



ARLINGTON COUNTY, VIRGINIA

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

DATE: November 14, 2008

SUBJECT: Approval of the Deed of Lease between 1101 WILSON OWNER, LLC, as Landlord, and The County Board of Arlington County, Virginia, as Tenant, for 53,826 Square Feet of Space in a Portion of a Building Located at 1101 Wilson Boulevard, Arlington, Virginia (RPC # 16-039-002).

C. M. RECOMMENDATIONS:

1. Approve the attached Deed of Lease (“Lease”) between 1101 WILSON OWNER, LLC, as Landlord, and The County Board of Arlington County, Virginia, as Tenant, for 53,826 Square Feet of Space in a Portion of a Building Located at 1101 Wilson Boulevard, Arlington, Virginia (RPC # 16-039-002); and
2. Authorize the Real Estate Bureau Chief, or his designee, to execute on behalf of the County Board of Arlington County, Virginia, the Deed of Lease and all related documents, including, but not limited to, any Memorandum of Lease, Memorandum of Lease Termination, and all documents, present or future, concerning subordination, non-disturbance, attornment, and estoppels, all subject to approval as to form by the County Attorney; and
3. Appropriate \$370,000 from the Rosslyn Fund Trust and Agency Account (799.359910) to Non-Departmental (101.91102) for the FY 2009 base costs of the Newseum lease.

ISSUES: What is the best use of the former Newseum space? Should the County use this opportunity to develop a Cultural Center? Can the County create a viable Cultural Center without new tax support?

SUMMARY: The Lease recommended for County Board approval would provide the County with the opportunity to fully explore converting the former Newseum space to an Arlington Cultural Center. Staff has developed a Business Plan for the proposed Cultural Center, including operating and capital cost budgets. These documents are currently being reviewed and refined by third party experts. If a viable plan is confirmed that requires no increase in general tax support

County Manager: _____

County Attorney: _____

Staff: Tim O’Hora – Department of Environmental Services, Real Estate Bureau
Michael R. Halewski – Department of Environmental Services, Real Estate Bureau
Norma Kaplan – Department of Parks, Recreation and Cultural Resources, Cultural Affairs

for the ongoing operations, use of the Newseum space for a Cultural Center will be recommended to the County Board as part of the FY 2010 budget. If the Cultural Center plan is not viable, then the County can terminate the Lease before June 30, 2009. If the County so terminates, the Landlord must repay the abated rent to the County, and can exercise its Conversion Option (discussed herein).

Approval of the Lease provides the time necessary to complete the review of the Cultural Center plans. Total monthly carrying cost of the Leased space is approximately \$50,000 per month. It is recommended that these costs be allocated from developer contributions to the Rosslyn Fund.

Upon County Board approval, approval as to form by the County Attorney, and proper execution of the Deed of Lease (the "Lease"), attached hereto as "Attachment 1", the County Board of Arlington County, Virginia (the "County") may occupy 53,826 square feet of the real property located at 1101 Wilson Boulevard, Arlington, Virginia (RPC # 16-039-002), as identified on the Vicinity Map attached hereto as "Attachment 2", owned by 1101 WILSON OWNER, LLC ("Landlord"). This lease through April 30, 2023 will give the County additional museum and cultural space in the Rosslyn sub-market. Base Rent for the Demised Premises will be one hundred percent (100%) abated throughout the first ten (10) years of the initial lease term, sixty-seven percent (67%) abated in year eleven (11), and thirty-three percent (33%) abated in year twelve (12). The County will pay full fair market lease base rent rate for years thirteen through the end of the lease term on April 30, 2023. After the Initial Term of fifteen years, the County has an option to renew the Lease for an additional five (5) year term at a rent rate that would include full fair market lease base rent rate.

BACKGROUND: In December 2007, the County Board approved SP #18 Site Plan Amendment ("SP #18), also known as 1812 North Moore Street, which included a community benefits package provided by the Landlord in exchange for increased density for the 1812 North Moore Street project. As a condition of the Site Plan approval for Site Plan SP #18, and as part of the approved community benefits package, Landlord agreed to lease 53,826 square feet of space in 1101 Wilson Boulevard, Arlington Virginia ("Demised Premises") to the County initially at an abated base rent rate, and thereafter at a fair market base rent rate. As described below, the County will be obligated to pay its pro rata share of the common area operating expenses, and all of the operating expenses attributable solely to the space leased by the County.

The Demised Premises was formerly occupied by the Newseum. Portions of the Demised Premises are encumbered by use restrictions in Site Plan SP #89 ("SP #89") limiting the use of the space to museum and cultural uses. In exchange for the community benefits package for SP #18, SP #89 was also amended to allow the Landlord to convert those portions of the Demised Premises currently subject to use restrictions to an unrestricted use ("Conversion Option"). Landlord may exercise its Conversion Option eighteen (18) months prior to the expiration of the initial term of the Lease (or earlier upon the County's default of the Lease for a violation of the existing use restrictions or for failure to pay rent).

Recently, the Landlord indicated its desire to exercise its Conversion Option under two additional circumstances: a major casualty loss affecting the building or a condemnation of all or a portion of the building. Neither SP #89, nor SP #18 provide for the Landlord's exercise of

its Conversion Option under these two additional circumstances. Thus, a minor site plan amendment is necessary to include these two additional circumstances under which the Landlord can exercise its Conversion Option. Minor site plan amendments to amend SP #89 and SP #18 have been filed on behalf of the Landlord, and are the subject of a separate staff report. The separate minor site plan amendments to SP #89 and SP#18 will be considered by the County immediately prior to the County's consideration of this Lease. The Lease has been drafted to allow the Landlord to exercise its Conversion Option, under certain circumstances, after the occurrence of a major default or a condemnation.

DISCUSSION: The attached Lease has been structured to: 1) provide a commercially viable agreement; 2) protect the County's rights and needs as a local government; 3) be consistent with the museum and cultural uses permitted by the Lease; 4) comport with the requirements of SP # 18 and SP # 89; and 5) enable the County to occupy the Demised Premises. Some of the pertinent provisions of the Lease are as follows:

- The County will lease the Demised Premises, containing 53,826 square feet of space, for an initial term that shall terminate at 11:59 p.m. on April 30, 2023 (the "Initial Term").
- The Lease Commencement shall begin upon the delivery of the Demised Premises to the County by the Landlord, in the condition required by the Lease. The delivery will occur within five (5) days after the completion of all of the following: (i) approval of this Lease by the County Board of Arlington County, Virginia; (ii) approval as to form of this Lease by the County Attorney; (iii) execution and delivery of this Lease by the last of the parties to execute and deliver this Lease; and (iv) an acceptable Subordination, Non-Disturbance and Attornment Agreement has been fully executed and delivered by and among the County, the Landlord, and the Landlord's current Mortgagee.
- Base Rent will be abated one hundred percent (100%) through April 30, 2018. Base Rent will be abated sixty-seven percent (67%) of a fair market value lease rate (to be determined in accordance with the provisions in the Lease) during the eleventh (11th) year of the lease. Base Rent will be abated by thirty-three percent (33%) of such fair market value lease rate during the twelfth (12th) year of this Lease. Base Rent shall be at the full fair market value lease rate during years thirteen (13) through April 30, 2023.
- County has the option to extend the term of this Lease by an additional five (5) years at a fair market value lease rate (to be determined in accordance with the provisions in the Lease).
- The County will be responsible to pay one hundred percent (100%) of the operating costs attributable solely to the Demised Premises. County also will be responsible for its pro rata share of those operating costs attributable to the common areas used both by the County and other tenants in the Building ("Common Area Expenses"). However, the County will not be responsible for operating costs attributable solely to common areas not used by the County. The calendar year 2008 estimated Common Area Expenses for the Demised Premises are \$205,695.00 (\$17,141.25 per month). The calendar year 2009 estimated Common Area Expenses for the Demised Premises is \$196,051.00 (\$16,337.58

per month). Because the Lease will commence during the middle of FY 2009, the County will be responsible for approximately \$123,165.98 in Common Area Expenses for the remainder of FY 2009. The County will be responsible for approximately \$200,952.24 in Common Area Expenses for the full FY 2010.

- The County will be responsible for its pro rata share of real estate taxes. The County's pro rata share of the calendar year 2008 Real Estate Assessment is \$197,218.58. Based on the County's pro rata share of the calendar year 2008 Real Estate Assessment (and assuming a 10% increase for the 2009 Real Estate Assessment), the County will be responsible for approximately \$132,576.49 in real estate taxes for the remainder of FY 2009. The County will be responsible for approximately \$227,787.42 in real estate taxes for the full FY 2010.
- Landlord will deliver the Demised Premises to the County in "as-is, where-is" condition. Landlord will not make any improvements to the Demised Premises.
- The County's use of the Demised Premises is limited to museum and other cultural uses. The County also may use the Demised Premises for related ancillary uses (including, but not limited to food service, café uses, and retail uses related to the museum or other cultural uses that are primary uses) as reasonably approved by the Landlord.
- The Demised Premises is separately sub-metered for electricity, and has a dedicated HVAC system solely serving the Demised Premises. The County will be responsible for the maintenance of the dedicated HVAC system solely serving the Demised Premises. The estimated combined electricity cost and HVAC maintenance cost for calendar year 2008 for the Demised Premises is \$81,899.88. Assuming a 5% increase in costs in 2009, the County will be responsible for approximately \$53,007.43 in electricity and HVAC maintenance costs for the remainder of FY 2009. The County will be responsible for approximately \$103,193.88 in electricity and HVAC maintenance costs for the full FY 2010.
- The County will be responsible for maintenance of the escalators and the elevators within the Demised Premises. The estimated escalator and elevator maintenance costs for calendar year 2008 for the Demised Premises are \$14,400.00 per year. Assuming a 5% increase in costs in 2009, the County will be responsible for approximately \$9,320.00 in escalator and elevator maintenance costs for the remainder of FY 2009. The County will be responsible for approximately \$15,498.00 in escalator and elevator maintenance costs for the full FY 2010. The County and the Landlord shall also equally share the cost of any replacement of the escalators or the elevators within the Demised Premises, provided such replacement is not necessitated due to the County's failure to properly maintain the escalators and elevators.
- The County will be responsible for the janitorial service within the Demised Premises. The County will have the option to either: 1) contract directly with the Landlord to have the current janitorial service provider for the Building provide janitorial service within the Demised Premises, or 2) contract with another janitorial service provider to perform

janitorial services within the Demised Premises. The estimated janitorial costs for calendar year 2008 for the Demised Premises are \$1.50 per square foot per annum, or \$80,739.00. Assuming a 5% increase in costs in calendar year 2009, the County will be responsible for approximately \$49,116.23 in janitorial costs for the remainder of FY 2009. However, because the space might not be used immediately, the janitorial expenses might be reduced by 75% until such time as the space is operational and occupied. The County will be responsible for between \$55,104.37 and \$86,895.35 in janitorial costs for the remainder of FY 2010.

- Upon termination of the Lease for any reason during the first twelve years of the Initial Term, the Landlord must repay to the County the outstanding amount designated in the Abated Rent Schedule incorporated into the Lease as Exhibit E. The initial outstanding amount is \$7,698,790, which amount will decrease annually by the amount of the abated rent for that year. Beginning on the thirteenth year of the Lease, there will be no outstanding balance on the Abated Rent Schedule.
- Landlord is required to maintain a minimum equity interest in the Building in an amount that is 150% of the entire amount Landlord owes County at any given time, according to the Abated Rent Schedule incorporated in the Lease as Exhibit E. In the first year of the Lease, this amount will be \$11,548,185.
- Landlord and the County shall maintain the commercially reasonable levels of insurance, as described in the Lease.
- In accordance with the terms of SP #18 and SP #89, in the event of a default (after all notice and cure periods have expired) by the County for: 1) the failure to pay rent; 2) failure to abide by the use provisions of the Lease; 3) during the last eighteen (18) months of the initial term of the Lease; 4) under certain circumstances (as further described in the Lease) after the occurrence of a major casualty; or 5) under certain circumstances (as further described in the Lease) after the occurrence of a condemnation, the Landlord can elect to convert that portion of the Demised Premises (subject to use restrictions) to an unrestricted use. In such event, the Landlord must pay the County an amount equal to the full fair fair-market FAR value of the square footage of the space subject to such use restrictions in order to exercise such election to convert. The Landlord must also repay the County the amount designated in the Base Rent schedule incorporated into the Lease as Exhibit E.
- The County has the right to assign, sublet, or license up to one hundred percent (100%) of the Demised Premises to persons or entities that the County determines shall provide services to the public with or through the County, for museum, cultural, or ancillary uses, subject to the prior review and approval of the Landlord, which review and approval shall not be unreasonably withheld, conditioned or delayed. All subtenants will be required to execute a sublease with the County. Each sublease must be consistent with the Lease between the County and the Landlord, and must contain various important required provisions. All subleases will be subject to the approval of the County Board.

- Landlord will coordinate all work to be done in or around the Demised Premises with the Tenant so as to minimize any disruption to the museum, cultural, or ancillary uses of the Demised Premises.
- The County will have the right to purchase twenty-five (25) parking permits, at the then-prevailing market rates, for the unreserved parking of passenger vehicles in the Building's underground parking garage. The Landlord also must make fifty-five (55) parking spaces in the Building's parking garage available for visitors to the Demised Premises. Such visitors' parking spaces must be made available to visitors of the Demised Premises at prevailing market rates on weekdays from 8:00 am to 5:00 pm. These visitors' parking spaces will be made available at all other times (except between 2:00 am and 6:00 am) on weekdays and weekends at no cost to the visitors or the County. In addition, after 5:00 pm on weekdays, and on weekends, visitors shall have access at no cost to all other available parking spaces.
- The County will have the right to install permanent signage on the exterior of the Building, consistent with applicable Site Plans, Zoning Ordinances, and other applicable laws, in the locations designated by the Landlord (as shown in Exhibit K to the Lease). The Landlord has also agreed to apply for any necessary site plan amendments that will permit the County to install signs and banners that will be periodically interchanged to promote exhibits and events occurring at the Demised Premises.
- The County shall have the exclusive use of the Level 9 Terrace Area, subject to limitations specified in the Lease.
- In any litigation between the Landlord and the County regarding the Lease, the party that is finally determined to be substantially prevailing shall be entitled to recover its attorney's fees from the non-substantially-prevailing party.
- The Lease specifically provides that the County does not waive its rights as a local government.

FISCAL IMPACT: Staff is currently refining a Business Plan, including capital and operating budgets, for converting the former Newseum space into a Cultural Center. Staff is confirming a recommendation that would result in no new tax support for the Cultural Center. The Cultural Center budgets are proposed to be balanced with funding from reallocation of existing County resources for arts, the Rosslyn Business District, the Rosslyn Fund, program and rental fees, and other revenue sources.

The interim carrying cost for the Leased space (through March 2009), until the completion of the review of the Business Plan, will be allocated from the Rosslyn Fund. If the County terminates the lease prior to June 30, 2009, the Landlord must repay the abated rent to the County, and can exercise its Conversion Option (discussed herein). In addition, if the Cultural Center plan is not viable, then the County will still have a pre-existing commitment to fund an estimated \$1.6 million to help relocate the Washington Shakespeare Company (WSC), currently slated to be

part of the Cultural Center. The WSC is being displaced from their current Arlington location as part of the land exchange for the Long Bridge Park project.

The out-of-pocket operating expenses of the Leased space that have to be covered by the various funding sources are a total of up to approximately \$370,000 in FY 2009 and approximately \$634,327 in FY 2010. Below is a breakdown of these operating costs:

	FY '09	FY '10
Common Area Maintenance	\$123,165.98	\$200,952.24
Real Estate Taxes	\$132,576.49	\$227,787.42
HVAC/Electric	\$53,007.43	\$103,193.88
Janitorial Services	\$13,373.77 to \$49,116.23	\$55,104.37 to \$86,895.35
Elevator/Escalator Maintenance	\$9,320.00	\$15,498.00
TOTAL	Up to approximately \$370,000.00	Up to approximately \$635,000.00

The preliminary planning estimated capital costs for the improvement of the Leased space for use as a Cultural Center is \$4,000,000. Park bonds and other funds have been identified to support up to \$4,000,000 in capital build-out costs. Staff will be working with consultants over the next few months to finalize the capital cost estimate and develop specific funding recommendations.

Once opened as a Cultural Center, new County resources to support the center will not be available. The proposed center is designed to operate with funds from consolidation and reallocation of current arts program and staff, earned income from tickets, space rentals and commissions against sales, and contributed income from various state and local sources. This is a cost-effective approach for implementing the County's long-standing vision for a Cultural Center through public/private partnership and consolidation of arts programming in a single location for more impact and creative synergy.