



Pillsbury Winthrop Shaw Pittman LLP

2300 N Street, NW | Washington, DC 20037-1122 | tel 202.663.8000 | fax 202.663.8007

RECEIVED
D.C. OFFICE OF ZONING

2010 MAR -5 PM 2: 52

Jeffrey C. Utz
Phone: 202.663.8715
jeffrey.utz@pillsburylaw.com

March 4, 2010

VIA HAND DELIVERY

Marc Loud, Chairman
D.C. Board of Zoning Adjustment
441 4th Street, N.W., Second Floor
Washington, D.C. 20001

Re: BZA Application No. 18037 by Dix Street Corridor Revitalization Partners, LLC – 400-414 Eastern Avenue, N.E. (Lots 17, 18, 19 in Square 5260) and Dix Street, N.E. (Lot 806 in Square 5260 (comprised of Lots 21, 22, 23, and 24, and a portion of Lot 25)), and 405 – 409 61st Street, N.E. (Lots 2, 28, and 800 in Square 5260) (collectively, the “Property”) – Special Exception and Variance Application – Post-Hearing Submission

Dear Chairman Loud and Members of the Board:

Dix Street Corridor Revitalization Partners, LLC (the “Applicant”) hereby submits twenty copies of the lease, dated February 4, 2004 (“Lease”), between Francis Fabrizio, as landlord, and Bernadette James (“Tenant”), as tenant, relating to 407 – 409 61st Street, N.E., as requested by the Board at the public hearing for the case on March 2, 2010.

As the Board is aware, a portion of the Property is currently owned by the District of Columbia and a portion is owned by Francis and Sarah Fabrizio. The Applicant has contracted to purchase all of the Property and has proceeded with this BZA application with the consent of both the District and the Fabrizios.

It is common for applications to be approved by the Board with tenancies pending on the subject properties. As with any such situation, if the Applicant is unable to reach an arrangement to relocate the Tenant, then the Applicant would not

www.pillsburylaw.com

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18037
EXHIBIT NO. 41

Board of Zoning Adjustment
District of Columbia
401728846v1
CASE NO. 18037
EXHIBIT NO. 41

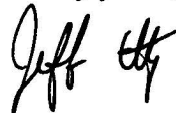
be able to develop the Property under the BZA Order. Consequently, the Applicant would have to modify its BZA approval to remove the portion of the Property encumbered by the Lease from the project. In that case, the existing tenants would remain in place and that portion of the Property would not be redeveloped.

As mentioned during the hearing, the Applicant has endeavored to assist the Tenant in relocation nearby. The Applicant will continue to assist the Tenant in such manner to find a suitable relocation site. Further, 407 – 409 61st Street, N.E. is in the second phase of the Applicant's project, which allows additional time for such efforts.

As noted in the record, the Applicant met with its Advisory Neighborhood Commission ("ANC") 7C Single Member District Commissioner and the entire ANC and received unanimous support.

In order to ensure this highly anticipated redevelopment, the existence of the Lease should not preclude the Board from moving forward with the zoning approval of this case. We look forward to the decisional meeting on this case on March 9, 2010. If you have any questions, please do not hesitate to contact the undersigned at (202) 663-8715. Thank you for your attention to this application.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jeff Utz", written over the typed name.

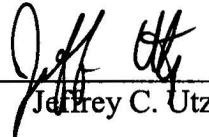
Jeffrey C. Utz

Enclosure

cc: Corey Lee (Project Manager, Deputy Mayor of Planning and Economic Development)

Certificate of Service

I certify that on March 4, 2010, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below.



Jeffrey C. Utz

Stephen Cochran (2 copies)
Office of Planning
2000 14th Street, N.W.
Suite 4000
Washington, D.C. 20009

Gizachew Andargeh
Office of Planning
2000 14th Street, N.W.
Suite 4000
Washington, D.C. 20009

ANC 7C (7 copies)
4651 Nannie Helen Burroughs Ave., N.E. #2
Washington, D.C. 20019

Mary Gaffney
328 62nd Street, N.E.
Washington, D.C. 20019

This Lease agreement, executed in duplicate and dated this 4TH day of FEB, 2004, by and between FRANCIS FADVIZIO, (hereinafter referred to as Landlord); and BERNADETTE JAMES (hereinafter referred to as Tenant);

WITNESSETH

WHEREAS, the Landlord is the owner of certain premises located at 407 - 409 61ST ST NE and the said Landlord desires to lease the same to the Tenant upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises and of the rental hereinafter specified, the parties hereto do hereby agree as follows:

1. Landlord agrees to lease to Tenant for a term of ONE (1) years ("Term") commencing on the date of execution hereof all those certain premises located and situated at 407-409 61ST ST NE ("Premises").
- TENANT HAS OPTION FOR 1 ADDITIONAL 10 YEAR TERM BY GIVING LANDLORD 60 DAY WRITTEN NOTICE PRIOR TO EXPIRATION OF BASE TERM. ALL TERMS AND CONDITIONS REMAIN THE SAME. SEE PARA 19 P. 5.
- The Tenant agrees to pay an annual rental of EIGHTEEN THOUSAND Dollars (18,000) per year ("Basic Rent") payable in installments of (\$1500) per month payable in advance. If the Term commences on a day other than the first day of a month, Tenant shall pay a pro-rata portion of the monthly installment of Basic Rent for the first partial month of the Term; and on the first day of each and every month thereafter the Tenant shall pay (\$1500) for the balance of the term.
- LEASE WILL START 2-4-04. LANDLORD WAIVES RENT FOR MONTH OF MARCH AND 1/2 APRIL (RENT FOR APRIL IS \$750)
3. The Tenant does hereby agree and with the signing of this lease, does hereby place with the Landlord a security deposit in the sum total of FIFTEEN HUNDRE Dollars (\$1500), which deposit will serve the purpose of assuring that the Premises when surrendered will be in similar condition to when initially occupied, except for ordinary wear and tear from ordinary use for the intended purpose. The security deposit shall be retained by Landlord in a separate, interest bearing account, and any portion not used to discharge Tenant's obligations hereunder shall be returned to Tenant at the termination or expiration of this lease.

PAID AT SIGNING OF LEASE: 1500 SAC. DEP
1500 FEB RENT
\$3000

4. Each year that this lease remains in effect after the first full year of the Term thereof, Tenant shall pay to the Landlord as Basic Rent such sums as determined by application of the following formula:

(a) Subject to 4(d) below, to the Basic Rent payable annually during the previous twelve months shall be added that sum representing One Hundred (100) percent of the resulting amount, if any, after multiplying such Basic Rent payable during the previous twelve months, by a fraction, the numerator of which shall be the Consumer Price Index (CPI) now known as the "U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index, United States City Average for Urban Wage Earners and Clerical Workers, All Items (1967=100)" for the month which is two months prior to the last month of the previous twelve months, and the denominator of which shall be such CPI for the month which is two months prior to the first month of such previous twelve months, and subtracting from such product the Basic Rent payable during the previous twelve months.

(b) The resulting new Basic Rent, which in each instance, shall in no event be less than the Basic Rent payable during the preceding twelve months, shall be payable in twelve equal monthly installments on the first day of each month of the applicable year.

(c) In the event CPI is discontinued, ceases to incorporate a significant number of the items now incorporated therein, or if a substantial change is made in such CPI, the parties hereto shall attempt to agree on an alternative formula and if agreement cannot be reached, the matter shall be submitted to arbitration under the rules of the American Arbitration Association then in effect.

(d) In no event shall this provision with respect to rental escalation operate to increase the rental payable in any year by more than ~~twenty-five~~ ⁽²⁵⁾ 5% percent of the rent payable during the immediately preceding year.

5. ~~In addition, the Tenant shall pay its proportional share of any taxes on the real property of which these Premises are a part.~~

Landlord

~~represents that the Premises are _____ % of the total area, that the _____ assessment for the entire property was _____ (\$ _____) and that the total tax levied for such year was on the entire property. The tenant shall pay each month with the rent, an amount equal to 1/12th the total pro rata annual tax, _____ per mo.~~

6. Tenant agrees to pay all charges for light, heat, fuel, power and water and other utilities used in or about the said Premises during the term hereof.

7. The Tenant warrants that he will not suffer or commit any waste to, or upon the said building fixtures and Premises, that he will, at his own expense during said term, keep the leased Premises, including the building exterior of the Premises, fixtures, plumbing, air conditioning and appurtenances thereof in substantial condition and in good repair, clean and in good working order and in proper, sanitary condition, all of which Premises are now in such condition. Tenant shall remove snow and ice from sidewalks thereof and the Landlord shall not be liable therefor.

8. The Tenant assumes liability for plate glass insurance during the Term of this lease.

9. The Tenant, during the Term of this lease, will carry at his expense, public liability insurance coverage of at least Fifty Thousand to One Hundred Thousand Dollars (\$50,000/\$100,000), and said policy or certificate from his insurance company to be deposited with the Landlord, and such policy shall provide that it shall not be cancelled for any reason unless and until the Landlord is given fifteen (15) days notice in writing by the insurance company.

10. The Landlord shall maintain fire and casualty insurance upon the improvements located on the Premises.

11. In the event the leased Premises shall be damaged by fire, windstorm or other hazard so as to make the Premises unusable for the purposes intended, then this lease shall immediately terminate and any rent paid in advance and the security deposit shall be returned to Tenant.

12. Tenant shall make no alterations or changes to the Premises without the written consent of the Landlord, which shall not be withheld unreasonably, and such improvements shall become the property of the Landlord except that fixtures and furnishings required in the operation of the Tenant's business shall remain the property of the Tenant. *PROPERTY IS PARTIALLY FURNISHED WITH KIT IN 407. ALL EQUIPMENT IN KIT IS PROPERTY OF LANDLORD AND SHALL REMAIN IN PLACE. PROPERTY IS LEASED IN AS IS CONDITION.*

13. The Tenant shall have the right to place its sign(s) on the Premises as long as the same complies with all local sign ordinances.

14. The Tenant shall use the Premises for DAY CARE CENTER and any other use or occupancy shall be only upon the written authority and consent of the Landlord, which shall not be withheld unreasonably.

15. The Landlord shall keep the exterior, including the roof and parking lot of said Premises in good condition and repair at its expense.

16. Landlord represents that the said Premises lawfully may be used for a C-2-A. If any law, ordinance, ruling, order or regulation now exists or is hereafter enacted prohibiting the use of the Premises for the above purpose, then the Tenant, at his option, may terminate this lease and all of his liability hereunder shall cease from and after the date when such law, ordinance, ruling or regulation, or prohibition becomes effective, and any advance rental and security deposit shall be apportioned and refunded to Tenant.

If it is necessary for the Landlord to obtain the services of an attorney in connection with a breach of this lease, tenant will pay all attorney's fees.

TENANT WAIVES NOTICE TO QUIT

17. If any installment of rent shall not be paid within 10 days after the same becomes due, the Landlord shall be entitled to immediately re-enter and take possession of the said Premises without notice of any kind. In the event rental payment is received postmarked after the 10th day of the month, Tenant shall pay a late charge of \$5.00 per day (minimum charge \$50.00) for each day following the first day of the month that such rental is in arrears. A check that is not honored for any

12. Tenant shall make no alterations or changes to the Premises without the written consent of the Landlord, which shall not be withheld unreasonably, and such improvements shall become the property of the Landlord except that fixtures and furnishings required in the operation of the Tenant's business shall remain the property of the Tenant. *PROPERTY IS PARTIALLY FURNISHED WITH KIT IN 407. ALL EQUIPMENT IN KIT IS PROPERTY OF LANDLORD AND SHALL REMAIN IN PLACE. PROPERTY IS LEASED IN AS IS CONDITION.*

13. The Tenant shall have the right to place its sign(s) on the Premises as long as the same complies with all local sign ordinances.

14. The Tenant shall use the Premises for DAY CARE CENTER and any other use or occupancy shall be only upon the written authority and consent of the Landlord, which shall not be withheld unreasonably.

15. The Landlord shall keep the exterior, including the roof and parking lot of said Premises in good condition and repair at its expense.

16. Landlord represents that the said Premises lawfully may be used for a C-2-A. If any law, ordinance, ruling, order or regulation now exists or is hereafter enacted prohibiting the use of the Premises for the above purpose, then the Tenant, at his option, may terminate this lease and all of his liability hereunder shall cease from and after the date when such law, ordinance, ruling or regulation, or prohibition becomes effective, and any advance rental and security deposit shall be apportioned and refunded to Tenant.

If it is necessary for the Landlord to obtain the services of an attorney in connection with a breach of this lease, tenant will pay all attorney's fees.

TENANT WAIVES NOTICE TO QUIT

17. If any installment of rent shall not be paid within 10 days after the same becomes due, the Landlord shall be entitled to immediately re-enter and take possession of the said Premises without notice of any kind. In the event rental payment is received postmarked after the 10th day of the month, Tenant shall pay a late charge of \$5.00 per day (minimum charge \$50.00) for each day following the first day of the month that such rental is in arrears. A check that is not honored for any reason is the same as non payment. Tenant shall pay to Landlord all charges made against the Landlord from a dishonored check.

18. During the Term of this lease or any option period or extension thereof, Tenant shall have the right to use 4 of the parking spaces located in the parking lot ^{IN FRONT OF} adjacent to the Premises. *TENANT MAY ALSO USE FENCED AREA IN REAR.*

ONE
10
10
19. Tenant shall have an ¹⁰option to extend this lease for a further term of *ONE* years from the expiration hereof, upon the same terms and conditions herein set forth, except that the basic rental at the commencement of the option period shall be the greater of fair market value, or the amount payable as basic rental during the immediately preceding year. Tenant may exercise this option by notifying Landlord in writing of his intent to do so at least sixty (60) days prior to the expiration of the initial Term. Upon the expiration of the option period, Tenant shall have a right of first refusal to lease the Premises for continuous periods.

20. Tenant shall have the right to assign this lease, or to sublet the Premises, in whole or in part. No such assignment or subletting shall relieve Tenant of his obligation to perform according to the terms and conditions of this lease.

21. This lease shall be governed by and construed in accordance with the laws of the D.C.

22. Tenant, upon the payment of the rent herein reserved and upon the performance of all the material terms of this lease shall at all times during the lease term and during any extension or renewal term peaceably and quietly enjoy the leased property without any disturbance from the Landlord or from any other person claiming through the Landlord.

TENANT AND TENANTS OPERATION OF A DAY CARE CENTER WILL IN NO WAY INTERFERE WITH THE OPERATION OF THE LIBRARY STORE AT 405 61ST ST.

23. In testimony whereof, the said parties have hereunto signed their names on the day and year herein written.

TENANT HAS OPTION TO PURCHASE 407-409 FOR \$189,000. OPTION PRICE WILL INCREASE BY CPI IN EACH YEAR OF THE LEASE TERM.

DATE: 2-4-04

Landlord

TENANT'S TELEPHONE

Tenant

SOCIAL SECURITY #

TENANT'S ADDRESS