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Metropolitan Transportation Authority

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**PLANNING AND PROGRAMMING COMMITTEE  
JANUARY 17, 2007**

**SUBJECT: GOLD LINE – EASTSIDE EXTENSION/POMONA & ATLANTIC PARK & RIDE JOINT DEVELOPMENT**

**ACTION: AUTHORIZE THE NEGOTIATION AND EXECUTION OF A JOINT DEVELOPMENT AGREEMENT, GROUND LEASE AND OTHER DEVELOPMENT RELATED DOCUMENTS WITH ATLANTIC PARTNERS, LLC**

**RECOMMENDATION**

Authorize the Chief Executive Officer (the “**CEO**”) to:

- A. Negotiate, execute and enter into a joint development agreement (the “**JDA**”) with Atlantic Partners, LLC, or another development entity that is acceptable to the CEO and is controlled and managed by Residential Communities Incorporated (“**Developer**”), providing for the development of a senior housing project consisting of approximately 130 affordable, for-rent, senior-housing units (the “**Housing Project**”) and a shared parking structure (the “**Shared Parking Structure**”) containing 200 parking spaces for the exclusive use of Metro, its patrons, employees, contractors, consultants, and agents (the “**Transit Parking**”), plus those spaces necessary to support the Housing Project (collectively, the “**Development**”) on the majority of the approximately 1.12-acre, Metro-owned property located at the intersection of Pomona Boulevard and Atlantic Boulevard, east of the Eastside Extension’s Atlantic Station (such majority portion, the “**Premises**”);
- B. Negotiate, execute and enter into a ground lease (the “**Ground Lease**”) with Developer, providing for Developer’s use of the Premises and the construction and operation of the Development thereon;
- C. Pay Developer, or Developer’s designee, up to \$4.3 million to cover that portion of the Shared Parking Structure’s cost attributable to the Transit Parking from funding included in the Gold Line Eastside Extension Enhancements project budget; and

- D. Negotiate, execute and enter into such other agreements and documents (the “**Other Agreements and Documents**”) - including, possibly, reciprocal easement agreements, shared parking agreements, funds transfer agreements and Development funding applications - as may be necessary to implement the Ground Lease and/or the JDA, provide for Metro’s financing of the Transit Parking and/or provide for the construction and operation of the Development on the Premises.

The JDA, the Ground Lease and the Other Agreements and Documents (collectively, the “**Development Documents**”) will contain terms and conditions that are consistent with the key terms and conditions set forth on Attachment A.

### **ISSUE**

In September 2006, staff received an unsolicited proposal from Developer to construct and operate the Development on the Premises. The Development contemplates the construction of the Housing Project over the Shared Parking Structure. The Shared Parking Structure will include the Transit Parking, eliminating the need to build the stand alone, 200-space park and ride facility Metro is currently considering for the Premises. Staff has considered Developer’s proposal and has negotiated certain key terms and conditions that are acceptable to staff and Developer with respect to the Development and the Development Documents. Staff and Developer contemplate entering into the Development Documents on terms and conditions consistent with those set forth on Attachment A. Execution of the JDA will obligate Metro and Developer, upon satisfaction or waiver of certain conditions, to enter into the Ground Lease, and, as is necessary, the Other Agreements and Documents, including, an agreement providing for the transfer of up to \$4.3 million of Gold Line Eastside Extension Enhancement project funds to Developer (or Developer’s designee) to cover that portion of the Shared Parking Structure’s cost attributable to the Transit Parking. The JDA will also allow Developer time to complete pre-construction due diligence and gain all permits and entitlements necessary to construct the proposed Development.

### **BACKGROUND**

The Premises cover the majority of a larger 1.12-acre Metro-owned site located on the northwest corner of the intersection of Pomona and Atlantic Boulevards (the “**Site**”). The Site is level and irregularly shaped. It has significant frontage along Atlantic Boulevard, negligible frontage along Pomona Boulevard and access to Telford Street. The Site is located just east of the Gold Line’s future Atlantic Station as shown on Attachment B in an unincorporated portion of the County of Los Angeles. At present, the Site is being used as a construction staging area.

The January 4, 2002, Final Supplemental Environmental Impact Statement/Final Subsequent Environmental Impact Report for the Los Angeles Eastside Corridor contemplates that 200 parking spaces will be provided on the Site for users of the Eastside Extension’s Atlantic Station. To this end, Metro acquired the parcels comprising the Site in March of 2003. Under Metro’s current plan, the Site will contain a 200-space parking structure and a traction power substation. The traction power substation is slated for a small

portion of the Site located in its southwesterly corner, with the parking structure encumbering the remainder of the Site.

The proposed Development will be a total of six stories high. The Housing Project will be four stories high and will sit atop the Shared Parking Structure, which will contain one or two subterranean parking levels and two above-ground parking levels. The Housing Project will contain approximately 130 affordable senior apartments and the Shared Parking Structure will contain the Transit Parking and those parking spaces necessary to support the Housing Project. The proposed design and architecture of the Development will reflect the culture of the local community while meeting the needs of its senior residents. Access to the Shared Parking Structure will be via Atlantic Boulevard and, possibly, Telford Street. Separate access will be provided to the traction power substation at the corner of Pomona and Atlantic Boulevards. The current conceptual plan for the proposed Development is included as Attachment C. The foregoing represents the current plan for the Development and is subject to evolution as the design process progresses.

Eastside Extension revenue operation is scheduled to commence in July 2009, and Developer plans on completing the Shared Parking Structure and the Transit Parking contained therein on February 28, 2009, subject to force majeure and unavoidable delays. If the Eastside Extension is completed before July 2009 and construction of the Shared Parking Structure and the Transit Parking is delayed, the Eastside Extension may be ready for revenue operation prior to completion of the Transit Parking. Developer has agreed to provide adequate, temporary alternate parking, to the reasonable satisfaction of the CEO, in the area of the Eastside Extension's Atlantic Station, if the Transit Parking is not complete and available for use prior to the later to occur of: (i) scheduled Eastside Extension revenue operation in July 2009, or (ii) actual Eastside Extension revenue operation, but has not agreed to provide such temporary parking prior thereto.

The Housing Project is currently scheduled for completion on February 28, 2010, well after the commencement of the Eastside Extension's revenue operation. As such, the County, as the permitting authority for the Development, will need to allow the use of the Transit Parking within the Shared Parking Structure prior to completion of the Housing Project.

The design of the Shared Parking Structure is still in its conceptual stage and has not advanced to the point where the parties are able to obtain meaningful construction cost estimates for the Shared Parking Structure, let alone determine the portion of such cost attributable to the Transit Parking. The \$4.3 million cap on Metro's payment to Developer for Metro's fair share of the Shared Parking Structure merely reflects the amount included in the Metro Gold Line Eastside Extension Enhancements project budget for the construction of a stand-alone, 200-space parking structure on the Site, and is not an estimate of Metro's share of the Shared Parking Structure's cost. Staff will return to the Board for further authorization, if Metro's fair share of the cost of the Shared Parking Structure exceeds \$4.3 million.

Timely completion of the Development, and, in particular, the Shared Parking Structure, requires immediate Board authorization to proceed with negotiations and execution of the Development Documents. It also requires the full attention and cooperation of staff,

Developer and the County, as the permitting and entitling authority.

If the parties do not execute the Ground Lease prior to February 29, 2008, as such deadline may be extended by the CEO, in his/her sole and absolute discretion, the term of the JDA will expire and all rights Developer has to use the Premises and construct and operate the Development thereon will cease. At that time, Metro will commence its process to construct the stand-alone, 200-space parking structure on the Site.

Developer will be required to abide by all applicable state and federal requirements related to: (a) the funding used by Metro to acquire the Site, and (b) the funding provided by Metro for Metro's share of the Shared Parking Structure's cost.

Developer's project team includes Residential Communities Incorporated and Los Robles Development Corporation. Residential Communities Incorporated is an experienced Los Angeles based affordable housing developer. Los Robles Development Corporation is a Southern California based developer specializing in entry level and affordable, multifamily housing.

### **POLICY IMPLICATIONS**

The recommended actions are consistent with the goals of Metro's Joint Development Policy to:

- Promote and enhance transit ridership;
- Enhance and protect the transportation corridor and its environs;
- Enhance the land use and economic development goals of surrounding communities and conform to local and regional development plans; and
- Generate value for Metro based on a fair market return on the public investment.

Due to the need to move quickly on the Development proposal, staff and Developer have been working together for several months, and have resolved many of the matters that would be addressed under an Exclusive Negotiation Agreement. The other matters typically covered thereunder will either be completed under the JDA or will be performed prior thereto.

### **OPTIONS**

The Board could choose not to authorize the recommended actions, and, in connection therewith, request that staff either solicit competitive proposals for development of the Site or cease all joint development activity with respect thereto. Staff is not recommending these options for the following reasons:

- The proposed Development is a sound and viable plan, that, upon agreement on the specific financial terms related to the proposed Development, will meet the goals of Metro's Joint Development Policy.
- Staff does not have adequate time to solicit and evaluate development proposals for the Site and still ensure that the Transit Parking will be available prior to the

scheduled commencement of the Eastside Extension's revenue operation in July 2009.

### **FINANCIAL IMPACT**

Funding for Metro's share of the Shared Parking Structure is included in the Metro Gold Line Eastside Extension Enhancements project budget (Cost Center 8510, Project 800288), which contains \$4.3 million for construction of a 200-space park and ride facility on the Site. Funding of FY07 staff and third-party support costs for the proposed Development are included in the FY07 budget in Cost Center 2210, Project 401021. Since this is a multi-year project, the Cost Center Manager will be responsible for budgeting future year support costs.

### **NEXT STEPS**

Upon approval of the recommended actions, staff, Developer and their respective legal counsels and consultants will continue negotiation and drafting of the Development Documents consistent with the key terms and conditions set forth on Attachment A. Upon completion of the negotiation and drafting process, Developer and the CEO will execute the JDA, and, upon satisfaction or waiver of certain conditions set forth in the JDA for execution of the Ground Lease and the Other Agreements and Documents, will execute the Ground Lease and the Other Agreements and Documents (as applicable).

### **ATTACHMENTS**

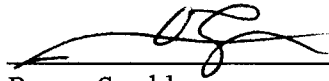
Attachment A - Summary of the Development Documents' Key Terms and Conditions  
Attachment B - Depiction of the Site and the Surrounding Area  
Attachment C - Conceptual Plan for the Proposed Development

Prepared by: Greg S. Angelo, Director, Real Property Management and Development



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Roger Moliere  
Chief, Real Property Management and Development



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Roger Snoble  
Chief Executive Officer

**Summary of Key Terms and Conditions**

*Gold Line – East Side Extension – Pomona and Atlantic Station  
Joint Development*

GENERAL:

**Ground Lessor:** Los Angeles County Metropolitan Transportation Authority (“**Metro**”).

**Developer/Ground Lessee:** Atlantic Partners, LLC or another development entity, controlled and managed by Residential Communities Incorporated and approved by Metro’s Chief Executive Officer or his/her authorized designee (“**Metro’s CEO**”) at his/her sole and absolute discretion (“**Developer**”).

**Development Site/  
Ground Leased Premises:** The premises (the “**Premises**”) to be leased by Metro to Developer will encompass most of the approximately 1.12 acre parcel depicted on Attachment B (the “**Site**”), exclusive of the southwest corner of the Site on which a traction power substation serving the Eastside Extension rail line will be located. The Site and the Premises are located approximately one-half block east of the Eastside Extension’s future Atlantic Station. The area encompassing the traction power substation will have separate vehicular access from that provided to the Shared Parking Structure (defined below). Such access will be provided at the corner of Pomona and Atlantic Boulevards.

**Proposed Development:** The proposed development (the “**Development**”) will be constructed on the Premises. The Development will consist of approximately 130 units of affordable, for-rent, senior housing (the “**Housing Project**”) constructed over a shared parking structure (the “**Shared Parking Structure**”) containing 200 parking spaces for the exclusive use of Metro, its patrons, employees, contractors, consultants, and agents (the “**Transit Parking**”), plus those spaces necessary to support the Housing Project. The current plan contemplates that the Housing Project will consist of a four-story residential structure located above the Shared Parking Structure, which will consist of one to two subterranean parking levels and two above ground parking levels. The initial conceptual design for the proposed Development is

included on the conceptual plan attached as Attachment C. The attached conceptual plan and the foregoing description represent the current development plan for the proposed Development and are subject to evolution as the design process progresses. All changes to the design of the Development shall be in accordance with the terms and conditions set forth in the Development Documents (defined below).

**The Development Documents:**

The “**Development Documents**” for this transaction will consist of: (a) the JDA (defined below); (b) the Ground Lease (defined below); and (c) such other agreements and documents (the “**Other Agreements and Documents**”), including, possibly, reciprocal easement agreements, shared parking agreements, funds transfer agreements and Development funding applications, as may be necessary or prudent to implement the Ground Lease and/or the JDA, provide for Metro’s financing of the Transit Parking and/or provide for the construction and operation of the Development on the Premises.

**Subdivision of the Site:**

Metro agrees to allow the Site to be subdivided into the following parcels, if requested by Developer: (i) one or more parcels having, in total, boundaries that are conterminous with the boundaries of the Premises; and (ii) a remainder parcel containing the Transit Parcel and the traction power substation. All work related to such subdivision will be performed by Developer at Developer’s sole cost and expense, and will be subject to Metro’s CEO’s review and approval. Developer shall fund Metro’s review and approval costs related to any such subdivision, including the cost of third-party civil engineers and land surveyors deemed necessary by Metro’s CEO to review Developer’s work.

**Development Financing:**

Developer intends to finance the majority of the Housing Project and its related parking with public financing, which may include loans from the Community Development Commission of the County of Los Angeles, tax-exempt bond financing, financing through the federal HOME program and City of Industry redevelopment funds. Metro understands that applications for such public financing must demonstrate that the applicant has control of the development site. Metro further understands that the total amount of the proposed public financing is limited and is allocated on a first-come, first-served basis. Therefore, to expedite consideration and approval of Developer’s



request(s) for public financing of the Development, Metro's CEO will consider co-signing Developer's public agency funding application(s) for the purpose of demonstrating applicant control of the Site. Metro will not co-sign any application that could reasonably result in Metro (a) receiving, managing or administering any of the requested public financing, (b) being bound by any terms, conditions or obligations arising from such application or financing, (c) having any portion of its feehold interest encumbered or subjected to a lien, or (d) being subjected to any claim or liability.

**Metro Support Costs:**

Developer acknowledges and agrees that Metro will incur certain costs related to the design and initial construction of the Development (the "**Metro Support Costs**"), which may include the costs of third-party services and Metro's in-house staff that Metro's CEO deems reasonably necessary to review and approve the design, construction and development of the Development and oversee, monitor and mitigate the impact, or potential impact, of the Development and the method of construction on, and access to, Metro facilities and the Transit Parking, and the timely completion of the same. Such Metro Support Costs may include costs related to: (a) construction safety, (b) construction management, (c) construction support, and (d) engineering and design review services. Those reasonable costs incurred by Metro that are directly attributable to the Transit Parking, except for those costs that result (i) from Development designs that are NOT logical evolutions of the conceptual plan attached hereto as Attachment C or any subsequent plans approved by Metro's CEO for the Development; or (ii) untimely completion of the Transit Parking, shall be deemed the "**Transit Parking Related Actual Costs**".

Prior to execution of the JDA, Metro's CEO and Developer will agree on a budget (the "**Oversight Budget**") for the Metro Support Costs reasonably anticipated in connection with the design, construction and development of the Development, less the Transit Parking Related Actual Costs (the "**Construction Related Actual Costs**") and a reasonable payment schedule by which Developer will provide funds to Metro in advance of when Metro's CEO anticipates that such anticipated Construction Related Actual Costs will be incurred (the "**Advanced Funds**"). The Advanced Funds shall be used by Metro to cover Construction Related Actual Costs as such costs are actually incurred.

Developer will not be required to reimburse Metro for Construction Related Actual Costs in excess of the Oversight Budget, except to the extent that Metro incurs additional Construction Related Actual Costs (“**Additional Costs**”) in connection with: (a) a Development design that is not a logical evolution from (i) the conceptual plan attached hereto as Attachment C, or (ii) any subsequent plans approved by Metro’s CEO for the Development; or (b) the avoidance of any possible adverse impact on any Metro facilities, the Transit Parking or the timely completion of the same. In such event, the Oversight Budget will be increased by the amount of such Additional Costs and Developer shall reimburse Metro for such Additional Costs upon receipt of a written invoice from Metro regarding the same.

Upon completion of the Development’s initial construction, Metro shall promptly refund to Developer any Advanced Funds in excess of the incurred Construction Related Actual Costs, provided that Metro may withhold such reasonable amount from such refund to cover invoices for Construction Related Actual Costs not yet received by Metro or to cover the cost to provide services and support related to “punch list” items.

**Transfers, Assignment and Subletting:**

Except as otherwise approved in writing by Metro’s CEO, at his/her sole and absolute discretion, Developer will not transfer, assign or sublet (except for subleasing individual senior housing units within the Housing Project) its rights or obligations under any of the Development Documents, or any portion thereof (“**Transfer**”), until Developer has completed the construction of the Development pursuant to the Development Documents. Thereafter, Developer may Transfer its rights and obligations under the Development Documents, or any portion thereof, subject to (a) satisfaction of reasonable transfer criteria (including criteria regarding the creditworthiness and experience of any proposed transferee) to be negotiated by Metro’s CEO and Developer, and included in the Development Documents, or (b) Metro’s CEO’s reasonable written consent.

**Compliance with Funding Restrictions:**

Developer shall abide by all applicable state and federal requirements related to: (a) the funding used by Metro to acquire the Site, and (b) the funding provided by Metro for Metro’s share of the Shared Parking Structure’s cost.

## JDA:

### JDA - Generally:

After Metro's CEO and Developer reach agreement on the specific terms and conditions to be contained therein, Metro and Developer will enter into a joint development agreement ("**JDA**") containing terms and conditions that are consistent with those set forth in this Summary of Key Terms and Conditions, as the same may be modified by the Metro Board. Upon satisfaction or waiver by the appropriate party of all the conditions to entering into the Ground Lease (defined below) as set forth in the JDA ("**Closing Conditions**"), each party will be obligated to enter into the Ground Lease and other applicable Development Documents. The Closing Conditions will include, among other things, Developer having (a) obtained all necessary entitlements and permits for the construction and operation of the Development; (b) obtained construction financing sufficient to fund the construction of the Development; (c) received Metro's CEO's and County of Los Angeles approval of full, complete and final construction documents for the Development; and (d) provided Metro with the Financial Assurances (defined below).

### JDA Term:

The JDA must be entered into by July 31, 2007, as such deadline may be extended by Metro's CEO, in his/her sole and absolute discretion. The JDA will be effective on the date of its making and, unless the JDA Closing (defined below) has occurred, will expire on February 29, 2008 (the "**JDA Term**"), as such deadline may be extended by Metro's CEO, in his/her sole and absolute discretion. The JDA Term cannot be extended by Developer under any circumstances. Developer understands that Metro's CEO will not, in any event, extend the JDA Term to the extent that such extension will negatively affect Metro's ability to complete a stand-alone, 200-space parking structure on the Site for use by Eastside Extension patrons prior to the Eastside Extension's revenue operation.

### JDA Closing:

During the JDA Term, once all of the JDA's conditions precedent to the execution and making of the Ground Lease and all other applicable Development Documents have been satisfied or waived by the appropriate party, Developer and Metro will execute and deliver the Ground Lease and other Development Documents (the "**JDA Closing**").

### JDA Consideration:

Upon execution of the JDA, Developer shall pay Metro holding rent in the amount of Seventy Five Thousand

Dollars (\$75,000). Such amount shall be in addition to the Capitalized Rent under the Ground Lease and the Advanced Funds defined above.

**Design Review:**

The design of the proposed Development will be advanced during the JDA Term and except as approved in writing by Metro's CEO in his/her sole and absolute discretion: (i) will be consistent with the initial Development concept set forth above in the "Proposed Development" section of this Summary of Key Terms and Conditions; and (ii) will be a logical evolution of the initial conceptual design for the proposed Development attached hereto as Attachment C. Metro's CEO's approval of final construction documents for the Development will be a condition precedent to JDA Closing.

**Financial Assurances:**

Prior to JDA Closing, and, as a condition of the JDA Closing, Developer shall provide, for the benefit of Metro, financial assurances ("**Financial Assurances**") that (a) are acceptable to Metro's CEO at his/her sole and absolute discretion, (b) demonstrate Developer's ability to construct and operate the Development, (c) survive the JDA Closing, (d) are to be included in the Ground Lease, and (e) will ensure, among other things, the completion of construction of the Development in the event of a default by Developer.

**GROUND LEASE:**

**Unsubordinated Ground Lease Agreement:**

At the JDA Closing, Developer, as tenant, and Metro, as ground lessor, will enter into an *unsubordinated* ground lease providing for the construction and operation of the Development on the Premises (the "**Ground Lease**"), which Ground Lease will contain terms and conditions that are consistent with those set forth in this Summary of Key Terms and Conditions, as the same may be modified by the Metro Board.

**Ground Lease Commencement:**

The term of the Ground Lease will commence on the date of the JDA Closing (the "**Commencement Date**").

**Ground Lease Term:**

The initial term of the Ground Lease shall be fifty-seven (57) years or such longer term, as agreed to by Metro's CEO, that is necessary to secure Developer's government financing for the Development (the "**Initial Ground Lease Term**"), which Initial Ground Lease Term may be extended by Developer by

exercising its Option to Extend as set forth in the following paragraph (such Initial Ground Lease Term as extended, the “**Ground Lease Term**”).

**Option to Extend Term:** Developer shall have one (1) option to extend the Ground Lease Term (the “**Option to Extend**”) for a period of ten (10) years beyond the expiration of the Initial Ground Lease Term (the “**Option Period**”). Developer may exercise the Option to Extend ONLY during the year that terminates ten (10) years prior to the end of the Initial Ground Lease Term, and ONLY if, at the time of such exercise, Developer is in compliance with all terms and conditions of the Ground Lease and all other Development Documents.

**Construction Period:** It is anticipated that construction of the Shared Parking Structure (including the Transit Parking) will be completed and available for occupancy and use within twelve (12) months after JDA Closing and that the Development will be complete and ready for occupancy and use within twenty-four (24) months after JDA Closing, subject only to force majeure and unavoidable delay as set forth in the Development Documents.

**Capitalized Base Rent - Initial Ground Lease Term Only:** Developer will pay Metro, upon execution of the Ground Lease, a one-time payment (“**Capitalized Rent**”) equal to the net present value of the estimated annual rent payments over the Initial Ground Lease Term (including consideration of reasonable cost-of-living adjustments over such term) for the real property and other rights granted to Developer under the Ground Lease, discounted at a market discount rate, all as agreed upon by Metro’s CEO and Developer. Capitalized Rent shall include the construction period under the Ground Lease, and, as such, the calculation of Capitalized Rent shall consider reduced rent during such period, as agreed upon by Metro’s CEO and Developer.

**Annual Option Period Rent - Option Period Only:** In the event Developer exercises the Option to Extend, Developer shall pay annual ground rent (“**Annual Option Rent**”) for the real property and other rights granted to Developer under the Ground Lease in an amount equal to the fair market ground rent for such rights on or about the commencement of the Option Period, based on the highest and best use of the Premises. Annual Option Rent will commence to accrue on the first day of the Option Period

and will continue until expiration or earlier termination of the Ground Lease. Annual Option Rent will be paid in advance, in annual installments, on each anniversary of the commencement of the Option Period.

**Option Period Base Rent Adjustment:**

Annual Option Rent will be adjusted on the fifth (5<sup>th</sup>) anniversary of the commencement of the Option Period (the “**Adjustment Date**”) to the greater of (a) the Annual Option Rent on the day preceding that Adjustment Date multiplied by the cumulative increase in the Consumer Price Index over the five-year period since the commencement of the Option Period; or (b) the Annual Option Rent on the day preceding that Adjustment Date multiplied by that amount equal to  $1.0y^5$  (where y equals an annual cost of living adjustment floor agreed upon by Metro’s CEO and Developer, which amount shall be set forth in the Ground Lease).

**Maintenance and Operation:**

Developer shall maintain and operate all portions of the Development at its sole cost and expense, except for the Transit Parking, which may be maintained and operated by Metro or Developer, as will be set forth in the Development Documents. Regardless, maintenance and operation of the Transit Parking shall be performed at Metro’s sole cost and expense, except to the extent of any costs resulting from Developer breaches under the Development Documents. The cost to maintain and operate any shared portions of the Shared Parking Structure shall be appropriately prorated between the parties.

**Transit Parking Revenue:**

Metro will have the right to receive all revenues derived from the Transit Parking.

**Reversion/Demolition Fund:**

During the year ending seven (7) years prior to the expiration of the Ground Lease Term, Metro will indicate to Developer whether or not it desires Developer, upon expiration of the Ground Lease Term to: (a) demolish the Development and return the Premises to Metro in the same condition as when provided to Developer on the Commencement Date except that the surface of the Premises shall be graded level and paved with one-inch thick asphalt providing positive sheet drainage off of the Premises, all as directed by Metro’s CEO; (b) demolish a

portion of the Development and leave the remainder of the Development in place, to the extent such a demolition is technologically feasible and the cost of the same is commercially reasonable (e.g.; demolish the Housing Project, but leave the Shared Parking Structure in place); or (c) leave the Development in place for Metro's use. Developer shall comply with Metro's request at Developer's sole cost and expense.

If Metro desires that all or a portion of the Development be demolished, Developer shall prepare an engineering study, demolition cost estimate and funding plan for such demolition that is acceptable to Metro's CEO, at his/her sole and absolute discretion (the "**Demolition Plan**"). The Demolition Plan must be agreed upon by the parties prior to the date occurring six (6) years prior to the expiration of the Ground Lease Term or Metro's CEO will be empowered to impose a reasonable Demolition Plan of its devising upon Developer. As applicable, Developer will deposit all funds required to complete the Demolition Plan with Metro at least five (5) years prior to the expiration of the Ground Lease Term. Such funds will only be useable by Developer, upon Metro's CEO's written direction, for demolition of the Development.

**Capital Improvement Reserve:**

On the first anniversary of the Commencement Date, Developer shall fund and thereafter maintain a capital improvement reserve (the "**Reserve**") throughout the Ground Lease Term. Developer shall fund the Reserve annually, in arrears, at an amount equal to at least two hundred fifty dollars per housing unit included in the Development (\$250/unit). The Reserve funds can be expended only on permitted capital improvements (as the same are specified in the Ground Lease) or as required in conjunction with any financing for the Development. The Ground Lease shall set forth a procedure for the use and accounting of such funds, which will allow the Developer to use any funds remaining in the Reserve on the date that is five (5) years prior to the expiration of the Ground Lease Term to fund the Demolition Plan, if Metro elects to have Developer demolish all or part of the Development.

**Encumbrances:**

Subject to Metro's CEO's reasonable approval, Developer may encumber its leasehold estate with mortgages, deeds of trust or other financing instruments. The Ground Lease will include mutually acceptable mortgagee protection

provisions. In no event will Metro's fee title or the rent payable to Metro, or any portion thereof, be subordinated or subject to Developer's financing or other claims or liens.

**Other:**

Other customary provisions contained in recent Metro ground leases will be included in the Ground Lease, including a provision requiring competent management of the Development.

**GROUND LEASE  
AND/OR OTHER  
DEVELOPMENT  
DOCUMENTS:**

**Construction of the Shared  
Parking Structure and  
Transit Parking/Temporary  
Alternate Parking:**

Developer shall construct the Shared Parking Structure and the Transit Parking in accordance with key milestones to be agreed upon by Metro's CEO and Developer. Developer plans on completing the Shared Parking Structure and the Transit Parking contained therein on February 28, 2009, subject to force majeure and unavoidable delays. If the Transit Parking included within the Shared Parking Structure is not complete and available for use prior to the later to occur of: (a) scheduled Eastside Extension revenue operation in July 2009, or (b) actual revenue operation of the Eastside Extension, Developer shall provide adequate, temporary alternate parking, to the reasonable satisfaction of Metro's CEO, in the area of the Eastside Extension's Atlantic Station. Developer will provide such temporary alternate parking until such time as the Transit Parking within the Shared Parking Structure is available for use by Eastside Extension patrons.

**Construction Funding  
for the Transit  
Parking:**

Metro will pay to Developer (or Developer's designee) that portion of the Shared Parking Structure's cost attributable to the Transit Parking up to a total of \$4.3 million. Such payments shall be made pursuant to an agreement between Metro and Developer containing terms and conditions typically set forth in such agreements or as Metro's CEO deems necessary or prudent, given the funding source. Such terms and conditions shall include provisions covering progress payments, draw procedures and payment contingencies. The parties acknowledge that the design of



the Shared Parking Structure is still in its conceptual stage and has not advanced to the point where the parties are able to obtain meaningful construction cost estimates for the Shared Parking Structure, let alone determine the portion of such cost attributable to the Transit Parking. The \$4.3 million cap on Metro's payment to Developer hereunder merely reflects the amount budgeted by Metro for the construction of a stand-alone, 200-space parking structure on the Site, and is not an estimate of Metro's share of the Shared Parking Structure's cost. Metro will need further Metro Board authorization to expend any more than \$4.3 million.

