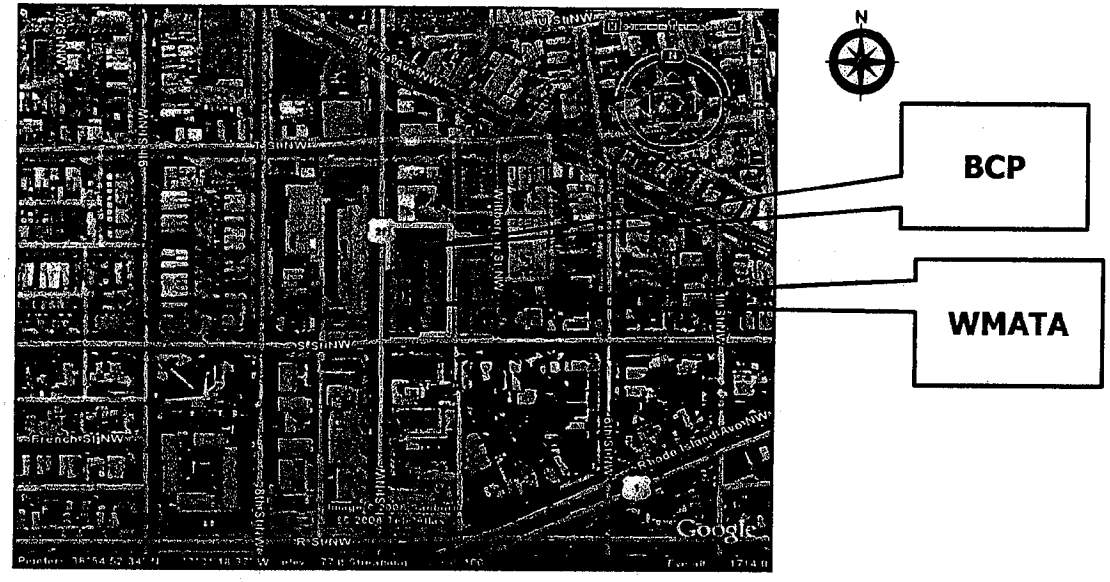



WMATA-INV 001957

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Background

- District of Columbia's developable site surrounds WMATA's site
- In 2005 District of Columbia contracted to sell its site to Broadcast Center Partners, LLC (BCP) and BCP obtained approval for a PUD anchored by Radio One as the major tenant for its 300,000 s.f. mixed use project
- The approved BCP plan impairs Metro's ability to market and develop its site independently of the adjacent BCP project






WMATA-INV 001958

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Background
(continued)

- In 2007 Metro received unsolicited sole source offer from BCP to purchase various easement rights from Metro, but final plans and specific easement areas were not provided to Metro until 2008
- Air rights are required from Metro for window washing and unobstructed visibility from 7th street
- Underground easements are required for building foundations and to provide underground parking required by District of Columbia
- To accommodate BCP's design for the office building south entrance , BCP will need an easement on Metro's elevator parcel
- This is not a joint development project but is only a conveyance of easement rights
- Metro can negotiate with BCP on a sole source basis due to site geography and since it is the adjacent property owner



WMATA-INV 001959

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Status of Negotiations

- All recent discussions have addressed price; complete terms and conditions have not been negotiated or finalized
- Metro Staff recommends conveying the easements required by BCP for the offered price of $300,000 with a negotiation of certain terms and transit benefits associated with this action



WMATA-INV 001960

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Key Terms and Conditions

- Metro staff will grant a 60-year easement for $300,000 cash and other transit related benefits totaling approximately $446,000 per year (See Appendix)
- Additional benefits to Metro and the local community include the revitalization of the Shaw-Howard area (Howard University and Howard Theater District) and promotion of the transit oriented development goals for the development around the station
- The term of the easement (s) granted to BCP by Metro will expire in 60 years or upon redevelopment of the office building structure, whichever comes first; i.e., the easement (s) will be granted for the specific office building structure that BCP has proposed
- Metro's closing with BCP must occur on or after BCP's closing of the Land Disposition Agreement with the District of Columbia



WMATA-INV 001961

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Issues for Board Consideration

- The valuation approach proposed is significantly different from approaches used in the past
- A review appraisal suggests that Metro's property value ranges from $1.8 to $2.0 million assuming one methodology , and from $600,000 to $700,000 assuming another
- Final terms and conditions of any agreement between Metro and BCP will be subject to Board and FTA approval
- On balance, Staff recommends moving forward to develop terms on the basis described herein



WMATA-INV 001962

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Appendix

## BCP Project Transit Use Calculations

- The Broadcast Center Partners (BCP) project will have :
  - 180 Apartment units
  - 95,000 square feet of office space
  - 19,000 square feet of retail space
- The following additional daily Metrorail patronage is estimated from the BCP project for weekdays:
  - Office trips at 366, with annual revenue at $150,975
  - Residential trips at 408, with annual revenue at $168, 300
  - Retail trips at 308, with annual revenue at $127, 050
  - Total annual revenue is estimated at $446,325



WMATA-INV 001963

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Appendix

## BCP Project Transit Use Calculations

| Use | Weekday Trip Estimate* | Weekdays | Base Peak Fare | Annual Weekday Revenue |
|---|---|---|---|---|
| Office | 366 | 250 | 1.65 | $150,975 |
| Residential | 408 | 250 | 1.65 | $168,300 |
| Retail | 308 | 250 | 1.65 | $127,050 |
| Totals | 1082 | | | $446,325 |

*ITE trip generation rates & Mode share data are for weekdays; the retail and residential uses may generate more trips on weekends & holidays as well



WMATA-INV 001964

Planning, Development and Real Estate Committee

Board Information Item I-E

March 12, 2009

# DC Village Update

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ○Action ◉Information | MEAD Number: | Resolution: ○Yes ◉No |
|---|---|---|

**TITLE:**

D.C. Village Update

**PURPOSE:**

To update the Planning, Development and Real Estate Committee and the Board on the status of the proposed property exchange between Metro and the District of Columbia, including the site at D.C. Village for the replacement Southeastern Bus Garage.

**DESCRIPTION:**

In December 2007, staff obtained Board approval to negotiate and execute an Exchange and Cooperation in Development Agreement with the District of Columbia (the "District") to facilitate the acquisition of a 16-acre site at D.C. Village suitable for construction of the replacement Southeastern Bus Garage. Metro has considered the purchase of the D.C. Village site as a continuation and part of the closure of the Southeastern Bus Garage. Resolutions from the Metro Board of Directors memorialize this understanding.

As a matter of convenience and cooperation, the District and Metro have each built facilities on the property of the other pursuant to right of entry agreements over the years. The District and Metro agreed that as part of Metro's acquisition of the D.C. Village property, the parties would complete all outstanding real estate transactions through a no-cost exchange of properties. The proposed exchange of properties was approved by the Board subject to a verification of the value of the D.C. Village parcel.

As agreement details were being negotiated, Metro and the District could not agree on the value of the Metro parcels comprising the exchange. Metro subsequently presented the District with various options consisting of other properties (including a list of all excess Metro properties in the District of Columbia and the Stone Straw Building) none of which were of interest to the District.

By letter dated February 12, 2009, the District of Columbia Department of Transportation advised Metro that it is no longer pursuing the property exchange to relocate the replacement bus garage at D.C. Village. In that letter, the District also advised that it is not able to continue funding the costs of the reallocation of buses from the former Southeastern Bus Garage (the "deadheading costs") and that the District's January 2009 payment would be its last payment.

To date, Metro has expended approximately $7 million for design work and environmental investigation for the replacement garage at D.C. Village. The funding for this work was obtained from the proceeds of the sale of the Southeastern Bus Garage Employee Parking Lot property.

**FUNDING IMPACT:**

The decision to no longer pursue the property exchange has extended 1) the time span until the Southeastern Bus Garage buses are relocated to a permanent facility; and 2) the associated $400,000/month temporary deadheading cost. The District's decision not to continue paying this cost after January 2009 has created the need to identify another source of funds.

**RECOMMENDATION:**

N/A

ROS

View 14
Level 2
David Franco

Took
$550K with
$490 left
leaves $80K

**Planning, Development and Real Estate Committee**

**Board Information Item I-C**

**March 12, 2009**

# Extension of Development Agreement Negotiation Period

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| ◉Action ○Information | MEAD Number: 100284 | Resolution: ○Yes ◉No |
|---|---|---|

**TITLE:**

Extend Agreement Negotiation Period for Shaw-FL Av

**PURPOSE:**

Approve a 120-day extension for negotiating a joint development agreement for the Shaw-Howard University/Florida Avenue parcels.

**DESCRIPTION:**

On June 26, 2008, the Board selected a development team and approved a term sheet for the Shaw-Howard University/Florida Avenue property, which consists of three parcels totaling 28,892 sf located between 7th and 9th Streets NW in Washington, DC. The development team was composed of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC. It proposed to develop a minimum of 104 housing units over ground floor retail of approximately 11,750 sf under a 60-year lease.

In its approval, the Board directed that the final agreement include an affordable housing component. It further directed staff to provide documentation to the Board clarifying the roles and responsibilities of the members of the development team.

Following term sheet and Developer approval, staff prepared a draft development agreement, which was provided to the Developer. The Developer has:

A. Requested a revised business deal reflecting the inclusion of affordable housing. The rent would be substantially reduced from that agreed to at term sheet approval.

B. Lost at least one member of the development team, Metropolis Development Company, which provided the construction and development expertise needed for the proposed project. Banneker, the lead member of the development team, has not yet provided documentation on a suitable replacement and its roles and responsibilities on the team.

C. Requested a 99-year lease instead of a 60-year lease.

The extension being requested is expected to provide enough time for resolution of the items noted above.

**FUNDING IMPACT:**

This action will have no immediate impact on funding although a reduction in land value for

affordable housing from that agreed to at term sheet stage will have an impact that will be presented to the Board upon negotiation of a joint development agreement. Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

Approval of a 120-day extension for negotiating a joint development agreement for the Shaw-Howard University/Florida Avenue parcels. A negotiated agreement will be brought to the Board for approval.

FOIA CONFIDENTIAL TREATMENT REQUESTED



# Extend Negotiation Period for Joint Development Agreement

***Presented to the Board of Directors:***

**Planning, Development and Real Estate Committee**
**Executive Session**

March 12, 2009

WMATA-INV 001971

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Purpose

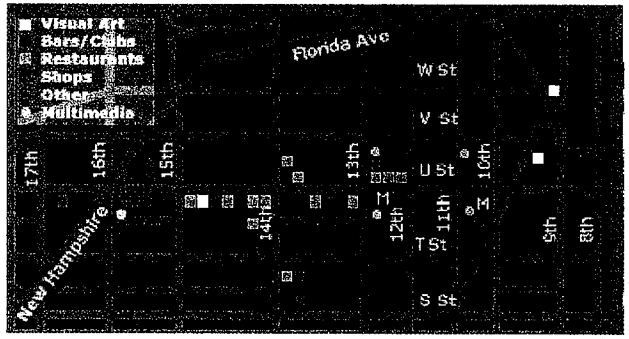
**Approve a 120-day extension for negotiating a joint development agreement.**

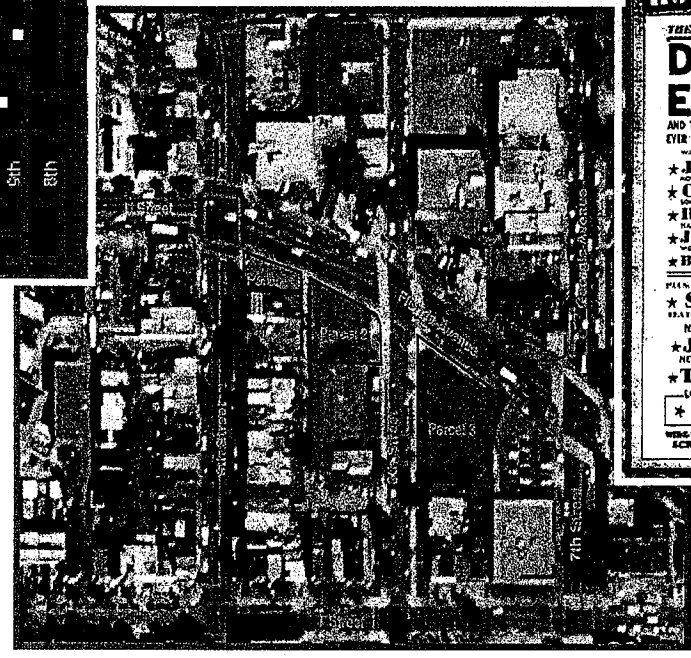
WMATA-INV 001972

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Site

- Metro has 3 parcels (comprising 28,892 sf) that were used to construct Green Line tunnel
- Washington, DC adopted "Duke" Plan for area in 2005



WMATA-INV 001973

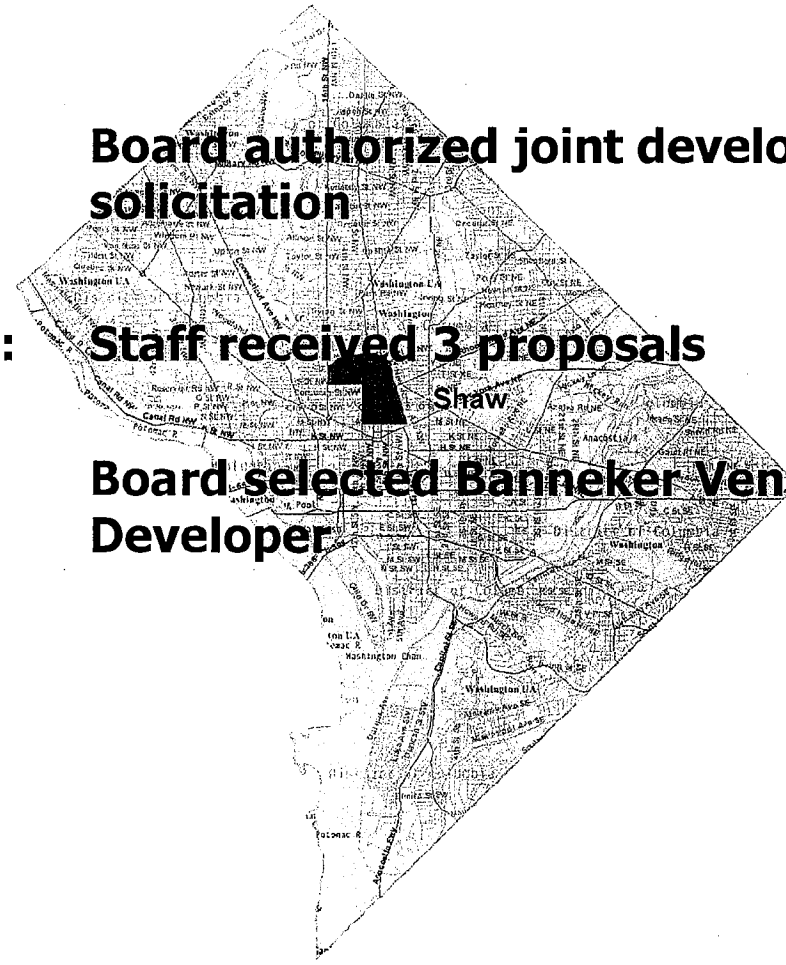
FOIA CONFIDENTIAL TREATMENT REQUESTED

# Background

**July 2006:** Board authorized joint development solicitation

**October 2007:** Staff received 3 proposals

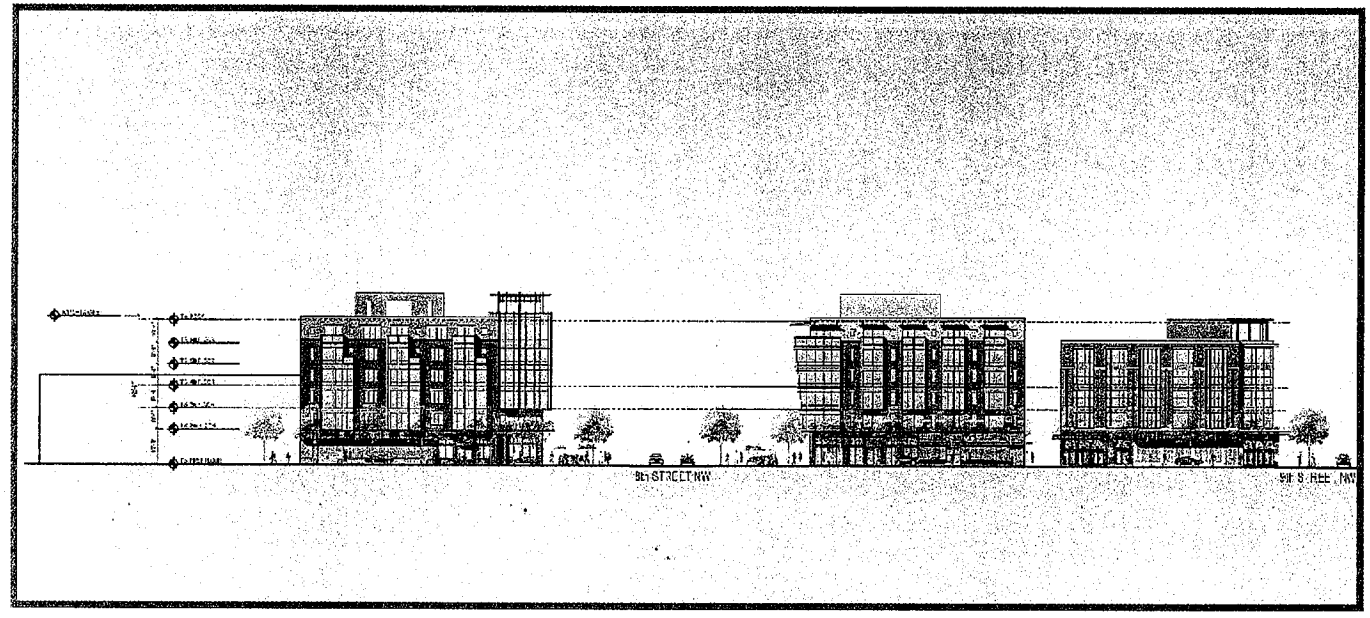
**June 2008:** Board selected Banneker Ventures team as Developer




WMATA-INV 001974

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Elevation



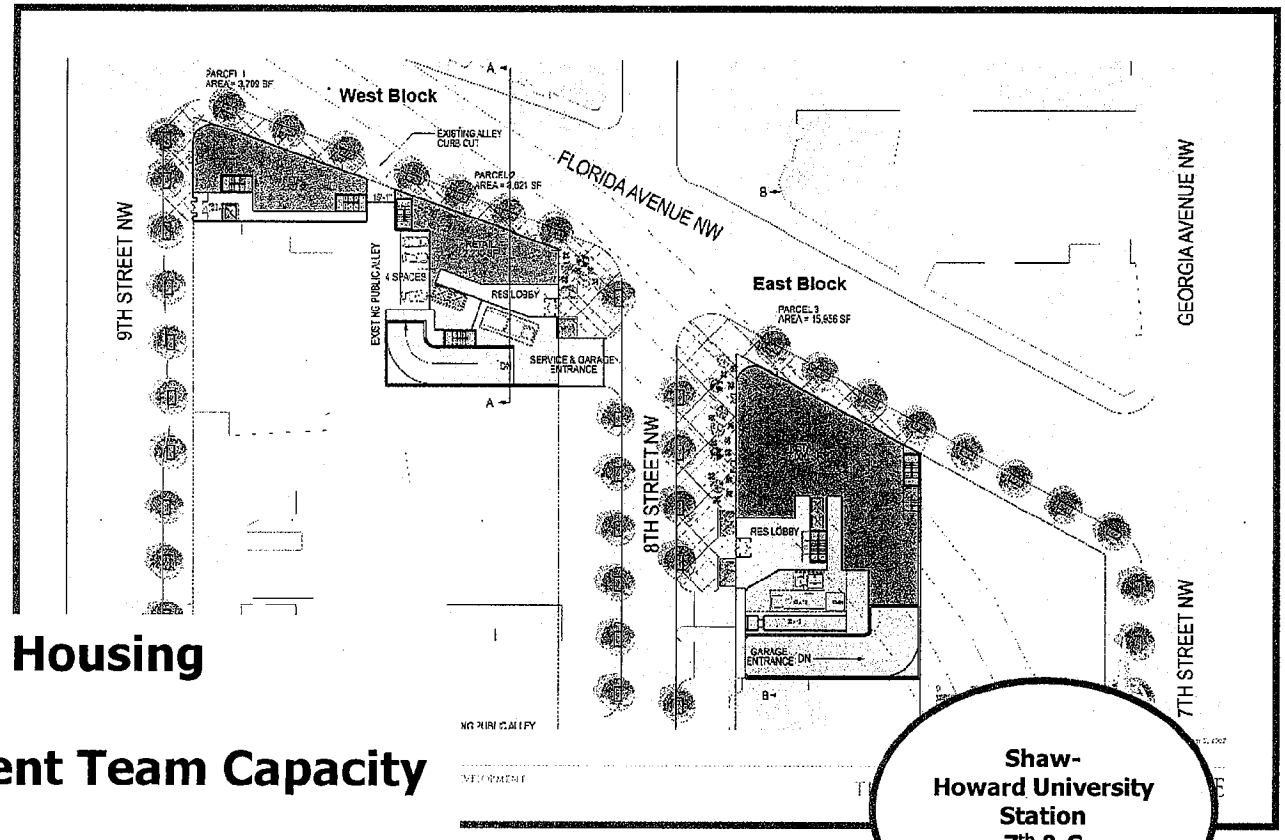

- **Provides 104 apartments**
- **Allocates 11,750 sf for retail/arts uses**

WMATA-INV 001975

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Issues

U Street/
African-American
Civil War
Memorial/Cardozo
Station
U & 10th




- Affordable Housing
- Development Team Capacity
- Lease Term

Shaw-
Howard University
Station
7th & S

WMATA-INV 001976

FOIA CONFIDENTIAL TREATMENT REQUESTED

# Recommendation

**Approve a 120-day extension for negotiating a joint development agreement.**

WMATA-INV 001977

APPENDIX

AFFORDABLE HOUSING/INCLUSIONARY ZONING REQUIREMENTS BY JURISDICTION

| Jurisdiction | Set-aside Requirement | Incentive | Notes |
|---|---|---|---|
| District of Columbia* | Steel/concrete buildings: 8% at or 50% of bonus density<br><br>Stick built buildings: 10% or 75% of bonus density | • Up to 20% density bonus | • Trigger: 10 units<br>• Income Target for Steel/concrete: 80% AMI (Area Median Income)<br>• Income Target for Stick built: 50% at 50% AMI, 50% at 80% AMI<br>• Final regulations to be published @ 3/1/09, effective 60 days later; Title 11, Chapter 26 of the DC Zoning Regulations |
| Montgomery County | 12.5% Moderately Priced Dwelling Units (MPDU's)<br><br>10% work force housing in Metro Station Policy Areas (areas near Metro stations) | • Up to 22% density bonus<br><br>• Up to 10% residential FAR or density increase but not more than maximum height for zone | • Trigger: 20 units<br>• MPDU Target: 65-70% AMI<br><br>• Trigger: 35 units<br>• Work force target: 80-120% AMI |
| Prince George's County | None | None | Revoked in 1996 |
| Fairfax County | 6.25%-12.5% affordable dwelling units (ADU's) single family and multifamily low rise (3 stories or less)<br><br>5%-6.25% ADU's multifamily 4 stories and more<br><br>12% Work force housing in steel & concrete buildings where ADU's are not required | • Up to 10 to 20% density bonus (sliding scale depending on ADU number)<br><br>• Up to 17% density bonus (sliding scale depending on ADU number and % structured parking)<br><br>• Up to 20% (residential or non residential) | • Trigger: 50 units<br>• ADU Target: 70% AMI<br><br>• Trigger: 50 units<br>• ADU Target 70% AMI<br><br>• Target: Up to 120% AMI<br>• Enacted to date in amended Comp Plan (9/22/08)<br>• In certain mixed use centers |

FOIA CONFIDENTIAL TREATMENT REQUESTED

| Jurisdiction | Set-Aside Requirement | Incentive | Notes |
|---|---|---|---|
| Rockville | 15% MPDU's in Town Center and MXT zones at Metro stations | No density bonus | • Trigger: 50 units<br>• Target: 60% AMI |
| Arlington County | 5% of Gross Floor Area over 1.0 FAR (no requirement under 1.0 FAR) for ADU's<br><br>Alternative: provide a) ADU's off-site with conditions or b) cash donation to housing fund | • 10 to 20% density bonus | • Trigger: 1.0 FAR<br>• ADU Target: 60% AMI<br>• Duration: 30 years |
| Alexandria | Tier 1: Voluntary contributions for "by right" development<br><br>Tier 2: For certain density, height or FAR increases, voluntary contribution plus $4.00/sf of GFA above "by right" base<br><br>Tier 3: Tier 1 and 2 as applicable PLUS Affordable Housing Units (AHU's) equal to 33% of housing units made possible by density bonus | • No density bonus<br><br>• Density bonus varies<br><br>• Increased density bonus For Tier 3 | • Trigger: None<br><br>• Trigger: FAR, height or density increase over "by right"<br><br>• AHU Target: 60% AMI<br>• AHU's may be provided off-site by mutual agreement between city and developer<br>• Zoning ordinance to be amended to reflect Tier 3 bonus density |

*The District of Columbia also has legislative requirements for affordable housing in the disposition of city-owned land in the Anacostia Waterfront Area and city-owned land formerly in the National Capital Revitalization Corporation's portfolio: 15% housing at 30% AMI and 15% housing at 60% AMI. The office of the Deputy Mayor for Planning and Economic Development includes these same requirements in its RFP's for disposition of other city-owned property.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority

# METRO ELECTRONIC ACTION DOCUMENT

MEAD ID: 100284

| DESCRIPTION | |
|---|---|
| TITLE: | Extend Agreement Negotiation Period for Shaw-FL Av |
| SUBJECT: | Approve a 120-day extension to negotiate a Shaw-Howard U./Forida Avenue revised term sheet |
| PURPOSE: | Approve a 120-day extension for negotiating a revised term sheet for the Shaw-Howard University/Florida Avenue parcels. |

Washington Metropolitan Area Transit Authority

# METRO ELECTRONIC ACTION DOCUMENT

DESCRIPTION:

On June 26, 2008, the Board selected a development team and approved a term sheet for the Shaw-Howard University/Florida Avenue property, which consists of three parcels totaling 28,892 sf located between 7th and 9th Streets NW in Washington, DC. The development team was composed of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC. It proposed to develop a minimum of 104 housing units over ground floor retail of approximately 11,750 sf under a 60-year lease.

In its approval, the Board directed that the final agreement include an affordable housing component. It further directed staff to provide documentation to the Board clarifying the roles and responsibilities of the members of the development team.

Following term sheet and Developer approval, staff prepared a draft development agreement, which was provided to the Developer. The Developer has:

A. Requested a revised business deal reflecting the inclusion of affordable housing. The rent would be substantially reduced from that agreed to at term sheet approval.

B. Lost at least one member of the development team, Metropolis Development Company, which provided the construction and development expertise needed for the proposed project. Banneker, the lead member of the development team, has not yet provided documentation on a suitable replacement and its roles and responsibilities on the team.

C. Requested a 99-year lease instead of a 60-year lease.

The extension being requested is expected to provide enough time for resolution of the items noted above.

FUNDING IMPACT:

This action will have no immediate impact on funding although a reduction in land value for affordable housing from that agreed to at term sheet stage will have an impact that will be presented to the Board upon negotiation of a joint development agreement. Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

PRIOR APPROVALS:

The Board approved the Developer and term sheet on June 26, 2008.

RECOMMENDATION:

Approval of a 120-day extension for negotiating a revised term sheet for the Shaw-Howard University/Florida Avenue parcels. A negotiated agreement will be brought to the Board for approval.

## Routing Status

| | |
|---|---|
| Status: | This document has been approved! |
| Document: | MEAD(100284) Extend Agreement Negotiation Period for Shaw-FL Av |
| Routing Initiated: | 02/19/2009 04:41 pm by ROSALYN DOGGETT (rdoggett@wmata.com) |

| Routing Level | Name | Approver/ Reviewer | Notified by email | Action | Date of Action | Comments |
|---|---|---|---|---|---|---|
| 1 | BOTTIGHEIMER, JOHN | Approver | 02/19/2009 04:41 pm | Approved | 02/19/2009 05:08 pm | |
| | WASHINGTON, JOEL | Approver | 02/19/2009 04:41 pm | Approved | 02/19/2009 04:43 pm | |
| | SEQUEIRA-CASTILLO, LOYDA | Reviewer | 02/19/2009 04:41 pm | | No action is necessary | |
| 2 | GRISWOLD, RAYMOND | Approver | 02/19/2009 05:08 pm | Reassigned | 02/20/2009 12:23 pm | [Reassigned to: ROSALYN DOGGETT, by:ROSALYN DOGGETT] not a procurement actior |
| | REQUA, JOHN | Approver | 02/19/2009 05:08 pm | Approved | 03/05/2009 10:53 am | |
| | DOGGETT, ROSALYN | Approver | 02/20/2009 12:23 pm | Approved | 02/20/2009 .12:27 pm | |
| | BROWN, CARL | Reviewer | 02/19/2009 05:08 pm | | No action is necessary | |
| | HARCUM, RICHARD | Reviewer | 02/19/2009 05:08 pm | | No action is necessary | |
| 3 | KISSAL, CAROL | Approver | 03/05/2009 10:53 am | Approved | 03/05/2009 03:57 pm | |
| 4 | PENDING, COUNAPPROVAL | Approver | 03/05/2009 03:57 pm | Reassigned | 03/06/2009 01:40 pm | [Reassigned to: CAROL O'KEEFFE, by:COUNAPPROVAL PENDING] for sign off |
| | O'KEEFFE, CAROL | Approver | 03/06/2009 01:40 pm | Approved | 03/06/2009 01:50 pm | |
| 5 | FRANCIS, GERALD | Approver | 03/06/2009 01:50 pm | Approved | 03/06/2009 03:57 pm | |
| | SEQUEIRA-CASTILLO, LOYDA | Approver | 03/06/2009 03:57 pm | Approved | 03/11/2009 03:07 pm | |

| | | | | | | |
|---|---|---|---|---|---|---|
| 6 | PANT, SHIVA | Approver | 03/06/2009 03:57 pm | Approved | 03/11/2009 06:11 pm | |
| 7 | CEO, GMGR | Approver | 03/11/2009 06:11 pm | Approved | 03/13/2009 12:17 pm | |
| 8 | WMATA, BOARD | Approver | 03/13/2009 12:17 pm | Approved | 05/05/2009 12:47 pm | Approved by the Board on April 23,09, LSC. |
| Routing Completed | | | | | | |

Return to previous screen

CMIS

## Doggett, Rosalyn

**From:** ProcAdmin@wmata.com
**Sent:** Tuesday, May 05, 2009 12:51 PM
**To:** Doggett, Rosalyn
**Subject:** MEAD Routing (APPROVED!) - MEAD(100284) Extend Agreement Negotiation Period for Shaw-FL Av

```
TO:       ROSALYN DOGGETT
DOCUMENT: MEAD(100284) Extend Agreement Negotiation Period for Shaw-FL Av
SUBJECT:  The document specified above has just been approved.
-------------------------------------------------------------

All approver(s) have approved your document.
```



FOIA CONFIDENTIAL TREATMENT REQUESTED

## Routing Status

| | |
|---|---|
| Status: | This document has been approved! |
| Document: | MEAD(100284) Extend Agreement Negotiation Period for Shaw-FL Av |
| Routing Initiated: | 02/19/2009 04:41 pm by ROSALYN DOGGETT (rdoggett@wmata.com) |

| Routing Level | Name | Approver/ Reviewer | Notified by email | Action | Date of Action | Comments |
|---|---|---|---|---|---|---|
| 1 | BOTTIGHEIMER, JOHN | Approver | 02/19/2009 04:41 pm | Approved | 02/19/2009 05:08 pm | |
| | WASHINGTON, JOEL | Approver | 02/19/2009 04:41 pm | Approved | 02/19/2009 04:43 pm | |
| | SEQUEIRA-CASTILLO, LOYDA | Reviewer | 02/19/2009 04:41 pm | | No action is necessary | |
| 2 | GRISWOLD, RAYMOND | Approver | 02/19/2009 05:08 pm | Reassigned | 02/20/2009 12:23 pm | [Reassigned to: ROSALYN DOGGETT, by:ROSALYN DOGGETT] not a procurement actior |
| | REQUA, JOHN | Approver | 02/19/2009 05:08 pm | Approved | 03/05/2009 10:53 am | |
| | DOGGETT, ROSALYN | Approver | 02/20/2009 12:23 pm | Approved | 02/20/2009 12:27 pm | |
| | BROWN, CARL | Reviewer | 02/19/2009 05:08 pm | | No action is necessary | |
| | HARCUM, RICHARD | Reviewer | 02/19/2009 05:08 pm | | No action is necessary | |
| 3 | KISSAL, CAROL | Approver | 03/05/2009 10:53 am | Approved | 03/05/2009 03:57 pm | |
| 4 | PENDING, COUNAPPROVAL | Approver | 03/05/2009 03:57 pm | Reassigned | 03/06/2009 01:40 pm | [Reassigned to: CAROL O'KEEFFE, by:COUNAPPROVAL PENDING] for sign off |
| | O'KEEFFE, CAROL | Approver | 03/06/2009 01:40 pm | Approved | 03/06/2009 01:50 pm | |
| 5 | FRANCIS, GERALD | Approver | 03/06/2009 01:50 pm | Approved | 03/06/2009 03:57 pm | |
| | SEQUEIRA-CASTILLO, LOYDA | Approver | 03/06/2009 03:57 pm | Approved | 03/11/2009 03:07 pm | |

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|---|---|---|---|---|---|---|
| 6 | PANT, SHIVA | Approver | 03/06/2009 03:57 pm | Approved | 03/11/2009 06:11 pm | |
| 7 | CEO, GMGR | Approver | 03/11/2009 06:11 pm | Approved | 03/13/2009 12:17 pm | |
| 8 | WMATA, BOARD | Approver | 03/13/2009 12:17 pm | Approved | 05/05/2009 12:47 pm | Approved by the Board on April 23,09, LSC. |
| Routing Completed | | | | | | |

Return to previous screen

CMIS

Washington Metropolitan Area Transit Authority

# Board Action/Information Summary

| | | |
|---|---|---|
| ◉ Action ○ Information | MEAD Number: 100284 | Resolution: ○ Yes ◉ No |

**TITLE:**

Extend Agreement Negotiation Period for Shaw-FL Av

**PURPOSE:**

Approve a 120-day extension for negotiating a revised term sheet for the Shaw-Howard University/Florida Avenue parcels.

**DESCRIPTION:**

On June 26, 2008, the Board selected a development team and approved a term sheet for the Shaw-Howard University/Florida Avenue property, which consists of three parcels totaling 28,892 sf located between 7th and 9th Streets NW in Washington, DC. The development team was composed of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC. It proposed to develop a minimum of 104 housing units over ground floor retail of approximately 11,750 sf under a 60-year lease.

In its approval, the Board directed that the final agreement include an affordable housing component. It further directed staff to provide documentation to the Board clarifying the roles and responsibilities of the members of the development team.

Following term sheet and Developer approval, staff prepared a draft development agreement, which was provided to the Developer. The Developer has:

A. Requested a revised business deal reflecting the inclusion of affordable housing. The rent would be substantially reduced from that agreed to at term sheet approval.

B. Lost at least one member of the development team, Metropolis Development Company, which provided the construction and development expertise needed for the proposed project. Banneker, the lead member of the development team, has not yet provided documentation on a suitable replacement and its roles and responsibilities on the team.

C. Requested a 99-year lease instead of a 60-year lease.

The extension being requested is expected to provide enough time for resolution of the items noted above.

**FUNDING IMPACT:**

This action will have no immediate impact on funding although a reduction in land value for affordable housing from that agreed to at term sheet stage will have an impact that will be presented to the Board upon negotiation of a joint development agreement. Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

**RECOMMENDATION:**

Approval of a 120-day extension for negotiating a revised term sheet for the Shaw-Howard University/Florida Avenue parcels. A negotiated agreement will be brought to the Board for approval.

FOIA CONFIDENTIAL TREATMENT REQUESTED

1/30/2009

## PLJD Board of Directors Items
## March 2009

### Planning, Development, and Real Estate (PD&RE) Committee & Board

| CMTE & Admin Items Pre-brief for AGM PLJD | PD&RE Items Materials to AGM OPRS | PD&RE Cmte Pre-brief for AGM OPRS | | Revised PD&RE Items Materials to Michelle Bellamy OPRS | Draft PD&RE Items Materials to SECT | | | | GM All Cmte & Admin Items Briefing | Final All Cmte Materials (1 copy) to SECT for Proofing | PD&RE Cmte Mailout Materials (17 copies) to SECT | SECT Mail-out to PD&RE Cmte | PD&RE Cmte Mtg | GM Board Final Review | Board Mailout Materials (17 copies) to SECT | SECT Mail-out to Board | | Board Meeting |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2/10 ? | ~~2/15~~ 2/13 | 2/16 | | 2/18 | 2/24/09 1500 | | | | ~~2/26~~ 2/16 ? | 2/17 ? | 3/5/09 1400 | 3/6/09 1100 | 3/12/09 0900 | 3/13 | 3/19/09 1400 | 3/20/09 1100 | | 3/26/09 1100 |
| | | | | | 2/24/09 1500 | | | | | | 3/5/09 1400 | 3/6/09 1100 | 3/12/09 0900 | | 3/19/09 1400 | 3/20/09 1100 | | 3/26/09 1100 |



WMATA-INV 001990

**From:** Nat Bottigheimer
**To:** jrwashington@wmata.com,smohsberg@wmata.com,jrequa@wmata.com
**Date:** 2/8/2009 8:12:33 PM
**Subject:** Fwd: PLJD Board Items Preparation Milestones -2009

Joel/Sid/Jack--

We're going to need to add a few items to take to the Board in March for Executive Session for PDRE. We need to bring a Radio One item and we also need to bring the Florida and 9th project back, and we also need to bring an affordable housing policy item back -- and also an information item on status of the DC Village Project.

Joel, please begin preparing these right away -- Emeka, please correct me if I'm off base on the following. As I understand it, our approach is to be:

Radio One -- bring the item forward for Board guidance on the deal as it currently stands. We obviously do not have a term sheet or any other document for approval, so what we really need is guidance on approach going forward. Therefore, we're asking for Board guidance and the item should provide the informational background the Board needs to provide us with a reaction and guidance so that we can proceed in finalizing terms with the development team. Provide informational background to frame the question and the issues that the Board needs to consider. In the informational background, we will stress our desire to move forward but that we are challenged to square the terms offered with the appraisals we've received.

Shaw Howard -- this item is similar to Radio One above. Board approved one set of terms, and conditions have changed since then. We would like to help advance the project, but are seeking Board guidance on how to proceed. Provide informational background to frame the question and the issues that the Board needs to consider.

DC Village -- We should provide an information update on this project and its unraveling, and update the Board on our strategy for securing a long-term home for the old Southeastern division.

Affordable housing policy -- working with COUN, please draft a policy that lays out a Board policy on writing down project values to reflect local affordable housing ordinances. I suggest a policy that accepts a 15% discount from a fully market rate project in terms of total value, irrespective of the specific kind of affordable housing approach that is used by the local jurisdiction. If the affordable housing requirements are imposed on the project after approval by the Board of terms, the policy will have to address how all original proposals must be evaluated. If the project is advertised under the new JD guidelines, it may be a different approach from what we're thinking about for the current projects advertised under the old guidelines.

Thanks,

Nat

**CC:** emoneme@wmata.com,cokeeffe@wmata.com

**From:** Joel R. Washington
**To:** Doggett, Rosalyn
**Date:** 2/10/2009 3:54:57 PM
**Subject:** Fwd: Meeting with DM re: DC Joint Development

>>> Emeka Moneme 2/5/2009 7:53 PM >>>
Let's put heads together tomorrow to discuss what happened at the meeting with Neil Albert:

**Florida Avenue**
- DC requests to re-present the deal to the Board with a reduction in rent from $597k to $300k ($4.5M reduction in NPV)
- They also requested to explore the use of TIIF funds
- **Banc of America CDC was identified as a partner (no mention of a construction partner)**
- We should prepare a proposal for back-end participation
- I will be speaking with Omar Karim tomorrow (2/6)
- This should be ready as part of the March 2009 P&D Committee

**Radio One**
- Four Points has offered $300k or they will redesign their property around our station
- I need to need to know whether we have an leverage on Four Points if they decide to redesign
- We need to be prepared to explain why we are not getting any value from an adjacent property owner, if they redesign
- Can we negotiate some other transit-benefitting improvement, in exchange for the lower price

**Exchange Agreement**
- Deputy Mayor's office will be drafting a letter expressing the District's decision to terminate negotiations
- They expressed again that they will not be paying the deadhead costs, due to legal restrictions

That is the short version...I am speaking with the GM tomorrow about these issues. He would also like to discuss our Morgan Boulevard and Southern Strategy with PG County.

Good night.

Emeka

Emeka Moneme
Chief Administrative Officer
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001
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Cell: (202) 236-7911
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Washington Metropolitan Area Transit Authority

# Agenda
## Planning, Development and Real Estate Committee
## April 9, 2009
## 9 a.m.

**I. Call to Order**

**II. Motion for Executive Session**
- A. Maryland-National Capital Park and Planning Commission Proposal (N. Bottigheimer)
- B. Extension of Development Agreement Negotiation Period (N. Bottigheimer)

**III. Reconvene in the Meeting Room**

**IV. Approval of Agenda**

**V. Approval of Minutes of March 12, 2009**

**VI. Action Items**
- A. Action on Matters Arising from Executive Session
- B. Authorize Negotiation of Contract to Replace Royal Bus Garage (D. Couch)
- C. Authorization to Negotiate and Execute an MOU with Montgomery County for Wheaton Redevelopment (N. Bottigheimer)
- D. Priority Corridor Network Policies and Standards (N. Bottigheimer/J. Hughes)

**VII. Subsequent Planning, Development and Real Estate Committee Agendas**

**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 WMATA-INV 001993

**Minutes**
**Planning, Development and Real Estate Committee**
**March 12, 2009**

The meeting was called to order at 9:09 a.m. Present were:

**Committee members:**

Mr. Neil Albert, Chair
Ms. Elizabeth Hewlett, Vice Chair
Mr. Jim Graham
Mr. Peter Benjamin
Mrs. Catherine Hudgins
Mr. Christopher Zimmerman
Mr. Jeff McKay
Mr. Anthony Giancola
Mr. Marcell Solomon
Mr. William D. Euille

The Committee meeting was called to order at 9:09 a.m. Mr. Albert moved, seconded by Mr. Giancola, that the Committee convene in Executive Session at 9:10 a.m. The Committee voted unanimously in favor of the motion.

The Committee meeting reconvened at 11:09 a.m.

**Approval of Agenda**

The agenda was approved.

**Approval of Minutes**

Mr. Albert moved, seconded by Mr. Zimmerman, to approve the February 26, 2009 minutes as submitted. The Committee voted unanimously in favor of the motion.

**Action Items**

**A. Shady Grove Access Road Bike Path**

Staff sought to obtain Board approval to issue a Real Estate permit to Montgomery County to construct, operate and maintain a bicycle path on Metro property at the Shady Grove Metrorail station.

Mr. Benjamin moved, Mr. Zimmerman seconded, to issue a Real Estate permit to



FOIA CONFIDENTIAL TREATMENT REQUESTED

Montgomery County. The Committee voted unanimously in favor of the motion.

**B. Request for Southern Bus Garage Public Hearing**

Staff sought concurrence from the Planning, Development and Real Estate Committee and approval from the Board of Directors to authorize staff to conduct a Public Hearing for the reconstruction of Southern Avenue Bus Garage.

Mr. Graham moved, seconded by Mr. Benjamin, to authorize staff to conduct a Public Hearing for the reconstruction of Southern Avenue Bus Garage. The Committee voted unanimously in favor of the motion.

The meeting adjourned at 11:18 a.m.



FOIA CONFIDENTIAL TREATMENT REQUESTED

Planning, Development and Real Estate Committee

Board Action Item VI-A

April 9, 2009

# Action on Matters Arising from Executive Session



FOIA CONFIDENTIAL TREATMENT REQUESTED

## VI. Action Item

### A. Action on Matters Arising from Executive Session

### A1. Extension of Development Agreement Negotiation Period

- Board to approve a 120-day extension for negotiating a joint development for the Shaw-Howard University/Florida Avenue parcels.



FOIA CONFIDENTIAL TREATMENT REQUESTED

Planning, Development and Real Estate Committee

Board Action Item VI-B

April 9, 2009

# Advertise Rail Yard Infrastructure Rehabilitation Contract



FOIA CONFIDENTIAL TREATMENT REQUESTED

Moddie Turay Co., LLC
Clark Enterprises Inc.

*Renaissance Row*

# VOLUME I

# TECHNICAL INFORMATION