

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is made and entered into as of this ____ day of _____, 2007, by and among **THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION** (the “Commission”), and **BOZZUTO DEVELOPMENT COMPANY, SPAULDING & SLYE INVESTMENTS**, a member of the Jones Lang LaSalle Group, and **HARRISON DEVELOPMENT** (collectively, the “Developer”). Developer shall assign its rights under this MOU to a development entity to be formed whereupon all references herein to Developer shall be deemed to refer to such assignee.

BACKGROUND

A. In 1998, the Commission acquired the surface parking lot adjacent to the Montgomery Regional Office at 8787 Georgia Avenue from the County (together with the adjacent property already owned by the Commission, the “MRO Site”) and as generally shown on **Exhibit A-1** attached hereto. Since then, the Commission has studied the concept of utilizing the value of the MRO Site as a catalyst for replacing its aged, obsolete and overcrowded headquarters building while also promoting other important public policy objectives of Montgomery County government (the “County”), including affordable and workforce housing, smart growth and sustainability, as well as extending the urban revitalization of downtown Silver Spring. In 2003, the Commission reviewed a study entitled “Consolidated Headquarters Study” which study:

- justified the need for a new headquarters building for the Commission;
- established the Silver Spring Central Business district as the location of the new headquarters;
- established 120,000 square feet as the preliminary headquarters space need;
- determined that a public/private partnership allowing mixed-used development of the MRO Site was the optimal method to meet the Commissions’ objectives;
- determined that a minimum 30% affordable/workforce housing would be a requirement for the residential development;
- framed the Commission’s planning principles to help guide development of the proposed project; and
- included a community outreach effort to keep the greater Silver Spring civic and business communities abreast of the emerging project and solicited ideas for mixed-use development on the MRO Site.

B. A Request for Qualifications (“RFQ”) was widely advertised by the Commission and a subsequent Request for Proposals (“RFP”) for development of the Commission’s headquarters and the redevelopment of the MRO Site (collectively, the “Project”), was issued to selected developers. Developer, among others, submitted a

proposal response to the RFQ and RFP (the Developer's proposal, as amended and supplemented, is hereinafter referred to as the "Developer's Proposal"). In January 2007, the Commission approved the recommendations of a multi-agency evaluation committee to commence negotiations with the Developer as the top ranked team in accordance with the terms of the RFQ, the RFP and the Developer's Proposal, as the Developer's Proposal best met the Commission's and the County's public policy goals as hereinafter set forth (the "Public Policy Goals"). A true, complete and correct copy of the RFQ, the RFP and Developer's Proposal are attached hereto as **Exhibit B**. Developer is a development entity comprised of the Bozzuto Development Company, Spaulding & Slye Investments, a member of the Jones Lang LaSalle Group, and Harrison Development (collectively the "Original Members"). Further, it is the intent of the Commission and the Developer for all members of the development team proffered in the Developer's Proposal (individually, "Member" and collectively, the "Development Team") to remain with the Project, subject to replacement of a Member as set forth herein.

C. Developer's proposed project as described in the Developer's Proposal, was intended as a concept for the MRO Site layout and development, and it included two (2) Phases. Phase 2 of Developer's Proposal is separate and apart from the negotiations of the parties as contemplated under the terms of this MOU. The MRO Site layout and development as proposed by the Developer were for the purpose of demonstrating the Developer's ability and intention to meet the Public Policy Goals, and as such is subject to revision in accordance with the terms of this MOU; provided however, the underlying concepts embodied in the Developer's Proposal will be the basis of further negotiations between the Commission and the Developer as contemplated in this MOU.

D. The Project is presently anticipated to be comprised of (i) public improvements (the "Public Improvements") to be located on a portion of the Project Land as hereinafter defined, and (ii) private improvements (the "Private Improvements") to be located on a portion of the Project Land and to be conveyed in fee simple to Developer or its affiliates, (the "Private Land"). Pursuant to the terms of the Development Services Agreement (the "DSA") and the General Development Agreement (the "GDA") (each to be defined in more detail herein), Developer shall act as a third party development services provider and fee developer of the Public Improvements for and on behalf of the Commission and the relationship of the Developer and the Commission with respect to the Public Improvements shall be that of owner and contractor with the respective rights and obligations of the parties to be set forth more specifically in the DSA and the GDA. With respect to the Private Improvements and the sale of the Private Land, the Commission shall act in the capacity of owner/seller and Developer shall act in the capacity of purchaser/developer of the Private Land, with the respective rights and obligations of the parties to be set forth more specifically in the GDA. The Project Land as such term is used herein shall mean the MRO Site or if the Commission shall be successful in acquiring the PLD Land (as defined in Section 8 hereof) then the Project Land shall be deemed to include the PLD Land.

E. The Project achieves important Public Policy Goals of the Commission and the County which include, among others:

- Develop for the Commission a headquarters facility to be owned by the Commission to house the Parks Department and the Planning Department.
- Through quality and appearance design a facility that supports, facilitates, projects, and enhances the Commission's function and image as a Countywide planning agency committed to environmental protection and quality-of-life enhancements for the residents of the County.
- Develop a headquarters facility that meets or exceeds LEED Silver Certification standards.
- Develop the residential component on the MRO Site to contain a minimum of 30 percent affordable units as defined in the RFP.
- Develop the residential component to incorporate "Green" design initiatives as exemplified in the LEED standards.
- Develop a Project that is physically and functionally compatible and integrated with the immediate neighborhood and the Silver Spring Central Business District.
- Leverage the MRO Site and the Headquarters to be advantageous to the Commission's financial position.
- Address functional issues related to the space program, transportation management, vehicular and pedestrian circulation, safety, and parking.
- Satisfy open space requirements by designing and developing a public space(s) that incorporates current urban design best practices and provides an environment that satisfies employees', residents' and visitors' needs.

F. The parties desire to enter into this non-binding MOU for the purpose of setting forth the respective commitments of the parties to advancing the prompt design, development and construction of the Project and with the intent of entering into a binding DSA, GDA and Guaranteed Maximum Price Contract (the "GMP") consistent with the spirit and intent of this MOU. The parties acknowledge and agree that although this MOU is non-binding, it reflects the express commitments of the parties to work diligently and in good faith to meet the spirit and intent of the RFP, the RFQ, and the Developer's Proposal (as they may be amended from time to time by this MOU, the DSA and the GDA), all in accordance with the Project Schedule (as defined below), and in furtherance thereof, the parties hereto make the following general commitments:

1. Commission Commitments

The Commission enters into this MOU in its capacity as owner of the MRO Site and not in its regulatory capacity. The parties hereto acknowledge and agree that approvals and consents required from the Commission in connection with the Project and in accordance with this MOU, the DSA and the GDA do not substitute for regulatory approvals required under applicable law. Subject to the foregoing, the Commission hereby commits to:

A. Seek a supplemental appropriation (the "Design Appropriation") from the County for sufficient funding, to be disbursed in accordance with the applicable provisions of the DSA, to pay Developer, (i) on a monthly draw basis, to achieve at a minimum, the level of the design of the Public Improvements, consistent with the Development Plan, necessary to complete the schematic design (design drawings to approximately 20% completion) so as to enable the Commission to seek the Construction Appropriation, and which such payments shall include, (1) actual, out of pocket, third party expenses and related costs attributable to the Public Improvements and incurred to develop the schematic design from the Development Plan (as hereinafter defined), working together with the community and other stakeholders with interest in the Project, through a public participatory process which shall include a project design charrette as more specifically outlined in Section 3 herein, (2) that portion of certain due diligence costs expended by the Developer with respect to the Project Land that are attributable to the Public Improvements and which were incurred to generate certain efficiencies in the Project, including, without limitation, survey, title search and review, preliminary environmental and geotechnical studies, and such other requirements as may be agreed between the parties and set forth in the DSA ("Commission's Pro Rata Share"), and (3) the Development Management Fee (as hereinafter defined) and (ii) the Developer's Cost Recovery (as defined below), if applicable. The Commission shall use good faith efforts to obtain the Design Appropriation on or before the date set forth in the Project Schedule, (which date is currently anticipated to be December, 2007), as the same may be amended from time to time, in accordance with the terms of this MOU.

B. Developer has expressed its willingness to commit to accelerate the purchase of the Private Land and the development of the Private Improvements in accordance with the Project Schedule such that the Private Improvements shall proceed contemporaneously with the development of the Public Improvements. In order to meet such accelerated schedule, Developer will incur significant "soft costs" well in advance of the approval of the Construction Appropriation (as defined below) in connection with the design of the Private Improvements. For the foregoing reasons, it is in the best interest of the Commission that the Developer proceed with the planning, design and other pre-construction aspects of the Private Improvements concurrently with the planning, design and other pre-construction aspects of the Public Improvements. Therefore, if the Commission chooses not to proceed with the Project then the Commission will make limited compensatory/restoration payment to the Developer of certain eligible costs, as more particularly described below (the "Developer's Cost Recovery"). The balance of the Developer's costs shall be borne by the Developer without recourse to the Commission.

The Commission will reimburse the Developer for a portion of the design and pre-construction costs for the Private Improvements, limited to actual, out of pocket, third party expenses, architectural, engineering and related costs necessary to maintain the Private Improvements in parity with the Public Improvements and the Project Schedule ("Eligible Costs"). Eligible Costs and the proposed budget therefore are described in more specific detail on **Exhibit C** attached hereto.

The Developer's Cost Recovery will not include:

- 1) Any costs incurred for any reason prior to January 18, 2007;
- 2) Any subsequent litigation expenses arising as a result of any contest related to the MOU.

The Developer's Cost Recovery will not exceed a total of One Million Nine Hundred Sixty-five Thousand Dollars (\$1,965,000.00) (See **Exhibit C** attached) (the "Cost Recovery Cap"). The parties hereto acknowledge and agree that Developer shall be under no obligation to expend any funds in excess of the Cost Recovery Cap until the later to occur of the execution of a binding GDA and final approval of the Construction Appropriation.

Subject to appropriation, and upon receipt of paid invoices and appropriate backup, the Commission will pay the Developer's Cost Recovery to the Developer in the event that the DSA is terminated in accordance with the applicable provisions of the DSA. In the event the Developer's Cost Recovery is paid to Developer, Developer shall deliver to the Commission, at no cost, copies of all non proprietary third party reports, studies, architectural and engineering work, plans and related materials obtained by Developer with respect to the Project Land. Upon the last to occur of (i) full execution of the GDA, and (ii) the final approval of the Construction Appropriation, the obligation to pay the Developer's Cost Recovery shall lapse and be of no further force or effect.

C. Seek an additional appropriation (the "Construction Appropriation") for the remaining unappropriated costs under the DSA plus 100% of the estimated capital costs of development and construction of the Public Improvements. The Commission shall use good faith efforts to obtain the Construction Appropriation on or before the date set forth in the Project Schedule, (which date is currently anticipated to be February, 2009), as the same may be amended from time to time, in accordance with the terms of this MOU.

D. In consideration of the payment of the purchase price for the Private Land as may be agreed between the Commission and Developer consistent with the terms of the Developer's Proposal (the "Commission Purchase Price"), convey the Private Land to Developer in fee simple and in accordance with the terms of the GDA. The parties acknowledge that the Commission Purchase Price shall be based on the fair market value of the Private Land impacted by the uses, densities and other factors as set forth in the RFQ, the RFP, and other requirements of the Commission for the Project and shall be expressed as the product of an agreed upon "per unit" price, multiplied by the number of

units approved for development in accordance with the finally approved Site Plan for the Private Improvements. The Commission Purchase Price, or the portion thereof attributable to that portion of the Private Land conveyed to the Developer, will be paid upon conveyance of all or portions of the Private Land to the Developer.

E. Designate Developer as exclusive developer of the Project and, subject to the applicable provisions of the DSA and the GDA, grant an agency authorization to authorize Developer to act as applicant for the entitlements for the Project.

F. Negotiate in good faith with the Developer to reach final agreements for the DSA, GDA and GMP in accordance with the terms of Sections 4, 5 and 6 hereof for design and construction of the Project in accordance with the Project Schedule and in keeping with the spirit and intent of this MOU.

2. Developer Commitments

The Developer shall:

A. As applicant, diligently pursue obtaining the entitlements for the Project in accordance with the Project Schedule, DSA and GDA.

B. Negotiate in good faith with the Commission to reach final agreements for the DSA, GDA and GMP in accordance with the terms of Sections 4, 5 and 6 hereof for design and construction of the Project in accordance with the Project Schedule and in keeping with the spirit and intent of this MOU.

C. Design the Project substantially in conformance with the Development Plan and in accordance with the Project Schedule, the DSA, GDA, GMP and applicable law.

D. Construct the Public Improvements in accordance with the Project Schedule, the DSA, GDA, GMP and applicable law.

E. Purchase the Private Land in consideration of the payment of the Commission Purchase Price and diligently proceed with the development and construction of the Private Improvements in accordance with the Project Schedule, the GDA, and applicable law.

F. Until completion of the Project and the issuance of certificates of use and occupancy for the Public Improvements and the Private Improvements, none of the Original Members shall be removed from the Developer entity without the prior written approval of the Commission, not to be unreasonably withheld, conditioned or delayed.

G. Developer shall be obligated to increase the proposed level of minority participation in the Private Improvements (the "Minority Equity") to 20% of the total equity ownership in the Private Improvements. Developer shall maintain or exceed its commitment to 25% subcontractor MFD participation in the development and construction of the Project in accordance with the Commission's MFD goals.

H. Although the Developer intends to retain all Members of the Development Team, limited substitution of a Member or Members may be warranted. In the event that fees proposed by a Member for services to be rendered in connection with the Project are substantially greater than usual, normal or customary fees in the market for similar services, the Developer may request approval from the Commission's project manager (i) to replace the Member, and (ii) of the proposed replacement, provided that such replacement has equivalent qualifications, education level and experience level of the Member proposed for replacement. Upon such approval, which shall not be unreasonably withheld, conditioned or delayed, the Developer may replace such Member as approved.

3. Mutual Commitments of the Parties

A. The parties acknowledge and agree that the timely completion of the Project is in the best interests of all parties hereto and that the parties shall diligently negotiate in good faith to facilitate the design, development and construction of the Project in accordance with the preliminary Project Schedule attached hereto as **Exhibit D** (the "Project Schedule"). The Project Schedule represents the parties' presently contemplated critical path schedule for the completion of the Project. The parties understand and acknowledge that failure to meet the Project Schedule will have adverse financial impacts to the Project and the parties. The foregoing notwithstanding, the parties acknowledge and agree that the Project Schedule shall be amended by agreement of the parties from time to time during the course of obtaining the entitlements for the Project and achieving various Project milestones. The Project Schedule supersedes any project schedule proposed by the Developer in the Developer Proposal.

B. Preparation of urban design plans shall be programmed by the Developer and its consultants in coordination with the Commission through, a public participatory process commonly referred to as a "project design charrette" involving community, business, and other stakeholders, to develop an acceptable concept plan for the Project and a development of the Private Improvements that is financially and economically feasible from a market perspective, and that meets the Public Policy Goals (the "Development Plans") in accordance with the Project Schedule. The Development Plans shall consist of illustrative drawings of two-dimensional building and project land uses, cross-sectional drawings, three-dimensional elevations, and demonstrative graphics.

C. The parties hereto shall reasonably cooperate to facilitate the design, development and construction of the Project. Subject to the terms of Section 7A hereof, and in accordance with a process to be more particularly described in the DSA and the GDA, the Commission shall execute applications, plans, plats and other like documents required in connection with obtaining the entitlements for the Project.

D. Upon request, and to the extent within its power and legal authority, each party shall grant to the other or its designee and to any utility company or governmental authority, such utility rights-of-way and other easements (including grading, drainage, stormwater management, slope and access easements) on, under, over, or across the adjoining property owned by such party as may be required in connection with the development or use of the Project. The location of all such rights-of-way and easements

shall be subject to the approval of the burdened party, such approval not to be unreasonably withheld or delayed. All such rights-of-way and easements shall be granted without charge.

4. Development Services Agreement

A. The Commission and Developer currently anticipate that the DSA will be entered into contemporaneously with the Montgomery County Council's approval of the Design Appropriation and in accordance with the Project Schedule, (which date is currently anticipated to be January, 2008), as the same may be amended from time to time, in accordance with the terms of this MOU. The parties further agree that in the event, despite the good faith efforts of the parties, the parties cannot agree upon a mutually acceptable Development Plan then in such event the DSA shall be terminable by either party upon written notice to the other, subject however to the payment and reimbursement obligations thereunder, including without limitation payment of the Developer's Cost Recovery.

B. The DSA shall include, among other matters, (1) the agreements of the Commission and the Developer with respect to the (i) scope of services and compensation for the Development Management Fee (as hereinafter defined), including a monthly draw schedule and draw requirements, (ii) design of the Public Improvements; (iii) pursuit of Project entitlements; (iv) terms and calculation of, and payment for the Commission's Pro Rata Share; (v) proposed allocation of costs of shared infrastructure between the Public Improvements and the Private Improvements, (vi) terms of payment of the Developer's Cost Recovery; and (2) the commitment of the Developer to the design of such elements of the Private Improvements as Developer deems reasonable and necessary to advance the Private Improvements so as not to delay completion of the Public Improvements (and which shall be at Developer's sole cost and expense). Any and all payments to the Developer will be subject to submission to the Commission of invoices and supporting documentation in sufficient detail to meet the Commission's audit requirements.

C. The Commission acknowledges and agrees to negotiate in good faith with Developer for compensation to the Developer for certain services under the DSA including fees for Developer's overhead, costs and profit for development services rendered in connection with the Public Improvements (such fees to be agreed upon in the DSA and to be consistent with the formula included in the Developer's Proposal) (the "Development Management Fee") and to reimburse the Developer the Commission's Pro Rata Share, provided that:

- (i) Such agreement includes sufficient detail of the activities for which compensation is being paid; and
- (ii) Payment of such compensation is subject to obtaining the Design Appropriation.

D. The Commission acknowledges and agrees that (i) Developer shall not be obligated to undertake any design activities until the DSA is fully executed and the Design Appropriation is approved, and (ii) Developer shall not be obligated to advance the design beyond the Schematic Design stage until the GDA is fully executed and the Construction Appropriation is approved.

E. Developer shall use good faith efforts to cause any applicable third party consultants agreements to expressly provide that in the event the DSA shall be terminated, Developer shall have the right to assign (and the Developer hereby agrees to assign) to the Commission all of its right and interest in, plans, materials or data developed under the DSA. The foregoing notwithstanding, Developer shall not be obligated to assign to the Commission any of its financial projections, proformas and similar proprietary financial information.

5. General Development Agreement

The Commission and Developer currently anticipate that the GDA will be entered into contemporaneously with the Commission's submission to the Montgomery County Council for approval of the Construction Appropriation, and in accordance with the Project Schedule, (which date is currently anticipated to be December, 2008), as the same may be amended from time to time, in accordance with the terms of this MOU. The terms of the GDA shall include, among other matters the rights and obligations of the parties with respect to (i) acquisition of the PLD Land, if required for the Project, (ii) the Commission Purchase Price, (iii) incorporation of the terms of the DSA, as applicable, (iv) the estimated hard cost guaranteed maximum price for the Public Improvements as of the date of the GDA, (v) terms of the proposed GMP; (vi) terms and conditions of settlement on the Private Land, which shall occur within sixty (60) days after issuance of final non-appealable project entitlements for the Private Improvements, including, without limitation, Site Plan, Record Plat, issuance of a demolition permit for the existing improvements (if necessary) and a building permit and, if required to construct the Private Improvements, vacation of the existing Commission headquarters building by the Commission such that the existing Commission headquarters shall be vacant free of leases or other rights of occupancy or possession and all Commission personal property is removed or abandoned by the Commission; (vi) agreement of the parties with respect to any required environmental remediation of all or any portion of the Project Land; and (vii) requirements for guarantees, bonds, insurance and other security instruments that will be required for the development and construction of the Public Improvements.

6. Guaranteed Maximum Price Contract

The GMP shall be in the form of an AIA guaranteed maximum price contract (as the same may be amended through negotiation of the parties) for the hard costs of construction of the Public Improvements. The parties presently anticipate establishing the guaranteed maximum price and entering into the GMP upon receipt of bids based upon completion of 80% drawings for the Public Improvements.

7. Consent And Appropriation

A. Approvals and consents required from the Commission in connection with the Project shall not substitute for regulatory approvals required under applicable law. Regulatory approvals by the Commission required by law or regulation do not substitute for approvals and consents required from the Commission under this MOU, the DSA or the GDA.

B. Any time any parties approval or permission is required, such approval must be in writing.

C. The parties further acknowledge that any payment from the Commission is expressly subject to the appropriation of funds by the Montgomery County Council for such payment and failure to make such appropriation is not a breach or default by the Commission, although the same may give rise to payment of the Developer's Cost Recovery.

8. PLD Land

In the event that those portions of County Garage 2 and Lot 2, as generally shown on **Exhibit A-2** attached hereto for the inclusion into the Project, together with such cross easements and rights as may otherwise be reasonably required in connection with the development and operation of the Project (collectively the "PLD Land") can be acquired by the Commission under reasonable terms and conditions acceptable to the Commission and consistent with the Project Schedule, and the Commission determines, in its sole and absolute discretion, that the PLD Land should be included in the Project, the Commission will enter into such agreements with the County as are necessary to acquire such rights as may be legally required to incorporate the PLD Land into the Project, and acquire the PLD Land in accordance with such agreements.

9. Confidentiality

The parties hereto shall maintain the terms of negotiations of this MOU, the DSA, the GDA, and any other Project documents in strictest confidence and will not disclose any of its terms to any person or entity except for its Representatives (as hereinafter defined) on a need-to-know basis without the express consent of the other party, until such document has been fully executed by all parties. As used herein, the term "Representatives" means, as to any person, its and their directors, officers, employees, agents, partners, members, prospective or existing investors with respect to the Property and advisors (including, without limitation, financial advisors, counsel, consultants and accountants).

10. Non-Binding and Rights of Termination

This MOU, is non-binding and imposes no obligations upon or grants any rights, preferential interests or value in and to the parties hereto. No such obligations, rights, interests or value shall accrue to any party until the execution of binding agreements, including the DSA, GDA and GMP, and upon appropriations being made from time to time by the Montgomery County Council in support thereof. The purpose of this MOU is to set forth the respective commitments of the parties to advance the prompt design, development and construction of the Project. The parties shall diligently and in good faith negotiate the terms of the DSA, GDA and GMP. However, if in accordance with the Project Schedule (or within a reasonable time thereafter), the parties fail to reach agreement as to the terms of the DSA, GDA and GMP, including the scope and amount of payment for the development services to be provided by Developer under the DSA, and the amount of the Commission Purchase Price, either party may terminate this MOU without recourse by and to the other, unless otherwise expressly stated herein. The foregoing notwithstanding, once any or all of the DSA, GDA and GMP are fully executed by the parties thereto, the terms of such agreements shall supercede and control over any contrary provisions of this MOU.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be signed, sealed, and delivered by their duly authorized representatives the day and year first above written.

WITNESS:

**THE MARYLAND NATIONAL
CAPITAL PARK AND PLANNING
COMMISSION**

By: _____
Name: _____
Title: _____

**BOZZUTO DEVELOPMENT
COMPANY**

By: _____
Name: _____
Title: _____

SPAULDING & SLYE INVESTMENTS,
a member of the Jones Lang LaSalle Group

By: _____
Name: _____
Title: _____

HARRISON DEVELOPMENT

By: _____
Name: _____
Title: _____