

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

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 ___ day of ___, 2018 between the City of Alexandria, Virginia, a municipal corporation ("**City**") and CPYR Shopping Center LLC and CPYR Theater LLC, Delaware 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 North Potomac Yard and wishes to redevelop the existing retail center generally in conformance with the North Potomac Yard Small Area Plan, as amended through June 13, 2017. Lionstone Investments ("**Lionstone**") is the investment adviser to CPYR and JBG Smith is the development consultant to CPYR;
2. The City and the Owner 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 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. 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 approved in 2010 for North Potomac Yard;
 - b. Amendments to the Master Plan and the Rezoning of North Potomac Yard could not have gone forward until the City was satisfied that an acceptable financial plan had been developed and agreed to;
 - c. A clear, detailed and conservative financial plan is, and has always been contemplated, with no negative cash impact projected for the City's General Fund in any given year;
 - 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 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. 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 governmental approvals will be binding 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 North Potomac Yard. All obligations placed on CPYR herein shall apply to CPYR and its successors and assigns.
2. Processing of Land Use Applications. The Parties anticipate that the land use approvals for development of 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 action, and City Council review and action.

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"). The City has established the Station Fund which includes contributions from the below described 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 is a separate segregated fund, the proceeds of which may be used only for the purposes stated in Section 5 of this MOU. The funds in the Station Fund may not be diverted from the Station Fund for other purposes, except as described in this section 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**"), commencing as of the final effective date of the 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 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 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 July 1, 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.
 - i. Townhouse: 33% of revenues utilized for services, leaving 67% percent of gross new tax revenues to be utilized as Net New Tax Revenues and placed in the Station Fund.
 - ii. Multifamily: 38% of revenues utilized for services, leaving 62% of gross new tax revenues to be utilized as Net New Tax Revenues and placed in the Station Fund.

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.

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.
 - v. Hotel/Hospitality: 7% of revenues utilized for services, leaving 93% percent of gross new tax revenues to be utilized as Net New Tax Revenues and placed in the Station Fund.
- 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.

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 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.
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 indebtedness of approximately \$206 million as set forth in the 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.
 5. 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 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 \$206 million. Capitalized interest and bond issuance costs are estimated at approximately \$9.7 million.
 - b. The City plans to issue Debt Instruments, in an amount estimated at \$215.7 million,

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

to fund construction of the Metrorail Station. The financial plan is to issue the General Obligation Bonds as tax exempt bonds, issue bond anticipation notes, utilize the federal Build America loan program and utilize the Virginia Transportation Infrastructure Bank loan program. The city also plans to utilize a to-be-determined amount of cash from the Potomac Yard Station Fund to pay for a portion of station construction and related costs.

- c. Construction period interest is planned to be capitalized during at least the first seven years after issuance of the Debt Instruments.
- d. It is estimated that Debt Instruments will provide that repayment of interest only during years one through seven (1-7), with repayment of principal planned to commence in year six (6).
- e. 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 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 approximately 40 years after the issuance of the first Debt Instruments.
- f. Since 2010, the City has submitted preliminary and updated Financing Plans to the City's bond counsel and financial advisors, and has discussed this proposed financing with the applicable rating agencies, to obtain evaluation and comment on the Financing Plan and to identify any issues that need to be addressed to ensure that the Financing Plan 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.
- g. The City shall have no obligation to actually issue Debt Instruments until certain conditions have been met, including but not limited to (i) approval of the final 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 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 \$320 million; (v) a court validation of the planned bond issue, or issues, if deemed necessary by the City and (vi) the execution of a design-build contract between the Washington Metropolitan Area Transit Authority and its selected design-build contractor. If a condition to the City's obligation to issue the debt instruments is not satisfied and the financing does not close, the Guarantor

shall not be obligated to make the Shortfall Guarantee Deposit, or if such Deposit has previously been made, it will be returned to the Guarantor.

- h. Once the Debt Instruments are issued, the City will be obligated to make payments of principal and interest on the 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 need to meet its obligations in servicing the indebtedness. The Shortfall Guarantee and Shortfall Guarantee Deposit provide comfort that cash shortfalls in servicing the debt (including principal and interest) will be met by the Owner, deferring any loss to the City. However, inasmuch as the City is liable on the debt, if the Shortfall Guarantee is exhausted or the Guarantor defaults in its obligation to make or reimburse the Shortfall Guarantee Deposit or to 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 \$11.37 per square foot CPI adjusted payments or net new taxes). If the Shortfall Guarantor defaults in its obligation to make payments under the Shortfall Guarantee or to timely replenish the Shortfall 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 North Potomac Yard until the default is cured.
 - i. 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 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 debt instruments in excess of the planned \$206,000,000 principal amount.
- 7. Regional, State or Federal Funding. No Regional, State or Federal funds received shall reduce the amount of the Developer Contribution or the Shortfall Guarantee, although it is recognized that any available Regional, State or 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.
- 8. Shortfall Guarantee. In order to reduce the risk that the City will draw upon its General Fund revenue to make payments on the debt for the Metrorail Station, CPYR will provide a contingent guarantee of any shortfall in any given year (the "**Shortfall Guarantee**"), between amounts required to be paid to service indebtedness (including both principal and interest, in accordance with the terms of the approved financing), and funds on hand in the Station Fund. The Shortfall Guarantee will be provided by Owner (the "**Shortfall Guarantor**"), the financial assets and condition of which are approved by the City and

must be reapproved at the time of financing by the City's underwriters in accordance with the terms of the financing.

- a. The Shortfall Guarantee shall total \$32 million with the Shortfall Guarantor not obligated to pay more than \$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.
- c. Within 45 days of receipt of the 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 to cover possible draws under the Shortfall Guarantee (the "**Shortfall Guarantee Deposit**"). Interest earned on the Shortfall Guarantee Fund will remain with such Fund.
- d. The City may draw upon the Shortfall Guarantee Fund to make Shortfall Guarantee payments as and when payments are due on the debt instruments. The Shortfall Guarantor shall be obligated to replenish, within ninety (90) days, any funds drawn from the Shortfall Guarantee Fund, so that at all times the sum of \$10 million will be available for use to cover Shortfall Guarantee obligations. However, the obligation to replenish the Shortfall 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 Guarantee Cap for Phase I shall be offset by any Developer Contributions that have been paid in accordance with Section 3c herein. 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 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.

- g. Excluding the planned first three years of capitalized interest to pay 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 requiring the use of any Shortfall Guarantee funds, any remaining Shortfall Guarantee Deposit funds may be credited against future \$11.37 per square foot (as annually adjusted by the CPI) Developer Contributions due from 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 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 Guarantee Deposit will be released to the 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.
- h. If any Shortfall 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 requested by the City, the City shall have the right to record a lien against the parcel(s) within 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 Guarantee amount shall be memorialized in a document recorded in the Land Records of the City of Alexandria, encumbering the parcel(s) of North Potomac Yard property owned by CPYR within the phase during which the default occurs.
- i. After the Shortfall Guarantee Release Date, notwithstanding the requirement in Section 3a herein, the City may decide to deposit only some or none of the Net New Tax Revenues generated by 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 debt issued to finance the Potomac Yard Metrorail 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.
- j. 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. 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 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.

- k. In the event that the Shortfall Guarantee is not utilized to pay debt service on the Debt Instruments issued for the Potomac Yard Metrorail Station, any unused portion thereof shall be paid to the City, for 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 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 Guarantee Release Date. The Applicant shall pay the unused portion of the Shortfall 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 Guarantee Release Date. However, if after the passage of five (5) years from the Shortfall 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 unused portion of the Shortfall 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 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 Guarantee Release Date, the Applicant will make full payment of the unused portion of the Shortfall Guarantee (adjusted to reflect increases in the CPI subsequent to January 1, 2020) to the City within six months of the Shortfall Guarantee Release Date.
 - l. 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 MOU modifies or limits the ability of the Planning Commission and/or City Council to 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.
 10. Redevelopment Preceding Metrorail Station Construction. In order to reduce the City's risk of diverting General Fund revenues to pay for debt service for the Station, the City will allow redevelopment of 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.

11. Conditions of Development Approval. The Owner's ability to proceed with redevelopment and to provide the Developer Contributions and Shortfall 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, 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 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.
12. Vested Rights. The City will work with the Owner during the Land Use process, to provide commercially reasonable assurances acceptable to the City of Alexandria City Attorney's Office and the Owner, against arbitrary actions by the City subsequent to the approval of the Rezoning that would deprive the Owner of approved uses, heights and densities. The Owner 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 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.
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 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.

In Witness whereof, the Parties have executed this Memorandum of Understanding on

_____.

CITY OF ALEXANDRIA, VIRGINIA

By: _____

Name: Mark Jinks

Its: City Manager

Approved as to Form:

City Attorney

CPYR, a Delaware Corporation

By: _____

Name: _____

Its: _____