



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of November 15, 2008**

**DATE:** November 4, 2008

**SUBJECT:** SP #18 AND 89 SITE PLAN AMENDMENT: Monday Properties Services, LLC, amend conditions #1 (SP #89) and #92 (SP #18) re use of former Newseum space; 1850 N. Moore St., 1815 N. Fort Myer Dr., 1101 Wilson Blvd. (RPC #16-037-004, -005,16-039-002)

**Applicant:**

Monday Properties Services, LLC

**By:**

Nan E. Walsh, Agent/Attorney  
Walsh, Colucci, Lubeley, Emrich and Walsh  
2200 Clarendon Blvd, 13<sup>th</sup> Floor  
Arlington, Virginia 22201

**C.M. RECOMMENDATION:**

Approve the site plan amendment to modify Condition 92 for SP #18 and Condition 1 for SP #89 relative to the use of the former Newseum space.

**ISSUES:** This is a site plan amendment application to modify conditions in the 1812 N. Moore St. (SP #18) and the 1101 Wilson Blvd. / Newseum (SP #89) site plans. Condition language in SP #18 and SP #89 needs to be modified in order to be consistent with the proposed lease agreement negotiated between the Applicant and the County. The recommended conditions reflect additional circumstances under which the Newseum restricted space could be converted to unrestricted space consistent with the negotiated lease agreement. There are no issues associated with this proposed site plan amendment.

**SUMMARY:**

This is a site plan amendment application to modify conditions in the 1812 N. Moore St. (SP #18) and the 1101 Wilson Blvd. / Newseum (SP #89) site plans. Since December 2007 when

County Manager: \_\_\_\_\_

County Attorney: \_\_\_\_\_

Staff: Richard Dooley, CPHD, Planning Division  
Michael Halewski, DES, Real Estate Bureau

PLA-5115

these two site plans were last amended, the landowner for these two properties has negotiated with the County on a lease agreement (details of which are provided in a separate County Board report) for the County to use the former Newseum space.

Although SP #89 generally governs the use of the former Newseum space and there are no changes being asked for in SP #89 or in the 1812 N. Moore St. (SP #18) building itself as part of this request, the two site plans are related in that the community benefits package and Condition #92 of SP #18 referenced the County's use of the former Newseum site. Condition #92 of SP #18 and Condition #1 of SP #89 should both be consistent with the lease agreement between the County and the landowner regarding the use of the former Newseum site. Therefore, those two conditions have been revised to ensure they be consistent with the lease agreement.

During the lease negotiations since December 2007, it became apparent that the landowner understood Condition 1 of SP #89 and Condition 92 of SP #18 to include the right for the landowner to exercise its conversion option for the former Newseum space upon a lease termination due to casualty or condemnation. However, although both the County and the landowner agreed that under most circumstances such a conversion would be fair and equitable, the approved site plan conditions did not provide such conversion rights for the landowner. Thus, the landowner is seeking to amend Condition 1 of SP #89 and Condition 92 of SP #18 to allow them to convert the subject space under particular casualty and condemnation circumstances.

The Applicant has agreed to specific terms to provide the County with space to be used as a museum or cultural use, and to terms under which associated uses and circumstances the landowner has the option to convert the Newseum space to unrestricted space. Staff concludes that the modified site plan conditions are consistent with the lease agreement, and that the County Board should therefore approve the site plan amendment.

**BACKGROUND:** From 1993 through 1999, the County Board approved several site plan amendments for the subject site, granting bonus floor area to facilitate the construction and operations of the Newseum, which opened in Arlington in 1997. This facility closed in March 2002 and has moved to a new location in Washington, DC. The Newseum's administrative offices continue to be located at 1101 Wilson Boulevard until such time as they are relocated to the new location.

Between 2002 and 2005, the property owner tried, unsuccessfully, to find an appropriate museum or cultural tenant for the subject space. As part of the site plan amendment for 1812 N. Moore St. (SP #18), the Applicant negotiated with the County to include the former Newseum space as part of the amendment's community benefits package.

As of December 2007 the Applicant agreed to lease the space formerly occupied by the Newseum (1101 Wilson Blvd.) to the County for 15 years, with an option to renew for 5 years, for a museum or other cultural activity and related ancillary uses. Conditions 92 and 96 of SP# 18, and Conditions 1 and 2 of SP# 89 gave the landowner the option to convert the 36,416 square feet of restricted space to unrestricted space under certain terms, provided the landowner pays a

Conversion Option Payment to the County equal to the fair market value for 36,416 square feet of Class A office space in the Rosslyn-Ballston corridor. However, the terms for conversion under Condition #92 (SP #18) and Condition #1 (SP #89) did not include the ability of the landowner to exercise the option to convert upon certain circumstances after a casualty or condemnation; the Applicant submitted this site plan amendment to make all of the relevant conditions match the lease agreement.

**The following provides additional information about the site and location:**

Site: The site is located on the north side of Wilson Boulevard, east of its intersection with North Lynn Street. Freedom Park, an outdoor museum, is immediately east of the Newseum space. Further east is North Kent Street and Rosslyn Plaza, an 11-story office building constructed in 1966. To the north of the site is Plaza East, a 12-story office building, at 1800 North Kent Street. To the south of the site, across Wilson Boulevard, are the Arland Towers (East and West) office buildings at 1000 and 1100 Wilson Boulevard. To the east of the site is International Place, a 12-story office building built in 1967.

Zoning: “C-O-Rosslyn” Commercial Office Building, Retail, Multiple Family Dwelling Districts.

Land Use: “High” Office-Apartment-Hotel (3.8 FAR office; 4.8 FAR residential; and 3.8 FAR hotel). The site is within the boundaries of the “Rosslyn Coordinated Redevelopment District” on the General Land Use Plan.

Civic Association: North Rosslyn

Public-Private Partnership: Rosslyn Renaissance

**DISCUSSION:** The space that was previously occupied by the Newseum is comprised of three types of spaces: bonus space; converted space with restrictions; and converted space without restrictions. The following table provides a summary of that space in square feet:

<b>Bonus Space- Restricted Space</b>	
Theater/Dome Addition	3,500
9th Floor Plaza/Mezzanine Addition	13,150
<b>Museum Only - Restricted Space</b>	
Daycare Center Conversion	15,766
6th Floor Lobby	4,000
<b>Restricted Space</b>	<b>36,416</b>
<b>Unrestricted Space</b>	
6th Floor Lobby	60
8th Floor Lobby	17,350
<b>Total Space</b>	<b>53,826</b>

The bonus and restricted space noted in the table above is limited to only museum and museum administration uses. The remainder of the space, on the sixth floor and the eighth floor, is unrestricted, meaning that use of this space can be either office or retail.

The space has been vacant for several years and has not contributed to the activity and vibrancy in Rosslyn. As an additional element of the community benefit package for the 1812 North Moore Street site plan (SP #18), the Applicant has agreed to lease the entire 53,826 square foot space to the County for its use as a museum or other cultural use and its related ancillary uses. The terms of the lease are provided in a separate County Board report and summarized below.

Conversion Option: At any time during the last 18 months of the Lease Term, the developer shall have the right to elect to make a payment to the County at the then-current Rosslyn Fair Market Community Benefit Rate on both the Bonus and the Restricted spaces to convert the entire Premises to an unrestricted use, subject to the County’s right to exercise the Renewal Term. The developer may also exercise the conversion option during the Lease Term if the County defaults for a failure to pay rent or for a failure to adhere to the use restrictions imposed on the Bonus Space and the Restricted Space.

During the subsequent lease negotiations, it became apparent that the landowner understood Condition 1 of SP #89 and Condition 92 of SP #18 to include the right for the landowner to exercise its conversion option upon a lease termination due to casualty or condemnation. However, although both the County and the landowner agreed that under most circumstances such a conversion would be fair and equitable, the approved site plan conditions did not provide such conversion rights for the landowner. The revised conditions included in this staff report reflect recommended changes to the condition language so that the conditions agree with the lease.

End of Lease Term: At the end of the Lease Term or subsequent Renewal Term (to the extent exercised) or upon the developer exercising the Conversion Option, the developer shall be permitted to lease or occupy the entirety of the Premises for use by any lawfully permitted use

and all restrictions, including demolition clauses, which are set forth in prior approvals for Site Plan #89 shall be removed.

**CONCLUSION:** The former Newseum space, with the exclusion of the unrestricted space, was approved as a cultural amenity and resource in the Rosslyn area. Since the departure of the Newseum in 2002, the space has remained vacant. After working with staff in 2008, the Applicant has agreed to a lease agreement to provide the County with space to be used as a museum or cultural use with associated uses. In addition, the County and Applicant have agreed upon the circumstances under which the landowner has the option to convert the Newseum space to unrestricted space. Staff concludes that such terms are appropriate and recommends that the County Board approve the site plan amendment to modify the site plan conditions (Condition #92 of SP #18 and Condition #1 of SP #89) so that they reflect what was agreed upon in the lease agreement. All other previous conditions in SP #18 and SP #89 still apply.

## **REVISED CONDITION #92 of SP #18**

### **92. Newseum Space**

Prior to the issuance of an Excavation/Sheeting & Shoring Permit for any portion of the properties included in this site plan, the Developer shall execute, deliver to the County Manager, and obtain County Board approval of, a Lease Agreement ("Lease") which shall contain, at a minimum, the following terms:

- A. Demised Premises: Approximately 53,826 rentable square feet of space (the Demised Premises") in the Building located at 1101 Wilson Boulevard in Arlington, Virginia. The Demised Premises is further depicted in the floor plans dated November 14, 2007 attached as Exhibit A.
- B. Exclusive Use of Terrace Area: The County shall have exclusive use of the exterior terrace area ("Terrace Area") accessible from the Demised Premises and depicted on Exhibit A. The Terrace Area shall not be included in the calculation of square footage of the Demised Premises for the purposes of determining the County's payment of any rent or a proportionate share of Real Estate Taxes, Operating Expenses or increases in Operating Expenses required by the Lease, and the County shall neither be responsible for the maintenance nor the repair of the Terrace Area.
- C. Initial Lease Term and Renewal Term: Fifteen (15) years commencing the earlier of the date upon which the Lease is executed, or May 1, 2008 and ending no later than April 30, 2023 (the "Initial Term"). Thereafter, provided that the County gives written notice not later than eighteen (18) months prior to the expiration of the Initial Term, the County shall have the right, but not the obligation, to renew the Lease for one (1) additional five (5) year term (the "Renewal Term") under the same terms and conditions as the Initial Term, except Base Rent as hereinafter described. If the Developer and the County have not executed a Lease for the Demised Premises by May 1, 2008, then the Initial Term of any Lease shall begin on the date of the execution thereof and, nevertheless, shall end on April 30, 2023.
- D. Base Rent and Abatement: The base rent for a 16,650 square feet portion of the Demised Premises shall be abated for the full fifteen (15) years of the Initial Lease Term. The base rent for the balance of the Demised Premises (37,176 square feet) shall be determined as follows:

There will be no base rent for the first 10 years. The base rent for the 11th year will be 33% of the then FMV Rental Rate (as hereafter defined). The base rent for the 12th year will be at 66% of the then FMV Rental Rate. The base rent for the 13th, 14th and 15th years will be at 100% of the then FMV Rental Rate. The "FMV Rental Rate" shall mean the fair market rental rate for the Premises as agreed to by the Developer and the County, and in the event that the parties are unable to agree on the FMV Rental Rate, then the FMV Rental Rate shall be determined by the parties using the "Three Appraiser Method".

The base rent for the Renewal Term (if exercised) for all of the Demised Premises shall be at 100% of the FMV Rental Rate, for the then existing use of the Demised Premises by the County or its sublessees. If the parties cannot agree to the FMV Rental Rate, then the FMV Rental Rate for such periods shall be determined by the "Three Appraiser Method". The appraisers shall be instructed to take into account that the Demised Premises are comprised of 17,410 square feet of unrestricted space, 19,766 square feet of restricted space ("Restricted Space"), and 16,650 square feet of bonus space ("Bonus Space").

- E. Pass Throughs: The County shall be obligated to pay during each year of the Initial Term and the Renewal Term (to the extent exercised), a proportionate share of real estate taxes ("Real Estate Taxes") and operating expenses ("Operating Expenses") of the Building. Such proportionate share of Real Estate Taxes and Operating Expenses shall be determined by dividing the square footage of the Demised Premises by the total square footage of the entire Building. The County shall have reasonable audit rights.
- F. Operating Expenses: The term "Operating Expenses" as used in the Lease shall not include, among other things: 1) debt service; 2) costs of improvement of common areas; 3) costs of work on space leased to tenants/occupants; 4) costs of capital improvements, alterations or building systems replacements; 5) costs of casualty repairs; 6) costs of any additions to the Building; and 7) costs and expenses solely associated with space leased to other tenants/occupants; except that capital expenditures spent for replacement of building systems serving or benefiting the Demised Premises intended as cost savings in lieu of systems repairs shall be deemed Operating Expenses.
- G. The County shall not, at any time, be obligated to pay any sums as rent, costs, or expenses, for the right to lease the Demised Premises, or use any portion of the common areas of the Building, unless such obligation is specifically required by the Lease.
- H. County Improvements: The County shall, at its own expense, pay for and perform any and all County improvements in the Demised Premises. The plans and specifications for all planned County improvements shall be subject to the reasonable review and approval of the Developer, which review and approval shall not be unreasonably withheld, conditioned, or delayed. At the end of the Lease Term, the County may, but shall not be required to, remove any County improvements to the Demised Premises, and shall not be required to restore the Demised Premises to its condition prior to the beginning of the Initial Term, except that the County shall restore any slab cuts and other structural changes it may make.
- I. The Developer will ensure that the Demised Premises are free of all hazardous materials, and that all electrical, mechanical, transportation and life safety systems are in working condition prior to the beginning of the Initial Term.

- J. **Use:** During the Initial Term and the Renewal Term (to the extent exercised), the County shall be permitted to use the Demised Premises for a museum, for other cultural uses, and any related ancillary uses (including, but not limited to food service/cafe) as reasonably approved by the Developer, which approval shall not be unreasonably withheld, conditioned, or delayed. Any other use shall be subject to the approval of the Developer.
- K. **Assignment/Subletting:** The County shall be entitled to sublet or license up to 100% of the Demised Premises, subject to reasonable review and approval of the Developer, which review and approval shall not be unreasonably withheld, conditioned, or delayed, to persons or entities that the County determines will provide services to the public with or through the County. The County shall not be obligated to share any revenue received by the County from the subletting or licensing of the Demised Premises by such persons or entities.
- L. **Fire/Life Safety:** The Demised Premises shall be equipped, by the Developer, at Developer's sole cost and expense, with Code compliant, operating smoke detectors, fire alarms and a sprinkler system as of the beginning of the Initial Term and at all other times during the Initial Term and the Renewal Term (if exercised), unless necessitated by physical alterations of the Demised Premises by the County for its specific use.
- M. **ADA:** The Developer shall provide barrier free accessibility to the common areas and adhere to the requirements of the Americans with Disabilities Act ("ADA") on an ongoing basis as Building modifications are undertaken. The Developer, to the best of its knowledge, represents that the Building common areas currently comply with the ADA. The County, at its sole cost and expense, agrees that any work in the Demised Premises will be done in compliance with ADA requirements.
- N. **Signage:** The County shall have the right to install interior and exterior signage, at the County's sole cost and expense, including but not limited to procuring any site plan amendments and/or amendments to the approved comprehensive sign plan, subject to reasonable review and approval of the Developer, which review and approval shall not be unreasonably withheld, conditioned, or delayed. The Developer, at the Developer's sole cost and expense, shall provide the County with a reasonable number of lines on the Building lobby directory for the County and/or its subtenants/licensees.
- O. **Parking:** The County shall have the right, but not the obligation, to obtain twenty-five (25) monthly parking permits for its employees and contractors in the Building's parking garage, on a reserved or non-reserved basis, at the County's option, at the prevailing monthly rate for other tenants in the Building. Public parking spaces for the use of visitors to the Demised Premises shall be available at market rates to visitors on weekdays from 8:00 AM to 5:00 PM. Such public parking spaces shall be available to visitors at all other times (except between 2:00 AM and 6:00 AM) on weekdays and weekends at no cost to the visitors or to the County.

- P. Non-Disturbance: The County shall be provided with a non-disturbance agreement on a commercially reasonable and recordable form from all current and future mortgagees and ground lessors.
- Q. Utilities and Building Systems: The County shall pay the periodic costs of utilities separately metered to the Demised Premises. The County also shall pay the maintenance and repair costs for the dedicated HVAC system and the escalator located within, and solely serving, the Demised Premises.
- R. Janitorial Costs: The County shall pay for janitorial services, as such services are provided to the Demised Premises by the Developer. Alternatively, at the County's option, the County shall have the right to contract for its own janitorial services, in which event the County shall not pay for such services provided by the Developer for the Demised Premises.
- S. Access: The County shall have access to the Building, the Demised Premises, and the Parking Garage twenty-four (24) hours a day, seven (7) days a week, via an electronic security card system. Additionally, the Developer shall work with the County to establish an acceptable system for providing the County's visitors with after-hours ingress to and egress from the Building, Demised Premises, and the Parking Garage, consistent with the Developer's obligations to provide parking.
- T. Security Deposit: None.
- U. Building Security: The Developer shall provide first class Building perimeter security equipment procedures and systems. The County shall be responsible for security service costs for security systems installed by the County for the Demised Premises.
- V. Default. In the event of a Lease termination by reason of a default by the Developer, the parties agree that the damages to which the County will be entitled shall include the then present value of the sum of the Base Rental Revenue for Spaces A, B, and C, after the effective date of the termination of the Initial Term, as shown in the spreadsheet attached hereto as Exhibit B. In addition, the County also shall be entitled to exercise all remedies available under law to recover all other damages it may be entitled to as a result of the Developer's default.

If the County elects, in its sole discretion, to terminate the Lease prior to the end of the Initial Term, or the County is determined by a court of competent jurisdiction, after all appeals periods have ended, to be in default under the terms of the Lease solely for either: (i) failure to pay rent or additional rent; or (ii) use of the Demised Premises for a use not authorized or permitted by Subsection J of this Condition or by the Lease, then the Developer shall be entitled to exercise its Conversion Option (as defined in Condition #96). If the Developer elects to so exercise its Conversion Option upon default by the County, then exercise of such conversion shall be the Developer's sole and exclusive

remedy for any damages or other recovery arising out of the County's default of the Lease.

- W. Special County Provisions: The Lease Agreement shall include special provisions applicable to the County's status as a County government addressing the following issues: Appropriation of Funds; Role of the County/County Decisions; No Waiver; Sovereign Immunity; Indemnification and Hold Harmless; No Rights in Third Parties; Ratification of Lease by the County; and Recordation.
- X. For the purposes of such Lease, the term "County" shall be construed to include sublessee(s), except to the extent such term applies to the County as a Virginia local government.
- Y. Effective Date. The Lease shall be subject to: acceptability to the County Manager; approval as to form by the County Attorney; and approval by the County Board. Such Lease shall not be effective until it is approved by the County Board, executed by the parties, and the County Board shall have amended Site Plan #89 to include new Conditions #1 & #2 pertaining to the aforesaid lease.
- Z. The Developer's Conversion Option Upon Casualty. In addition to the instances in which the Developer is specifically permitted to exercise a Conversion Option, as such instances are described in Condition # 92 and Condition # 96 of this Site Plan SP # 18, the Developer may exercise its Conversion Option upon the occurrence of a casualty, but only under the following circumstances:

- 1. After the occurrence of the casualty, the Lease is terminated by the County because either:
  - a. the Developer's architect reasonably estimates that the restoration of the Demised Premises and those elements of the Building necessary for access to or use of the Demised Premises cannot be completed by the expiration of the fifteenth (15<sup>th</sup>) full calendar month following the date of casualty; AND the Developer timely pays to the County the balance of the remaining abated rent as provided in the Abated Rent Schedule;  
or
  - b. the Developer's actual restoration of the Demised Premises and those elements of the Building necessary for access to or use of the Demised Premises has not been completed by the expiration of the fifteenth (15<sup>th</sup>) full calendar month following the date of casualty, AND the Developer timely pays to the County the balance of the remaining abated rent as provided in the Abated Rent Schedule.
- 2. After the occurrence of the casualty, the Lease is terminated by the Developer because either:

- a. zoning or other applicable law does not permit the repair and restoration of the Demised Premises; and the Developer timely pays to the County the balance of the remaining abated rent as provided in the Abated Rent Schedule, or
- b. the Developer's architect reasonably estimates that the restoration of the Demised Premises and those elements of the Building necessary for access to or use of the Demised Premises cannot be completed by the expiration of the fifteenth (15<sup>th</sup>) full calendar month following the date of casualty, AND the Developer timely pays to the County the balance of the remaining abated rent as provided in the Abated Rent Schedule.

The Developer shall not have the right to exercise its Conversion Option (as described in Condition # 92 and Condition # 96 of this Site Plan SP # 18) where the Developer terminates the lease because the Building is damaged by fire or casualty (whether or not the Demised Premises has been damaged) to such an extent that the Developer decides, in its sole and absolute discretion, not to rebuild or reconstruct the Building.

AA. The Developer's Conversion Option Upon Condemnation. In addition to the instances in which the Developer is specifically permitted to exercise a Conversion Option, as such instances are described in Condition # 92 and Condition # 96 of this Site Plan SP # 18, the Developer may exercise its Conversion Option upon the condemnation by any governmental authority for any public or quasi-public use or purpose of all or a portion of the Demised Premises, excluding the Terrace Area, or the Building, but only under the following circumstances:

1. the Developer terminates the Lease because the whole or a Substantial Part (i.e. 40% or more) of the Demised Premises, excluding the Terrace Area, or the Building, shall be condemned by, and title vests in, any governmental authority for any public or quasi-public use or purpose, AND the Developer timely pays to the County the balance of the remaining abated rent as provided in the Abated Rent Schedule. Notwithstanding the foregoing, the Developer shall not be entitled to exercise its right to terminate the Lease and exercise its Conversion Option in connection with any temporary taking unless such temporary taking is of the entire Demised Premises and is for a stated term that is longer than the then unexpired Term of the Lease (which shall be deemed to include the Renewal Term, unless, at the time of such taking, Tenant's right to extend the Lease for the Renewal Term shall have expired without having been exercised); or
2. the County terminates the Lease because forty percent (40%) or more of the entire Demised Premises, excluding the Terrace Area, is condemned or

acquired in lieu of condemnation, or if (a) less than forty percent (40%) of the entire Demised Premises, excluding the Terrace Area, is taken and (b) the portion of the Demised Premises, excluding the Terrace Area, taken, renders the entire Demised Premises, excluding the Terrace Area, not reasonably useable for the County's use of the Demised Premises as reasonably determined by the County, AND the Developer timely pays to the County the balance of the remaining abated rent as provided in the Abated Rent Schedule.

**REVISED CONDITION #1 of SP #89**

1. The developer agrees that the 53,826 square foot space located at 1101 Wilson Boulevard, and formerly occupied by the Newseum (1101 Wilson Blvd), ("Premises") is comprised of three types of spaces: Bonus (16,650 square feet); Restricted (19,766 square feet); and Non-restricted (17,410 square feet). The developer further agrees that the Premises shall remain restricted in accordance with applicable conditions of this Site Plan # 89, as amended, except as follows:

The Developer shall execute, deliver to the County Manager, and obtain County Board approval of, a Lease Agreement ("Lease") which shall contain, at a minimum, the following terms:

A. Demised Premises: Approximately 53,826 rentable square feet of space (the Demised Premises") in the Building located at 1101 Wilson Boulevard in Arlington, Virginia. The Demised Premises is further depicted in the floor plans dated November 14, 2007 attached as Exhibit A.

B. Exclusive Use of Terrace Area: The County shall have exclusive use of the exterior terrace area ("Terrace Area") accessible from the Demised Premises and depicted on Exhibit A. The Terrace Area shall not be included in the calculation of square footage of the Demised Premises for the purposes of determining the County's payment of any rent or a proportionate share of Real Estate Taxes, Operating Expenses or increases in Operating Expenses required by the Lease, and the County shall neither be responsible for the maintenance nor the repair of the Terrace Area.

C. Initial Lease Term and Renewal Term: Fifteen (15) years commencing the earlier of the date upon which the Lease is executed, or May 1, 2008 and ending no later than April 30, 2023 (the "Initial Term"). Thereafter, provided that the County gives written notice not later than eighteen (18) months prior to the expiration of the Initial Term, the County shall have the right, but not the obligation, to renew the Lease for one (1) additional five (5) year term (the "Renewal Term") under the same terms and conditions as the Initial Term, except Base Rent as hereinafter described. If the Developer and the County have not executed a Lease for the Demised Premises by May 1, 2008, then the Initial Term of any Lease shall begin on the date of the execution thereof and, nevertheless, shall end on April 30, 2023.

D. Base Rent and Abatement: The base rent for a 16,650 square feet portion of the Demised Premises shall be abated for the full fifteen (15) years of the Initial Lease Term. The base rent for the balance of the Demised Premises (37,176 square feet) shall be determined as follows:

There will be no base rent for the first 10 years. The base rent for the 11th year will be 33% of the then FMV Rental Rate (as hereafter defined). The base rent for the 12th year will be at 66% of the then FMV Rental Rate. The base rent for the 13th, 14th and 15th years will be at 100% of the then FMV Rental Rate. The "FMV Rental Rate" shall mean the fair market rental rate for the Premises as agreed to by the Developer and the County, and in the event that the parties are unable to agree on the FMV Rental Rate, then the FMV Rental Rate shall be determined by the parties using the "Three Appraiser Method".

The base rent for the Renewal Term (if exercised) for all of the Demised Premised shall be at 100% of the FMV Rental Rate , for the then existing use of the Demised Premises by the County or its sublessees. If the parties cannot agree to the FMV Rental Rate, then the FMV Rental Rate for such periods shall be determined by the "Three Appraiser Method". The appraisers shall be instructed to take into account that the Demised Premises are comprised of 17,410 square feet of unrestricted space, 19,766 square feet of restricted space ("Restricted Space"), and 16,650 square feet of bonus space ("Bonus Space").

E. Pass Throughs: The County shall be obligated to pay during each year of the Initial Term and the Renewal Term (to the extent exercised), a proportionate share of real estate taxes ("Real Estate Taxes") and operating expenses ("Operating Expenses") of the Building. Such proportionate share of Real Estate Taxes and Operating Expenses shall be determined by dividing the square footage of the Demised Premises by the total square footage of the entire Building. The County shall have reasonable audit rights.

F. Operating Expenses: The term "Operating Expenses" as used in the Lease shall not include, among other things: 1) debt service; 2) costs of improvement of common areas; 3) costs of work on space leased to tenants/occupants; 4) costs of capital improvements, alterations or building systems replacements; 5) costs of casualty repairs; 6) costs of any additions to the Building; and 7) costs and expenses solely associated with space leased to other tenants/occupants; except that capital expenditures spent for replacement of building systems serving or benefiting the Demised Premises intended as cost savings in lieu of systems repairs shall be deemed Operating Expenses.

G. The County shall not, at any time, be obligated to pay any sums as rent, costs, or expenses, for the right to lease the Demised Premises, or use any portion of the common areas of the Building, unless such obligation is specifically required by the Lease.

H. County Improvements: The County shall, at its own expense, pay for and perform any and all County improvements in the Demised Premises. The plans and specifications for all planned County improvements shall be subject to the reasonable review and approval of the Developer, which review and approval shall not be unreasonably withheld, conditioned, or delayed. At the end of the Lease Term, the County may, but shall not be required to, remove any

County improvements to the Demised Premises, and shall not be required to restore the Demised Premises to its condition prior to the beginning of the Initial Term, except that the County shall restore any slab cuts and other structural changes it may make.

I. The Developer will ensure that the Demised Premises are free of all hazardous materials, and that all electrical, mechanical, transportation and life safety systems are in working condition prior to the beginning of the Initial Term.

J. Use: During the Initial Term and the Renewal Term (to the extent exercised), the County shall be permitted to use the Demised Premises for a museum, for other cultural uses, and any related ancillary uses (including, but not limited to food service/cafe) as reasonably approved by the Developer, which approval shall not be unreasonably withheld, conditioned, or delayed. Any other use shall be subject to the approval of the Developer.

K. Assignment/Subletting: The County shall be entitled to sublet or license up to 100% of the Demised Premises, subject to reasonable review and approval of the Developer, which review and approval shall not be unreasonably withheld, conditioned, or delayed, to persons or entities that the County determines will provide services to the public with or through the County. The County shall not be obligated to share any revenue received by the County from the subletting or licensing of the Demised Premises by such persons or entities.

L. Fire/Life Safety: The Demised Premises shall be equipped, by the Developer, at Developer's sole cost and expense, with Code compliant, operating smoke detectors, fire alarms and a sprinkler system as of the beginning of the Initial Term and at all other times during the Initial Term and the Renewal Term (if exercised), unless necessitated by physical alterations of the Demised Premises by the County for its specific use.

M. ADA: The Developer shall provide barrier free accessibility to the common areas and adhere to the requirements of the Americans with Disabilities Act ("ADA") on an ongoing basis as Building modifications are undertaken. The Developer, to the best of its knowledge, represents that the Building common areas currently comply with the ADA. The County, at its sole cost and expense, agrees that any work in the Demised Premises will be done in compliance with ADA requirements.

N. Signage: The County shall have the right to install interior and exterior signage, at the County's sole cost and expense, including but not limited to procuring any site plan amendments and/or amendments to the approved comprehensive sign plan, subject to reasonable review and approval of the Developer, which review and approval shall not be unreasonably withheld, conditioned, or delayed. The Developer, at the Developer's sole cost and expense, shall provide the County with a reasonable number of lines on the Building lobby directory for the County and/or its subtenants/licensees.

O. Parking: The County shall have the right, but not the obligation, to obtain twenty-five (25) monthly parking permits for its employees and contractors in the Building's parking garage, on a reserved or non-reserved basis, at the County's option, at the prevailing monthly

rate for other tenants in the Building. Public parking spaces for the use of visitors to the Demised Premises shall be available at market rates to visitors on weekdays from 8:00 AM to 5:00 PM. Such public parking spaces shall be available to visitors at all other times (except between 2:00 AM and 6:00 AM) on weekdays and weekends at no cost to the visitors or to the County.

P. Non-Disturbance: The County shall be provided with a non-disturbance agreement on a commercially reasonable and recordable form from all current and future mortgagees and ground lessors.

Q. Utilities and Building Systems: The County shall pay the periodic costs of utilities separately metered to the Demised Premises. The County also shall pay the maintenance and repair costs for the dedicated HVAC system and the escalator located within, and solely serving, the Demised Premises.

R. Janitorial Costs: The County shall pay for janitorial services, as such services are provided to the Demised Premises by the Developer. Alternatively, at the County's option, the County shall have the right to contract for its own janitorial services, in which event the County shall not pay for such services provided by the Developer for the Demised Premises.

S. Access: The County shall have access to the Building, the Demised Premises, and the Parking Garage twenty-four (24) hours a day, seven (7) days a week, via an electronic security card system. Additionally, the Developer shall work with the County to establish an acceptable system for providing the County's visitors with after-hours ingress to and egress from the Building, Demised Premises, and the Parking Garage, consistent with the Developer's obligations to provide parking.

T. Security Deposit: None.

U. Building Security: The Developer shall provide first class Building perimeter security equipment procedures and systems. The County shall be responsible for security service costs for security systems installed by the County for the Demised Premises.

V. Default. In the event of a Lease termination by reason of a default by the Developer, the parties agree that the damages to which the County will be entitled shall include the then present value of the sum of the Base Rental Revenue for Spaces A, B, and C, after the effective date of the termination of the Initial Term, as shown in the spreadsheet attached hereto as Exhibit B. In addition, the County also shall be entitled to exercise all remedies available under law to recover all other damages it may be entitled to as a result of the Developer's default.

If the County elects, in its sole discretion, to terminate the Lease prior to the end of the Initial Term, or the County is determined by a court of competent jurisdiction, after all appeals periods have ended, to be in default under the terms of the Lease solely for either: (i) failure to pay rent or additional rent; or (ii) use of the Demised Premises for a use not authorized or permitted by Subsection J of this Condition or by the Lease, then the Developer shall be entitled to exercise its

Conversion Option (as defined in Condition #2 96). If the Developer elects to so exercise its Conversion Option upon default by the County, then exercise of such conversion shall be the Developer's sole and exclusive remedy for any damages or other recovery arising out of the County's default of the Lease.

W. Special County Provisions: The Lease Agreement shall include special provisions applicable to the County's status as a County government addressing the following issues: Appropriation of Funds; Role of the County/County Decisions; No Waiver; Sovereign Immunity; Indemnification and Hold Harmless; No Rights in Third Parties; Ratification of Lease by the County; and Recordation.

X. For the purposes of such Lease, the term "County" shall be construed to include sublessee(s), except to the extent such term applies to the County as a Virginia local government.

Y. Effective Date. The Lease shall be subject to: acceptability to the County Manager; approval as to form by the County Attorney; and approval by the County Board. Such Lease shall not be effective until it is approved by the County Board, executed by the parties, and the County Board shall have amended Site Plan #18 to include Conditions #92 and #96.

Z. The Developer's Conversion Option Upon Casualty. In addition to the instances in which the Developer is specifically permitted to exercise a Conversion Option, as such instances are described in Condition #1 and Condition #2 of this Site Plan SP #89, the Developer may exercise its Conversion Option upon the occurrence of a casualty, but only under the following circumstances:

1. After the occurrence of the casualty, the Lease is terminated by the County because either:
  - a. the Developer's architect reasonably estimates that the restoration of the Demised Premises and those elements of the Building necessary for access to or use of the Demised Premises cannot be completed by the expiration of the fifteenth (15<sup>th</sup>) full calendar month following the date of casualty; AND the Developer timely pays to the County the balance of the remaining abated rent as provided in the Abated Rent Schedule;  
or
  - b. the Developer's actual restoration of the Demised Premises and those elements of the Building necessary for access to or use of the Demised Premises has not been completed by the expiration of the fifteenth (15<sup>th</sup>) full calendar month following the date of casualty, AND the Developer timely pays to the County the balance of the remaining abated rent as provided in the Abated Rent Schedule.
2. After the occurrence of the casualty, the Lease is terminated by the Developer because either:

- a. zoning or other applicable law does not permit the repair and restoration of the Demised Premises; AND the Developer timely pays to the County the balance of the remaining abated rent as provided in the Abated Rent Schedule; or
- c. the Developer's architect reasonably estimates that the restoration of the Demised Premises and those elements of the Building necessary for access to or use of the Demised Premises cannot be completed by the expiration of the fifteenth (15<sup>th</sup>) full calendar month following the date of casualty, AND the Developer timely pays to the County the balance of the remaining abated rent as provided in the Abated Rent Schedule.

The Developer shall not have the right to exercise its Conversion Option (as described in Conditions #1 and Condition #2 of this Site Plan SP #89) where the Developer terminates the lease because the Building is damaged by fire or casualty (whether or not the Demised Premises has been damaged) to such an extent that the Landlord decides, in its sole and absolute discretion, not to rebuild or reconstruct the Building.

AA. The Developer's Conversion Option Upon Condemnation. In addition to the instances in which the Developer is specifically permitted to exercise a Conversion Option, as such instances are described in Conditions #1 and Condition #2 of this Site Plan SP #89, the Developer may exercise its Conversion Option upon the condemnation by any governmental authority for any public or quasi-public use or purpose of all or a portion of the Demised Premises, excluding the Terrace Area, or the Building, but only under the following circumstances:

1. the Developer terminates the Lease because the whole or a Substantial Part (i.e. 40% or more) of the Demised Premises, excluding the Terrace Area, or the Building, shall be condemned by, and title vests in, any governmental authority for any public or quasi-public use or purpose, AND the Landlord timely pays to the County the balance of the remaining abated rent as provided in the Abated Rent Schedule. Notwithstanding the foregoing, the Developer shall not be entitled to exercise its right to terminate the Lease and exercise its Conversion Option (as described in Conditions #1 and Condition #2 of this Site Plan SP #89) in connection with any temporary taking unless such temporary taking is of the entire Demised Premises and is for a stated term that is longer than the then unexpired Term of the Lease (which shall be deemed to include the Renewal Term, unless, at the time of such taking, the County's right to extend the Lease for the Renewal Term shall have expired without having been exercised); or

2. the County terminates the Lease because forty percent (40%) or more of the entire Demised Premises, excluding the Terrace Area, is condemned or acquired in lieu of condemnation, or if (a) less than forty percent (40%) of the entire Demised Premises, excluding the Terrace Area, is taken and (b) the portion of the Demised Premises, excluding the Terrace Area, taken, renders the entire Demised Premises, excluding the Terrace Area, not reasonably useable for the County's use of the Demised Premises as reasonably determined by the County, AND the Developer timely pays to the County the balance of the remaining abated rent as provided in the Abated Rent Schedule.

PREVIOUS COUNTY BOARD ACTIONS  
(SP #89 - Specific to the Newseum space)

January 16, 1993	Deferred consideration of the site plan amendment to construct a theater and auditorium and to convert 4,000 square feet of storage space to retail space to the March 6, 1993 meeting.
February 6, 1993	Deferred consideration of the site plan amendment to convert a child care center to museum, museum administration or theater space to the March 6, 1993 meeting.
March 6, 1993	Continued the site plan amendments for the construction of a theater and auditorium; the conversion of 4,000 square feet of storage space to retail space; and conversion of a child care center to museum, museum administration or theater space to the March 10, 1993 meeting.
March 10, 1993	Deferred consideration of the site plan amendment to construct a theater and auditorium and to convert 4,000 square feet of storage space to retail space to the April 3, 1993 meeting.  Deferred consideration of the site plan amendment to convert a child care center to museum, museum administration or theater space to the March 20, 1993 meeting.
March 20, 1993	Approved a site plan amendment to convert 15,766 square feet of child care space to museum, museum administration or theater space with conditions.
April 3, 1993	Continued the site plan amendments for the construction of a theater and auditorium and the conversion of 4,000 square feet of storage space to retail space to the April 15, 1993 meeting.
April 15, 1993	Approved a site plan amendment for the construction of a 3,500 square foot theater and auditorium with conditions.

	Approved a site plan amendment for the conversion of approximately 4,000 square feet of storage space to retail GFA with conditions.
June 5, 1993	Approved a site plan amendment for the construction of approximately 13,150 square feet on the existing plaza deck (9,370 sf) and in a new mezzanine area within the existing tower (3,780 sf) for use as an exhibit space with conditions.
July 20, 1996	Approved a site plan amendment to convert an existing loading dock and garage entrance (approximately 7,000 square feet) to a meeting room for visitors to the Newseum.
November 16, 1999	Approved a site plan amendment to expand the 9 <sup>th</sup> floor Newseum space and the 10 <sup>th</sup> floor administrative office space, a total of 10,950 square feet, for museum and museum-related uses. (NEVER CONSTRUCTED)
July 9, 2005	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the September 17, 2005 meeting.
September 17, 2005	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the November 15, 2005 meeting.
November 15, 2005	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the January 2006 meeting.
January 21, 2006	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the April 22, 2006 meeting.
April 22, 2006	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the July 8, 2006 meeting.
July 8, 2006	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the September 16, 2006 meeting.

September 16, 2006	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the October 14, 2006 meeting.
October 14, 2006	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the December 9, 2006 meeting.
December 9, 2006	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the January 27, 2007 meeting.
January 27, 2007	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the March 17, 2007 meeting.
March 17, 2007	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the June 9, 2007 meeting.
June 9, 2007	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the September 8, 2007 meeting.
September 8, 2007	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the November 13, 2007 meeting.
November 13, 2007	Deferred a site plan amendment to convert former Newseum space to a use other than a museum to the December 15, 2007 meeting.
December 15, 2007	Approved a site plan amendment to convert former Newseum space to a use other than a museum.

PREVIOUS COUNTY BOARD ACTIONS  
(SP #18 – 1812 N. Moore St.)

February 8, 1962	Approved a site plan (Z-1598-62-2 SP #18) for an 11-story office building.
January 6, 1968	Approved a site plan amendment for an exterior sign request.
December 10, 1975	Approved a site plan amendment for an exterior sign change.
March 10, 1979	Approved a site plan amendment to convert parking to retail / office space.
September 16, 1980	Approved a site plan amendment for an exterior sign request.
December 15, 2007	Approved a rezoning request (Z-2529-06-1) and a site plan amendment to incorporate 1850 N. Moore St. (Dominion Virginia Power substation) into the site plan, construct approximately 569,739 square feet of commercial office, approximately 11,020 square feet of retail space, and retain the existing power substation.