

Memorandum of Understanding Between City and CPYR
6/14/2010

**REVISED MEMORANDUM OF
UNDERSTANDING BY AND BETWEEN
CITY OF ALEXANDRIA, VIRGINIA
AND
CPYR, INC.**

FINAL AT MAY 25,2010
REVISED JUNE 3 2010 AS TO DEVELOPER CONTRIBUTIONS
DATED JUNE 12,2010, DATE OF APPROVAL -OF REZONING CDD#19 AND
RELATED LAND USE APPROVALS

REVISED _____

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MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ALEXANDRIA,
VIRGINIA AND CPYR, INC. REGARDING POTOMAC YARD METRORAIL STATION
FINANCING

This Memorandum of Understanding is entered into the ~~12TH~~ day of ~~JUNE, 2010~~, 2018 between the City of Alexandria, Virginia, a municipal corporation ("**City**") and CPYR, ~~Inc., a Shopping Center LLC and CPYR Theater LLC, Delaware corporation ("corporations and its successors and assigns (collectively known as "CPYR" or "Owner").~~ The City and CPYR are collectively referred to as the "Parties".

Recitals

1. CPYR is the owner of ~~Landbay F at~~ North Potomac Yard and wishes to redevelop the existing retail center generally in conformance with the ~~draft~~ North Potomac Yard Small Area Plan. ~~RREEF America L.L.C., ("RREEF", as amended through June 13, 2017. Lionstone Investments ("Lionstone") is the investment adviser to CPYR/CPYR and McCaffery Interests, Inc. JBG Smith is the development consultant to CPYR;~~
2. The City and the Owner ~~through RREEF and McCaffery~~ have engaged in a cooperative planning process which has produced the North Potomac Yard Small Area Plan adopted by the Alexandria City Council May 15, 2010 ("**SAP**"). ~~The~~ and amended by the City Council on June 13, 2017 ("SAP") and the rezoning of the property to Coordinated Development District #19 on May 15, 2010 ("Rezoning"). A critical element of the SAP is the proposed Potomac Yard Metrorail Station ("**Metrorail Station**").
3. The City and CPYR both wish to facilitate the design, funding and construction of the new Metro Station to serve Potomac Yard and North Potomac Yard and have engaged in discussions regarding the funding of the Metro Station.
4. ~~At its Monday December 15, 2009, meeting, the Metrorail Station Feasibility Work Group (which includes the City's Mayor, Vice Mayor, former Chair of the Planning Commission and Chair of the Transportation Commission) unanimously adopted certain guidance for City staff in relation to the proposed Metrorail Station. Critical policy statements from this include the following:~~
 - ~~4.~~ The 2010 SAP and related Rezoning approval were predicated on these financial principles that remain in effect:
 - a. Construction of the Metrorail Station is required to support the level of development ~~proposed~~ approved in Landbay F, 2010 for North Potomac Yard;
 - b. Amendments to the Master Plan and the ~~rezoning of Landbay F cannot go~~ Rezoning of North Potomac Yard could not have gone forward until the City is ~~was~~ satisfied that an acceptable ~~financing~~ financial plan ~~has~~ had been developed and agreed to;
 - ~~Paragraphs 4, 5 and 6 require a~~ c. A clear, detailed and conservative financial plan is, and has always been contemplated, with no negative cash impact ~~on~~ projected for

the City's City's General Fund in any given year;

- ~~• The projected "gap" between the anticipated tax revenues from the special tax district, per square foot developer contributions, plus additional incremental net new revenues generated by the project, will be "bridged" by "firm and sufficient upfront Landbay F payments."~~

d. Developer contributions from CPYR as detailed in this Memorandum of Understanding have been and remain a key element of the financing plan for the Potomac Yard Metrorail Station.

e. A shortfall guarantee by CPYR provides the City a financial backstop in the event that a deficit gap between Metrorail debt service and operating expenses and Potomac Yard Metrorail Station Fund revenues occurs.

5. The Parties wish to set forth their mutual understanding of the next steps in the process for planning development of the Metrorail Station and redevelopment of ~~Landbay F~~ North Potomac Yard and wish to set forth their respective commitments and obligations to each other.

Agreement

Now, therefore, in consideration of the material undertakings set forth hereafter, the City and CPYR, each pursuant to due and proper authority, agree to the following, which shall govern the Parties' actions with respect to the matters contained herein.

1. ~~Effect of Agreement.~~ Effect of Agreement. This Memorandum of Understanding ("MOU") sets forth the Parties' mutual expectations to proceed with various material undertakings and the negotiation of binding agreements and governmental approvals in the future. If either Party fails to perform as set forth in this MOU, the other Party may terminate this MOU, but shall have no additional remedy against the other based solely on this MOU. The Parties expect that future agreements and ~~actions~~ governmental approvals will ~~include~~ be binding agreements in accordance with the law that governs such actions, including remedies for default where applicable and as provided in such agreements. All such agreements and governmental approvals are subject to the legislative discretion of the City Council and all municipal immunities enjoyed by the City, as well as legislative -and administrative approvals associated with construction of the Metrorail station and development proposals for Land Bay F. These future agreements and actions include, but are not limited North Potomac Yard. All obligations placed on CPYR herein shall apply to: CPYR and its successors and assigns.

a. ~~Approval of North Potomac Yard Small Area Plan;~~

b. ~~Rezoning~~ 2. Processing of Land Bay F;

e. ~~Approval of CDD conceptual design plan;~~

- d. ~~Creation of two Special Tax Districts.~~
- e. ~~Approval of preliminary development plan special use permits;~~
- f. ~~Shortfall Guaranty Documentation and Shortfall Deposit Agreement;~~
- g. ~~Environmental studies and regulatory approvals;~~
- h. ~~Funding of predevelopment expenses prior to bond issuance.~~
- i. ~~Design process for Metrorail station;~~
- J. ~~Award of a contract for construction of the Metrorail Station; and~~
- k. ~~Issuance of bonds (the "Bonds") sufficient for construction of the Metrorail station.~~

Use Applications. The Parties anticipate that the land use approvals for development of ~~Land Bay F~~North Potomac Yard will proceed in the ordinary course for such reviews, including staff review, public notice and comment, Potomac Yard Design Advisory Committee review and action, Planning Commission review and recommendationsaction, and City Council review and action. ~~The Shortfall Guaranty Deposit Agreement will set forth the terms contemplated by this MOU in greater detail and will be executed prior to issuance of bonds for the Metrorail Station.~~

2. CPYR and the City will develop and agree to a detailed development schedule for Phase 1 and CPYR will provide a general project timetable for subsequent development phases.

CPYR and the City agree to make all reasonable efforts to adhere to the timelines in the detailed development schedule, allowing for any delays occasioned by the construction of the Metrorail station or the proposed Dominion Virginia Power line in the CSX Rail corridor or Potomac Avenue, any litigation associated with the Metrorail station or development approvals, and circumstances outside the control of either the City or CPYR.

3. Establishment of Potomac Yard Metrorail Station Fund ("Station Fund"). ~~Concurrently with the approval of a rezoning of Landbay F, the City will establish a fund for purposes of accumulating the following flow of funds, each of~~The City has established the Station Fund which includes contributions from the below described in more detail below sources. All cash contributions by the Owner to the Station Fund shall be payable without offset, deduction or counterclaim of any kind, except as expressly set forth herein. ~~The Station Fund will be~~a separate segregated fund, the proceeds of which may be used only for the purposes stated herein, i.e., furthering the design, construction and financing in Section 5 of this MOU. The funds in the Metrorail Station. ~~Funds Fund~~ may not be diverted from the Station Fund for other purposes, except as described in this Sectionsection below.

- a. Net New Tax Revenues¹. Net new tax revenues generated by the several Landbays at Potomac Yard and North Potomac Yard ("Net New Tax Revenues"),

¹ The Parties recognize that transfer of Net New Tax Revenues into the Station Fund are subject to actual appropriations and the current City Council cannot bind future Councils to make such appropriations.

commencing as of the final effective date of the ~~rezoning~~Rezoning, but in any case, no earlier than June 15, 2011 for real property tax revenues, and July 1, 2011 for other tax revenues. Net New Tax Revenues shall include all new real property taxes (i.e., increased ad valorem real estate taxes over and above the base year in which the ~~rezoning~~Rezoning occurs, whether due to increased assessed values, new construction or development, or changes in the tax rates, including the real estate tax rate, in effect in the base year) payable to the City from all Landbays at Potomac Yard and North Potomac Yard, less the percentage amount² of gross tax receipts for each type of use representing the estimated cost of providing services required by such use, as follows, such percentage to remain in effect so long as the ~~Bonds are outstanding unless a different percentage for cost of services is agreed upon by the City and the landowners of the various Landbays at Potomac Yard.~~Potomac Yard Metrorail Station Debt Instruments³ are outstanding. Net New Tax Revenues shall also include increased business tangible, sales (1% City levy), meals, transient occupancy and business licenses tax receipts from net new development in Potomac Yard and North Potomac Yard; the same percentages described below will be applied to such other types of taxes, depending on the source of the tax, i.e. net new sales taxes will be subject to the retail percentage, net new transient occupancy tax shall be subject to the Hotel/Hospitality percentage, and so forth. Excluded from net new taxes would be: (1) any new tax category or new classification not in place and approved by the Alexandria City Council as of ~~January~~July 1, 2010~~2018~~, including but not limited to the commercial transportation add-on real estate tax for transportation purposes, and (2) any taxes restricted by federal or state law or regulation which would be inconsistent with the payment of debt service on the Debt Instruments issued to finance the Metrorail Station in Potomac Yard.
~~the payment of debt service on the bonds issued to finance the Metrorail Station in Potomac Yard.~~

~~Residential: 59.85 %~~

- ~~i. Townhouse: 33% of revenues utilized for services, leaving 40.15 % percent of gross new tax revenues to be utilized as Net New Tax Revenues and placed in the Station Fund (Source for all: USPTO Study 1999).~~
- ~~ii. Office and other non-retail commercial: 17 % of revenues utilized for services, leaving 83.67% percent of gross new tax revenues to be utilized as Net New Tax Revenues and placed in the Station Fund.~~
- ~~m. Retail: 12.9~~ii. Multifamily: 38% of revenues utilized for services, leaving 87.162% of gross new tax revenues to be utilized as Net New Tax Revenues and placed in the Station Fund.

² Source for all percentages is the Tischler Fiscal Impact Report, 2017 and are subject to change if the City updates that report.

³ Debt Instruments are defined as general obligation bonds, general obligation bond anticipation notes, loans from the state or federal governments such as the Virginia Transportation Infrastructure Bank and/or the Build America program, or any other borrowing instrument that the City deems in the interest of financing the Potomac Yard Metrorail Station construction project.

- iii. Office: 12% of revenues utilized for services, leaving 88% percent of gross new tax revenues to be utilized as Net New Tax Revenues and placed in the Station Fund.
- iv. Retail: 16% of revenues utilized for services, leaving 84% percent of gross new tax revenues to be utilized as Net New Tax Revenues and placed in the Station Fund.
- ivv. Hotel/Hospitality: 6.57% of revenues utilized for services, leaving 93.5% percent of gross new tax revenues to be utilized as Net New Tax Revenues and placed in the Station Fund.
- b. ~~Special Tax Districts. Special Tax District revenues generated by the several Landbays at Potomac Yard, based on the projected establishment (effective January 1, 2011) of a special tax district to apply to all assessed value (current and future) of real property and improvements in the Landbays at Potomac Yard, based on a planned special assessment of twenty cents (\$0.20) per one hundred dollars (\$100.00) of assessed valuation on Landbays F, G, H, I, and J ("Special Tax District Revenues"). Old Town Greens will not be subject to the Special Tax District. Potomac Greens, and portions of Potomac Yard landbays other than Landbay F which are to be developed for single family attached development (or alternatively, areas within such other land bays zoned for lower density residential and at a further distance from the Metro Station); will be included in a second Special Tax District when established, with a rate of zero until the Metro Station commences operation, and thereafter with a yet to be determined tax rate that is planned to be equal to or less than ten cents (\$0.10) per \$100.~~
- e. ~~Developer Contributions. Developer contributions of Ten Dollars (\$10.00) per square foot of gross floor area (net of structured parking) of new construction within Landbay F, capped at a maximum of Forty Nine Million Dollars (\$49,000,000) in 2010 Dollars ("Developer Contributions"), payable concurrently with issuance of each certificate of occupancy for such new improvements, and which shall be paid by the then owner of such improvements. This \$10.00 per square foot Developer Contribution would be as of the date of final approval of the rezoning of Landbay F, and, in order to retain a \$10 real dollar equivalent in 2010 dollars, would escalate annually thereafter on January 1 of each year in accordance with increases in prior years in the Consumer Price Index for all urban consumers (CPI-U), 1982-1984=100 (not seasonally adjusted) as reported by the United States Department of Labor, Bureau of Labor Statistics. The base CPI will be set as of the date of the rezoning and will be adjusted as of the first day of January each year thereafter, and the resulting adjusted Developer Contribution per square foot amount shall be in effect for that calendar year. It is understood that the dollar amount paid is that calculation for the calendar year when the certificate of occupancy is issued by the City. For example, if a building's construction is completed on December 15, 2015, but the certificate of occupancy for that building is issued on January 15, 2016 then the amount paid in 2016 at the time the certificate of occupancy is issued would be adjusted for changes in the CPI-U between January 1, 2015 and January 1, 2016. It is understood that Potomac Yard Development LLC ("PYD") and MRP Realty~~

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~~("MRP") as the owners of other landbays at Potomac Yard, are not seeking a rezoning with substantial additional density and have made extensive public-benefit contributions for transportation, sewer, storm water management, and will not be required to make Developer Contributions. However, it is acknowledged that if in the future PYD or MRP or any successor of either initiates a rezoning of all or a portion of their respective properties, involving significant increases in density of development, then mitigation of transportation impacts, including potential contributions to the Metrorail station, would be a part of the rezoning-contribution negotiation. As our discussions have evolved and we have considered issues of administrative simplicity, it has been agreed that the Developer Contribution will be collected based on the gross floor area of improvements constructed and for which a certificate of occupancy is issued, net only of area devoted to structured parking and shall be collected on the first 4.9-million square feet of improvements in Landbay F after which no further Developer Contributions shall be payable for any development thereafter in Landbay F.~~

b. Special Tax District Revenues. Special Tax District revenues generated by the special tax districts established in Sections 3-2-189 and 3-2-190 of the City Code as the same may be amended. North Potomac Yard is part of the Tier I Special Tax District and is subject to a tax levy currently in the amount of \$0.20 per \$100 of assessed value. That \$0.20 rate is projected to be in place through 2048 when it is projected to start declining as station debt service declines.

c. Developer Contributions.

Catalyst Phase – Developer Contributions: Buildings that have preliminary development special use permit (DSUP) and all other applicable CDD approvals within 3 years of the date of execution of the MOU (or as extended by any litigation associated with the Metrorail station or development approvals) will be eligible for a Catalyst Phase developer contribution to implement the North Potomac Yard Small Area Plan and to incentivize the construction of office, hotel and retail uses adjacent to the Metrorail station within North Potomac Yard during the Catalyst Phase.

The Catalyst Phase developer contributions will be \$11.37 /sq. ft of floor area (January 2018 dollars) that will escalate annually on January 1 of each year starting on January 1, 2019 based on the prior calendar year's change in Consumer Price Index (CPI) as measured by the Federal Bureau of Labor Statistics on all residential uses. Office, hotel and retail uses will not be required to pay a developer contribution as referenced herein.

Buildings that do not receive a certificate of occupancy permit within 10 years of the execution of the MOU, or buildings that have not commenced substantial construction in compliance with Section 11-418 of the Zoning Ordinance within 8 years of the execution of the MOU, will not be eligible for the Catalyst Phase developer contribution and will be subject to the Non-Catalyst Phase developer contribution.

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Non Catalyst Phase – Developer Contribution: After the Catalyst Phase defined above has expired, the developer contribution will be \$11.37/sq. ft of floor area (January 2018 dollars) that will escalate annually on January 1 of each year starting on January 1, 2019 based on the prior calendar year's change in CPI as measured by the Federal Bureau of Labor Statistics for all residential, office, hotel and retail uses up to 4.9 million sq. ft of floor area in addition to the square feet of floor area of office, hotel and retail development that does not provide a developer contribution within the Catalyst Phase.

d. Interest earned on funds deposited in the Station Fund, including interest earned by any investment of ~~bond principal~~ Debt Instrument proceeds will be invested by the City as per Code of Virginia investment laws for short-term cash investments and shall remain in the Fund and may be used for any purposes allowed by the Station Fund.

~~e. In the event that bonds for the Metrorail Station are not issued by January 1, 2018 and the City and CPYR or the then controlling owner of Landbay F determine that financing and construction of a Metrorail Station is no longer feasible, any Developer Contributions then remaining in the Station Fund may be withdrawn from the Station Fund by the Owner. In determining the extent of Developer Contributions remaining in the Station Fund, the use of funds expended shall be deemed to have been spent in proportion to the source of the funds. The parties will cooperate to develop a schedule for all predevelopment processes and approvals preceding the closing of bond financing and construction of the Metrorail station, with milestones against which progress can be measured.~~

~~3. Bond 4. Financing of Metrorail Station Construction. The City has determined that the long term benefits to the City from redevelopment of Potomac Yard, including the construction of a Metrorail Station serving Potomac Yard, merit the incurrence by the City of ~~bonded~~ indebtedness of approximately \$275206 million (as set forth in the "~~Bond Financing~~") attached memorandum dated April 4, 2018 from City Manager Mark Jinks to the City Council to pay hard and soft costs of construction, capitalized interest, and issuance costs necessary to place in service an operating Metrorail Station serving Potomac Yard. ~~The bonds may be issued as general obligation bonds, revenue bonds, lease revenue bonds, certificates of participation, or other municipal debt instruments, or a combination of these instruments. The bonds may be issued in one or more tranches. The bonds are likely to be fixed rate, but some or a portion of the bonds may be issued as variable rate.~~~~

~~4. Utilization of Funds from Potomac Yard Metrorail Station Fund. The City may use funds accumulated in the Station Fund to cover debt service on the Bonds issued to finance the Metrorail Station, to cover that portion of any annual operating expense deficit specifically allocable to the Potomac Yard Metrorail Station by WMATA and chargeable to the City pursuant to the terms of the WMATA Compact to which the City is a party, to pay expenses incurred in the establishment of the Fund, costs of design of the Metrorail Station, including architectural, engineering, design, and construction document costs, costs of land acquisition, costs of permit or grant applications and processing, environmental studies,~~

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~~legal and other professional service costs, and all other costs reasonably incurred by or on behalf of the City in connection with the final location approval, design, and preparation for commencement of construction of the Metrorail Station. Funds accumulated in the Station Fund could be used to pay ongoing costs of construction, or accumulated as a debt service reserve, as determined pursuant to the terms of the Bond Financing. Funds may also be used to reimburse the City for Metrorail Station related expenses incurred prior to initiation of the Fund. If any funds accumulated in the Station Fund prior to the closing of Bond Financing and commencement of construction of the Metrorail Station, are insufficient to pay ongoing predevelopment expenses, either party shall have the right, but not the obligation, to contribute funds to the Station Fund to pay such expenses, such additional advance contributions to be eligible to be repaid from the proceeds of the Bond Financing. The parties shall immediately commence the development of a detailed checklist of predevelopment tasks and anticipated costs, including development of an overall multi-year budget showing total anticipated costs that are expected starting in 2010 up until the closing of Bond Financing and commencement of construction.~~

55. Utilization of Funds from Potomac Yard Metrorail Station Fund. The City may use funds accumulated in the Station Fund for one or more of the following five purposes: (1) to pay cash in a yet-to-be determined amount for Potomac Yard Metrorail Station's planning, administration, and construction expenditures; (2) to be set aside as an extra contingent (above the \$30 million planned construction budget contingent) to cover unforeseen/ unbudgeted construction costs; (3) to pay principal and/or interest on any borrowing undertaken to fund the Potomac Yard Metrorail Station project; (4) to pay operating costs allocated by the Washington Metropolitan Area Transit Authority due to the Potomac Yard Metrorail Station, or (5) to be used or held in reserve to cover future operating and capital costs related to the Potomac Yard Metrorail station. The funds in the Station Fund may not be diverted from the Station Fund for other purposes, except as described in Section 3 herein.

6. Financing Plan⁴. The financing plan for the construction of the Metrorail Station (the "Financing Plan") has evolved so that the following general principles are agreed upon financing plan, which remains subject to change, is currently contemplated:

- a. The projected cost of construction of the Metrorail Station, using the highest cost alternative B-2 to construct a "mid-point" cost and debt service projection, is approximately \$240206 million in 2015 dollars (mid-point of construction). Capitalized interest and bond issuance costs are estimated at \$35approximately \$9.7 million.
- b. The City will plans to issue bonds ("Bonds"), Debt Instruments, in an amount not to exceed \$275estimated at \$215.7 million, to fund construction of the Metrorail Station. The financial plan is to issue the General Obligation Bonds as tax exempt bonds to the maximum degree feasible, or to, issue bond anticipation notes, utilize the federal Build America Bond loan program if authorized at and utilize the Virginia Transportation Infrastructure Bank loan program. The city also plans to utilize a to-be-determined amount of cash from the time the bonds are

⁴ The current financing plan, which is subject to change, is based on WSP "Potomac Yard 2018 Financing and Feasibility Final Update", June 2018

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~~issued~~ Potomac Yard Station Fund to pay for a portion of station construction and related costs.

- c. Construction period interest ~~will~~ is planned to be capitalized during at least the first ~~three~~seven years after issuance of the ~~Bonds~~Debt Instruments.
- d. ~~—Bonds~~ It is estimated that Debt Instruments will provide that repayment will be of interest only during years ~~four~~one through ~~six~~ (4-6) ~~seven~~ (1-7), with repayment of principal ~~commencing~~planned to commence in year ~~seven~~ (6).
- e. ~~—Depending on market conditions at the time of issuance, all or a portion of the Bonds may be callable at the end of the tenth year. This may increase borrowing costs slightly in the first ten years, but will provide an opportunity for refinancing of the Bonds, after the first ten years, or through an advance refunding prior to the end of the first ten years through a new bond issuance and defeasance of the original Bonds.~~
- fe. Although neither the Owner nor the current City Council can bind future Councils, the present intent is that when the debt incurred to finance the construction of the Metrorail Station has been fully ~~paid off~~amortized, and any funds advanced by the City due to shortfalls in the Station Fund have been repaid, the Special Tax Districts would be terminated. This is projected to be ~~30~~approximately 40 years after the issuance of the ~~Bonds~~first Debt Instruments.
- g. ~~The f.~~ Since 2010, the City ~~plans to submit a~~has submitted preliminary and updated Financing ~~Plan~~Plans to the City's bond counsel and financial advisors, ~~and to discuss~~has discussed this proposed financing with the applicable rating agencies ~~during the first half of 2010~~, to obtain ~~early~~ evaluation and comment ~~of the feasibility of on~~ the Financing Plan ~~(which the City's financial advisors have already provided input to)~~ and to identify any issues that need to be addressed. ~~Adjustments to the plan may be required as a result of this review, to ensure that the Financing Plan is~~remains conservative, with a sound financing structure and shared risk, and that it will not put at risk the City's AAA/Aaa bond ratings.
- hg. The City shall have no obligation to actually issue ~~the Bonds~~Debt Instruments until certain conditions have been met, including but not limited to (i) approval of the ~~final bond~~ financing plan and underwriting prospectus by the City's financial advisors (and any underwriters if the bond sale is negotiated and not a competitive transaction) and counsel; (ii) issuance of all necessary permits for commencement of construction of the Metrorail Station (iii) the Owner has fulfilled all of its obligations with respect to cash contributions and the documentation of the Shortfall ~~Guaranty~~Guarantee in a manner sufficient to the City, its underwriters, lenders and counsel; (iv) confirmation that based on the final plans for the Metrorail Station and the construction cost estimates provided as part of the design build process, the Metrorail Station can be constructed and placed in service for a total cost not to exceed ~~\$240~~320 million; (v) a court

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validation of the planned ~~Bond~~bond issue, or issues, if deemed necessary by the City; and (vi) the ~~attainment~~execution of at least a ~~AA bond rating for design-build contract between the Bonds from Moody's Washington Metropolitan Area Transit Authority and S&P,~~its selected design-build contractor. If a condition to the City's obligation to issue the ~~Bonds~~debt instruments is not satisfied and the ~~Bond~~-financing does not close, the ~~Shortfall~~ Guarantor shall not be obligated to make the ~~Shortfall Guaranty~~Shortfall Guarantee Deposit, or if such Deposit has previously been made, it will be returned to the ~~Shortfall~~ Guarantor.

ih. Once the ~~Bonds~~Debt Instruments are issued, the City will be obligated ~~in some-~~fashion to make payments of principal and interest on the ~~Bonds~~debt, as and when the same come due, or to suffer the consequences of a default in payment, including adverse effects on the City's bond ratings. ~~-If the various development and financial projections are not met, the City will still need to service~~meet its obligations in servicing the Bond-indebtedness. The Shortfall ~~Guaranty~~Guarantee and Shortfall ~~Guaranty~~Guarantee Deposit provide comfort that cash shortfalls in servicing the ~~bonds~~debt (including principal and interest) will be met by the Owner, deferring any loss to the City. However, inasmuch as the City is ~~primarily~~ liable on the ~~Bonds~~debt, if the Shortfall ~~Guaranty~~Guarantee is exhausted or the Guarantor defaults in its obligation to make or reimburse the Shortfall ~~Guaranty~~Guarantee Deposit or to ~~otherwise~~otherwise make payments of shortfalls as and when due, the City will likely have the responsibility to make up the difference. Should this occur, interest shall accrue on any amounts paid by the City other than from the Station Fund, at the Applicable Federal Rate from the time incurred and paid out by the City until the time such funds are returned to the City, such amounts to be repaid to the City when funds in the Station Fund are available to do so (including from the ~~\$40~~11.37 per square foot CPI-U adjusted payments or net new taxes). If the Shortfall Guarantor defaults in its obligation to make payments under the ~~Shortfall Guaranty~~Shortfall Guarantee or to timely replenish the Shortfall ~~Guaranty~~Guarantee Deposit, in accordance with Section 8 herein, the owner agrees that the City shall have no obligation to issue building permits for new development in Landbay F North Potomac Yard until the default is cured.

ji. All parties recognize that the Financing Plan is based on current projections of cost, and timing of construction, and that if the projected costs increase materially or the timing of construction is significantly delayed prior to finalization and closing of all of the Bond-financing elements, all terms and conditions of financing will need to be reassessed and renegotiated. ~~-However, in no event will the City be obligated to issue bonds~~debt instruments in excess of ~~\$275~~the planned \$206,000,000 principal amount.

~~6. State or Federal Funding. The Financing Plan has been developed on the assumption that no State or Federal sources of funding, whether through grants, loans, or otherwise, will be specifically available for this project. Should State or Federal funds become available, such funds will be utilized as authorized. No~~7. Regional, State or Federal Funding. No Regional, State or Federal funds received shall reduce the amount of the Developer Contribution or the Shortfall GuarantyGuarantee, although it is recognized that any

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available ~~state~~Regional, State or federal~~Federal grant~~ funding should reduce risk for all parties and will likely reduce the amount needed to be borrowed, or in the case of State or Federal loans, reduce the costs of borrowing.

78. ~~Shortfall Guaranty~~Guarantee. In order to reduce the risk that the City will draw upon ~~general funds~~General Fund revenue to make payments on the ~~bonds~~debt for the Metrorail Station, CPYR will provide a contingent ~~guaranty~~guarantee of any shortfall in any given year (the "~~Shortfall Guaranty~~Guarantee"), between amounts required to be paid to service ~~Bond~~Indebtedness (including both principal and interest, in accordance with the terms of the approved ~~Bond~~Financing), and funds on hand in the Station Fund. The Shortfall ~~Guaranty~~Guarantee will be ~~made~~provided by the ~~landowner (currently CPYR, Inc.)~~Owner (the "~~Shortfall Guarantor~~Shortfall Guarantor"), the financial assets and condition of which are approved by the City and must be reapproved at the time of ~~bond~~ financing by the City's ~~bond~~ underwriters in accordance with the terms of the ~~bond~~ financing.
- a. ~~The Shortfall Guarantee shall total \$32 million; with the Shortfall Guarantor; not obligated to pay more than \$32 million cumulatively over a multi-year period to cover any debt service shortfall, nor~~16 Million during each of the two phases of the development (Phase 1 being east of Potomac Avenue and Phase 2 being west of Potomac Avenue; See Exhibit 1) (the "Shortfall Guarantee Cap") but no more than \$10 million in any single calendar year.
- b. ~~The City shall give the Shortfall Guarantor at least six months written notice of any estimated shortfall amount due, and provide detailed calculations of how that shortfall was estimated to the Shortfall Guarantor, and upon what date the Shortfall payments would be due.~~
- a. ~~Concurrently with~~c. Within 45 days of receipt of the closing of the Bond Financing~~City's six months written notice of any estimated shortfall amount due, the Shortfall Guarantor will deposit into a separate fund controlled by the City (the "Shortfall Guarantee Fund") the sum of \$10 million in Shortfall Guaranty funds to cover possible draws under the Shortfall Guaranty Guarantee (the "Shortfall Guaranty Guarantee Deposit"). Interest earned on the Shortfall Guaranty Deposit Guarantee Fund will remain with such Deposit Fund.~~
- d. ~~The City may draw upon the Shortfall Guaranty Deposit Guarantee Fund to make Shortfall Guaranty Guarantee payments as and when payments are due on the Bonds debt instruments. The Shortfall Guarantor shall be obligated to replenish, within ninety (90) days, any funds drawn from the Shortfall Guaranty Deposit Guarantee Fund, so that at all times the sum of \$10 million will be available for use to cover Shortfall Guaranty Guarantee obligations. However, the obligation to replenish the Shortfall Guaranty Deposit Guarantee Fund shall be subject to the same annual cap of \$10 million and Shortfall Guarantee Cap of \$16 million for Phase I and \$16 million for Phase II of the North Potomac Yard development.~~
- e. ~~The overall Shortfall Guaranty Guarantee Cap for Phase I shall be offset by any Developer Contributions that have been paid in accordance with Section 3c herein.~~

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To the extent that any Shortfall Guarantee Deposits have been made prior to Developer Contributions being due, the Developer Contributions to be paid shall not exceed the overall Shortfall Guarantee Cap less any amount that has been deposited in the Shortfall Guarantee Fund. Any funds remaining in the Shortfall Guarantee Fund after the last Certificate of Occupancy for Phase I shall remain available for drawdown after Phase I is completed but before Phase II begins.

f. Phase II will begin when the first building permit is issued for development in Phase II. For Phase II, the overall Shortfall Guarantee cap of \$32 million will be reset at \$16 million and deposits will occur as set forth in Sections 8b-8d above. The overall Shortfall Guarantee Cap for Phase II shall be offset by any Developer Contributions that have been paid in Phase II in accordance with Section 3c herein. To the extent that any Shortfall Guarantee Deposits remain from Phase I or have been made in Phase II prior to Developer Contributions being due for Phase II, the Developer Contributions to be paid shall not exceed the overall Shortfall Guarantee Cap for Phase II less any amount that has been deposited in the Shortfall Guarantee Fund.

bg. Excluding the planned first three years of capitalized interest to pay ~~bond~~ debt service, subsequent to the City fiscal year in which the last debt service payment of capitalized interest is paid, if after three subsequent consecutive fiscal years of no ~~Shortfalls~~ shortfalls requiring the use of any Shortfall ~~Guaranty~~ Guarantee funds, any remaining Shortfall ~~Guaranty~~ Guarantee Deposit funds may be credited against future \$~~10.00~~ 11.37 per square foot (as annually adjusted by the CPI-~~U~~) Developer Contributions due from ~~Landbay F~~ North Potomac Yard, subject to Section 8f herein. Any credits against Developer Contributions must be to the Shortfall Guarantor, or if credits are proposed to be allowed to a third party other than the Shortfall Guarantor, the granting of such credits must be approved in writing by the Shortfall Guarantor. In addition, if after the first ~~three~~ eight years of capitalized interest and the amortization of principal amount of indebtedness has stabilized at its ultimate level, ~~(currently projected for 2036)~~, there shall occur three consecutive years in which the total of collections from the Special Tax District and Net New Tax Revenues exceed the annual debt service, any funds remaining in the Shortfall ~~Guaranty~~ Guarantee Deposit will be released to the ~~Shortfall~~ Shortfall Guarantor. ~~(the~~ “Shortfall Guarantee Release Date”). The City shall annually produce a reconciliation of the Station Fund and make it publicly available to all parties who request a copy.

~~e. The Shortfall Guaranty, and other terms and conditions of the Metrorail station financing participation by CPYR, Inc. or other acceptable Shortfall Guarantor, shall be affirmed in writing as a "best efforts" planned pledge by an authorized agent for CPYR, Inc. prior to the time of the adoption of the North Potomac Yard Small Area Plan, affirmed as a legally binding commitment at the time of the rezoning of Landbay F, but the binding Shortfall Guaranty shall be contingent upon the initiation of construction of the Metrorail station, or the bond financing for that station, whichever comes first.~~

~~eh.~~ If any Shortfall ~~Guaranty~~ Guarantee amount becomes due during Phase I or Phase II and is not paid by CPYR, Inc. or other acceptable Shortfall Guarantor at the time

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requested by the City, the City shall have the right to record a lien against ~~any and all parcels~~ the parcel(s) within ~~Landbay F~~ North Potomac Yard that are owned by CPYR, Inc., and part of that phase of development (See Exhibit), such lien to have the priority of a deed of trust recorded at the time the lien notice is filed by the City among the Land Records of Alexandria, Virginia. The City's right to record a lien for any unpaid Shortfall ~~Guaranty~~ Guarantee amount shall be memorialized in a document recorded in the Land Records of the City of Alexandria, encumbering ~~all the parcel(s) of North Potomac Yard property owned by CPYR, concurrently with the closing of~~ within the bond financing phase during which the default occurs.

- ei. After the Developer's requirements to pay any Shortfall Guarantee have been satisfied ~~Release Date, notwithstanding the requirement in Section 3a herein,~~ the City may decide to deposit into the Station Fund only some or none of the ~~net new tax revenues~~ Net New Tax Revenues generated by ~~Landbay F~~ North Potomac Yard or other Potomac Yard Landbays, if the City determines, in its sole discretion, that those amounts are not projected to be reasonably required to pay projected future debt service on ~~bonds~~ debt issued to finance the Potomac Yard Metrorail ~~station~~ Station or to pay projected Potomac Yard Metrorail Station operating costs. It is recognized by all parties that Special Tax District revenues under the Code of Virginia limit use of Special Tax District Funds to those purposes for which the Special Tax District was created.
- fj. The Parties recognize that transfer of Net New Tax Revenues into the Station Fund are subject to actual appropriations and the current City Council cannot bind future Councils to make such appropriations. ~~However, if~~ Prior to the Shortfall Guarantee Release date, in any calendar year the City Council does not authorize the transfer of all of Net New Tax Revenues into the Station Fund, the obligation of the Shortfall Guarantor to make Shortfall ~~Guaranty~~ Guarantee payments in that calendar year shall be reduced by an amount equal to the amount of Net New Tax Revenues that would have been paid into the Station Fund but for the City Council's decision not to authorize such transfer.
- gk. In the event that the ~~\$32,000,000~~ Shortfall ~~Guaranty~~ Guarantee is not utilized to pay debt service on the ~~bonds~~ Debt Instruments issued for the Potomac Yard Metrorail Station, any unused portion thereof shall be paid to the City, for ~~bond~~ debt repayment, or for public improvements or amenities recommended by the North Potomac Yard Small Area Plan, as determined by the City Council. Such funds shall be paid to the City subject to the following: Upon the occurrence of the Shortfall ~~Guaranty~~ Guarantee Release Date, the Director of Planning & Zoning will determine the total amount of floor area remaining pursuant to the CDD concept design plan for which a final site plan has not been approved as of the Shortfall ~~Guaranty~~ Guarantee Release Date. The Applicant shall pay the unused portion of the Shortfall ~~Guaranty~~ Guarantee (adjusted to reflect increases in the CPI subsequent to January 1, 2020) on a pro rata basis for each remaining square foot of floor area upon approval of each final site plan subsequent to the Shortfall ~~Guaranty~~ Guarantee Release Date. However, if after the passage of five (5) years from the Shortfall ~~Guaranty~~ Guarantee Release Date, final site plans have not been approved for all floor area authorized by the CDD concept design plan, the final payment of the

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unused portion of the Shortfall ~~Guaranty~~Guarantee (adjusted to reflect increases in the CPI subsequent to January 1, 2020) shall be due and payable in full on such fifth anniversary of the Shortfall ~~Guaranty~~Guarantee Release Date. In the event final site plans have been approved for all floor area authorized by the CDD concept design plan prior to the Shortfall ~~Guaranty~~Guarantee Release Date, the Applicant will make full payment of the unused portion of the Shortfall ~~Guaranty~~Guarantee (adjusted to reflect increases in the CPI subsequent to January 1, 2020) to the City within six months of the Shortfall ~~Guaranty~~Guarantee Release Date.

- ~~8. Final Approval of Metrorail Station Location. The parties will work together and with WMATA and other affected regulatory agencies and stakeholders such as the National Park Service ("NPS"), to resolve the final location of the Metrorail Station as expeditiously as feasible, taking into consideration the requirements of federal law with respect to required environmental analyses. The parties recognize the positive benefits as well as the issues related to the current preferred locations "B-2" and "B-3." The current reserved site "A," along with site "B-2" and "B-3," will continue to be studied for the purpose of future NEPA environmental studies in order to select a preferred alternative among those options. The parties acknowledge and agree that the financial structure set forth herein as well as the North Potomac Yard Small Area Plan and related rezoning will only work if either location B-2 or B-3 (either in their current location or with minor adjustments due to environmental studies or final engineering) is designated for the Metrorail Station, and that if site "A" is chosen, or if the "no build" alternative is chosen, CPYR shall have no obligation for financial contributions or undertakings contemplated by this Agreement. The parties also acknowledge that the redevelopment of Landbay F will be subject to zoning conditions requiring the Landbay F Developer Contributions and Shortfall Guaranty and that the City may withhold subsequent development approvals and permits if payments are not made as timely required.~~
- ~~9. Metrorail Station Design Process. The parties will work with WMATA and NPS to develop an approved schematic design of the Metrorail Station. The current plan is for the Metrorail Station to have two entrances on or crossing Potomac Avenue, so as to expand pedestrian access to Metrorail to the maximum possible degree. Following the determination of the station design, the Station Fund will finance from revenues available and paid into the Fund, the development of detailed construction drawings for the Metrorail Station. The construction of the Metrorail Station may be done on a "design build" basis in which the final design of construction documents will proceed concurrently with early phases of construction. However, to minimize change order and related construction risk, if design build is used, the parties shall seek to advance the development of detailed construction documents to the greatest possible degree prior to the commencement of construction.~~
- ~~10. Notwithstanding any other provision of this MOU, the total financial liability to CPYR for payment of the applicable square foot of development amounts and for Shortfall Guarantee payments under this MOU shall not exceed \$55,713,000 in 2018 dollars.~~
9. Comprehensive Plan Process. The North Potomac Yard Small Area Plan was adopted by the City Council on May 15, 2010, and amended June 13, 2017. Nothing contained as part of this ~~letter~~MOU modifies or limits the ability of the Planning Commission and/or City

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Council to ~~amend~~, approve, defer or deny any proposed amendment to the North Potomac Yard Small Area Plan, or any future rezoning. Also the plan including the Metrorail station construction is subject to regulation by NPS, FAA and other state and federal agencies.

~~11. Rezoning Process. The Owner has initiated an application for the rezoning of Landbay F of Potomac Yard to be known as CDD#19 (REZ #2009-0001; CDD#2009-0001; TMP#2009-0061). By letter dated December 8, 2009, the Owner was advised that these related applications were deemed complete for review by the City, conditioned on the applicant continuing to work with the City to address various items, including the Metrorail Station Financing. The City plans to continue its review of these applications. Nothing contained as part of this Memorandum modifies or limits the ability of the Planning Commission and/or City Council to amend, approve, defer or deny the rezoning, CDD Concept Plan and accompanying approvals.~~

~~12~~10. Redevelopment Preceding Metrorail Station Construction. In order to reduce the City's risk of diverting ~~general fund~~General Fund revenues to pay for debt service ~~on the bonds~~ for the Station, the City will allow redevelopment of ~~Landbay F~~North Potomac Yard to proceed prior to the opening of the Metrorail Station in phases as specified in the CDD Concept Development Plan #2009-0001, or as may be amended by City Council through any amendments to the CDD Concept Development Plan.

~~13~~11. Conditions of Development Approval. The Owner's ability to proceed with redevelopment and to provide the Developer Contributions and Shortfall ~~Guaranty~~Guarantee is affected by the financial impact of the public benefit contributions and development conditions that will be or have been imposed in the ~~rezoning~~Rezoning, CDD conceptual design plan and preliminary development special use permits (collectively "Land Use Approval-Conditions"). The parties intend that obligations imposed in subsequent Land Use Approval Conditions will generally be consistent with the ~~condition~~terms of this MOU and other public benefits approved with Rezoning #2009-0001, CDD Conceptual Design Plan #2009, and TMPSUP #2009-0061 as to extent and financial impact.

~~14~~12. Vested Rights. ~~The Owner has raised the issue of vesting development rights as part of an agreement for funding of the Metrorail Station.~~ The City will work with the Owner during the ~~comprehensive plan amendment and rezoning~~Land Use process, to provide commercially reasonable assurances acceptable to the City of Alexandria City Attorney's officeOffice and the Owner, against arbitrary actions by the City subsequent to the approval of the ~~rezoning~~Rezoning that would deprive the Owner of approved uses, heights and densities. The Owner ~~seeks to obtain~~retains any protections available pursuant to section 15.2-2307 of the Virginia Code. This may take the form of a post-rezoning DSUP process. However, any Owner protection involving vested rights must take into consideration the fundamental proposition that (i) phasing of development is conditioned as set forth in the conditions for CDD Concept Development Plan #2009-0001; ~~as may be amended;~~ (ii) any default by the Owner under the Shortfall ~~Guaranty~~Guarantee or in making cash contributions for the Metrorail Station would expose the City to significant financial liabilities and would be a basis for denying a request for vested rights, or for revoking a prior determination of vesting.

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~~15. — Terms Not Evergreen.~~

13. Financing Plan Subject to Change. All parties recognize that the financing plan discussed in this MOU is based on current projections of cost and timing of construction, and that if material adverse changes occur prior to finalization and closing of the ~~Bond~~last contemplated debt financing, all terms and conditions of financing and Developer Contributions will need to be reassessed and renegotiated.
14. Future City Councils. Nothing contained in this MOU shall be construed to bind the current or any future City Council, until such time as the City Council takes actions that would be binding on future City Councils (such as the issuance of general obligation bonds or notes).
15. Amendments. This MOU shall not be supplemented or amended without the written consent of each of the parties hereto and the parties hereto acknowledge and agree that the approval of the City Council of the City is required to supplement or amend this Agreement.
16. This Memorandum of Understanding replaces the June 14, 2010 MOU between Parties.
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Memorandum of Understanding Between City and CPYR
6/14/2010

In Witness whereof, the Parties have executed this Memorandum of Understanding on ~~June 14,~~
2010. _____.

CITY OF ALEXANDRIA, VIRGINIA

By: _____

By: _____
Name: Mark Jinks
Its: City Manager

Approved as to Form:

City Attorney

CPYR, INC., a Delaware Corporation

By: _____
Name: _____
Its: _____