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Jonathan P. Rak
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McGUIREWOODS

5f
6-12-10

Land Use and Environmental
jrak@mcguirewoods.com

June 12, 2010

VIA HAND DELIVERY

Mayor Euille and Members of City Council
City Hall
301 King Street, Suite 2100
Alexandria, VA 22314

RE: North Potomac Yard, Docket Item #5, Rezoning #2009-0001; Text Amendment 2010-0002; CDD 2009-0001; TMP SUP 2009-0061; Street Naming 2010-0002; and Adoption of Design Guidelines (the "Application")

Dear Mayor Euille and Members of City Council:

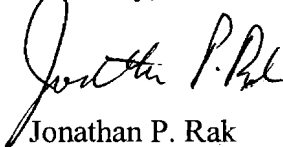
On behalf of our client, CPYR, Inc. (the "Applicant"), we are requesting that the City Council approve the following revision to the staff recommended conditions of approval for the Application. The following revision will facilitate the construction of the transitway stations in advance of the Metro. The traffic study prepared by the City's traffic consultant determined that the traffic generated by a total of 2.25 million square feet of development on the site can be accommodated in advance of the Metro Station with high frequency local transit services.

Therefore, we request the following revision:

Condition 12.

Phase II – Development Preceding the Metrorail Station: A maximum of ~~2.0~~ 2.25 million sq.ft. of total development (~~inclusive of the~~ which shall include any portion of the existing retail center in existence as of June 12, 2010 which is not demolished or replaced pursuant to future DSUP approvals) in CDD#19, shall be permitted in advance of the commencement of construction of a Metrorail station located within or adjacent to CDD#19, provided that the development complies with the conditions required herein and the following:

Sincerely,


Jonathan P. Rak

Cc: Faroll Hamer, Director Planning and Zoning

\11779856.1

SPEAKER'S FORM

DOCKET ITEM NO. 5

PLEASE COMPLETE THIS FORM AND GIVE IT TO THE CITY CLERK
BEFORE YOU SPEAK ON A DOCKET ITEM

PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.

1. NAME: Jonathan Rak
2. ADDRESS: 1750 Tysons Blvd, McLean VA 22102
TELEPHONE NO. 703-712-5411 E-MAIL ADDRESS: j.rak@mcgossrewards.com
3. WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF? _____
Applicant
4. WHAT IS YOUR POSITION ON THE ITEM?
FOR: AGAINST: _____ OTHER: _____
5. NATURE OF YOUR INTEREST IN ITEM (PROPERTY OWNER, ATTORNEY, LOBBYIST, CIVIC INTEREST, ETC.):
Attorney
6. ARE YOU RECEIVING COMPENSATION FOR THIS APPEARANCE BEFORE COUNCIL?
YES NO _____

This form shall be kept as a part of the permanent record in those instances where financial interest or compensation is indicated by the speaker.

A maximum of three minutes will be allowed for your presentation, except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard on a docket item shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation. If you have a prepared statement, please leave a copy with the Clerk.

Additional time not to exceed 15 minutes may be obtained with the consent of the majority of the council present; provided notice requesting additional time with reasons stated is filed with the City Clerk in writing before 5:00 p.m. of the day preceding the meeting.

The public normally may speak on docket items only at public hearing meetings, and not at regular legislative meetings. Public hearing meetings are usually held on the Saturday following the second Tuesday in each month; regular legislative meetings on the second and fourth Tuesdays in each month. The rule with respect to when a person may speak to a docket item at a legislative meeting can be waived by a majority vote of council members present but such a waiver is not normal practice. When a speaker is recognized, the rules of procedures for speakers at public hearing meetings shall apply. If an item is docketed *for public hearing* at a regular legislative meeting, the public may speak to that item, and the rules of procedures for speakers at public hearing meetings shall apply.

In addition, the public may speak on matters which are not on the docket during the Public Discussion Period at public hearing meetings. The mayor may grant permission to a person, who is unable to participate in public discussion at a public hearing meeting for medical, religious, family emergency or other similarly substantial reasons, to speak at a regular legislative meeting. When such permission is granted, the rules of procedures for public discussion at public hearing meetings shall apply.

Guidelines for the Public Discussion Period

- (a) All speaker request forms for the public discussion period must be submitted by the time the item is called by the city clerk.
- (b) No speaker will be allowed more than three minutes; except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard during the public discussion period shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation.
- (c) If more speakers are signed up than would be allotted for in 30 minutes, the mayor will organize speaker requests by subject or position, and allocated appropriate times, trying to ensure that speakers on unrelated subjects will also be allowed to speak during the 30 minute public discussion period.
- (d) If speakers seeking to address council on the same subject cannot agree on a particular order or method that they would like the speakers to be called on, the speakers shall be called in the chronological order of their request forms' submission.
- (e) Any speakers not called during the public discussion period will have the option to speak at the conclusion of the meeting, after all docketed items have been heard.

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6-12-10

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 12, 2010

TO: MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: FAROLL HAMER, DIRECTOR *FH*
DEPARTMENT OF PLANNING AND ZONING

SUBJECT: NORTH POTOMAC YARD REZONING: ACTION ITEM TO
HIGHLIGHT

As a clarification, staff would like to highlight that one of the actions requested of the City Council in this case is authorizing the City Manager to sign the Memorandum of Understanding between the City and the Applicant, which is attached to the report that was sent to Council.

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6-12-10

Development Phasing

	DEVELOPMENT TRIGGER	AMOUNT OF DEVELOPMENT	REQUIREMENTS
Phase #1	In Advance of Metro Station	1,400,000 sf NEW 600,000 sf EXISTING <hr/> <hr/> 2,000,000 sf TOTAL	<ul style="list-style-type: none"> • High frequency local transit service • 1,500,000 sf – Transitway Under Const • 2,000,000 sf – Transitway Operational
Phase #2	Concurrent with Metro Station Construction	2,000,001 sf to 3,700,000 sf	<ul style="list-style-type: none"> • Transitway Operational • Metro station Bonds Issued • Metro station Permits Issued • Substantial Construction of Metro station
Phase #3	Once Metro Station is Operational	3,700,001 sf to ~7,500,000 sf	<ul style="list-style-type: none"> • Developer Required to Contribute \$10 / sf for first 4,900,000 sf
Alternate Scenario	Development if <u>City</u> Decides Not to Construct Metro Station (by 2018)	2,000,000 sf Initially (up to 3,700,000 sf - subject to future planning process)	<ul style="list-style-type: none"> • Transitway Fully Operational • Subject to Future Planning Process

NOTE: Streets Necessary for Circulation will be Required with Each Phase

Anticipated Phasing of Amenities

	Phase I (2.0 msf Total)	Phase II (2.0 - 3.7 msf)	Phase III (3.7 - 7.5 msf)
Open Space & Parks	Landbay K (Initial) Market or Metro Park * Synthetic Field NPS Contribution Possible 4MR Contrib *	Landbay K (final) Market or Metro Park * (park not built in Ph I)	Crescent Park (w/ Civic Structure) Four Mile Run Imp 3 Public Courtyards
Community Facilities	School Site Dedication* Affordable Housing Public Art	School Contribution Affordable Housing Public Art Theater / Civic Bldg *	Affordable Housing Public Art Theater / Civic Bldg
Infrastructure	2 Transitway Stops Sewer Contribution Utility/Sewer Infras	As Required by Phasing	Pump Station * Stormwater Pond

* Depends on Order of Phasing



APPLICATION SPECIAL USE PERMIT

SPECIAL USE PERMIT # 2009-0061

PROPERTY LOCATION: 3601 Jefferson Davis Highway and 3601 Potomac Avenue

TAX MAP REFERENCE: 016.01-05-01 and 016.02-01-02 **ZONE:** CDD #10

APPLICANT:

Name: CPYR, Inc.

Address: c/o RREEF, 875 North Michigan Avenue, 41st Floor, Chicago, IL 60611-1901

PROPOSED USE: Transportation Management Plan.

[] **THE UNDERSIGNED**, hereby applies for a Special Use Permit in accordance with the provisions of Article XI, Section 4-11-500 of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

[] **THE UNDERSIGNED**, having obtained permission from the property owner, hereby grants permission to the City of Alexandria staff and Commission Members to visit, inspect, and photograph the building premises, land etc., connected with the application.

[] **THE UNDERSIGNED**, having obtained permission from the property owner, hereby grants permission to the City of Alexandria to post placard notice on the property for which this application is requested, pursuant to Article IV, Section 4-1404(D)(7) of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

[] **THE UNDERSIGNED**, hereby attests that all of the information herein provided and specifically including all surveys, drawings, etc., required to be furnished by the applicant are true, correct and accurate to the best of their knowledge and belief. The applicant is hereby notified that any written materials, drawings or illustrations submitted in support of this application and any specific oral representations made to the Director of Planning and Zoning on this application will be binding on the applicant unless those materials or representations are clearly stated to be non-binding or illustrative of general plans and intentions, subject to substantial revision, pursuant to Article XI, Section 11-207(A)(10), of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

Jonathan P. Rak, Esquire, Agent
Kenneth W. Wire, Esquire, Agent
Print Name of Applicant or Agent

Jonathan P. Rak May 17, 2010
Signature Date

McGuireWoods LLP
1750 Tysons Boulevard, Suite 1800
Mailing/Street Address

(JPR) (703) 712-5411 (703) 712-5231
(KWW) (703) 712-5362 (703) 712-5222
Telephone # Fax #

McLean, VA 22102
City and State Zip Code

jrak@mcguirewoods.com
kwire@mcguirewoods.com
Email address

Planned and Special Use Permits
ACTION: PLANNING COMMISSION DATE: _____
ACTION: CITY COUNCIL DATE: _____

CC approved PC recommendation w/ amendments 7-0 6/12/10

SN: Approved 7-0
DG: Recommend Adoption 7-0

City Council approved the Planning Commission and staff recommendation, with the amendment to condition #12 to state a maximum of 2.25 million square feet of total development which shall include any portion of the existing retail center in existence as of June 12, 2010, which is not demolished or replaced pursuant to future DSUP approvals in CDD #19, shall be permitted in advance of the commencement of construction of a Metrorail station located within or adjacent to CDD #19, provided that the development complies with the conditions required herein.

Council Action: _____

6. TEXT AMENDMENT #2010-0001
SMALL BUSINESS ZONING REGULATIONS
Public Hearing and Consideration of a request for an amendment to the City's Zoning Ordinance regulations related to small businesses. Staff: City of Alexandria Department of Planning and Zoning

PLANNING COMMISSION ACTION: Recommend Approval w/amendments 7-0

City Council approved the Planning Commission recommendation.

City Council adopted the Planning Commission recommendation with an amendment to Section 11-511(c)(4) on page 35, and Section (b)(1) on page 37, that the appeal process go from 14 days to 30 days for both appeals; an amendment that the number of seats can't exceed the administrative cap; and on page 36, Section 11-513(a)(2) as relates to the notification, to add reference to ENews and leave it up to staff how best and which vehicles to use to get notification out prior to the approval or possible approval.

Council Action: _____

REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER

7. Public Hearing on the Draft City of Alexandria Strategic Plan (adoption is scheduled for June 22, 2010.) (#16, 5/25/10)

City Council held the public hearing and noted adoption is scheduled for June 22, 2010.

Council Action: _____

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

Planning Commission (continued)

8. SPECIAL USE PERMIT #2010-0015



APPLICATION

REZ 2009-0001

Master Plan Amendment MPA# _____
 Zoning Map Amendment REZ# _____

PROPERTY LOCATION: 3601 Jefferson Davis Highway and 3601 Potomac Avenue

APPLICANT

Name: CPYR Inc.
Address: c/o RREEF, 875 North Michigan Avenue, 41st Floor, Chicago, IL 60611-1901

PROPERTY OWNER:

Name: CPYR Inc.
Address: c/o RREEF, 875 North Michigan Avenue, 41st Floor, Chicago, IL 60611-1901

Interest in property:

- Owner Contract Purchaser
 Developer Lessee Other _____

If property owner or applicant is being represented by an authorized agent such as an attorney, a realtor, or other person for which there is some form of compensation, does this agent or the business in which they are employed have a business license to operate in Alexandria, VA:

yes: If yes, provide proof of current City business license.

no: If no, said agent shall obtain a business license prior to filing application.

THE UNDERSIGNED certifies that the information supplied for this application is complete and accurate, and, pursuant to Section 11-301B of the Zoning Ordinance, hereby grants permission to the City of Alexandria, Virginia, to post placard notice on the property which is the subject of this application.

Jonathan P. Rak, Esquire, Agent
Kenneth W. Wire, Esquire, Agent
Print Name of Applicant or Agent

Jonathan P. Rak
Signature

McGuireWoods LLP
1750 Tysons Boulevard, Suite 1800
Mailing/Street Address

(JPR) (703) 712-5411 (703) 712-5231
(KWW) (703) 712-5362 (703) 712-5222
Telephone # Fax #

McLean, VA 22102
City and State Zip Code

Date May 19, 2010

DO NOT WRITE IN THIS SPACE - OFFICE USE ONLY

Application Received: _____ Fee Paid: \$ _____
Legal advertisement: _____
ACTION - PLANNING COMMISSION _____ ACTION - CITY COUNCIL: _____

Rec approval w/ Amendments 7-0 6/3/10
application master plan amend.pdf

8/1/06 Pnz/Applications, Forms, Checklists/Planning Commission

CC: City Council approved PC recommendation w/ amendments 7-0 6/12/10
(see attachment) 3

SN: Approved 7-0
DG: Recommend Adoption 7-0

City Council approved the Planning Commission and staff recommendation, with the amendment to condition #12 to state a maximum of 2.25 million square feet of total development which shall include any portion of the existing retail center in existence as of June 12, 2010, which is not demolished or replaced pursuant to future DSUP approvals in CDD #19, shall be permitted in advance of the commencement of construction of a Metrorail station located within or adjacent to CDD #19, provided that the development complies with the conditions required herein.

Council Action: _____

6. TEXT AMENDMENT #2010-0001
SMALL BUSINESS ZONING REGULATIONS
Public Hearing and Consideration of a request for an amendment to the City's Zoning Ordinance regulations related to small businesses. Staff: City of Alexandria Department of Planning and Zoning

PLANNING COMMISSION ACTION: Recommend Approval w/amendments 7-0

City Council approved the Planning Commission recommendation.

City Council adopted the Planning Commission recommendation with an amendment to Section 11-511(c)(4) on page 35, and Section (b)(1) on page 37, that the appeal process go from 14 days to 30 days for both appeals; an amendment that the number of seats can't exceed the administrative cap; and on page 36, Section 11-513(a)(2) as relates to the notification, to add reference to ENews and leave it up to staff how best and which vehicles to use to get notification out prior to the approval or possible approval.

Council Action: _____

REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER

7. Public Hearing on the Draft City of Alexandria Strategic Plan (adoption is scheduled for June 22, 2010.) (#16, 5/25/10)

City Council held the public hearing and noted adoption is scheduled for June 22, 2010.

Council Action: _____

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

Planning Commission (continued)

8. SPECIAL USE PERMIT #2010-0015



APPLICATION

CDD DEVELOPMENT CONCEPT PLAN

CDD # 2009-0001

[must use black ink or type]

PROPERTY LOCATION: 3601 Jefferson Davis Highway and 3601 Potomac Avenue

TAX MAP REFERENCE: 016.01-05-01 and 016.02-01-02 **ZONE:** CDD#10

APPLICANT'S NAME: CPYR Inc

ADDRESS: c/o RREEF 875 N. Michigan Avenue, 41st Floor, Chicago, IL 60611

PROPERTY OWNER NAME: CPYR Inc.

ADDRESS: c/o RREEF 875 N. Michigan Avenue, 41st Floor, Chicago, IL 60611

REQUEST Request for a CDD Concept Plan for a mixed use development including residential, office, hotel, and retail uses.

THE UNDERSIGNED hereby applies for CDD Development Concept Plan approval in accordance with the provisions of Section 5-600 of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

THE UNDERSIGNED, having obtained permission from the property owner, hereby grants permission to the City of Alexandria to post placard notice on the property for which this application is requested, pursuant to Article XI, Section 11-301(B) of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

THE UNDERSIGNED hereby attests that all of the information herein provided and specifically including all surveys, drawings, etc., required to be furnished by the applicant are true, correct and accurate to the best of their knowledge and belief. The applicant is hereby notified that any written materials, drawings or illustrations submitted in support of this application and any specific oral representations made to the Planning Commission or City Council in the course of public hearings on this application will be binding on the applicant unless those materials or representations are clearly stated to be non-binding or illustrative of general plans and intentions, subject to substantial revision, pursuant to Article XI, Section 11-207(A)(10), of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

Jonathan P. Rak, Esquire, Agent
Kenneth W. Wire, Esquire, Agent
Print Name of Applicant or Agent

Jonathan P. Rak
Signature

McGuireWoods LLP
1750 Tysons Boulevard, Suite 1800
Mailing/Street Address

(JPR) (703) 712-5411 (703) 712-5231
(KWW) (703) 712-5362 (703) 712-5222
Telephone # Fax #

McLean, VA
City and State

22102
Zip Code

May 19, 2010
Date

DO NOT WRITE IN THIS SPACE - OFFICE USE ONLY

Application Received: _____ Date and Fee Paid: _____ \$ _____
ACTION - PLANNING COMMISSION: _____ ACTION - CITY COUNCIL: _____

application CDD development plan.pdf
8/1/06 PrnzApplications, Forms, Checklists\Planning Commission

PC Action: Dec Approval w/amendments 7-0 6/3/10
CC: City Council approved PC recommendation w/ amendments 7-0 6/12/10
(see attachment)

SN: Approved 7-0
DG: Recommend Adoption 7-0

City Council approved the Planning Commission and staff recommendation, with the amendment to condition #12 to state a maximum of 2.25 million square feet of total development which shall include any portion of the existing retail center in existence as of June 12, 2010, which is not demolished or replaced pursuant to future DSUP approvals in CDD #19, shall be permitted in advance of the commencement of construction of a Metrorail station located within or adjacent to CDD #19, provided that the development complies with the conditions required herein.

Council Action: _____

6. TEXT AMENDMENT #2010-0001
SMALL BUSINESS ZONING REGULATIONS
Public Hearing and Consideration of a request for an amendment to the City's Zoning Ordinance regulations related to small businesses. Staff: City of Alexandria Department of Planning and Zoning

PLANNING COMMISSION ACTION: Recommend Approval w/amendments 7-0

City Council approved the Planning Commission recommendation.

City Council adopted the Planning Commission recommendation with an amendment to Section 11-511(c)(4) on page 35, and Section (b)(1) on page 37, that the appeal process go from 14 days to 30 days for both appeals; an amendment that the number of seats can't exceed the administrative cap; and on page 36, Section 11-513(a)(2) as relates to the notification, to add reference to ENews and leave it up to staff how best and which vehicles to use to get notification out prior to the approval or possible approval.

Council Action: _____

REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER

7. Public Hearing on the Draft City of Alexandria Strategic Plan (adoption is scheduled for June 22, 2010.) (#16, 5/25/10)

City Council held the public hearing and noted adoption is scheduled for June 22, 2010.

Council Action: _____

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

Planning Commission (continued)

8. SPECIAL USE PERMIT #2010-0015



COA Contact Us: North Potomac Yard rezoning

Bill Hendrickson to: william.euille, frank.fannon, kerry.donley,
alicia.hughes, council, delpepper, paulcsmedberg,
rose.boyd, jackie.henderson, elaine.scott,
rob.krupicka, linda.owens

06/07/2010 04:39 PM

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6-12-10

Please respond to Bill Hendrickson

Time: [Mon Jun 07, 2010 16:39:48] Message ID: [22143]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Bill
Last Name: Hendrickson
Street Address: 304 E. Spring St.
City: Alexandria
State: VA
Zip: 22301
Phone: 703-549-7365
Email Address: whendrick@aol.com
Subject: North Potomac Yard rezoning
Dear Mayor Euille and members of the City Council:

I support the development plan for North Potomac Yard—if there is a Metro station. However, I am concerned about what might happen if the rezoning of the site is approved and a station isn't built, either because the Council decides not to go ahead with the bond financing or because of problems determined during the environmental impact analysis.

If on June 12 you approve the rezoning and a new coordinated development district, you will be agreeing to at least 1.4 million square feet and possibly as much as 3.1 million square feet of additional development. You will be doing this without any guarantee that a Metro station—the critical element of the plan—will be built.

Why are you going ahead with the rezoning before we know for sure that we will get Metro?

The transportation analysis indicates that the Route 1 corridor can support an extra 1.4 million square feet of development—with some infrastructure improvements and additional pain for drivers. But there are reasons to be skeptical of transportation analysis. The North Potomac Yard analysis, for example, relies greatly on the success of a new rapid transit system, with dedicated lanes for buses, trolleys, or light rail cars. Will this new transit way attract sufficient ridership or are we taking too big of a leap of faith?

Even without a transportation analysis, most people intuitively understand that the Route 1 corridor in the future, even without any new development at Potomac Yard, is going to be somewhere between fairly to ridiculously congested. Thus, I ask that you examine the traffic issue very closely, ask staff skeptical questions, and be as clear-headed as possible about the future, especially if a Metro station is not built.

Comments:

The North Potomac Yard plan that allows 7.5 million square feet of development with Metro includes a wide variety of public amenities. But how many of these benefits do we get if there is no Metro? Will they be pro-rated somehow? The city staff report is not very clear. We must ensure that public amenities are commensurate with what we are providing. After all, the developer is being given at least 1.4 million square feet of development rights that it does not have now.

And what about the environmental impact analysis? This issue was barely discussed during the public process. Is there any reason to be worried that it will make it impossible to build the Metro station? It's not clear, but Council need to clearly understand the risks before it approves the rezoning.

Finally, if the Metro plan blows up but we still get significantly more development, what happens to all the land that isn't developed? If a Metro isn't built in conjunction with this plan, will a station ever be built? The staff conditions for the rezoning concentrates

the development within a fairly small area. Perhaps, in a situation without a Metro, as much as half of the site's 70 acres would not be developed and could never be developed because of an inadequate transportation network. Why not include a condition that if the Metro is not approved, any land on the site not needed for the possible 3.1 million square feet of development be turned over to the city for public parks and other civic purposes?

One last issue: Even though there was some community outreach before and after the master plan for North Potomac Yard was publicly released, there was no public outreach at all after the rezoning document was released, and there was very little time for public discussion. Yet the rezoning document has much additional and critical information that is not at all easily digested and often difficult to understand. Very few people in the entire city know anything at all about the plan. If you approve the rezoning, I urge you to direct staff to hold some public meetings in the fall to explain what is in the final plan and what it will mean. Thank you.

Bill Hendrickson
Member, Potomac Yard Planning Advisory Group



COA Contact Us: Potomac Yard Development

william.euille, frank.fannon, kerry.donley,
Peggy Cantfil to: alicia.hughes, council, delpepper, paulcsmedberg,
rose.boyd, jackie.henderson, elaine.scott,
rob.krupicka, linda.owens

06/09/2010 11:47 AM

Please respond to Peggy Cantfil

5
6-12-10

Time: [Wed Jun 09, 2010 11:47:22] Message ID: [22200]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Peggy
Last Name: Cantfil
Street Address: 302 Lee Circle
City: Alexandria
State: Va
Zip: 22305
Phone: 703-836-8744
Email Address: peggy.cantfil@yahoo.com
Subject: Potomac Yard Development
I've lived in Alexandria since 1960. I'm an original Titan and raised three children in the city. I cannot be at the hearing on the rezoning of Potomac Yards. I am opposed to high density anything, ANYWHERE. I find the overdevelopment of my town and the city councils and mayor's office support of it irresponsible. What were you thinking with the BRAC building on Seminary? We have traffic and parking issues already. Do you all drive around this town at all?
Comments: Let's have a park and some green space it will help with our water run off and environmental issues too.
NO MORE streets and paved areas and development in need of MORE city services. You are overspending. You are overdeveloping out of greed for more tax dollars.

ENOUGH please! This is MY town too.

Peggy Cantfil



COA Contact Us: Potomac Yard mega development

Judith Schaeffer to: william.euille, frank.fannon, kerry.donley,
alicia.hughes, council, delpepper, paulcsmedberg,
rose.boyd, jackie.henderson, elaine.scott,
rob.krupicka, linda.owens

06/08/2010 07:56 PM

5
6-12-10

Please respond to Judith Schaeffer

Time: [Tue Jun 08, 2010 19:56:41] Message ID: [22179]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Judith
Last Name: Schaeffer
Street Address: 3406 Alabama Avenue
City: Alexandria
State: VA
Zip: 22305
Phone: 202-296-6889, x. 305
Email Address: jeschaeffer@msn.com
Subject: Potomac Yard mega development

Dear Mr. Mayor and Members of the City Council,

I have been a homeowner

in Beverley Hills since 1992, and am writing to urge you to reject the proposed re-zoning of of 70 acres in Potomac Yard. The infrastructure along the Route 1 corridor, particularly including the roads, is already overburdened and simply cannot sustain the proposed new mega-development, even if (and that's a big IF) new public transit were to be built. No objective observer could reasonably believe that the additional traffic resulting from such a new development would be anything other than a nightmare, regardless of Metro, light rail, or any similar alternatives.

In the nearly 20 years that I have lived in our City, I have seen the quality of our lives decline as local development has gone through the roof and far outpaced the ability of our roads and other facilities to handle it. We just CANNOT afford to have the increase in

Comments:

the amount of traffic such a project would bring. Do the people behind this proposal never drive on Route 1 during rush hour, or mid-afternoon on the weekends? It's practically a parking lot along Potomac Yard now!

In

addition, there can be no question that the proposed development would bring even more traffic to our already burdened neighborhoods west of Route 1. It is my understanding that the City intends to address this by asking the developer to install so-called "traffic calming" in our streets. What a joke. The main result of traffic "calming" devices is to inconvenience and punish the very people who live in the affected neighborhoods and have no choice but to drive on these streets because WE LIVE HERE.

Enough is enough. Please prioritize our quality of life and stop selling out our City to the highest bidder.

Sincerely,

Judith E. Schaeffer



COA Contact Us: Potomac Yard Development

william.euille, frank.fannon, kerry.donley,
Elizabeth Good to: alicia.hughes, council, delpepper, paulcsmedberg,
rose.boyd, jackie.henderson, elaine.scott,
rob.krupicka, linda.owens

06/09/2010 05:13 AM

Please respond to Elizabeth Good

5
6-12-10

Time: [Wed Jun 09, 2010 05:13:24] Message ID: [22190]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Elizabeth
Last Name: Good
Street Address: 3417 Alabama Ave
City: Alexandria
State: VA
Zip: 22305
Phone: 703 683 4674
Email Address: libbygood@aol.com
Subject: Potomac Yard Development

I strongly oppose plans to further develop Potomac Yards. I do not believe the assurances that have been made that traffic can be handled with a combination of some possibility of mass transit and existing Rt

1.

Furthermore, I agree with Ms. Laane's comments/concerns:

1)

poorer air quality and increased respiratory problems (in an area that is already sometimes out of compliance due to vehicular pollution),

2)

less available water going refilling the water-table; more demands on our drinkable water supply and waste water systems (some people may not

Comments: remember the water restrictions that we have had dry years), and
3)

increased temperature caused in combination of reduction of trees combined with more concrete and asphalt.

All of these factors rob us of our

health, our free time, and our ability to enjoy life. I definitely oppose rezoning for higher density to further benefit developers at the cost of Alexandria's citizens. One solid way to effect the outcome is to take time to email your elected officials with your point of view on the subject.



COA Contact Us: Potomack Yards

Jane Knowlton to: william.euille, frank.fannon, kerry.donley,
alicia.hughes, council, delpepper, paulcsmedberg,
rose.boyd, jackie.henderson, elaine.scott,
rob.krupicka, linda.owens

06/10/2010 12:26 AM

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6-12-10

Please respond to Jane Knowlton

Time: [Thu Jun 10, 2010 00:26:39] Message ID: [22220]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Jane
Last Name: Knowlton
Street Address: 6621 Wakefield Dr. #502
Alexandria, Va. 22307
City: Alexandria
State: Va
Zip: 22307
Phone: 703-820-3860
Email Address: jknowl21@yahoo.com
Subject: Potomack Yards

Dear Mayor, Vice Mayor, and Council Members:

I am an Alexandria resident

and take my vote seriously.

I am strongly opposed to rezoning Potomack

Yard to a higher density area. To zone it for higher density would create terrible traffic problems. The costs to the city would be prohibitive and ecologically it would set a poor example for conservation stewardship.

Many other negative outcomes would result as well including degrading Alexandria air quality - this area was already rated one of the worst in

Comments: the U.S.

I work for a federal conservation agency in the area and know from my work and research that good drinking water and quality of life are seriously compromised with a plan such as this.

Please do not

support this project which benefits only developers and not citizens of

Alexandria.

Thank you,
Jane Knowlton

Alexandria Resident

5

6-12-10

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

CITY OF ALEXANDRIA, VIRGINIA

AND

CPYR, INC.

FINAL AT MAY 25, 2010
REVISED JUNE 3 2010 AS TO DEVELOPER CONTRIBUTIONS
DATED JUNE 12, 2010, DATE OF APPROVAL OF REZONING CDD#19 AND RELATED
LAND USE APPROVALS

LN

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MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF
ALEXANDRIA, VIRGINIA AND CPYR, INC. REGARDING POTOMAC YARD
METRORAIL STATION FINANCING

This Memorandum of Understanding is entered into the 12TH day of JUNE, 2010 between the City of Alexandria, Virginia, a municipal corporation (“City”) and CPYR, Inc., a Delaware corporation (“CPYR” or “Owner”). The City and CPYR are collectively referred to as the “Parties”.

Recitals

1. CPYR is the owner of Landbay F at Potomac Yard and wishes to redevelop the existing retail center generally in conformance with the draft North Potomac Yard Small Area Plan. RREEF America L.L.C., (“RREEF”) is the investment adviser to CPYR and McCaffery Interests, Inc. is the development consultant to CPYR;
2. The City and the Owner through RREEF and McCaffery have engaged in a cooperative planning process which has produced the North Potomac Yard Small Area Plan adopted by the Alexandria City Council May 15, 2010 (“SAP”). The critical element of the SAP is the proposed Potomac Yard Metrorail Station (“Metrorail Station”).
3. The City and CPYR both wish to facilitate the design, funding and construction of the new Metro Station to serve Potomac Yard and have engaged in discussions regarding the funding of the Metro Station.
4. At its Monday December 15, 2009, meeting, the Metrorail Station Feasibility Work Group (which includes the City’s Mayor, Vice-Mayor, former Chair of the Planning Commission and Chair of the Transportation Commission) unanimously adopted certain guidance for City staff in relation to the proposed Metrorail Station. Critical policy statements from this include the following:
 - Construction of the Metrorail Station is required to support the level of development proposed in Landbay F.
 - Amendments to the Master Plan and the rezoning of Landbay F cannot go forward until the City is satisfied that an acceptable financing plan has been developed and agreed to.
 - Paragraphs 4, 5 and 6 require a clear, detailed and conservative financial plan with no negative cash impact on the City’s General Fund in any given year.
 - The projected “gap” between the anticipated tax revenues from the special tax district, per square foot developer contributions, plus additional incremental net new revenues generated by the project, will be “bridged” by “firm and sufficient upfront Landbay F payments.”

5. The Parties wish to set forth their mutual understanding of the next steps in the process for planning development of the Metrorail Station and redevelopment of Landbay F and wish to set forth their respective commitments and obligations to each other.

Agreement

Now, therefore, in consideration of the material undertakings set forth hereafter, the City and CPYR, each pursuant to due and proper authority, agree to the following, which shall govern the Parties' actions with respect to the matters contained herein.

1. Effect of Agreement. This Memorandum of Understanding ("MOU") sets forth the Parties' mutual expectations to proceed with various material undertakings and the negotiation of binding agreements in the future. If either Party fails to perform as set forth in this MOU, the other Party may terminate this MOU, but shall have no additional remedy against the other based solely on this MOU. The Parties expect that future agreements and actions will include binding agreements, including remedies for default where applicable and as provided in such agreements, and subject to the legislative discretion of the City Council and all municipal immunities enjoyed by the City, as well as legislative and administrative approvals of development proposals for Land Bay F. These future agreements and actions include, but are not limited to:
 - a. Approval of North Potomac Yard Small Area Plan;
 - b. Rezoning of Land Bay F;
 - c. Approval of CDD conceptual design plan;
 - d. Creation of two Special Tax Districts.
 - e. Approval of preliminary development plan special use permits;
 - f. Shortfall Guaranty Documentation and Shortfall Deposit Agreement;
 - g. Environmental studies and regulatory approvals;
 - h. Funding of predevelopment expenses prior to bond issuance.
 - i. Design process for Metrorail station;
 - j. Award of a contract for construction of the Metrorail Station; and
 - k. Issuance of bonds (the "Bonds") sufficient for construction of the Metrorail station.

The Parties anticipate that the land use approvals for development of Land Bay F will proceed in the ordinary course for such reviews, including staff review, public notice and comment, Planning Commission review and recommendations, and City Council review

and action. The Shortfall Guaranty Deposit Agreement will set forth the terms contemplated by this MOU in greater detail and will be executed prior to issuance of bonds for the Metrorail Station.

2. Establishment of Potomac Yard Metrorail Station Fund ("Station Fund"). Concurrently with the approval of a rezoning of Landbay F, the City will establish a fund for purposes of accumulating the following flow of funds, each of which is described in more detail below. All cash contributions by the Owner to the Station Fund shall be payable without offset, deduction or counterclaim of any kind, except as expressly set forth herein. The Station Fund will be a separate segregated fund, the proceeds of which may be used only for the purposes stated herein, i.e., furthering the design, construction and financing of the Metrorail Station. Funds may not be diverted from the Station Fund for other purposes, except as described in this Section below.
 - a. Net New Tax Revenues. Net new tax revenues generated by the several Landbays at Potomac Yard ("Net New Tax Revenues"), commencing as of the final effective date of the rezoning but in any case no earlier than June 15, 2011 for real property tax revenues, and July 1, 2011 for other tax revenues. Net New Tax Revenues shall include all new real property taxes (i.e., increased ad valorem real estate taxes over and above the base year in which the rezoning occurs, whether due to increased assessed values, new construction or development, or changes in the tax rates, including the real estate tax rate, in effect in the base year) payable to the City from all Landbays at Potomac Yard, less the percentage amount of gross tax receipts for each type of use representing the estimated cost of providing services required by such use, as follows, such percentage to remain in effect so long as the Bonds are outstanding unless a different percentage for cost of services is agreed upon by the City and the landowners of the various Landbays at Potomac Yard. Net New Tax Revenues shall also include increased business tangible, sales (1% City levy), meals, transient occupancy and business licenses tax receipts from net new development in Potomac Yard; the same percentages described below will be applied to such other types of taxes, depending on the source of the tax, i.e. net new sales taxes will be subject to the retail percentage, net new transient occupancy tax shall be subject to the Hotel/Hospitality percentage, and so forth. Excluded from net new taxes would be: (1) any new tax category or new classification not in place and approved by the Alexandria City Council as of January 1, 2010, including but not limited to the commercial transportation add-on real estate tax for transportation purposes, and (2) any taxes restricted by federal or state law or regulation which would be inconsistent with the payment of debt service on the bonds issued to finance the Metrorail Station in Potomac Yard.
 - i. Residential: 59.85 % of revenues utilized for services, leaving 40.15 % percent of gross new tax revenues to be utilized as Net New Tax Revenues and placed in the Station Fund (Source for all: USPTO Study 1999).

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- ii. Office and other non-retail commercial: 17 % of revenues utilized for services, leaving 83 % percent of gross new tax revenues to be utilized as Net New Tax Revenues and placed in the Station Fund.
 - iii. Retail: 12.9 % of revenues utilized for services, leaving 87.1 % percent of gross new tax revenues to be utilized as Net New Tax Revenues and placed in the Station Fund.
 - iv. Hotel/Hospitality: 6.5 % of revenues utilized for services, leaving 93.5 % percent of gross new tax revenues to be utilized as Net New Tax Revenues and placed in the Station Fund.
- b. Special Tax Districts. Special Tax District revenues generated by the several Landbays at Potomac Yard, based on the projected establishment (effective January 1, 2011) of a special tax district to apply to all assessed value (current and future) of real property and improvements in the Landbays at Potomac Yard, based on a planned special assessment of twenty cents (\$0.20) per one hundred dollars (\$100.00) of assessed valuation on Landbays F, G, H, I, and J ("Special Tax District Revenues"). Old Town Greens will not be subject to the Special Tax District. Potomac Greens, and portions of Potomac Yard landbays other than Landbay F which are to be developed for single family attached development (or alternatively, areas within such other land bays zoned for lower density residential and at a further distance from the Metro Station); will be included in a second Special Tax District when established, with a rate of zero until the Metro Station commences operation, and thereafter with a yet to be determined tax rate that is planned to be equal to or less than ten cents (\$0.10) per \$100.
- c. Developer Contributions. Developer contributions of Ten Dollars (\$10.00) per square foot of gross floor area (net of structured parking) of new construction within Landbay F, capped at a maximum of Forty Nine Million Dollars (\$49,000,000) in 2010 Dollars ("Developer Contributions"), payable concurrently with issuance of each certificate of occupancy for such new improvements, and which shall be paid by the then-owner of such improvements. This \$10.00 per square foot Developer Contribution would be as of the date of final approval of the rezoning of Landbay F, and, in order to retain a \$10 real dollar equivalent in 2010 dollars, would escalate annually thereafter on January 1 of each year in accordance with increases in prior years in the Consumer Price Index for all urban consumers (CPI-U), 1982-1984=100 (not seasonally adjusted) as reported by the United States Department of Labor, Bureau of Labor Statistics. The base CPI will be set as of the date of the rezoning and will be adjusted as of the first day of January each year thereafter, and the resulting adjusted Developer Contribution per square foot amount shall be in effect for that calendar year. It is understood that the dollar amount paid is that calculation for the calendar year when the certificate of occupancy is issued by the City. For example, if a building's construction is completed on December 15, 2015, but the certificate of occupancy for that building is issued on January 15, 2016 then the amount paid in 2016 at the time the certificate of occupancy is issued would be adjusted for changes in the

CPI-U between January 1, 2015 and January 1, 2016. It is understood that Potomac Yard Development LLC ("PYD") and MRP Realty ("MRP") as the owners of other landbays at Potomac Yard, are not seeking a rezoning with substantial additional density and have made extensive public benefit contributions for transportation, sewer, storm water management, and will not be required to make Developer Contributions. However, it is acknowledged that if in the future PYD or MRP or any successor of either initiates a rezoning of all or a portion of their respective properties, involving significant increases in density of development, then mitigation of transportation impacts, including potential contributions to the Metrorail station, would be a part of the rezoning contribution negotiation. As our discussions have evolved and we have considered issues of administrative simplicity, it has been agreed that the Developer Contribution will be collected based on the gross floor area of improvements constructed and for which a certificate of occupancy is issued, net only of area devoted to structured parking and shall be collected on the first 4.9 million square feet of improvements in Landbay F after which no further Developer Contributions shall be payable for any development thereafter in Landbay F.

- d. Interest earned on funds deposited in the Station Fund, including interest earned by any investment of bond principal will be invested by the City as per Code of Virginia investment laws for short-term cash investments and shall remain in the Fund and may be used for any purposes allowed by the Station Fund.
 - e. In the event that bonds for the Metrorail Station are not issued by January 1, 2018 and the City and CPYR or the then controlling owner of Landbay F determine that financing and construction of a Metrorail Station is no longer feasible, any Developer Contributions then remaining in the Station Fund may be withdrawn from the Station Fund by the Owner. In determining the extent of Developer Contributions remaining in the Station Fund, the use of funds expended shall be deemed to have been spent in proportion to the source of the funds. The parties will cooperate to develop a schedule for all predevelopment processes and approvals preceding the closing of bond financing and construction of the Metrorail station, with milestones against which progress can be measured.
3. Bond Financing of Metrorail Station Construction. The City has determined that the long term benefits to the City from redevelopment of Potomac Yard, including the construction of a Metrorail Station serving Potomac Yard, merit the incurrence by the City of bonded indebtedness of approximately \$275 million (the "Bond Financing") to pay hard and soft costs of construction, capitalized interest, and issuance costs necessary to place in service an operating Metrorail Station serving Potomac Yard. The bonds may be issued as general obligation bonds, revenue bonds, lease-revenue bonds, certificates of participation, or other municipal debt instruments, or a combination of these instruments. The bonds may be issued in one or more tranches. The bonds are likely to be fixed rate, but some or a portion of the bonds may be issued as variable rate.
 4. Utilization of Funds from Potomac Yard Metrorail Station Fund. The City may use funds accumulated in the Station Fund to cover debt service on the Bonds issued to finance the

Metrorail Station, to cover that portion of any annual operating expense deficit specifically allocable to the Potomac Yard Metrorail Station by WMATA and chargeable to the City pursuant to the terms of the WMATA Compact to which the City is a party, to pay expenses incurred in the establishment of the Fund, costs of design of the Metrorail Station, including architectural, engineering, design, and construction document costs, costs of land acquisition, costs of permit or grant applications and processing, environmental studies, legal and other professional service costs, and all other costs reasonably incurred by or on behalf of the City in connection with the final location approval, design, and preparation for commencement of construction of the Metrorail Station. Funds accumulated in the Station Fund could be used to pay ongoing costs of construction, or accumulated as a debt service reserve, as determined pursuant to the terms of the Bond Financing. Funds may also be used to reimburse the City for Metrorail Station related expenses incurred prior to initiation of the Fund. If any funds accumulated in the Station Fund prior to the closing of Bond Financing and commencement of construction of the Metrorail Station, are insufficient to pay ongoing predevelopment expenses, either party shall have the right, but not the obligation, to contribute funds to the Station Fund to pay such expenses, such additional advance contributions to be eligible to be repaid from the proceeds of the Bond Financing. The parties shall immediately commence the development of a detailed checklist of predevelopment tasks and anticipated costs, including development of an overall multi-year budget showing total anticipated costs that are expected starting in 2010 up until the closing of Bond Financing and commencement of construction.

5. Financing Plan. The financing plan for the construction of the Metrorail Station (the "Financing Plan") has evolved so that the following general principles are agreed upon:
 - a. The projected cost of construction of the Metrorail Station, using the highest cost alternative B-2 to construct a "mid-point" cost and debt service projection, is approximately \$240 million in 2015 dollars (mid point of construction). Capitalized interest and bond issuance costs are estimated at \$35 million.
 - b. The City will issue bonds ("Bonds"), in an amount not to exceed \$275 million, to fund construction of the Metrorail Station. The plan is to issue the Bonds as tax exempt bonds to the maximum degree feasible, or to utilize the federal Build America Bond program if authorized at the time the bonds are issued.
 - c. Construction period interest will be capitalized during the first three years after issuance of the Bonds.
 - d. Bonds will provide that repayment will be of interest only during years four through six (4-6), with repayment of principal commencing in year seven (7).
 - e. Depending on market conditions at the time of issuance, all or a portion of the Bonds may be callable at the end of the tenth year. This may increase borrowing costs slightly in the first ten years, but will provide an opportunity for refinancing of the Bonds, after the first ten years, or through an advance refunding prior to the

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end of the first ten years through a new bond issuance and defeasance of the original Bonds.

- f. Although neither the Owner nor the current City Council can bind future Councils, the present intent is that when the debt incurred to finance the construction of the Metrorail Station has been fully paid off, and any funds advanced by the City due to shortfalls in the Station Fund have been repaid, the Special Tax Districts would be terminated. This is projected to be 30 years after the issuance of the Bonds.
- g. The City plans to submit a preliminary Financing Plan to the City's bond counsel and financial advisors, and to discuss this proposed financing with the applicable rating agencies during the first half of 2010, to obtain early evaluation and comment of the feasibility of the Financing Plan (which the City's financial advisors have already provided input to) and to identify issues that need to be addressed. Adjustments to the plan may be required as a result of this review, to ensure that the Financing Plan is conservative, with a sound financing structure and shared risk, and that it will not put at risk the City's AAA/Aaa bond ratings.
- h. The City shall have no obligation to actually issue the Bonds until certain conditions have been met, including but not limited to (i) approval of the final bond financing plan and underwriting prospectus by the City's financial advisors (and any underwriters if the bond sale is negotiated and not a competitive transaction) and counsel; (ii) issuance of all necessary permits for commencement of construction of the Metrorail Station (iii) the Owner has fulfilled all of its obligations with respect to cash contributions and the documentation of the Shortfall Guaranty in a manner sufficient to the City, its underwriters and counsel; (iv) confirmation that based on the final plans for the Metrorail Station and the construction cost estimates provided as part of the design build process, the Metrorail Station can be constructed and placed in service for a total cost not to exceed \$240 million; (v) a court validation of the planned Bond issue, or issues, if deemed necessary by the City; and (vi) the attainment of at least a AA bond rating for the Bonds from Moody's and S&P. If a condition to the City's obligation to issue the Bonds is not satisfied and the Bond financing does not close, the Shortfall Guarantor shall not be obligated to make the Shortfall Guaranty Deposit, or if such Deposit has previously been made, it will be returned to the Shortfall Guarantor.
- i. Once the Bonds are issued, the City will be obligated in some fashion to make payments of principal and interest on the Bonds, as and when the same come due, or to suffer the consequences of a default in payment, including adverse effects on the City's bond ratings. If the various development and financial projections are not met, the City will still need to service the Bond indebtedness. The Shortfall Guaranty and Shortfall Guaranty Deposit provide comfort that cash shortfalls in servicing the bonds (including principal and interest) will be met by the Owner, deferring any loss to the City. However, inasmuch as the City is primarily liable on the Bonds, if the Shortfall Guaranty is exhausted or the Guarantor defaults in

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its obligation to make or reimburse the Shortfall Guaranty Deposit or to otherwise make payments of shortfalls as and when due, the City will have to make up the difference. Should this occur interest shall accrue on any amounts paid by the City other than from the Station Fund, at the Applicable Federal Rate from the time incurred and paid out by the City until the time such funds are returned to the City, such amounts to be repaid to the City when funds in the Station Fund are available to do so (including from the \$10 per square foot CPI-U adjusted payments or net new taxes). If the Shortfall Guarantor defaults in its obligation to make payments under the Shortfall Guaranty or to timely replenish the Shortfall Guaranty Deposit, the City shall have no obligation to issue building permits for new development in Landbay F until the default is cured.

- j. All parties recognize that the Financing Plan is based on current projections of cost, and timing of construction, and that if the projected costs increase materially or the timing of construction is significantly delayed prior to finalization and closing of the Bond financing, all terms and conditions of financing will need to be reassessed and renegotiated. However, in no event will the City be obligated to issue bonds in excess of \$275,000,000 principal amount.
6. State or Federal Funding. The Financing Plan has been developed on the assumption that no State or Federal sources of funding, whether through grants, loans, or otherwise, will be specifically available for this project. Should State or Federal funds become available, such funds will be utilized as authorized. No State or Federal funds received shall reduce the amount of the Developer Contribution or the Shortfall Guaranty, although it is recognized that any available state or federal funding should reduce risk for all parties and will likely reduce the amount needed to be borrowed.
 7. Shortfall Guaranty. In order to reduce the risk that the City will draw upon general fund revenue to make payments on the bonds for the Metrorail Station, CPYR will provide a contingent guaranty of any shortfall in any given year (the "Shortfall Guaranty"), between amounts required to be paid to service Bond Indebtedness (including both principal and interest, in accordance with the terms of the approved Bond Financing), and funds on hand in the Station Fund. The Shortfall Guaranty will be made by the landowner (currently CPYR, Inc.) (the "Shortfall Guarantor"), the financial assets and condition of which are approved by the City and must be reapproved at the time of bond financing by the City's bond underwriters in accordance with the terms of the bond financing. The Shortfall Guarantee shall total \$32 million, with the Shortfall Guarantor, not obligated to pay more than \$32 million cumulatively over a multi-year period to cover any debt service shortfall, nor more than \$10 million in any single calendar year. The City shall give the Shortfall Guarantor at least six-months notice of any estimated shortfall amount due, and provide detailed calculations of how that shortfall was estimated to the Shortfall Guarantor, and upon what date the Shortfall payments would be due.
 - a. Concurrently with the closing of the Bond Financing, the Shortfall Guarantor will deposit into a separate fund controlled by the City the sum of \$10 million in Shortfall Guaranty funds to cover possible draws under the Shortfall Guaranty

(the "Shortfall Guaranty Deposit"). Interest earned on the Shortfall Guaranty Deposit will remain with such Deposit. The City may draw upon the Shortfall Guaranty Deposit to make Shortfall Guaranty payments as and when payments are due on the Bonds. The Shortfall Guarantor shall be obligated to replenish, within ninety (90) days, any funds drawn from the Shortfall Guaranty Deposit, so that at all times the sum of \$10 million will be available for use to cover Shortfall Guaranty obligations. However, the obligation to replenish the Shortfall Guaranty Deposit shall be subject to the same annual cap of \$10 million and overall Shortfall Guaranty cap of \$32 million.

- b. Excluding the planned first three years of capitalized interest to pay bond debt service, subsequent to the City fiscal year in which the last debt service payment of capitalized interest is paid, if after three subsequent consecutive fiscal years of no Shortfalls requiring the use of any Shortfall Guaranty funds, any remaining Shortfall Guaranty Deposit funds may be credited against future \$10.00 per square foot (as annually adjusted by the CPI-U) Developer Contributions due from Landbay F. Any credits against Developer Contributions must be to the Shortfall Guarantor, or if credits are proposed to be allowed to a third party other than the Shortfall Guarantor, the granting of such credits must be approved in writing by the Shortfall Guarantor. In addition, if after the first three years of capitalized interest and the amortization of principal amount of indebtedness has stabilized at its ultimate level, there shall occur three consecutive years in which the total of collections from the Special Tax District and Net New Tax Revenues exceed the annual debt service, any funds remaining in the Shortfall Guaranty Deposit will be released to the Shortfall Guarantor. The City shall annually produce a reconciliation of the Station Fund and make it publicly available to all parties who request a copy.
- c. The Shortfall Guaranty, and other terms and conditions of the Metrorail station financing participation by CPYR, Inc. or other acceptable Shortfall Guarantor, shall be affirmed in writing as a "best efforts" planned pledge by an authorized agent for CPYR, Inc. prior to the time of the adoption of the North Potomac Yard Small Area Plan, affirmed as a legally binding commitment at the time of the rezoning of Landbay F, but the binding Shortfall Guaranty shall be contingent upon the initiation of construction of the Metrorail station, or the bond financing for that station, whichever comes first.
- d. If any Shortfall Guaranty amount becomes due and is not paid by CPYR, Inc. or other acceptable Shortfall Guarantor at the time requested by the City, the City shall have the right to record a lien against any and all parcels within Landbay F that are owned by CPYR, Inc, such lien to have the priority of a deed of trust recorded at the time the lien notice is filed by the City among the Land Records of Alexandria, Virginia. The City's right to record a lien for any unpaid Shortfall Guaranty amount shall be memorialized in a document recorded in the Land Records of the City of Alexandria, encumbering all property owned by CPYR, concurrently with the closing of the bond financing.

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- e. After the Developer's requirements to pay any Shortfall Guarantee have been satisfied, the City may deposit into the Station Fund only some or none of the net new tax revenues generated by Landbay F or other Potomac Yard Landbays, if the City determines, in its sole discretion, that those amounts are not projected to be reasonably required to pay projected future debt service on bonds issued to finance the Potomac Yard Metrorail station. It is recognized by all parties that Special Tax District revenues under the Code of Virginia limit use of Special Tax District Funds to those purposes for which the Special Tax District was created.
 - f. The Parties recognize that transfer of Net New Tax Revenues into the Station Fund are subject to annual appropriations and the current City Council cannot bind future Councils to make such appropriations. However, if in any calendar year the City Council does not authorize the transfer of Net New Tax Revenues into the Station Fund, the obligation of the Shortfall Guarantor to make Shortfall Guaranty payments in that calendar year shall be reduced by an amount equal to the amount of Net New Tax Revenues that would have been paid into the Station Fund but for the City Council's decision not to authorize such transfer.
 - g. In the event that the \$32,000,000 Shortfall Guaranty is not utilized to pay debt service on the bonds issued for the Potomac Yard Metrorail Station, any unused portion thereof shall be paid to the City, for bond repayment, or for public improvements or amenities recommended by the North Potomac Yard Small Area Plan, as determined by the City Council. Such funds shall be paid to the City subject to the following: Upon the occurrence of the Shortfall Guaranty Release Date, the Director of Planning & Zoning will determine the total amount of floor area remaining pursuant to the CDD concept design plan for which a final site plan has not been approved as of the Shortfall Guaranty Release Date. The Applicant shall pay the unused portion of the Shortfall Guaranty (adjusted to reflect increases in the CPI subsequent to January 1, 2020) on a pro rata basis for each remaining square foot of floor area upon approval of each final site plan subsequent to the Shortfall Guaranty Release Date. However, if after the passage of five (5) years from the Shortfall Guaranty Release Date, final site plans have not been approved for all floor area authorized by the CDD concept design plan, the final payment of the unused portion of the Shortfall Guaranty (adjusted to reflect increases in the CPI subsequent to January 1, 2020) shall be due and payable in full on such fifth anniversary of the Shortfall Guaranty Release Date. In the event final site plans have been approved for all floor area authorized by the CDD concept design plan prior to the Shortfall Guaranty Release Date, the Applicant will make full payment of the unused portion of the Shortfall Guaranty (adjusted to reflect increases in the CPI subsequent to January 1, 2020) to the City within six months of the Shortfall Guaranty Release Date.
8. Final Approval of Metrorail Station Location. The parties will work together and with WMATA and other affected regulatory agencies and stakeholders such as the National Park Service ("NPS"), to resolve the final location of the Metrorail Station as expeditiously as feasible, taking into consideration the requirements of federal law with

respect to required environmental analyses. The parties recognize the positive benefits as well as the issues related to the current preferred locations "B-2" and "B-3." The current reserved site "A," along with site "B-2" and "B-3," will continue to be studied for the purpose of future NEPA environmental studies in order to select a preferred alternative among those options. The parties acknowledge and agree that the financial structure set forth herein as well as the North Potomac Yard Small Area Plan and related rezoning will only work if either location B-2 or B-3 (either in their current location or with minor adjustments due to environmental studies or final engineering) is designated for the Metrorail Station, and that if site "A" is chosen, or if the "no build" alternative is chosen, CPYR shall have no obligation for financial contributions or undertakings contemplated by this Agreement. The parties also acknowledge that the redevelopment of Landbay F will be subject to zoning conditions requiring the Landbay F Developer Contributions and Shortfall Guaranty and that the City may withhold subsequent development approvals and permits if payments are not made as timely required.

9. Metrorail Station Design Process. The parties will work with WMATA and NPS to develop an approved schematic design of the Metrorail Station. The current plan is for the Metrorail Station to have two entrances on or crossing Potomac Avenue, so as to expand pedestrian access to Metrorail to the maximum possible degree. Following the determination of the station design, the Station Fund will finance from revenues available and paid into the Fund, the development of detailed construction drawings for the Metrorail Station. The construction of the Metrorail Station may be done on a "design build" basis in which the final design of construction documents will proceed concurrently with early phases of construction. However, to minimize change order and related construction risk, if design build is used, the parties shall seek to advance the development of detailed construction documents to the greatest possible degree prior to the commencement of construction.
10. Comprehensive Plan Process. The North Potomac Yard Small Area Plan was adopted by the City Council on May 15, 2010. Nothing contained as part of this letter modifies or limits the ability of the Planning Commission and/or City Council to amend, approve, defer or deny the North Potomac Yard Small Area Plan, or any future rezoning. Also the plan including the Metrorail station construction is subject to regulation by NPS, FAA and other state and federal agencies.
11. Rezoning Process. The Owner has initiated an application for the rezoning of Landbay F of Potomac Yard to be known as CDD#19 (REZ #2009-0001; CDD#2009-0001; TMP#2009-0061). By letter dated December 8, 2009, the Owner was advised that these related applications were deemed complete for review by the City, conditioned on the applicant continuing to work with the City to address various items, including the Metrorail Station Financing. The City plans to continue its review of these applications. Nothing contained as part of this Memorandum modifies or limits the ability of the Planning Commission and/or City Council to amend, approve, defer or deny the rezoning, CDD Concept Plan and accompanying approvals.
12. Redevelopment Preceding Metrorail Station Construction. In order to reduce the City's risk of diverting general fund revenues to pay for debt service on the bonds for the

Metrorail Station and accelerate the Developer's ability to contribute to the Metrorail Station, the City will allow redevelopment of Landbay F to proceed prior to the opening of the Metrorail Station in phases as specified in the CDD Concept Development Plan #2009-0001.

13. Conditions of Development Approval. The Owner's ability to proceed with redevelopment and to provide the Developer Contributions and Shortfall Guaranty is affected by the financial impact of the public benefit contributions and development conditions that will be imposed in the rezoning, CDD conceptual design plan and preliminary development special use permits (collectively "Land Use Approval Conditions"). The parties intend that obligations imposed in subsequent Land Use Approval Conditions will generally be consistent with the conditions approved with Rezoning #2009-0001, CDD Conceptual Design Plan #2009, and TMPSUP #2009-0061 as to extent and financial impact.
14. Vested Rights. The Owner has raised the issue of vesting development rights as part of an agreement for funding of the Metrorail Station. The City will work with the Owner during the comprehensive plan amendment and rezoning process, to provide commercially reasonable assurances acceptable to the City of Alexandria Attorney's office and the Owner, against arbitrary actions by the City subsequent to the approval of the rezoning that would deprive the Owner of approved uses, heights and densities. The Owner seeks to obtain the protections available pursuant to section 15.2-2307 of the Virginia Code. This may take the form of a post-rezoning DSUP process. However, any Owner protection involving vested rights must take into consideration the fundamental proposition that (i) phasing of development is conditioned as set forth in the conditions for CDD Concept Development Plan #2009-0001; (ii) any default by the Owner under the Shortfall Guaranty or in making cash contributions for the Metrorail Station would expose the City to significant financial liabilities and would be a basis for denying a request for vested rights, or for revoking a prior determination of vesting.

Memorandum of Understanding Between City and CPYR
6/14/2010

15. Terms Not Evergreen. All parties recognize that the financing plan discussed in this MOU is based on current projections of cost and timing of construction, and that if material adverse changes occur prior to finalization and closing of the Bond financing, all terms and conditions of financing and Developer Contributions will need to be reassessed and renegotiated.

Nothing contained in this MOU shall be construed to bind the current or any future City Council, until such time as the City Council takes actions that would be binding on future City Councils (such as the issuance of general obligation bonds).

In Witness whereof, the Parties have executed this Memorandum of Understanding on June 14, 2010.

CITY OF ALEXANDRIA, VIRGINIA

By: _____



APPROVED AS TO FORM:

DEPUTY CITY ATTORNEY

CPYR, INC., a Delaware Corporation

By: _____

