

6-30-2009 Revised Site Plan Conditions

Site Plan 18 – 1812 N. Moore St.

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 on 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 (15th) 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 (15th) 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 (15th) 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.

Once fully executed and delivered by and between the County and the Developer, the Lease, including terms required by this Condition #92, may be amended as approved by the County Board, and after such approval, the amended Lease need not incorporate all provisions called for in this Condition #92; provided, however, that amendments to the Lease shall be consistent with all other conditions of this Site Plan #18 (i.e. all Conditions of this Site Plan #18 except this Condition #92).

96. Newseum – Conversion Option

- a. The Developer's Option to Convert Use Restriction ("Conversion Option"): Any time during the last 18 months of the Initial Term, the Developer shall have the right, by delivery of a written notice (the "Notice") to the County Manager, during such period of time, to express its intent to convert the Restricted Space and Bonus Space portions of the Demised Premises to unrestricted use by the Developer ("Conversion Option"). For purposes of this Condition and the Lease, as amended, "unrestricted use" shall mean all uses that are permitted (but not necessarily established) in any occupiable space under Site Plan #89 as of July 31, 2009, including, but not limited to, office, retail, restaurant and grocery store uses, without further County Board action. For purposes of this Condition and the Lease, "Use Restriction" or "Restriction" mean the use limitations, but only to the extent applicable to the Demised Premises, previously enacted by the County by Site Plan Amendments to

Site Plan #89, which Amendments were enacted by the County on March 20, 1993, April 15, 1993, June 5, 1993, and November 16, 1999. If the Developer exercises the Conversion Option by delivery of such Notice and the County elects to renew the term pursuant to Subparagraph C of Condition 92, then the rent for the Demised Premises shall be the full fair market value, as determined in Subparagraph D of Condition #92 (and the Lease executed pursuant thereto), during the Renewal Term (as such Renewal Term is defined in Subparagraph C of Condition # 92).

b. The Developer may exercise the Conversion Option by payment from the Developer to the County of the existing full fair market FAR value, as of the date of delivery of the written Notice to the County Manager, for unrestricted Class A office space in the Rosslyn - Ballston corridor for the square footage of the Restricted Space and Bonus Space portions of the Demised Premises ("Conversion Option Payment") only under the following circumstances:

- (1) When the Developer terminates the Lease (provided that the Developer also terminates the leases of all similarly situated tenants the Developer has a right to terminate) after the occurrence of a fire or casualty, where the Developer's licensed architect reasonably determines to the County in writing 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 fifteenth (15th) full calendar month following the date of the casualty; or
- (2) When the Developer terminates the Lease because the whole or a substantial part of the Demised Premises has been condemned by any governmental authority for any public or quasi-public use or purpose; or
- (3) When the County terminates the Lease as the result of the Developer's default under the terms of the Lease (including when the Developer defaults under the terms of the Lease subsequent to the effectuation of Conversion by the Developer during the last eighteen (18) months of the Initial Term).

If the Developer's Conversion Option arises under any other circumstances under the Lease, then the Developer shall not be required to pay the Conversion Option Payment to the County in order to effectuate the Conversion Option.

c. If the Developer is required to pay to the County the Conversion Option Payment and the County and the Developer are unable to agree, within thirty (30) days of the receipt of the Notice by the County Manager ("Negotiation Period"), upon the existing full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor, then such value shall be determined by a "Three Appraiser Method," as follows:

- (1) Within ten (10) days after the expiration of the thirty (30) day Negotiation Period, each party shall give written notice to the other setting forth the name and address of an Appraiser (as hereinafter defined) selected by such party who has agreed to act in such capacity, to determine the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor.

If either party shall fail to select an Appraiser as aforesaid and such failure shall continue for a period of ten (10) days after receipt of written notice from the other party, then the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor shall be determined by the Appraiser selected by the other party; and

(2) If each party has selected an Appraiser, then each Appraiser shall thereupon independently make his/her determination of the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor within sixty (60) days after the appointment of the second Appraiser. If the two Appraisers' determinations of the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor are within 5% of each other, then the average of such two determinations shall be deemed to be the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor. If the two Appraisers' determinations are not the same, but the higher of such two determinations is more than one hundred five percent (105%) of the lower of them, then the two Appraisers shall jointly appoint a third Appraiser within ten (10) days after the second of the two determinations described above has been rendered. The third Appraiser shall independently make his/her determination of the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor within thirty (30) days after his/her appointment. In such event, the highest and the lowest determinations of value among the three Appraisers shall be disregarded and the remaining determination shall be deemed to be the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor for the purpose of the exercise of the Conversion Option. Each party shall pay for the cost of its Appraiser and one-half of the cost of the third Appraiser.

d. ~~Within forty five (45) days of an agreement on, or a determination of, the existing full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor~~ If the Developer is not required to pay the Conversion Option Payment to the County, then the Developer agrees that it may exercise the Conversion Option only by completing the following requirements:

- ~~1. The Developer shall prepare and submit to the County a Release of Restrictions and all other necessary documents, which documents shall be subject to the review and approval by the County Manager, or designee, and approval as to form by the County Attorney;~~
- ~~2. The Developer shall make payment to the County of the Conversion Option Payment;~~
- ~~3. The Developer shall pay all applicable fees, including the fees for review, approval and recording of the Release of Restrictions; and~~
- ~~4. The Developer shall record the Release of Restrictions upon satisfaction of the above requirements. The form of such Release, which form is acceptable to the County, shall be attached to the Lease. Such Release of Restrictions shall be effective upon recordation thereof among the land records of Arlington County, Virginia.~~

- (1) Developer shall prepare and submit to the County an Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled document; and
 - (2) Developer shall pay all applicable fees, including the fees for review, approval and recording of the Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled; and
 - (3) Developer shall record the Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled upon satisfaction of the above requirements. Such Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled shall be effective upon the date of its recordation in the land records of Arlington County, Virginia.
- e. If the Developer is required to pay to the County the Conversion Option Payment, then the Developer may exercise the Conversion Option by completing the following requirements:
- (1) Developer shall prepare and submit to the County an Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled document; and
 - (2) Developer shall, unless otherwise specifically provided either in this Condition 96 of SP #18 or in the Lease, make payment to the County of the Conversion Option Payment within forty-five (45) days after agreement upon or determination of the full fair market FAR value for unrestricted Class A office space in the Rosslyn-Ballston corridor; and
 - (3) Developer shall pay all applicable fees, including the fees for review, approval and recording of the Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled; and
 - (4) Developer shall record the Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled upon satisfaction of the above requirements. Such Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled shall be effective upon the date of its recordation in the land records of Arlington County, Virginia.

~~If the above requirements are not fully satisfied within such forty five (45) day period, then the Conversion Option shall terminate automatically, without the requirement for any further acts of the Developer or the County.~~

- f. If the Developer does not exercise the Conversion Option by ~~delivery of the Notice and payment of the Conversion Option Payment~~ completing the requirements of this Condition 96 of SP #18 and the applicable provisions of the Lease, then at the expiration of the Lease, the Demised Premises shall remain as Bonus Space, Restricted Space, and Unrestricted Space, as provided in Site Plan #89, as amended.

Site Plan 89 – 1101 Wilson Blvd. / Newseum

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 on 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). 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 Conditions #1 and #2.
- 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 (15th) 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 (15th) 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 (15th) 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.

Once fully executed and delivered by and between the County and the Developer, the Lease, including terms required by this Condition #1, may be amended as approved by the County Board, and after such approval, the amended Lease need not incorporate all provisions called for in this Condition #1; provided, however, that amendments to the Lease shall be consistent with all other conditions of this Site Plan #89 (i.e. all Conditions of this Site Plan #89 except this Condition #1).

2.

- a. The Developer's Option to Convert Use Restriction ("Conversion Option"): Any time during the last 18 months of the Initial Term, the Developer shall have the right, by delivery of a written notice (the "Notice") to the County Manager, during such period of time, to express its intent to convert the Restricted Space and Bonus Space portions of the Demised Premises to unrestricted use by the Developer ("Conversion Option"). For purposes of this Condition and the Lease, as amended, "unrestricted use" shall mean all uses that are permitted (but not necessarily established) in any occupiable space under this Site Plan #89 as of July 31, 2009, including, but not limited to, office, retail, restaurant and grocery store uses, without further County Board action. For purposes of this Condition and the Lease, "Use Restriction" or "Restriction" mean the use limitations, but only to the extent applicable to the Demised Premises, previously enacted by the County by Site Plan Amendments to Site Plan #89, which Amendments were enacted by the County on March 20, 1993, April 15, 1993, June 5, 1993, and November 16, 1999. If the Developer exercises the Conversion Option by delivery of such Notice and the County elects to renew the term pursuant to Subparagraph C of Condition #1, then the rent for the Demised Premises shall be the full fair market value, as determined in Subparagraph D of Condition #1 (and the Lease executed pursuant thereto), during the Renewal Term (as such Renewal Term is defined in Subparagraph C of Condition # 1).

- b. The Developer may exercise the Conversion Option by payment from the Developer to the County of the existing full fair market FAR value, as of the date of delivery of the written ~~an~~ Notice to the County Manager, for unrestricted Class A office space in the Rosslyn - Ballston corridor for the square footage of the Restricted Space and Bonus Space portions of the Demised Premises ("Conversion Option Payment") only under the following circumstances:
 - (1) When the Developer terminates the Lease (provided that the Developer also terminates the leases of all similarly situated tenants the Developer has a right to terminate) after the occurrence of a fire or casualty, where the Developer's licensed architect reasonably determines to the County in writing 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 fifteenth (15th) full calendar month following the date of the casualty;
or
 - (2) When the Developer terminates the Lease because the whole or a substantial part of the Demised Premises has been condemned by any governmental authority for any public or quasi-public use or purpose; or
 - (3) When the County terminates the Lease as the result of the Developer's default under the terms of the Lease (including when the Developer defaults under the terms of the Lease subsequent to the effectuation of Conversion by Developer during the last eighteen (18) months of the Initial Term).

If the Developer's Conversion Option arises under any other circumstances under the Lease, then the Developer shall not be required to pay the Conversion Option Payment to the County in order to effectuate the Conversion Option.

c. If the Developer is required to pay to the County the Conversion Option Payment and the County and the Developer are unable to agree, within thirty (30) days of the receipt of the Notice by the County Manager ("Negotiation Period"), upon the existing full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor, then such value shall be determined by a "Three Appraiser Method," as follows:

~~1.~~(1) Within ten (10) days after the expiration of the thirty (30) day Negotiation Period, each party shall give written notice to the other setting forth the name and address of an Appraiser (as hereinafter defined) selected by such party who has agreed to act in such capacity, to determine the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor. If either party shall fail to select an Appraiser as aforesaid and such failure shall continue for a period of ten (10) days after receipt of written notice from the other party, then the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor shall be determined by the Appraiser selected by the other party; and

~~2.~~(2) If each party has selected an Appraiser, then each Appraiser shall thereupon independently make his/her determination of the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor within sixty (60) days after the appointment of the second Appraiser. If the two Appraisers' determinations of the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor are within 5% of each other, then the average of such two determinations shall be deemed to be the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor. If the two Appraisers' determinations are not the same, but the higher of such two determinations is more than one hundred five percent (105%) of the lower of them, then the two Appraisers shall jointly appoint a third Appraiser within ten (10) days after the second of the two determinations described above has been rendered. The third Appraiser shall independently make his/her determination of the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor within thirty (30) days after his/her appointment. In such event, the highest and the lowest determinations of value among the three Appraisers shall be disregarded and the remaining determination shall be deemed to be the full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor for the purpose of the exercise of the Conversion Option. Each party shall pay for the cost of its Appraiser and one-half of the cost of the third Appraiser.

~~d. Within forty five (45) days of an agreement on, or a determination of, the existing full fair market FAR value for unrestricted Class A office space in the Rosslyn - Ballston corridor, If the Developer is not required to pay the Conversion Option Payment to the~~

County, then the Developer agrees that it may exercise the Conversion Option only by completing the following requirements:

- ~~1. The Developer shall prepare and submit to the County a Release of Restrictions and all other necessary documents, which documents shall be subject to the review and approval by the County Manager, or designee, and approval as to form by the County Attorney;~~
- ~~2. The Developer shall make payment to the County of the Conversion Option Payment;~~
- ~~3. The Developer shall pay all applicable fees, including the fees for review, approval and recording of the Release of Restrictions; and~~
- ~~4. The Developer shall record the Release of Restrictions upon satisfaction of the above requirements. The form of such Release, which form is acceptable to the County, shall be attached to the Lease. Such Release of Restrictions shall be effective upon recordation thereof among the land records of Arlington County, Virginia.~~

- (1) Developer shall prepare and submit to the County an Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled document;
- (2) Developer shall pay all applicable fees, including the fees for review, approval and recording of the Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled; and
- (3) Developer shall record the Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled upon satisfaction of the above requirements. Such Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled shall be effective upon the date of its recordation in the land records of Arlington County, Virginia.

e. If the Developer is required to pay to the County the Conversion Option Payment, then the Developer may exercise the Conversion Option by completing the following requirements:

- (1) Developer shall prepare and submit to the County an Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled document; and
- (2) Developer shall, unless otherwise specifically provided either in this Condition 96 of SP #18 or in the Lease, make payment to the County of the Conversion Option Payment within forty-five (45) days after agreement upon or determination of the full fair market FAR value for unrestricted Class A office space in the Rosslyn-Ballston corridor; and
- (3) Developer shall pay all applicable fees, including the fees for review, approval and recording of the Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled; and
- (4) Developer shall record the Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled upon satisfaction of the above requirements.

Such Acknowledgement That Conditions Precedent to Conversion Have Been Fulfilled shall be effective upon the date of its recordation in the land records of Arlington County, Virginia.

~~If the above requirements are not fully satisfied within such forty five (45) day period, then the Conversion Option shall terminate automatically, without the requirement for any further acts of the Developer or the County.~~

- f. ~~If the Developer does not exercise the Conversion Option by delivery of the Notice and payment of the Conversion Option Payment~~ completing the requirements of this Condition 2 of SP #89 and the applicable provisions of the Lease, then at the expiration of the Lease, the Demised Premises shall remain as Bonus Space, Restricted Space, and Unrestricted Space, as provided in Site Plan #89, as amended.