



SUMMARY TERM SHEET

McMillan Redevelopment Project

December 20, 2007

The following terms broadly outline the preliminary understanding between Vision McMillan Partners (“VMP”) and the Government of the District of Columbia (“the District”) regarding the redevelopment of the 25-acre McMillan Sand Filtration Site in Northwest Washington, DC (the “Property”).

THE DISTRICT: The District, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (“ODMPED”)

VMP:

- VMP includes the following member companies (See **Exhibit A**):
 1. EYA, LLC (EYA)
 2. MacFarlane Partners (MacFarlane)
 3. Urban Service Systems Corporation (USSC)
 4. Smoot Construction (Smoot)
 5. The Alexander Company (Alexander)
 6. The Jair Lynch Companies (JLC)
 7. Street Sense
- VMP will be managed by EYA or a partnership or limited liability company in which the principals of this corporation are directly, or through the ownership of a corporation, the managing general partner or managing member.

PROPERTY: The 25-acre McMillan Sand Filtration Site, bounded by North Capital Street NW, Channing Street NW, First Street NW, and Michigan Avenue NW in the District of Columbia.

THE PROJECT: Through the coordination of a sequence of planning and construction activities, the Project is defined as the redevelopment of the land into a number of entitled, ready-to-build pad and super pad sites serviced by backbone infrastructure, including streets, utilities, lighting and common area amenities, such as active open space, community facilities and landscaping. The Project also entails the disposition of said pad sites to component builders, which may include VMP team members, for vertical development. The process and timing for disposition of said pad sites is articulated in the Vertical Development Process section of this Summary Term Sheet. Based on the guidelines established by the community stakeholders, the vertical development program will consist of integrated historic preservation elements, mixed-income housing, community-serving retail, job-creating commercial space, and education and cultural amenities.



THE ROLE OF VMP:

- VMP will serve as the land developer of the Project and will work with the District and subcontractors on all planning and land development activities.
- VMP will provide all necessary private capital, in the forms of debt and equity, for the project. VMP also will seek public financing tools appropriated by federal and local agencies, including the U.S. Department of Housing and Urban Development (“HUD”), the D.C. Department of Housing and Community Development (“DHCD”), the D.C. Housing Finance Agency (“HFA”), and the ODMPED. VMP furthermore will seek funding mechanisms, such as the Housing Production Trust Fund, Tax Increment Financing (“TIF”), and/or Payment In Lieu of Taxes (“PILOT”) to finance the Project.
- VMP will work with the existing McMillan Advisory Group (MAG), surrounding neighborhood groups and certain District agencies to build consensus on a viable development program that will include the historic preservation of certain filter cells and sand storage bins and the development of open space, mixed income housing, neighborhood serving retail, cultural amenities and commercial/office space.
- VMP will manage, along with the District, all community outreach initiatives, based upon a mutually agreed upon schedule and communication process.
- VMP will provide to the District short-lists of third party consultants and sub-contractors, including Certified Business Enterprise (CBE) firms, as defined under D.C. Official Code §§ 2-217.01 (2007) *et seq*, such as master planners, architects, engineers, land planners, landscape architects, and land use attorneys. The District will review such lists and may offer recommendations pertaining to well-qualified consultants and sub-contractors. VMP will comply with all District equal opportunity employment and employment covenant guidelines pertaining to CBEs, First Source and apprenticeship programs, as well as appropriations and procurement, and in its contracts with its consultants and subcontractors with respect to the Project, VMP will require its consultants and subcontractors to comply with all such guidelines and programs and make best efforts to enforce those provisions of said contracts. VMP will select and hire all consultant teams and provide “letters of value” (proof of Industry Standard terms and fees) and proof of CBE participation.
- VMP will be responsible for all necessary approval processes, including but not limited to, the development plan process, the Planned Unit Development (PUD) process, the Historic Preservation Review Board (HPRB) process, with the intent of obtaining pre-construction land development and architecture approvals. VMP shall be solely responsible for paying for all costs and fees associated with obtaining the aforementioned approvals.
- VMP will apply for, obtain, and pay for all permits required for the Project.



- VMP will be responsible for all land development construction activities, including but not limited to, demolition, earthwork, grading, installation of trunk utilities and spine roads and implementation of traffic improvements. The result of the land development construction activities will be a number of finished pads suitable for vertical development.
- VMP and the District will work together to dispose of the finished pad sites to component developers, including Local, Small and Disadvantaged Business Enterprise (LSDBE) firms as defined by District of Columbia Department of Small and Local Business Development (“DSLBD”). VMP team members may be allowed to acquire certain pad sites without participating in competitive solicitation processes. The terms of these acquisitions shall be approved by the District and will be set forth in detail in the Land Disposition Agreement (“LDA”). By the conclusion of the Feasibility Period, VMP will propose to the District product types/pad sites that certain VMP team members wish to develop vertically.
- VMP will coordinate all land development and vertical development activities and will provide project oversight from inception to vertical development completion.

**THE ROLE OF
THE DISTRICT:**

- VMP will submit to the District a “master plan” no less than ninety (90) days prior to the intended PUD submission due date. Within thirty (30) days of receipt of the master plan, the District will review and submit comments to VMP on the master plan. Provided that VMP has addressed all of the District’s comments to the District’s satisfaction 45 days prior to the PUD submission, the District will approve the master plan by a date not less than thirty (30) days prior to the intended submission due date as part of the PUD application.
- The District, in concert with VMP, will establish guidelines for the disposition of the finished pad sites to members of VMP and to component developers that are not members of VMP.
- The District may recommend to VMP, as appropriate, consultants and subcontractors, including CBE firms, which VMP may hire to work on the Project.
- The District will cooperate with VMP in planning and construction activities involving District of Columbia government agencies, including the Office of Planning (OP), the D.C. Department of Transportation (DDOT), the Department of Consumer and Regulatory Affairs (DCRA), the Historic Preservation Review Board (HPRB), etc. in connection to the Project and will provide the approvals necessary as the owner of the Property to get permits and approvals from such agencies.

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- The District acknowledges the likely need for public financing to complete this Project. To this end, the District will assist VMP in identifying and attaining Federal public financing tools and will actively assist VMP in identifying and securing public financing provided by the District, including TIF, Housing Production Trust Funding, Industrial Revenue Bonds, and other similar options.
- The District will assist in all community outreach activities based upon a mutually agreed upon schedule and communication process.
- The District will seek necessary council approvals under DC Official Code § 10-801 pursuant to the execution of a Land Disposition Agreement, mutually acceptable to the District and VMP.

**LAND DEVELOPMENT
PROCESS:**

- The District and VMP agree to negotiate a mutually acceptable LDA through which the District would convey to VMP fee simple title to the Property at the time set forth under the section entitled "Settlement" in this Summary Term Sheet.
- Conveyance of the Property to VMP shall be conditioned upon receipt of District of Columbia Council (Council) approval of the LDA and all land development approvals necessary for commencement of construction. Immediately following conveyance of the Property to VMP, VMP shall initiate and complete land development construction activities, pursuant to a schedule mutually agreeable to the District and VMP, on the Property that include:
 - 1) extraordinary site work to prepare the site for development by either preserving or demolishing certain filtration cells,
 - 2) installation all major roads and trunk utilities to serve the finished pad sites for vertical development, and
 - 3) construction of required park areas, landscaping and other common area site features, consistent with the phasing of the vertical development.
- All land development construction activities will be completed by VMP and its consultants and sub-contractors and paid for by VMP. All sub-contractors shall be bonded and insured.

**LAND DEVELOPMENT
ECONOMICS:**

- During the Feasibility Period (as defined herein), VMP shall submit to the District, for its review and agreement with VMP,
 - 1) A proforma *Land Development Expenditures Budget (Budget)*
 - 2) A proforma *Extraordinary Costs Budget*
- The Budget line items will include, but will not be limited to, the following costs: land acquisition, development, planning, construction, interest carry on debt, private capital carry, settlement, development and general contracting fees, and contingency costs (collectively referred to herein as Land Development Expenditures).

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A sample *Budget* is provided in **Exhibit B**. The sample illustrates and estimates the proposed line items that may be included in the *Budget*.

- The *Extraordinary Costs Budget* will include extraordinary land development, infrastructure, open space, historic preservation, affordable housing, underground parking and other Public Policy Objectives. **Exhibit C** includes a Sample *Extraordinary Costs Budget*.
- VMP will conduct all development and contracting activities itself.
- The District and VMP will agree on appropriate fee percentages for the development and general contracting line items during the Feasibility Period, and such fees will be paid in proportion to other Land Development Expenditures.
- The *Budget* will be utilized to determine private and public financing uses for the Project and to determine the VMP 25% preferred Return on Cost.
- The pad site products, developed by VMP, may be sold to members of VMP and component developers at fair market values. Pad Sites will be placed under contract by VMP team members and 3rd party component developers prior to Settlement on the Property.
- During the Feasibility Period, VMP and the District will commission an *Appraisal* to be completed no less than 60 days prior to the conclusion of the Feasibility Period to determine:
 - 1) the market value for the Property
 - 2) the market value of product type set forth in the Master plan agreed upon by the District and VMP, including residential, retail, office, hotel, etc.
- The appraisal will be based on:
 - 1) all Land Development Expenditures necessary to complete land development on the Property,
 - 2) all Extraordinary Land Development Expenditures in connection to public policy objectives imposed on the Project, including affordable housing,
 - 3) an expected development program to be approved through the PUD process, and
 - 4) a fair market return to VMP.
- The District and VMP will utilize the appraisal to agree on both the appropriate value of the Property and the cost of the vertical product types proposed for the Project. The appraisal notwithstanding, VMP and the District will agree on a minimum value for the Property (and in turn, the value of the District's land equity investment into the Project) during the Feasibility Period.
- The *Budget*, *Extraordinary Costs Budget*, and the *Appraisal* will provide all necessary information to create an Estimated Sources and Uses Table during the Feasibility Period. Sources will include all estimated Land Sales Proceeds (from the appraisal) and all Public Financing and Subsidies. Uses will include all Estimated Land Development Expenditures, Estimated Extraordinary Costs, the value of the Property, and the 25% VMP Return on Cost.

Government of the District of Columbia



Office of the Deputy Mayor for Planning and Economic Development

- The District and VMP agree to balance all Sources and Uses or to affect a surplus by which Sources exceed Uses. A sample Estimated Sources and Uses Budget is enclosed as **Exhibit D**.
- VMP commits to explore an array of Federal and other public financing options. The District commits to provide Public Financing and/or land equity to ensure that the Sources and Uses are in balance or in surplus.
- Prior to the conclusion of the Feasibility Period, the District and VMP will have agreed upon an i) Estimated Sources and Uses Budget, ii) the Public Financing and Subsidies to make the Sources greater than or equal to the Uses, and iii) the vertical parcels and the base price for those parcels to be developed (per an agreed upon Master Plan) by VMP team member.
- Ninety (90) days prior to Settlement, VMP would create the Revised Sources and Uses Table based on the PUD approved development program (utilizing the fair market vertical values agreed per the *Appraisal* or alternative values agreed upon by the District and VMP), the agreed upon District Land Value, revised Land Development Expenditures, revised Extraordinary Costs, and the 25% VMP Return on Cost revised per the revised Land Development Expenditures Budget. The Revised Sources and Uses Table will ensure that Sources remain greater than or equal to the Uses such that the Project may proceed. To the extent there is a shortfall of Sources, VMP and the District will make best efforts to secure necessary Federal, District, and other financing to allow the project to move forward. An example of the Revised Sources and Uses Table is also included in **Exhibit D**.
- Conveyance of the Property to VMP and commencement of land development construction activities will not occur until VMP and the District concur that the Sources are greater than or equal to the Uses for the Project to ensure that the land development activities are economically feasible.
- The sum of Actual Gross Land Sale Proceeds, defined as the income generated from the sale of finished pad sites, and actual public financing received will:
 - 1) First, repay all the actual Land Development Expenditures for the entire Project that are funded by 3rd party financing, incurred or to be incurred, by VMP. The 3rd party financing will be secured by a 1st Trust on the Property.
 - 2) Second, pay all equity and debt contributed by the District and VMP para-passu including:
 - land equity plus preferred return (to the District)
 - VMP debt and equity plus interest and preferred return (to VMP)
 - land equity and VMP debt and equity both will be secured by a 2nd Trust on the Property.
 - 3) Third, a 25% preferred return on cost (to VMP)



- 4) Finally, to the extent there are remaining proceeds, distribute 50% of such Proceeds to the District and 50% of such Proceeds to VMP.

**VERTICAL DEVELOPMENT
PROCESS:**

- VMP will manage the disposition/sales of the finished pad sites to either VMP team members or component developers. Disposition of finished pads sites may be executed through fee-simple and ground lease transactions.
- A minimum of 20% of the approved FAR square feet of the approved master plan will be developed by LSDBE firms, which may include members of VMP.
- VMP and the District will manage competitive solicitation processes for component developers concurrent to the land development process, upon approval of a Phase 1 PUD (or similar approval) that approves the site plan, land uses, FAR, and thematic architecture for the development of the Property.
- VMP team members may be allowed to acquire certain pad sites at their fair market values without participating in competitive solicitation processes. The terms of these acquisitions will be set forth in detail in the Land Disposition Agreement. Should VMP team members acquire certain pad sites without participating in the competitive solicitation process, VMP team members, as part of the land developer entity, will be excluded from the competitive process for component developers to avoid any conflicts or perceived conflicts of interest.

**VERTICAL DEVELOPMENT
ECONOMICS:**

- Winners of the solicitation processes will acquire finished pad sites for fair market values. The distribution of these gross land sale proceeds is described herein the section titled *Land Development Economics*.
- VMP team members will acquire pad sites for fair market values, to be determined in the LDA. The distribution of these gross land sale proceeds is described herein the section titled *Land Development Economics*.
- The District will be entitled to a percentage of the sales proceeds of the market rate, for-sale vertical improvements, (including condominiums and townhomes), developed by VMP team members, above agreed upon sales values. The specific values and percentages will be set forth in the LDA.

**LOCAL, SMALL AND
DISADVANTAGED
BUSINESS ENTERPRISES:**

Government of the District of Columbia



Office of the Deputy Mayor for Planning and Economic Development

- VMP shall enter into an agreement (“LSDBE Agreement”) with the District of Columbia Department of Small and Local Business Development (DSLBD) and a First Source Agreement with the Department of Employment Services (DOES) for all services procurement activities in connection to the Project.
- Equity and Management Participation: VMP represents that no less than 20% of the equity capital invested into the Project will be invested by LSDBE firms in compliance with D.C. Official Code §§ D.C. Official Code §§ 2-217.01 (2007) *et seq.* VMP includes at least three LSDBE firms: Smoot, USSC and JLC. Smoot and USSC will contribute 15% of the equity capital structure. The equity investments of Smoot and USSC will entitle them to 15% of the equity value created by the Project, in accord with current DSLBD policy at the time of LDA execution. JLC will contribute 15 % of the equity capital structure.. JLC’s equity contribution will entitle it to 15% of the equity value created by the Project, in accord with current DSLBD policy at the time of LDA execution.. The equity investments of Smoot, USSC and JLC will entitle each entity to proportionate levels of management participation in VMP. VMP also represents that the listed LSDBE equity investors will not have their equity and/or management interests diluted under any circumstances, except in the event of a default by any such equity investor. The District must be notified of an “LSDBE default” event in writing within thirty (30) days of VMP’s determination. The District must concur in writing within thirty (30) days of notification that an “LSDBE default” event indeed has occurred before VMP may initiate any dilutive or corrective actions against the LSDBE firm(s).

CERTIFIED BUSINESS ENTERPRISES:

- VMP shall enter into an agreement (“CBE Agreement”) with the District of Columbia Department of Small and Local Business Development (DSLBD) and a First Source Agreement with the Department of Employment Services (DOES) for all services procurement activities in connection to the Project.
- Subcontracting: Qualified CBE firms will be awarded contracting opportunities equivalent to the value of at least 35% of the appropriate portions of the *Budget* .

AFFORDABLE AND WORKFORCE HOUSING:

- VMP recognizes that mixed-income housing is a critical District public policy objective for the Property. The LDA shall contain affordable and workforce housing proportions (of total residential units), affordability guidelines, and income levels for the residential component of the development program.

Government of the District of Columbia



Office of the Deputy Mayor for Planning and Economic Development

- The LDA also will contemplate pad site purchase prices including the inherent costs associated with any applicable Mandatory Inclusionary Zoning Program requirements.
- VMP first will seek public financing tools, as described above, to subsidize affordable housing requirements beyond those captured in any applicable Mandatory Inclusionary Zoning Program.
- The District may contribute to the Project some or all of its entire Residual Land Value basis in the Property to subsidize affordable housing requirements beyond those captured in any applicable Mandatory Inclusionary Zoning Program and financed by said public financing tools.
- VMP will develop an “Extraordinary Costs” budget that will include an articulation of the range of costs for incremental affordable and workforce housing beyond those captured in any applicable Mandatory Inclusionary Zoning Program. Such budget will allow VMP and the District to understand the cost of such affordable and workforce housing and allow the District to determine what percentage of such housing it will require for the Project. Such budget will also be the basis for VMP’s affordable housing subsidy request.

PUBLIC POLICY OBJECTIVES:

Apart from affordable and workforce housing, other District Public Policy Objectives for the site include historic preservation, recreation spaces and parks, and cultural amenities. The Extraordinary Costs budget will also articulate the range of costs for the Public Policy Objectives. The District will approve the Extraordinary Costs budget. The District and VMP will cooperate to develop a package of Public Policy Offerings that will address the goals of the District and the community while also ensuring that the project is financially feasible and commercially viable.

PROJECT CAPITAL STRUCTURE:

- VMP shall be responsible for arranging all private debt and equity capital necessary to finance the Project through completion. VMP also will provide guarantees or other securities to insure the successful completion of the Project.
- The District will assist VMP in identifying and attaining Federal public financing tools. The District acknowledges that public financing likely will be necessary to achieve the Public Policy Objectives for the Project and will cooperate with VMP in identifying and securing public financing provided by the District.

EARNEST MONEY DEPOSIT:

- Within five (5) business days of the execution of this Summary Term Sheet, VMP shall deposit \$250,000 (the “Initial Deposit”) in the form of cash with Regional Title Incorporated (a mutually acceptable

Government of the District of Columbia



Office of the Deputy Mayor for Planning and Economic Development

Escrow Agent for VMP and the District) or VMP may submit to the District \$250,000 in the form of an irrevocable letter of credit as consideration for the District's grant of the Exclusive Rights Period (as further defined herein).

- The Initial Deposit, if made in the form of cash, will be held in an interest bearing escrow account. The Initial Deposit and all interest accrued are the property of VMP.
- If VMP terminates this Summary Term Sheet at any time during the Feasibility Period, then the Initial Deposit and all interest accrued thereon shall be refunded immediately to VMP.
- If after the Feasibility Period has expired and the District and VMP cannot execute an LDA within the agreed upon period of time (which may be extended per the Acceptance clause below), or if Council does not approve the form of the LDA agreed upon by both parties, then VMP shall have the right, in its sole discretion, to terminate this Summary Term Sheet, in which event VMP will receive a refund of the Initial Deposit and all accrued interest.
- The circumstances described above notwithstanding, if VMP does not terminate this Summary Term Sheet during the Feasibility Period, then after the conclusion of the Feasibility Period, if execution of the LDA does not occur within the agreed upon period of time and VMP is deemed solely responsible for failure to execute the LDA on terms mutually agreed upon by the District and VMP, the District will retain \$100,000 of the Initial Deposit and all work product developed by VMP. (The right of the District to use such work product shall be subject to the terms set forth in the contracts with consultants preparing the same.) In the event the District's use of the work product is limited significantly by the terms of the consultants' contracts and consequently the value of the useable work product is deemed marginal by the District and VMP, the District and VMP will agree upon an additional value that the District may retain from the Initial Deposit incremental to the \$100,000 described above.
- Work product is defined as the studies, plans, analyses, etc. conducted during the Feasibility Period to determine the parameters of the redevelopment opportunities offered by Project.
- If the parties fail to execute an LDA within the Exclusive Rights Period (as defined herein), the District shall be entitled to receive all work-product produced by VMP at no cost and expense to the District (The right of the District to use such work product shall be subject to the terms set forth in the contracts with consultants preparing the same.).
- Within five (5) days of the execution of the LDA, VMP shall deposit with an escrow agent an additional \$750,000 ("Additional Deposit"), in the form of cash or an irrevocable letter of credit, increasing the "Total Deposit" to \$1,000,000.
- The Total Deposit (plus any interest accrued) will be returned to VMP in increments of \$250,000 per every 25% of FAR square feet conveyed to component developers and/or VMP team members.

Government of the District of Columbia



Office of the Deputy Mayor for Planning and Economic Development

- In the event, VMP is unable to obtain all or any of the Development Approvals or to complete the Project after obtaining all development approvals and acquiring the Property, \$750,000 of Total Deposit (plus all accrued interest on the Total Deposit) will be refunded to VMP. If such inability to obtain the Development Approvals or to complete the Project is not caused in any way by the District, then the \$250,000 balance of the Total Deposit and all work product will be retained by the District.
- The Total Deposit (plus accrued interest) will be refunded to VMP in the event the Council does not approve the LDA or the District does not execute the LDA on terms mutually agreed upon by VMP and the District or the District is deemed responsible for the failure of VMP to receive Development Approvals or to complete the Project.

FEASIBILITY PERIOD:

- VMP shall be granted a 150-day feasibility period that will begin upon the execution of this Summary Term Sheet and terminate 150 days thereafter (“The Feasibility Period”).
- VMP shall utilize this Feasibility Period to fully evaluate the Property and hold introductory meetings with the Office of Planning, the State Historic Preservation Officer (“SHPO”), several community organizations, and other critical stakeholders.
- VMP shall indemnify the District as provided in the Section entitled “Indemnification”.
- Within 10 days of the execution of this Summary Term Sheet, the District and VMP will enter into a right of entry agreement, in a form found to be legally sufficient by the Office of the Attorney General (OAG) and VMP, to provide VMP full access to the Property during the Feasibility Period (“Right of Access”) to conduct all necessary site, traffic, soil, engineering and environmental studies.
- VMP shall promptly provide the District with copies of the reports regarding the Property (including, but not limited to, any environmental testing reports) obtained during the Feasibility Period.
- During the Feasibility Period, VMP will propose to the District potential concept and vertical development plans for the Property. **Exhibit E** represents VMP’s efforts on developing a concept master plan for the site.
- VMP and the District will utilize the Feasibility Period to:
 - 1) Agree on concept site plan with community stakeholders
 - 2) Complete the *Appraisal* for the Property
 - 3) Agree on initial budgets and sources and uses of funds for the Project
 - 4) Identify the types of public financing that may be used for the Project
 - 5) Agree on a form LDA

FEASIBILITY

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EXPENDITURES:

Upon execution of this Summary Term Sheet, VMP will begin feasibility studies, title searches, and similar work typically performed during the Feasibility Period at its sole cost and expense.

TITLE:

- Within five (5) days following execution of this Summary Term Sheet, the District will provide VMP with the latest owner's title policies or commitments obtained by the District for an owner's policy for title insurance as may have been received within the last two years, together with copies of all documents mentioned therein as exceptions to title.
- During the Feasibility Period, VMP shall provide the District notice of any title objections that it would like the District to remove from the Property prior to settlement. The District, in its sole and absolute discretion, may agree to cure the objections. If the District elects not to remove the objections or the objections are not curable, VMP may either waive the objection or terminate this agreement and receive its Initial Deposit.
- The District will convey fee simple title in the form of a Deed of Trust to VMP at settlement, free and clear of any and all liens and encumbrances not already of record or listed as exceptions to the title policies of the immediate past owner and not expressly approved by VMP during the Feasibility Period.

DEVELOPMEENT

APPROVALS:

VMP and the District agree that redevelopment of the Property will require approval of council under DC Code § 10-801 and the following Land Use Approvals:

- 1) Zoning Commission (via the submission and approval of 2 Phase PUD)
- 2) Historic Preservation Review Board ("HPRB")

In addition, VMP must obtain the following Land Development Approvals and Permits:

- 1) Grading and Sediment Erosion Control Plan
- 2) Utility Plans
- 3) Final Site plan
- 4) Other Site plans

The Land Development Approvals are issued by DCRA, WASA, PEPCO, and other utility companies. The Land Use Approvals and Land Development Approvals will constitute the "Development Approvals". A detailed list of all Land Development Approvals will be included in the Land Disposition Agreement. VMP reserves the right, but is under no obligation, to submit at its sole cost and expense applications for the Development Approvals prior to execution of the LDA.

BROKERAGE:

VMP and the District represent that no real estate broker has represented either party in this transaction and that no brokerage commission will be paid to any party.

Government of the District of Columbia



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INDEMNIFICATION: VMP shall indemnify and hold the District harmless from all claims by third parties for damages or expenses incurred by reason of property damage, personal injury, or Mechanics Liens arising from the VMP's activities on the Property, except for claims arising from the negligent acts of the District's employees and agents that are not otherwise covered by VMP's insurance. VMP acknowledges that the District is self-insured and is legally prohibited from granting indemnifications.

ENVIRONMENTAL LIABILITY: During the Feasibility Period, VMP will conduct tests and assessments to determine if and to what extent hazardous materials are present on the Property. Additional testing may occur after the conclusion of the Feasibility Period. At all times, VMP will promptly provide the District with results of the tests and assessments in writing. If any hazardous materials are found to exist, the parties will discuss who should bear the financial responsibility for removing such hazardous materials. With respect to unknown environmental contamination, VMP will purchase environmental liability insurance if available at commercially reasonable rates.

CONFIDENTIALITY AGREEMENT: To the extent permitted by law, this Summary Term Sheet shall be considered confidential and by receipt hereof, VMP and the District hereby agree to keep its contents and all matters related thereto strictly confidential, except that the parties shall have the right to discuss the terms set forth herein with Council and their respective agents, advisors, consultants, and representatives who shall be advised of the confidential nature of this Summary Term Sheet. Summaries of terms and processes critical to the community process can be prepared and agreed upon by the District and VMP and distributed to the community.

NON-BINDING EFFECTS: This Summary Term Sheet is intended to be an expression of interest by the parties who sign and accept it and shall in no event be deemed to be or constitute a binding contract agreement or other legally enforceable obligation between said persons or entities to such matters or any commitment that the parties will reach discussed herein, except as described in the Exclusive Rights Period described below. Further, the parties agree that this Summary Term Sheet is an expression of good faith between the District and VMP to redevelop the Property and as such, VMP will be expending staff resources and capital to engage in feasibility and pre-development efforts. If no agreements are reached, the District is under no obligation to reimburse VMP or its consultants, sub-contractors or successors for any cost, expense, or efforts incurred.



**ANTIDEFICIENCY ACT
LIMITATIONS:**

VMP acknowledges that the District is not authorized to make any obligation in advance or in the absence of lawfully available appropriations and that the District's authority to make such obligations is and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code Section 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) Section 446 of the District of Columbia Home Rule Act.

SETTLEMENT:

The LDA will provide that settlement for the disposition of the Property from the District to VMP will take place the latter of 30 days after the receipt of the last of the Development Approvals or the date upon which the District and VMP concur that the land and vertical development of the Project is commercially viable and financially feasible. The selection, if any, of component developers will occur concurrently with the development approval process. The disposition of the pad sites to members of VMP or other component developers will take place upon the completion of each site.

ACCEPTANCE:

- VMP will have the exclusive right to negotiate an LDA with the District pursuant to the redevelopment of the McMillan Sand Filtration Site for a period of 365 days after the date of this Summary Term Sheet ("Exclusive Rights Period"). The Exclusive Rights Period may be extended by 365 days or more provided that the Parties mutually agree to extend the Exclusive Rights Period in the form of a written amendment to this Summary Term Sheet prior to expiration of the Exclusive Rights Period.
- The Summary Term Sheet can be amended at any time prior to the execution of the LDA to include additional terms and agreements not included in this document. Such amendments will be mutually agreed upon by both parties.
- The terms outlined herein shall be set forth formally and more completely in a Land Disposition Agreement to be agreed upon and entered into between VMP and the District.
- Immediately following the execution of this Summary Term Sheet, VMP and the District will instruct their respective legal counsels to initiate preparation of the Land Disposition Agreement. All parties to the LDA will participate in the review and formation to this document and will negotiate the LDA in good faith to attempt to reach mutual agreement on same as soon as possible.
- The District will submit the LDA agreed to by the Parties to Council for approval promptly following execution of the LDA. The District and VMP have 365 days from the date of execution of this Summary Term Sheet to obtain approval of the LDA from Council. In the event the

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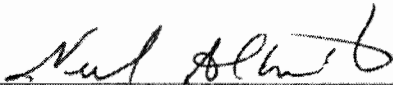
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LDA is not approved by Council within the defined time period and the time period is not extended, the terms outlined herein will expire.

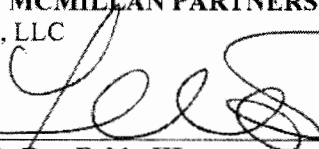
- The District and VMP will endeavor to agree on the final form of the LDA to be submitted to Council by the conclusion of the Feasibility Period. A Project Schedule will be attached as **Exhibit F** and will be utilized to measure progress on the Project.

ACKNOWLEDGED AND AGREED:

DISTRICT OF COLUMBIA GOVERNMENT

By: 
Name: **Neil O. Albert**
Title: Deputy Mayor for Planning and Economic Development
Date: 12/20/07

VISION MCMILLAN PARTNERS
c/o EYA, LLC

By: 
Name: **LeRoy Eakin III**
Company: EYA, LLC
Title: Chairman
Date: 12/20/07

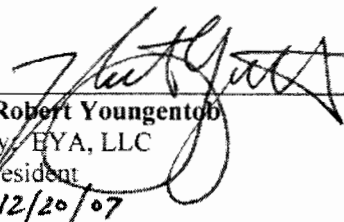
By: 
Name: **Robert Youngentob**
Company: EYA, LLC
Title: President
Date: 12/20/07

EXHIBIT A

Vision McMillan Partners Team Composition

#	Company	Role	LSDBE Firm	Form of Equity	% Equity
1	EYA, LLC	Managing Member, Lead Investor, Lead Developer		cash	56%
2	The Jair Lynch Companies/MacFarlane Partners (LSDBE entity)	Community Outreach Specialist/Equity Investor	LSDBE	cash	15%
3	Smoot Construction	Equity Investor	LSDBE	cash	7.5%
4	Urban Services System Corporation	Equity Investor	LSDBE	cash	7.5%
5	The Alexander Company	Historic Preservation Developer		in-kind services	9%
6	StreetSense	Mixed-Use, Retail Consultant/Developer		in-kind services	5%
					100%

Exhibit B		
<u>VMP Sample Land Development Expenditures Budget</u>		
<u>McMillan Sand Filtration Site</u>		
<u>Budget Items</u>	<u>\$ Amount</u>	<u>Comment</u>
Site Development	\$28,009,396	Includes all land development construction
Field Supervision & General Conditions	\$2,800,940	
Architecture	\$1,750,000	Covers all entitlement related architecture for new buildings and historic rehabilitation
Engineering	\$2,500,000	Includes utilities, environmental, geotechnical, grading, traffic, and similar
Legal	\$1,000,000	Entitlement and transactional
Proffers	\$500,000	
Community Benefits	\$1,000,000	Contributions to community assets i.e. community center, charter school, etc.
GC Overhead (3% of Site Development)	\$840,282	
Development Overhead (5% of Development Costs)	\$1,920,031	
Interest Payments	\$4,435,271	Interest on all project debt
Contingency @ 15%	\$5,634,050	Conservative given early stage of project - will become more accurate with additional study of the site
Total	\$50,389,970	

Exhibit C		
VMP Sample Extraordinary Costs Budget		
McMillan Sand Filtration Site		
<u>Budget Items</u>	<u>\$ Amount</u>	<u>Comment</u>
Site Development	\$12,000,000	Extraordinary land development and infrastructure
Historic Preservation	\$5,000,000	Preservation of cells, silos, and other features
Open Space	\$3,000,000	Inclusion of significant community serving open space
Below Grade Parking for Retail	\$6,000,000	Includes utilities, environmental, geotechnical, grading, traffic, and similar
Affordable Housing and Below Market Retail Space	\$20,000,000	To be finalized per District requirements
Total	\$46,000,000	

<u>Exhibit D</u>	
<u>VMP Sample McMillan Sources and Uses</u>	
<u>January 31, 2008</u>	
<u>Sources</u>	
Parcel Sales	\$75,000,000
Public Funding (Federal and District)	\$40,000,000
Total Sources	\$115,000,000
<u>Uses</u>	
Ordinary Land Development	\$35,000,000
Extraordinary Land Development (Including Historic Preservation, Demolition of Cells, Below Grade Retail Parking and Open Space)	\$26,000,000
Affordable Housing	\$20,000,000
District Land Value	\$15,000,000
VMP 25% Return on Cost	\$15,250,000
Total Uses	\$111,250,000
Difference	\$3,750,000
District Excess Proceeds 50% Split	\$1,875,000
VMP Excess Proceeds 50% Split	\$1,875,000
<u>VMP Sample McMillan Sources and Uses</u>	
<u>January 31, 2010</u>	
<u>Sources</u>	
Parcel Sales	\$78,000,000
Public Funding (Federal and District)	\$38,000,000
Total Sources	\$116,000,000
<u>Uses</u>	
Ordinary Land Development	\$35,000,000
Extraordinary Land Development (Including Historic Preservation, Demolition of Cells, Below Grade Retail Parking and Open Space)	\$25,000,000
Affordable Housing	\$22,000,000
District Land Value	\$15,000,000
VMP 25% Return on Cost	\$15,000,000
Total Uses	\$112,000,000
Difference	\$4,000,000
District Excess Proceeds 50% Split	\$2,000,000
VMP Excess Proceeds 50% Split	\$2,000,000

Exhibit E

VMP McMillan Concept Plan

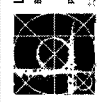
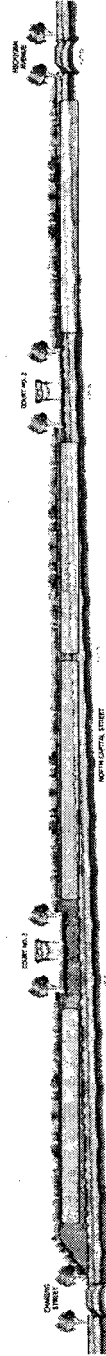
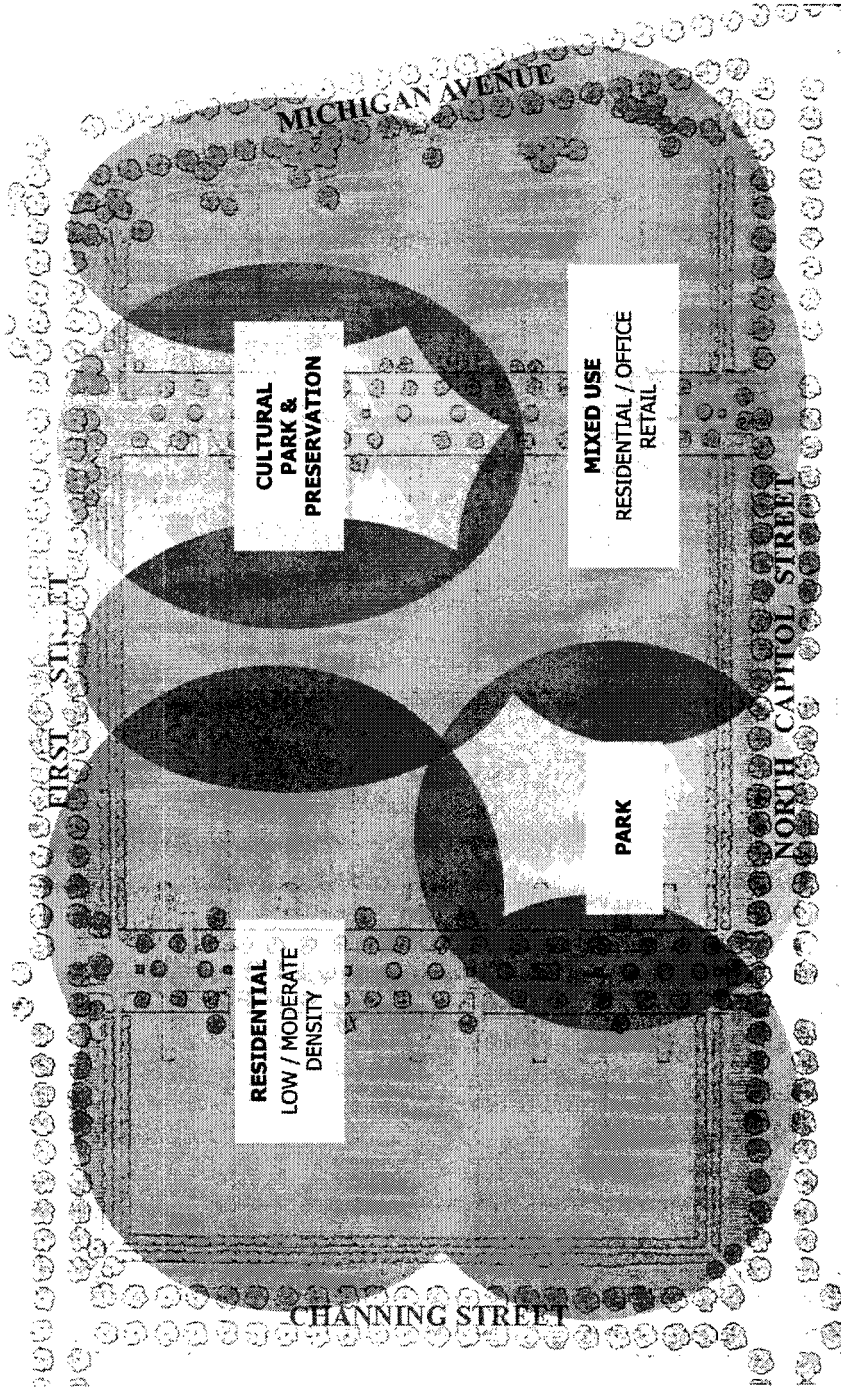


Exhibit F

VMP Initial McMillan Project Schedule

Actions Item	Target Date	Revised Date	Completion Date	Comments
Execute Summary Terms Sheet with District	12/20/2007			
Site Assessment and Feasibility Analysis (150 days)	5/18/2008			
Executed Land Disposition Agreement	6/17/2008			
Complete Community Outreach, Charrete and Presentation of Options	6/17/2008			
PUD and HPRB Submission	10/15/2008			
Development Approvals – PUD HPRB, and other (14 months)	2/15/2010			
Complete and Legally Document Component Developer Selection	2/15/2010			
Land Development Permits (6 months)	8/15/2010			
Land Conveyance and Groundbreaking	9/15/2010			
Start Vertical Construction	3/15/2011			
Complete Land Development and Historic Preservation	6/15/2011			

From: [Jackson, McClinton \(EOM\)](#)
To: jkl@jairlynch.com; athakkar@eya.com
Subject: Re: Executed McMillan Summary Term Sheet
Date: Thursday, January 03, 2008 5:47:39 PM

I called Nicole this afternoon and expect to speak with her by tomorrow. The Mayor has tentatively scheduled a press event for Jan. 9, so I am attempting to schedule the Brown meeting before then.

Clint

----- Original Message -----

From: Aakash Thakkar <athakkar@eya.com>
To: Jackson, McClinton (EOM); jkl@jairlynch.com <jkl@jairlynch.com>
Sent: Thu Jan 03 16:49:46 2008
Subject: Executed McMillan Summary Term Sheet

Clint and Jair,

Attached is an executed copy of the Summary Term Sheet.

Clint,

Please note that I have included the conceptual bubble plan as Exhibit E and opposed to the more detailed plan which we discussed with you, Valerie, and Neil at the signing. Jair and I discussed this and felt that given the early stage in the planning process and the many community discussions that lie ahead, we should include less detail for now until we have had the discussions and more consensus on the master plan. The document will be public and we don't want to put the cart before the horse.

Re Brown – you saw the e-mail – can you please push on your end to schedule the meeting as quickly as possible. I will call Nicole to follow-up as well. As soon as we can nail down a date, we can set the press date. Thanks.

Aakash

aakash r. thakkar | vice president

D 301-634-8617 C 202-427-4066 E athakkar@eya.com <<mailto:athakkar@eya.com>>

life within walking distance™

4800 Hampden Lane, Suite 300 | Bethesda, MD 20814
T 301-634-8600 F 301-634-8601 W eya.com

From: [Jackson, McClinton \(EOM\)](#)
To: [Crain, Deborah \(OP\)](#)
Subject: RE: McMillan Update
Date: Monday, December 03, 2007 5:48:19 PM
Attachments: [EYA McMillan Perspective 2.pdf](#)
[EYA McMillan Perspective 3.pdf](#)
[McMillan Community Advisory Group.pdf](#)
[EYA McMillan Land Use Plan.pdf](#)
[EYA McMillan Conceptual Site Plan.pdf](#)
[EYA McMillan Perspective 4.pdf](#)
[EYA McMillan Bubble Use Plan.pdf](#)
[EYA McMillan Perspective 1.pdf](#)

Deborah,

Contact McMillan Advisory Committee leadership (Tony Norman, Barrie Daneker, Anita Bonds abonds@fortmyer.com and Dianne Barnes) to get involved. I have attached their email addresses.

You will find VMP's latest renderings (dated May 2007) attached.

Thanks,

Clint Jackson
Project Manager
 District of Columbia Government
 Office of the Deputy Mayor for Planning and
 Economic Development (DMPED)
 The John A. Wilson Building
 1350 Pennsylvania Avenue NW, Suite 317
 Washington, D.C. 20004
 O: (202) 538-1282
 E: mcclinton.jackson@dc.gov

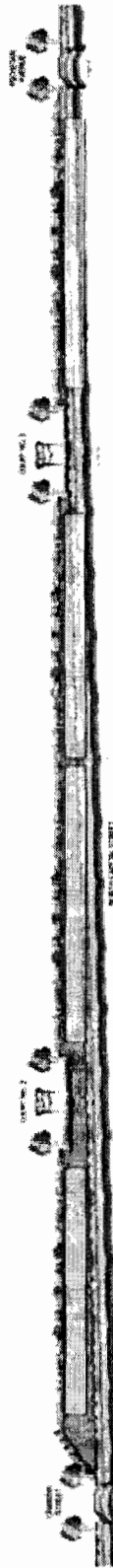
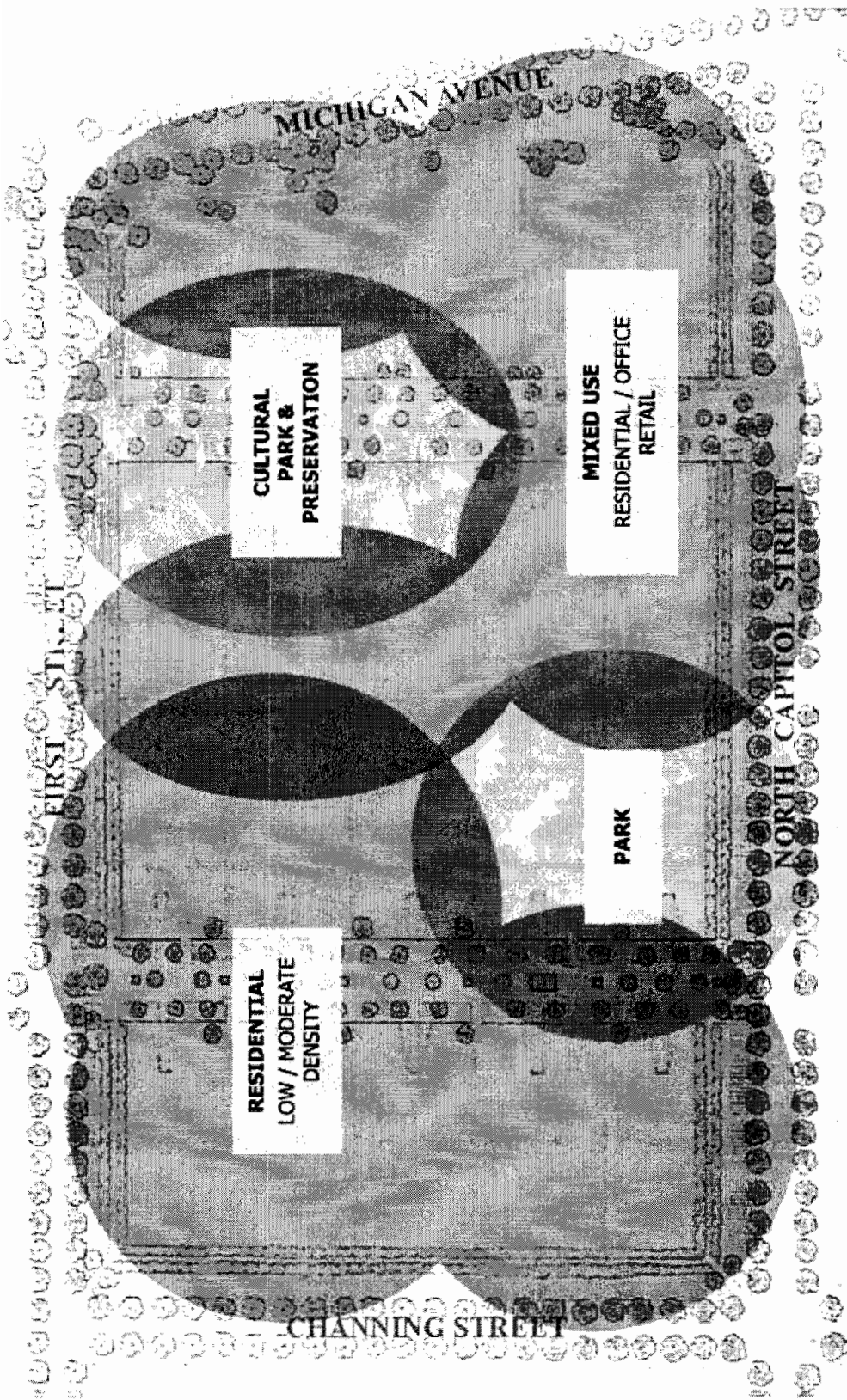
From: Crain, Deborah (OP)
Sent: Friday, November 30, 2007 5:54 PM
To: Jackson, McClinton (EOM)
Cc: Hughey, Rosalynn (OP); Gardner, Geraldine (OP)
Subject: McMillan Update

Greetings Clint:

Thanks for the update you provided me with earlier this week regarding the McMillan project. I understand that the McMillan Advisory Group is quite active and in regular communication with the Vision McMillan Partners (VMP). Please include me in this group both for meetings as well as information dissemination. Also I would like to receive a copy of the VMP's most recent power point presentation. Can I get that from you or should I contact the VMP. If from VMP, do you have a point of contact and contact information? Thanks in advance.

Deborah Crain, CPM
Neighborhood Planner,
Ward 5
DC Office of Planning
801 North Capitol Street, NE Suite 4000

Washington, DC 20002
202.442.7615 phone
202.442.7637 fax
email: deborah.crain@dc.gov

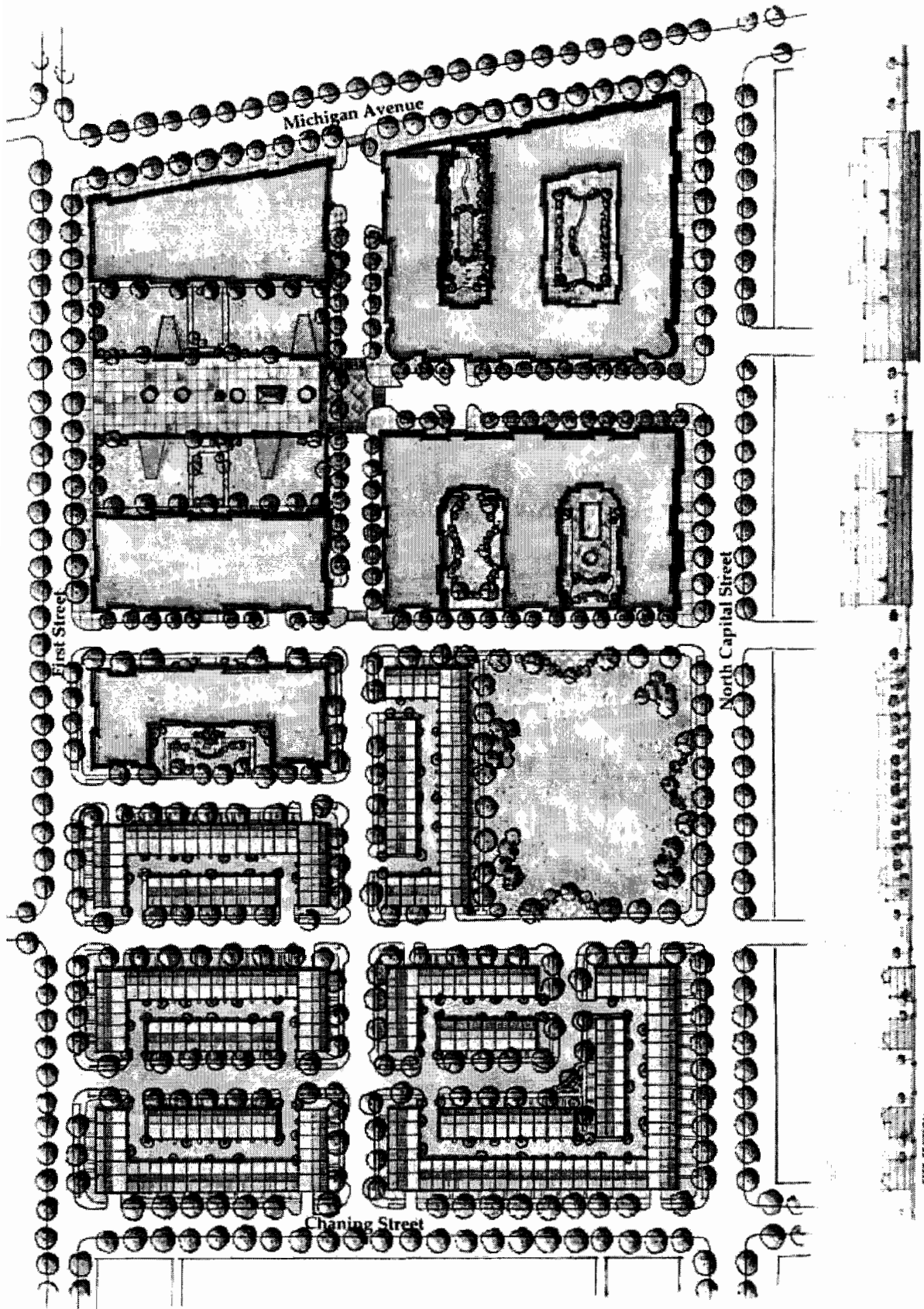


LESSARD GROUP INC.
 8321 LEESBURG PIKE, SUITE 700, WYOMING, VA 22782
 P: 703.786.9344 F: 703.780.9328 WWW.LESSARDGROUP.COM

LAND USE PLAN AND EXISTING SITE SECTION

McRELLAN
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 THE NEIGHBORHOODS OF EYA
 FEBRUARY 18, 2007 EYA-1483-00

NOT A CONTRACTUAL DOCUMENT
 1:1



McMILLAN
WASHINGTON, D.C.

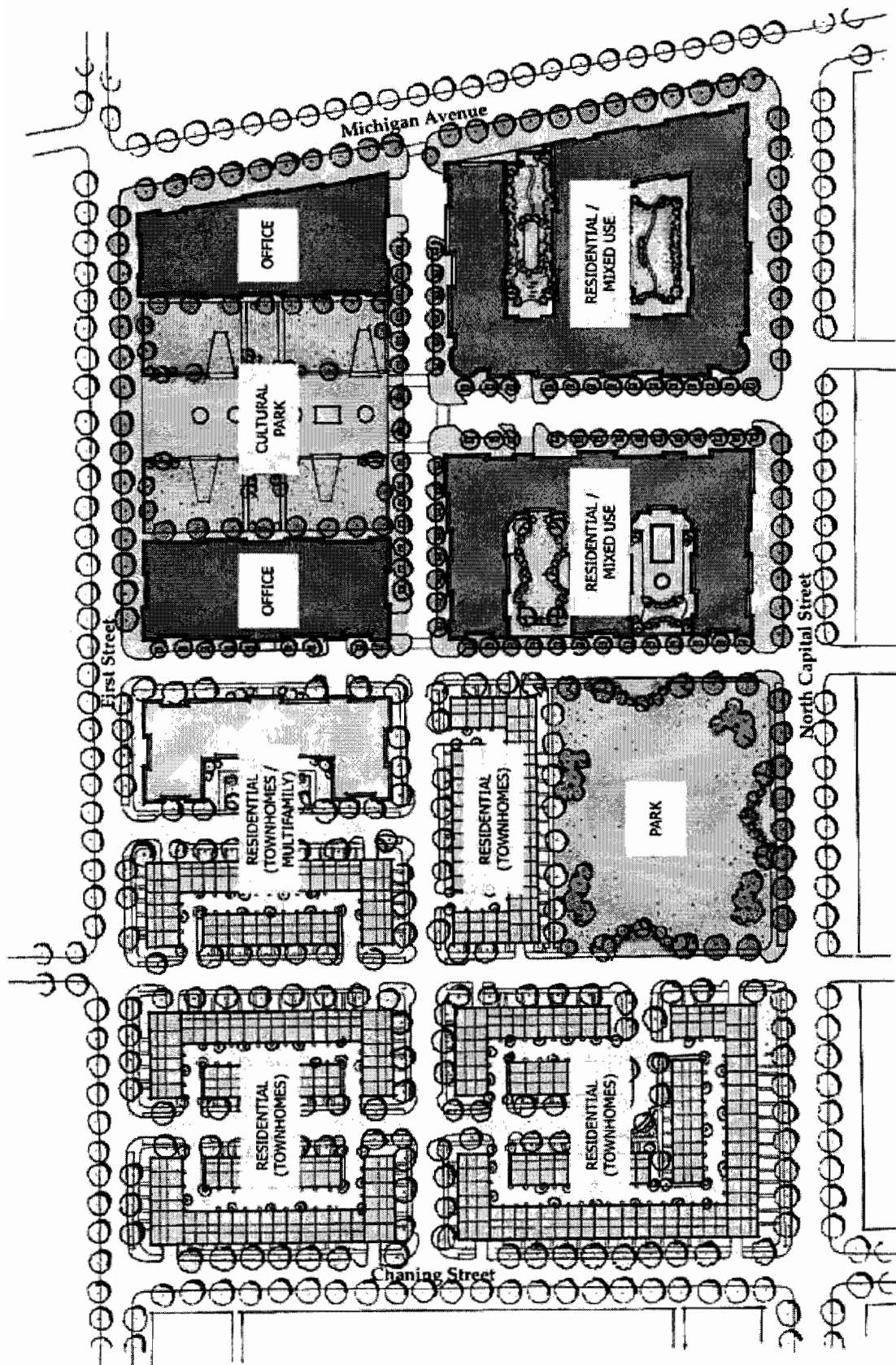
THE NEIGHBORHOODS OF EYA
DECEMBER 14, 2008 EYA/044/20

ILLUSTRATIVE SITE PLAN

LESSARD GROUP INC.
8221 LEEDSBURG PIKE SUITE 750 WINNAX, VA 22187

F 703.760.8148 F 703.760.8128 WWW.LESSARDGROUP.COM





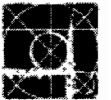
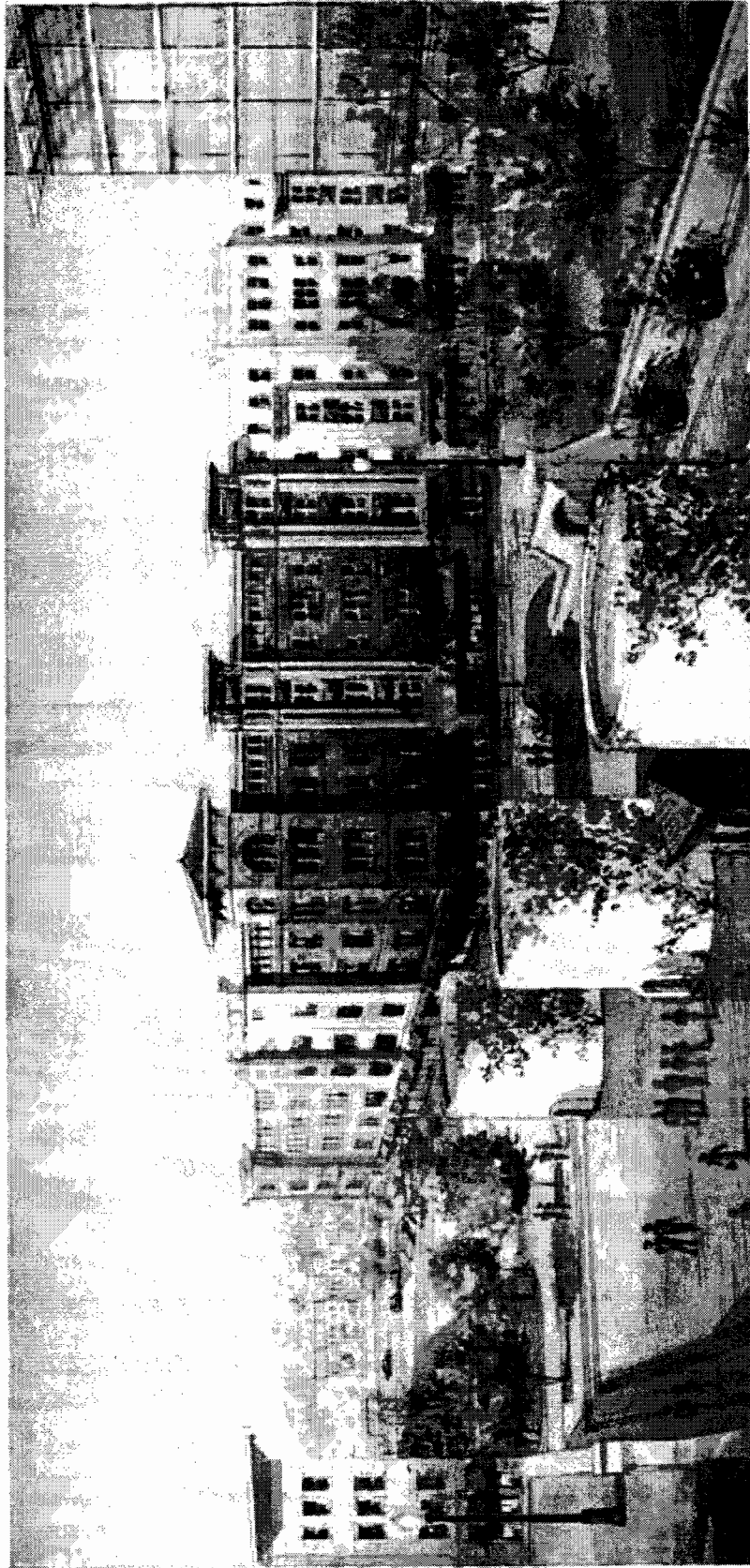
McMILLAN
WASHINGTON, D.C.

THE NEIGHBORHOODS OF EYA
DECEMBER 12, 2006 EYA14642.00 3/0

LAND USE PLAN

LESSARD GROUP INC.
8523 LEEBURG PIKE, SUITE 700 AFTON, VA 22026
P 703 260 8344 F 703 210 8128 WWW.L15LANDGROUP.COM





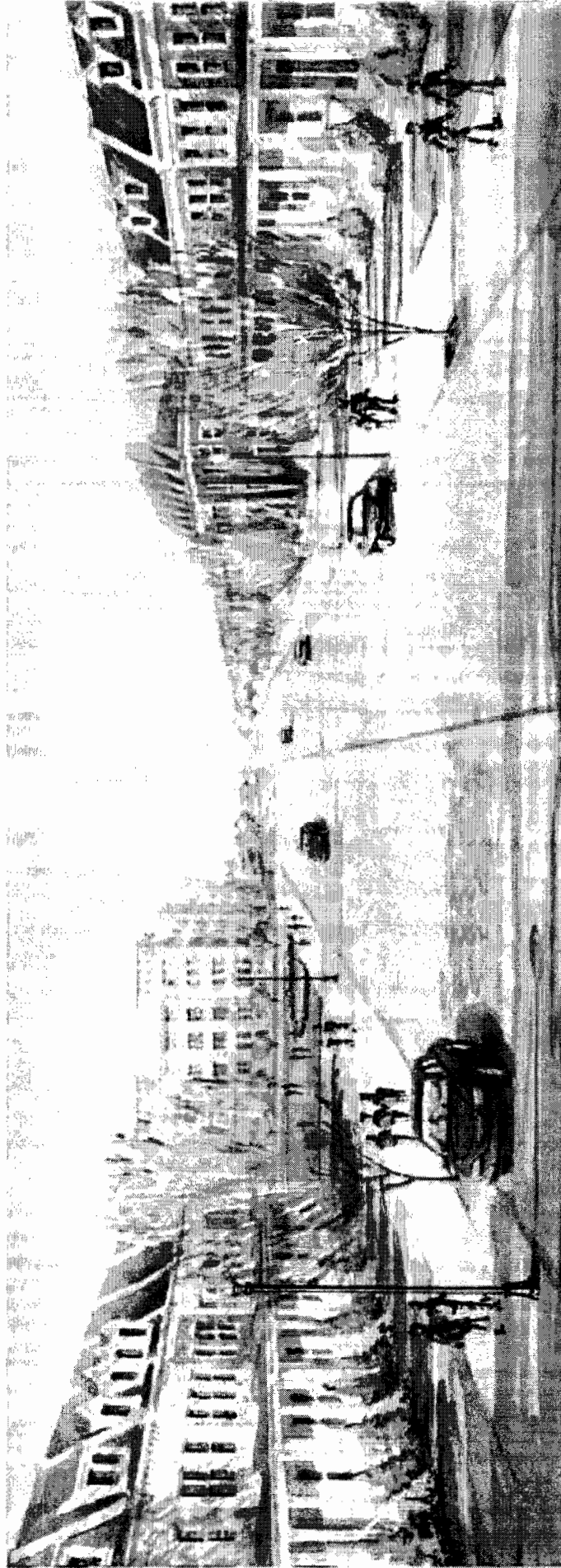
LESSARD GROUP INC.
 8531 LEFFERS FIVE, SUITE 750 WENDE WA 22187
 P 703.746.4141 F 703.760.9138 WWW.LESSARDGROUP.COM

PERSPECTIVE

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THE NEIGHBORHOODS OF EYA
 DECEMBER 14, 2009 EYA 1480.00





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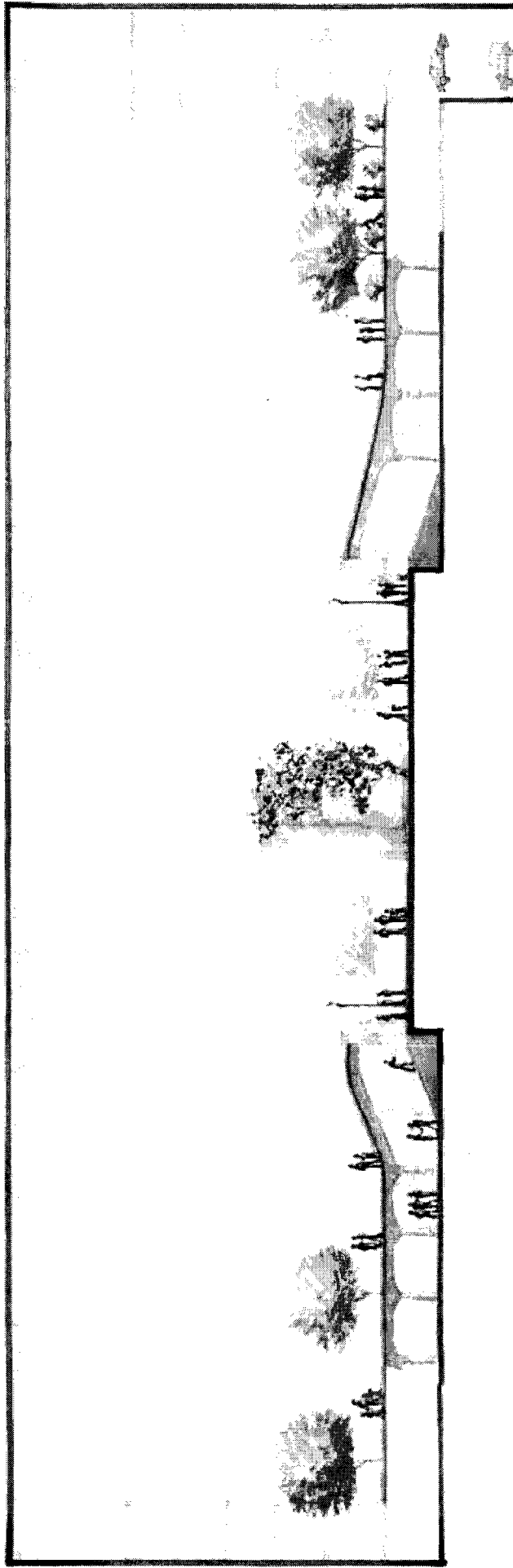


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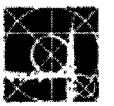
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THE NEIGHBORHOODS OF EYA
MAY 25 2007 EYA346A.00





LESSARD GROUP INC.
 8521 LEFEBVRE BLVD. SUITE 200 KENNESAWA, WA 98148
 P 206 762 9141 F 206 760 9181 WWW.LESSARDGROUP.COM



SECTION
 PLAZA

McMILLER
 WASHINGTON, D.C.

THE NEIGHBORHOODS OF EYA
 MAY 22, 2002 1/4" = 1'-0"



Jackson, McClinton

Distribution List Name: McMillan Advisory Committee

Members:

Ayawna Chase	achase@dccouncil.us
Barrie Daneker	brdaneker@hotmail.com
Cleopatra Jones	commishcjones@prodigy.net
Kenny Williams	dc-kenny@hotmail.com
C. Diane Barnes (dianne_brns@yahoo.com)	dianne_brns@yahoo.com
India Lockett	india.lockett@hhs.gov
Jim Berry	jberry@pdsdc.org
Michael Clark	Mdwa1105@aol.com
Myra Logan	mlogan@dccouncil.us
Nate Matthews	mrmathews81@yahoo.com
Carlton Lewis	photocyclist@yahoo.com
Robert Brannum	rbrannum@robertbrannum.com
Scott Roberts	scott@scott-roberts.net
Tony Norman (tonynorman@peoplepc.com)	tonynorman@peoplepc.com
Windy Carson-Smith	wycarson@aol.com
Zafara Stork	zstork@dccouncil.us

From: [Jair K. Lynch](#)
To: [SantosYoung, Valerie \(EOM\)](#)
Subject: Re: McMillan - open issues
Date: Friday, August 24, 2007 5:10:22 PM

Thanks for the response. Does NCRC have the green light to start marking up the term sheet. The big picture issue that we need some direction on is amount of vertical (80/20) that works for everyone. Given your note below, the other issues around the ADUs, the structure and papering the deal we can definitely workout with NCRC. 2025283242.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: SantosYoung, Valerie (EOM) <Valerie.SantosYoung@dc.gov>
To: Jair K. Lynch
Sent: Thu Aug 23 20:28:12 2007
Subject: McMillan - open issues

Jair –

Yes, I have spoken with Clint on several occasions about issues below, and he seems to be up to speed and has been meeting weekly with Aakash (and you?).

As for affordable housing: The Mayor’s stated goal is that 30% of units developed on real property owned by the District should be affordable. A discussion about potential nuances of, or variations from, this target require that the development program and associated pro forma iterations to be further along (such that we can understand the potential financial implications of the target percentage).

Regarding your other questions: Clint is aware of the various legal constraints, policy goals and other factors that govern our positions on each issue. OAG also recently assigned an attorney to work closely with Clint and help him navigate District-specific legal constraints (e.g., anti-deficiency concerns) related to deal structure. I’m willing to join upcoming discussions with Clint, you and Aakash - if you think it would be helpful.

I’ve asked Clint to reach out to you to check in about your various concerns and questions as well.

-Valerie

Valerie Santos Young
Chief Operating Officer
Office of the Deputy Mayor for Planning & Economic Development

Government of the District of Columbia

202.727.6822 direct

202.727.6365 receptionist

Valerie.SantosYoung@dc.gov

From: Jair K. Lynch [mailto:JKL@jairlynch.com]
Sent: Wednesday, August 22, 2007 9:53 AM
To: SantosYoung, Valerie (EOM)
Subject:

Valerie

I just wanted to touch basis with your regarding McMillan. Have you had a chance to talk to NCRC about the 3-4 major issues still unresolved for about a month ago regarding the term sheet? NCRC needs direction on these issues because these are DM policy issues

- The District relationship with VMP regarding the land – will it be a land partnership or some other hybrid with some upside for district on the backside
- VMP team members having the right to develop up to 80% of the vertical development with 20% of the remaining parcels being sold to third parties especially to CBE firms. Of course we expect that the team members will have to meet objective criteria showing relevancy and financial capacity to execute the specific vertical development. Also as we discussed the procurement of the third party component developers would happen during the PUD process and thus within the next 2 years.
- Affordable housing. Although this issue is somewhat a moving target we need to know that and have clear direction of what we can put in an ERA
- The decision to have ERA/LDA process instead of the planning a truncated LDA process.

I know you are very busy but this project is at a standstill. We have a community meeting tomorrow with NCRC and these issues need to be resolved. Can we meet tomorrow.

Thanks

Jair

From: SantosYoung, Valerie (EOM)
To: [Jair K. Lynch](mailto:Jair.K.Lynch)
Subject: McMillan - open issues
Date: Thursday, August 23, 2007 8:28:12 PM

Jair –

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As for affordable housing: The Mayor's stated goal is that 30% of units developed on real property owned by the District should be affordable. A discussion about potential nuances of, or variations from, this target require that the development program and associated pro forma iterations to be further along (such that we can understand the potential financial implications of the target percentage).

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I've asked Clint to reach out to you to check in about your various concerns and questions as well.

-Valerie

Valerie Santos Young
 Chief Operating Officer
 Office of the Deputy Mayor for Planning & Economic Development
 Government of the District of Columbia
 202.727.6822 direct
 202.727.6365 receptionist
Valerie.SantosYoung@dc.gov

From: [Jair K. Lynch \[mailto:JKL@jairlynch.com\]](mailto:Jair.K.Lynch)
Sent: Wednesday, August 22, 2007 9:53 AM
To: SantosYoung, Valerie (EOM)
Subject:

Valerie

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Thanks

Jair

JAIR K. LYNCH
THE JAIR LYNCH COMPANIES
CREATING LIVE-WORK-PLAY-LEARN COMMUNITIES
PLANNING ↔ EQUITY CAPITAL ↔ DEVELOPMENT ↔ CONSTRUCTION
1508 U STREET, NW, WASHINGTON, DC. 20009 T: 202.462.1092 F: 202.462.1082
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From: [Jair K. Lynch](#)
To: [SantosYoung, Valerie \(FOM\)](#)
Date: Wednesday, August 22, 2007 9:52:42 AM

Valerie

I just wanted to touch basis with your regarding McMillan. Have you had a chance to talk to NCRC about the 3-4 major issues still unresolved for about a month ago regarding the term sheet? NCRC needs direction on these issues because these are DM policy issues

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Jair

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 PLANNING ↔ EQUITY CAPITAL ↔ DEVELOPMENT ↔ CONSTRUCTION
 1508 U STREET, NW, WASHINGTON, DC, 20009 T: 202.462.1092 F: 202.462.1082
www.jairlynch.com

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