



**MONTGOMERY COUNTY DEPARTMENT OF PARKS**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB Date: 07/05/2007  
Agenda Item # **9**

DATE: June 22, 2007  
TO: Montgomery County Planning Board  
FROM: Michael F. Riley, Acting Deputy Director of Parks *MR*  
SUBJECT: Memorandum of Understanding between M-NCPPC and SilverPlace, LLC  
for the SilverPlace Project

---

**A) STAFF RECOMMENDATION:**

Approval to execute the Memorandum of Understanding.

**B) BACKGROUND:**

SilverPlace is a public/private partnership through which the Commission seeks to replace its obsolete and overcrowded headquarters building while facilitating several public policy objectives including provision of affordable housing, smart growth, and green building. In response to a Request for Proposals seeking exemplary mixed-use development of the Montgomery Regional Office site at 8787 Georgia Avenue, development entities responded with various design concepts and financial proposals. On January 18, 2007, the Planning Board approved the ranking of proposals from three finalists. Staff has negotiated a Memorandum of Understanding (MOU) with the top ranked development team, SilverPlace, LLC, and seeks the Planning Board's approval to execute the MOU.

## **C) MOU HIGHLIGHTS**

### **1) Project Goals and Objectives**

The MOU reiterates the goals of the SilverPlace in project, summarized as follows:

- Creation of an exemplary, compatible mixed-use development
- Development of new headquarters for the Planning Department and Department of Parks
- Inclusion of green, sustainable design in both the public and private improvements
- A minimum of 30% affordable / workforce housing
- Leveraging land value to reduce the public cost

### **2) Planned Agreements**

Three primary agreements are planned to set the terms of the public / private partnership for the SilverPlace project. They are:

- The MOU
- The Development Services Agreement (DSA)
- The General Development Agreement (GDA)

#### **a) The MOU**

The MOU is the initial non-binding agreement that outlines the respective obligations of the parties to work together and negotiate in good faith to reach binding agreements that achieve the project objectives as outlined in the MOU.

#### **b) The DSA**

The DSA will primarily set the rights and obligations of the parties during the design and entitlements phase of the project. It will dictate payment terms for architectural / engineering fees and other soft costs for the public improvements (headquarters, public infrastructure, and open space).

#### **c) The GDA**

The GDA will primarily set the rights and obligations of the parties during construction phase of the project. It will set the terms for the establishment of a guaranteed maximum price for the public improvements, dictate terms for the private development, and fix the purchase price for the land sale.

### 3) Cost Recovery Provision

The Commission intends to seek County Council approval of the public funding for the project in two steps; an initial design appropriation to take the project through the design development phase (40% design); and a second appropriation upon completion of design development to fund the remaining design and construction. The initial appropriation will be requested in July 2007. The second appropriation is presently scheduled for September 2008, after the project scope and cost is refined well beyond its current conceptual level.

Following authorization to commence negotiations with SilverPlace, LLC, staff negotiated a provision that will permit the Commission to fund portions of the project that are ineligible for tax-exempt Certificate of Participation (COP) financing without seeking an additional funding source. Under this provision, SilverPlace, LLC will advance the project schedule so that the Commission will receive the first installment of the proceeds from the sale of the land under the Private Improvements at the same time construction begins on the Public Improvements. These funds will be used to pay for the Commission's portion of infrastructure to be shared by the Public and Private Improvements e.g., utilities, portions of the open space, and storm water management systems.

In order to have money available to pay the first installment of the sales proceeds, SilverPlace, LLC must secure financing for the Private Improvements eight months earlier than anticipated in the schedule submitted as part of its proposal. Since the developer's lender will require entitlements to be in place as a condition of providing financing, SilverPlace, LLC must pursue entitlements for the Private Improvements before the construction appropriation occurs, currently scheduled for September 2008.

The developer has agreed to bear the cost of seeking entitlements for the Private Improvements realizing that if funding for the Public Improvements is appropriated, these costs will become ordinary project costs funded privately by a combination of debt and equity, but if Public Improvement funds are not appropriated, the Project will not go forward and, without any source of remedy, SilverPlace, LLC will have lost its investment through no fault of its own. The developer contends, and staff agrees, that the provision that places the Commission in the highly advantageous position of having funds available to pay for costs ineligible for COP financing, compels the developer to put money at risk in a manner unforeseen by either party at the time the developer responded to the RFP.

The cost recovery provision is intended to bridge the gap between reasonable developer "at-risk" expenditures and those expenditures necessary to meet the Commission schedule objectives prior to reaching construction appropriation for the public project. In a private transaction, the developer has contractual remedies to force the property owner to convey the property so that the pre-construction expenditures are not at risk. In

this transaction, the Commission's obligation to sell the property for the residential portion of the project is subject to appropriation of funding for construction.

The cost recovery provision states that only in the event that construction appropriation is not approved, the developer will be reimbursed for eligible third-party expenses actually incurred to advance the private portion of the project. A list of eligible expenses for cost recovery appears as Exhibit E of the MOU. The MOU includes a cap figure of \$2.9 million for cost recovery based on the Commission's review of estimated expenditures. The capped figure will be included in the initial appropriation request for funding for the public share of the project.

If construction appropriation is approved, then the excess \$2.9 million appropriation would be applied to the final design of the project.

#### 4) Minority Equity Participation

SilverPlace, LLC has committed to a level of minority participation in the Private Improvements of 20% of the total equity ownership in the Private Improvements, and maintain or exceed its commitment to 25% subcontractor MFD participation in the development and construction of the Project in accordance with the Commission's MFD goals.

#### 5) Inclusion of Parking Lot District Land – Lot 2 and Garage 2

The RFP for SilverPlace allowed respondents to consider the County Parking Lot District's (PLD) Garage 2 site in combination with the Commission's MRO site as the project limits. This was done with the concurrence of the County Executive at the time the RFP was released. The RFP included specific provisions for use of the PLD land, including compensation to the PLD for land and air rights at fair market value, and maintaining the PLD in revenue and parking supply neutral position. These provisions for the use of the PLD land and air rights are incorporated into the MOU. None of the proposals received deemed it economically feasible to demolish the garage for incorporation into the mixed-use development, but two of the three, including SilverPlace, LLC, utilized the surface land (Lot 2) under PLD control adjacent to the garage. The Commission is currently negotiating an agreement with the County that refines the conditions upon which the PLD will make the land available to the project.

#### 6) Support of Phase 2 – Speculative Office Building

The proposal from SilverPlace, LLC included a phase to construct a speculative office building over the Cameron Street wing of Garage 2. The Commission, as owner, would not be associated with this project if it goes forward. The Commission would only be involved in its regulatory capacity, unless the construction of this phase impacts the Commission property in any capacity. The MOU includes a statement of support for this phase, particularly that the Commission endorses the enhanced connectivity that would be provided between SilverPlace and the Silver Spring CBD if Fenton Street is extended

and enhanced along the Cameron Street wing of Garage 2. Any negotiations for this phase would be directly between the Developer and the County.

#### 7) Project Schedule

The project schedule in the form of a GANTT chart appears as Exhibit F of the attached MOU. The major milestones in the project schedule are as follows:

- July 2007 - obtain CIP amendment / supplemental appropriation for design
- October 2007 - execute development agreements / begin development approval process
- September 2008 – obtain appropriation for construction of headquarters
- August 2009 - begin construction of headquarters and Part 1 of private development
- February 2011 - headquarters occupancy / Begin construction of Part 2 private development
- June 2012 – complete Part 2 of private development

#### **D) NEXT STEPS**

If the MOU is approved, the next major steps in advancing the SilverPlace project are as follows:

- 1) Submission of CIP amendment for design supplemental appropriation
- 2) Continued negotiations with County / PLD
- 3) Continued community outreach
- 4) Negotiation of DSA/GDA
- 5) Initiation of development approval process including project plan and site plan

#### **E) CONCLUSION**

Staff requests approval to execute the Memorandum of Understanding between the Commission and SilverPlace, LLC for the SilverPlace project.

Attachments – MOU and Exhibits

## MEMORANDUM OF UNDERSTANDING

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

### BACKGROUND

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

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

B. The Commission anticipates that Montgomery County (“the County”) will agree to allow inclusion of the PLD Land (as defined below), in the proposed redevelopment of the MRO Site subject to the following general understandings:

- Limited interruption of the existing or future public parking operations;

- Keep the Silver Spring Parking Lot District (the “PLD”) at a revenue and parking supply neutral position;
- Compensate the PLD fair market value for the inclusion of the PLD Land into the Project in accordance with Section 60-2 of the Montgomery County Code, as amended, (the “Code”); and
- Construct any new public parking spaces in accordance with Montgomery County Parking Facility Design Criteria.

For purposes of this MOU, the PLD Land shall be deemed to include those portions of County Garage 2 and Lot 2, as generally shown on **Exhibit A-2** attached hereto, together with such cross easements and rights as may otherwise be reasonably required in connection with the development and operation of the Project (as defined below). The PLD Land together with the MRO Site is referred to herein as the “Project Land” and is generally shown on **Exhibit A-3** attached hereto.

C. A Request for Qualifications (“RFQ”) was widely advertised by the Commission and a subsequent Request for Proposals (“RFP”) was issued to selected developers. Developer, among others, submitted a proposal response to the RFQ and RFP (the Developer’s proposal, as amended and supplemented, is hereinafter referred to as the “Developer’s Proposal”). In January 2007, the Commission approved the recommendations of a multi-agency evaluation committee to commence negotiations with the Developer as the top ranked team in accordance with the terms of the RFQ, the RFP and the Developer’s Proposal. A true, complete and correct copy of the RFQ, the RFP and Developer’s Proposal are attached hereto as **Exhibit B**. Developer is a development entity comprised of the Bozzuto Development Company, Spaulding & Slye Investments, a member of the Jones Lang LaSalle Group, and Harrison Development (collectively the “Original Members”). Further, it is the intent of the Commission and the Developer for all members of the development team proffered in the Developer’s Proposal (individually, “Member” and collectively, the “Development Team”) to remain with the Project, subject to replacement of a Member as set forth herein.

D. Developer’s proposed project as described in the Developer’s Proposal, included two (2) Phases. Phase 2 of Developer’s Proposal is separate and apart from the negotiations of the parties as contemplated under the terms of this MOU.

E. Phase 1 of the Developer’s Proposal (the “Project”) is presently anticipated to be comprised of (i) public improvements (the “Public Improvements”) to be located on a portion of the Project Land to be owned in fee simple by the Commission and generally shown and described on **Exhibit D-1** attached hereto (the “Public Land”), and (ii) private improvements (the “Private Improvements”) to be located on a portion of the Project Land generally shown on **Exhibit D-2** attached hereto and to be conveyed in fee simple to Developer or its affiliates, (the “Private Land”). The Project, with the Public Improvements and the Private Improvements delineated, is generally described on **Exhibit C** attached hereto. The Public Improvements shall be developed as a single phase. The Private Improvements will be developed in 2 parts as outlined on **Exhibit D-3** and more particularly described hereinbelow (respectively “Part 1” and “Part 2”).

Pursuant to the terms of the Development Services Agreement (the “DSA”) and the General Development Agreement (the “GDA”) (each to be defined in more detail herein), Developer shall act as a third party development services provider and fee developer of the Public Improvements for and on behalf of the Commission and the relationship of the Developer and the Commission with respect to the Public Improvements shall be that of owner and contractor with the respective rights and obligations of the parties to be set forth more specifically in the DSA and the GDA. With respect to the Private Improvements and the sale of the Private Land, the Commission shall act in the capacity of owner/seller and Developer shall act in the capacity of purchaser/developer of the Private Land, with the respective rights and obligations of the parties to be set forth more specifically in the GDA.

F. The Project achieves important public policy goals of the Commission and the County which include, among others:

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

G. The parties desire to enter into this non-binding MOU for the purpose of setting forth the respective commitments of the parties to advancing the prompt design, development and construction of the Project and with the intent of entering into a binding DSA, GDA and Guaranteed Maximum Price Contract (the “GMP”) consistent with the spirit and intent of this MOU. The parties acknowledge and agree that although this MOU is non-binding, it reflects the express commitments of the parties to work diligently



and in good faith to meet the spirit and intent of the RFP, the RFQ, and the Developer's Proposal (as they may be amended from time to time by this MOU, the DSA and the GDA), all in accordance with the Project Schedule (as defined below), and in furtherance thereof, the parties hereto make the following general commitments:

**1. Commission Commitments**

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

A. Seek a supplemental appropriation (the "Design Appropriation") from the County for sufficient funding 1) to pay Developer, on a monthly draw basis, to achieve at a minimum, the level of the design of the Public Improvements necessary for the Commission to seek the Construction Appropriation, 2) to reimburse the Developer for that portion of certain due diligence costs expended by the Developer with respect to the Project Land that are attributable to the Public Improvements and which were incurred to generate certain efficiencies in the Project, including, without limitation, survey, title search and review, preliminary environmental and geotechnical studies, and such other requirements as may be agreed between the parties and set forth in the DSA ("Commission's Pro Rata Share"), and 3) to fund the Developer's Cost Recovery (as defined below), if applicable. The Commission shall use good faith efforts to obtain the Design Appropriation on or before July 31, 2007, subject to the Project Schedule as the same may be amended from time to time, in accordance with the terms of this MOU. The Commission's Pro Rata Share shall be as reasonably agreed by Developer and the Commission and shall be set forth in the DSA.

B. Developer has expressed its willingness to commit to accelerate the purchase of the Private Land and the development of the Private Improvements in accordance with the Project Schedule such that Part 1 of the Private Improvements shall proceed contemporaneously with the development of the Public Improvements. In order to meet such accelerated schedule, Developer will incur significant "soft costs" well in advance of the approval of the Construction Appropriation (as defined below) in connection with the design of the Private Improvements and the entry into the DSA. For the foregoing reasons, it is in the best interest of the Commission that the Developer proceed with the planning, design and other pre-construction aspects of the Private Improvements concurrently with the planning, design and other pre-construction aspects of the Public Improvements. Therefore, if the Commission chooses not to proceed with the Project then the Commission will make limited compensatory/restoration payment to the Developer of certain eligible costs, as more particularly described below (the "Developer's Cost Recovery"). The balance of the Developer's costs shall be borne by the Developer without recourse to the Commission.

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

The Developer's Cost Recovery will not include:

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

The Developer's Cost Recovery will not exceed a total of Two Million Nine Hundred Thousand Dollars (\$2,900,000.00) (the "Cost Recovery Cap"). The parties hereto acknowledge and agree that Developer shall be under no obligation to expend any funds in excess of the Cost Recovery Cap until the later to occur of the execution of a binding GDA and final approval of the Construction Appropriation.

Subject to appropriation, and upon receipt of paid invoices and appropriate backup, the Commission will pay the Developer's Cost Recovery to the Developer in the event that the DSA and if applicable, the GDA are terminated by reason of the County failing to finally approve of the Construction Appropriation (as defined below) on or before the date set forth in the Project Schedule, as the same may be amended in accordance with the terms of this MOU. In the event the Developer's Cost Recovery is paid to Developer, Developer shall deliver to the Commission, at no cost, copies of all non proprietary third party reports, studies, architectural and engineering work obtained by Developer with respect to the Project Land. Upon full execution of the GDA and the final approval of the Construction Appropriation, the obligation to pay the Developer's Cost Recovery shall lapse and be of no further force or effect.

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

D. Enter into such agreements with the County as are necessary to acquire such rights as may be legally required to incorporate the PLD Land into the Project, and acquire the PLD Land in accordance with such agreements. Any such acquisition will include payment of compensation to the PLD in accordance with Section 60-2 of the Montgomery County Code, as amended, taking into account the conditions as set forth in Recital B herein.

E. In consideration of the payment of the Commission Purchase Price as may be agreed between the Commission and Developer consistent with the terms of the Developer's Proposal, convey the Private Land to Developer in fee simple and in accordance with the terms of the GDA. The parties acknowledge that the Commission Purchase Price is based on the fair market value of the Private Land impacted by the uses, densities and other factors as set forth in the RFQ, the RFP, and other requirements of the Commission for the Project. The Commission Purchase Price will be made in two installment payments, and the conveyance of portions of the Private Land to the Developer will coincide with such installment payments.

F. Designate Developer as exclusive developer of the Project and grant an agency authorization to authorize Developer to act as applicant for the entitlements for the Project.

G. Negotiate in good faith with the Developer to reach final agreements for the DSA, GDA and GMP in accordance with the terms of Sections 5, 6 and 7 hereof for design and construction of the Project in accordance with the Project Schedule and in keeping with the spirit and intent of this MOU.

## **2. County Commitments**

The Commission anticipates that the County in its capacity as owner of the PLD Land and not as a regulatory body shall make the commitments set forth in this Section 2. The parties hereto acknowledge and agree that approvals and consents sought from the County in connection with the Project will not substitute for regulatory approvals required under applicable law and that the County's obligations, once committed, shall be limited to making the PLD Land available to be incorporated into the Project. The County shall not be a required party to the DSA or the GDA. Subject to the foregoing, the parties hereto anticipate that the County shall:

A. Enter into such agreements with the Commission as are necessary to convey such rights as may be legally required to incorporate the PLD Land into the Project, and convey the PLD Land to the Commission in accordance with such agreements. Any such conveyance will include payment of compensation to the PLD in accordance with Section 60-2 of the Montgomery County Code, as amended, taking into account the conditions as set forth in Recital B herein.

B. Establish the priority availability of County staff to negotiate all necessary agreements in connection with making the PLD Land available to be incorporated into the Project.

## **3. Developer Commitments**

The Developer shall:

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

B. Negotiate in good faith with the Commission to reach final agreements for the DSA, GDA and GMP in accordance with the terms of Sections 5, 6 and 7 hereof for design and construction of the Project in accordance with the Project Schedule and in keeping with the spirit and intent of this MOU.

C. Design and construct the Public Improvements in accordance with the Project Schedule, the DSA, GDA, GMP and applicable law.

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

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

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

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

#### **4. Mutual Commitments of the Parties**

A. The parties acknowledge and agree that the timely completion of the Project in is in the best interests of all parties hereto and that the parties shall diligently negotiate in good faith to facilitate the design, development and construction of the Project in accordance with the preliminary Project Schedule attached hereto as **Exhibit F** (the "Project Schedule"). The Project Schedule represents the parties' presently contemplated critical path schedule for the completion of the Project. The parties

understand and acknowledge that failure to meet the Project Schedule will have adverse financial impacts to the Project and the parties. The foregoing notwithstanding, the parties acknowledge and agree that the Project Schedule shall be amended by agreement of the parties from time to time during the course of obtaining the entitlements for the Project and achieving various Project milestones. The Project Schedule supersedes any project schedule proposed by the Developer in the Developer Proposal.

B. The parties hereto shall reasonably cooperate to facilitate the design, development and construction of the Project. Within ten (10) business days after request therefor by Developer, the Commission and the County, if required, shall, subject to the terms of Section 8A hereof, execute applications, plans, plats and other like documents required in connection with obtaining the entitlements for the Project.

C. Upon request, and to the extent within its power and legal authority, each party shall grant to the other or its designee and to any utility company or governmental authority, such utility rights-of-way and other easements (including grading, drainage, stormwater management, slope and access easements) on, under, over, or across the adjoining property owned by such party as may be required in connection with the development or use of the Project. The location of all such rights-of-way and easements shall be subject to the approval of the burdened party, such approval not to be unreasonably withheld or delayed. All such rights-of-way and easements shall be granted without charge.

## **5. Development Services Agreement**

A. The Commission and Developer acknowledge and agree that in order to meet the Project Schedule, the DSA will be entered into following the Design Appropriation and either prior to or contemporaneously with the execution of the GDA.

B. The DSA shall include, among other matters, (1) the agreements of the Commission and the Developer with respect to the (i) monthly draw schedule and draw requirements, (ii) design of the Public Improvements; (iii) pursuit of Project entitlements; (iv) payment for that portion of due diligence costs that are attributable to the Public Improvements, including, without limitation, survey, title search and review, preliminary environmental and geotechnical studies, and such other requirements as may be agreed in writing between the parties; (v) the Commission's Pro Rata Share; (vi) proposed allocation of costs of shared infrastructure between the Public Improvements and the Private Improvements, (vii) terms of payment of the Developer's Cost Recovery; and (2) the commitment of the Developer to the design of such elements of the Private Improvements as Developer deems reasonable and necessary to advance the Private Improvements so as not to delay completion of the Public Improvements (and which shall be at Developer's sole cost and expense).

C. The Commission acknowledges and agrees to negotiate in good faith with Developer for compensation to the Developer for certain services under the DSA including fees for development services rendered in connection with the Public Improvements (such fees to be agreed upon in the DSA and to be consistent with the

formula included in the Developer's Proposal) and to reimburse the Developer the Commission's Pro Rata Share, provided that:

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

**6. General Development Agreement**

The Commission and Developer acknowledge and agree that, the parties presently intend to enter into the GDA on or before October 29, 2007. The terms of the GDA shall include, among other matters the rights and obligations of the parties with respect to (i) the purchase price for the Private Land (the "Commission Purchase Price"), (ii) incorporation of the terms of the DSA, as applicable, (iii) the estimated hard cost guaranteed maximum price for the Public Improvements as of the date of the GDA, (iv) terms of the proposed GMP; (v) terms and conditions of settlement on Part 1 and Part 2 of the Private Land, which shall provide for settlement on Part 1 of the Private Land to occur within 60 days after issuance of final non appealable project entitlements for Part 1, including, without limitation, Site Plan, Record Plat, and issuance of a building permit for Part 1 and settlement on Part 2 of the Private Land to occur upon the later of (x) issuance of final non-appealable project entitlements for Part 2, including, without limitation, Site Plan, Record Plat, issuance of a demolition permit for the existing improvements and a building permit for Part 2, and (y) vacation of the MRO Site by the Commission such that the existing Commission headquarters shall be vacant free of leases or other rights of occupancy or possession and all Commission personal property is removed or abandoned by the Commission; and (vi) agreement of the parties with respect to any required environmental remediation of all or any portion of the Project Land.

**7. Guaranteed Maximum Price Contract**

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

**8. Consent And Appropriation**

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

B. Any time any parties approval or permission is required, such approval must be in writing. Nothing in this MOU is intended to be, and shall not be construed as, a limitation of the police powers of the County.

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

**9. Air Rights over Cameron Street Wing of Garage 2**

Separate and apart from the negotiations of the parties with respect to the Project as contemplated under the terms of this MOU, in the event the County and Developer shall negotiate for the acquisition by Developer of the air rights over the Cameron Street Wing of Garage 2, Developer acknowledges that such negotiations shall not impede, delay or in any manner interfere with Developer's commitments with respect to the completion of the Project in accordance with the Project Schedule. The foregoing notwithstanding, the Commission endorses the connectivity to the Silver Spring Central Business District as exemplified by the Developer's proposed project over the Cameron Street Wing of Garage 2 as creating an important link and connection between the Project and the rest of the Silver Spring Central Business District.

**10. Confidentiality**

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

[SIGNATURE PAGE FOLLOWS]

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

Attest:

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

\_\_\_\_\_  
Patricia Colihan Barney  
Secretary-Treasurer

\_\_\_\_\_  
R. Bruce Crawford  
Executive Director

Attest:

**BOZZUTO DEVELOPMENT  
COMPANY**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

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

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Witness:

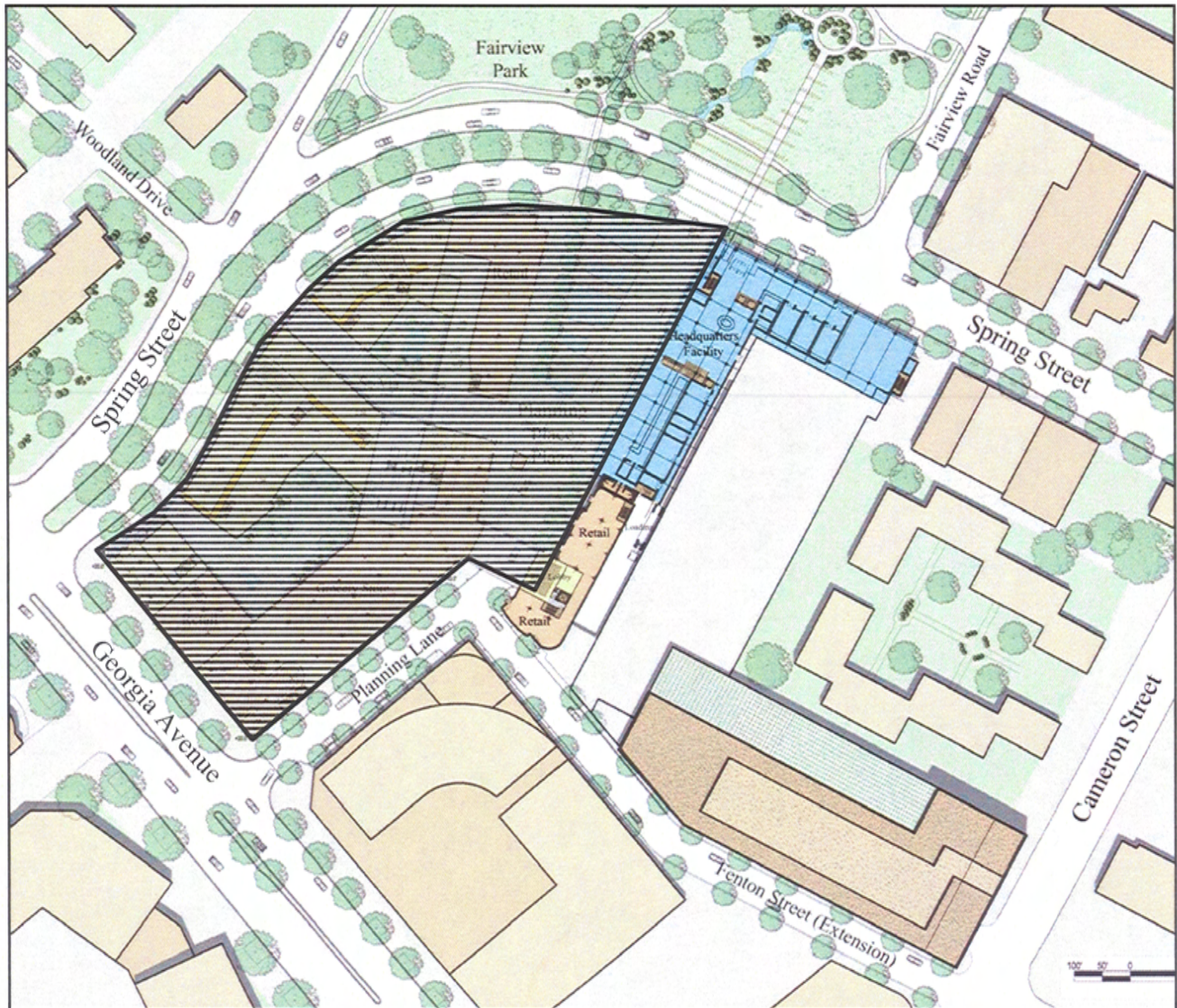
**HARRISON DEVELOPMENT**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

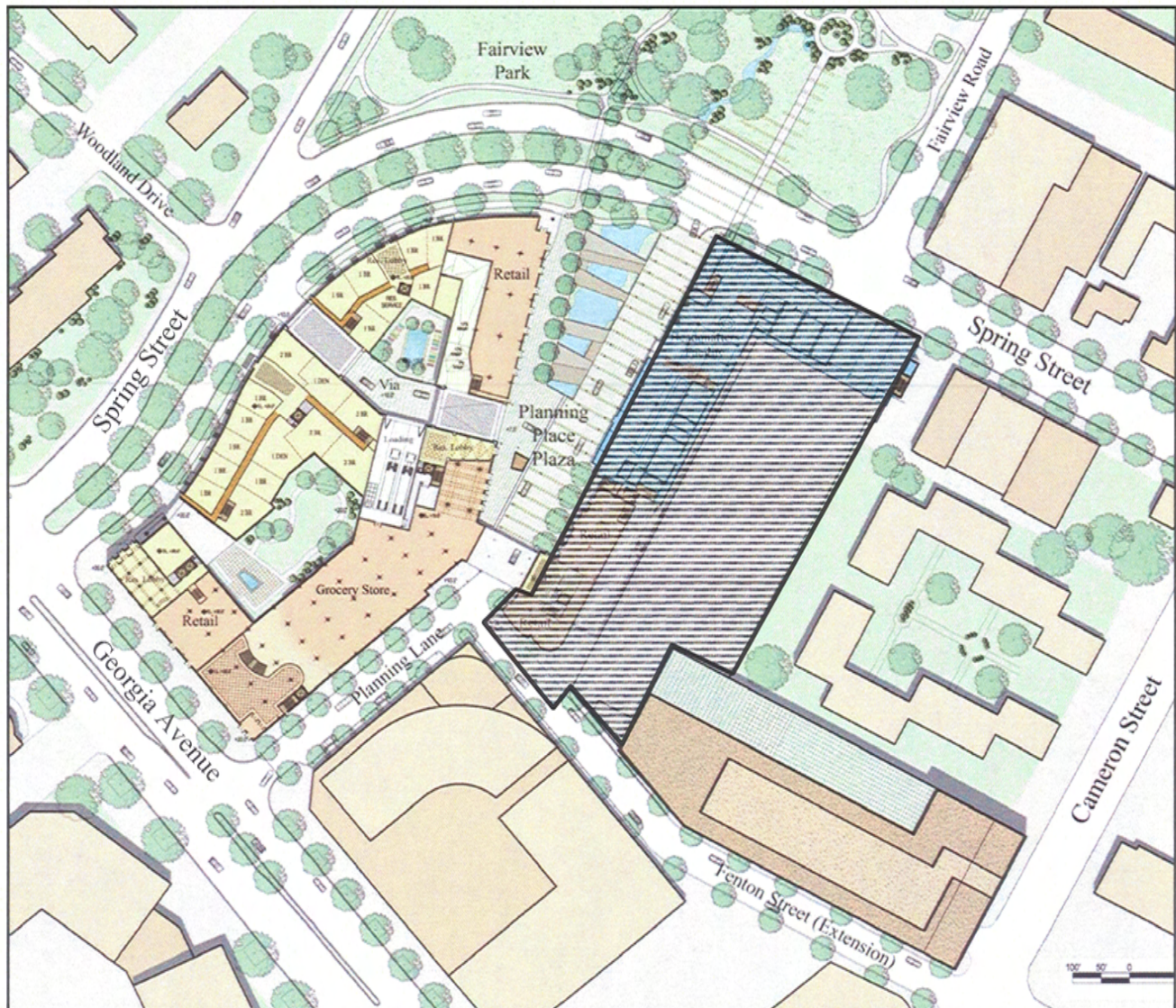


# Exhibit A-1: The MRO Site



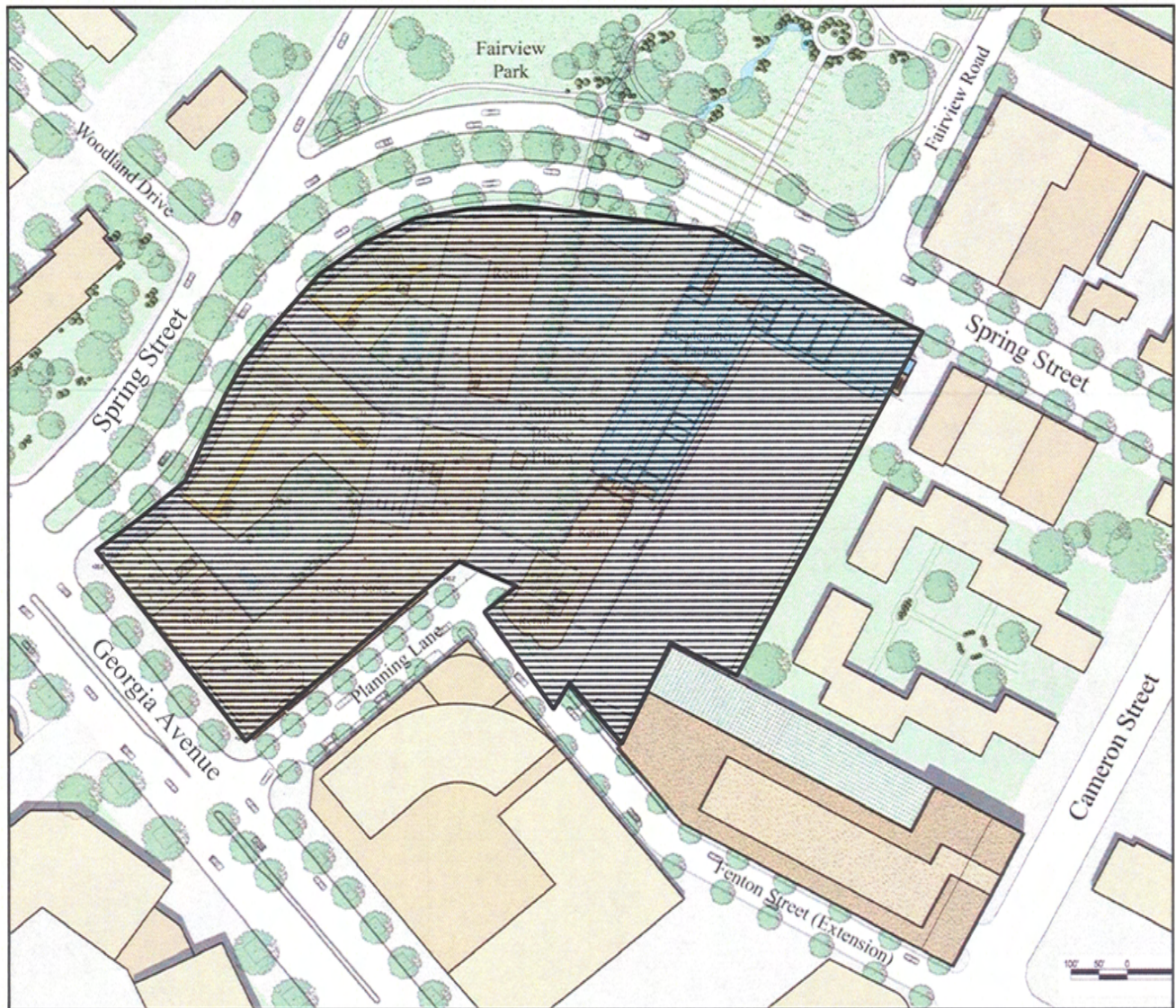


## Exhibit A-2: The PLD Land





# Exhibit A-3: The Project Land



## **EXHIBIT B**

Exhibit B is posted on the FTP website. Please follow the following directions to access the exhibit.

Use your web browser (Internet Explorer, etc.); remove everything from the Address. Key in as follows:

For users outside the Park & Planning network: <ftp://141.156.208.87>

For users inside the network: <ftp://10.80.1.25>

Press "Enter"

When the login box appears type the following:

Username: mroftpuser

Password: T3n\$4wot

Click log on.

Click on SilverPlace folder.

The SilverPlace folder will have subfolders of each exhibit. Click "Exhibit B" folder to retrieve documents.

## **EXHIBIT C**

### **PROJECT DESCRIPTION**

(Public Improvements and Private Improvements)

#### **Conceptual Design Highlights:**

- 120,000 GSF Commission Headquarters building containing a 9 story office tower facing Spring Street and a 3 story auditorium located on Planning Place Plaza ;
- 358 Residential Units – 267 for rent/91 for sale;
- 30% or 108 are affordable/workforce;
- Residential buildings are 4 to 5 stores on top of retail; Georgia Avenue frontage is 8 stores on top of retail;
- 47,000 SF Retail;
- Primary open space is “Planning Place Plaza”, a hardscaped urban open space with a water feature and improvements to Fairview Park;
- Planning Lane from Georgia Avenue through to Spring Street;
- Residential and retail parking is provided by a private 564 space underground garage;
- Commission parking is provided by constructing a 199 space, two story addition above public parking Garage 2, plus the utilization of existing Garage 2 surplus parking spaces.

Exhibit D-1:  
The Public Land

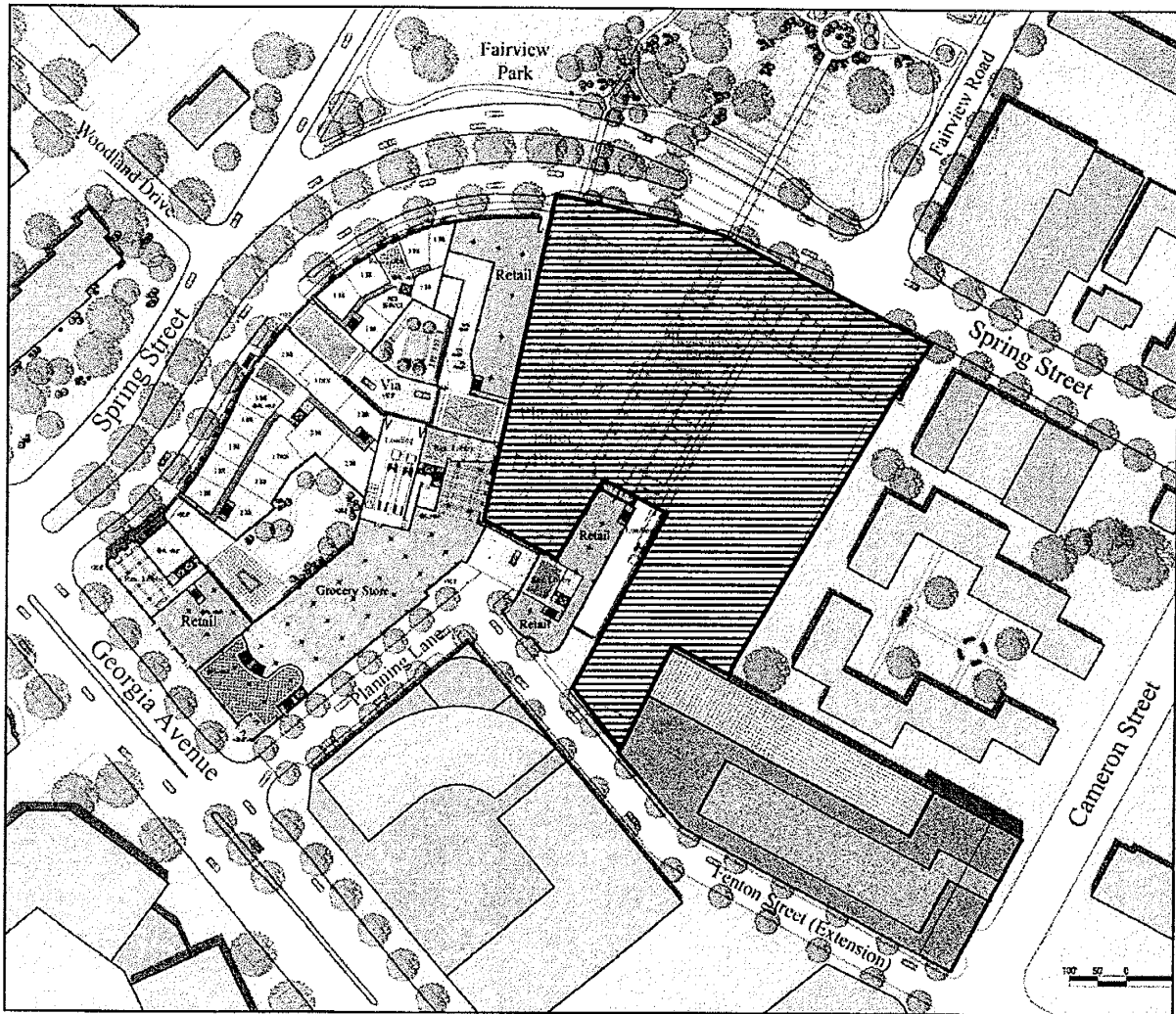
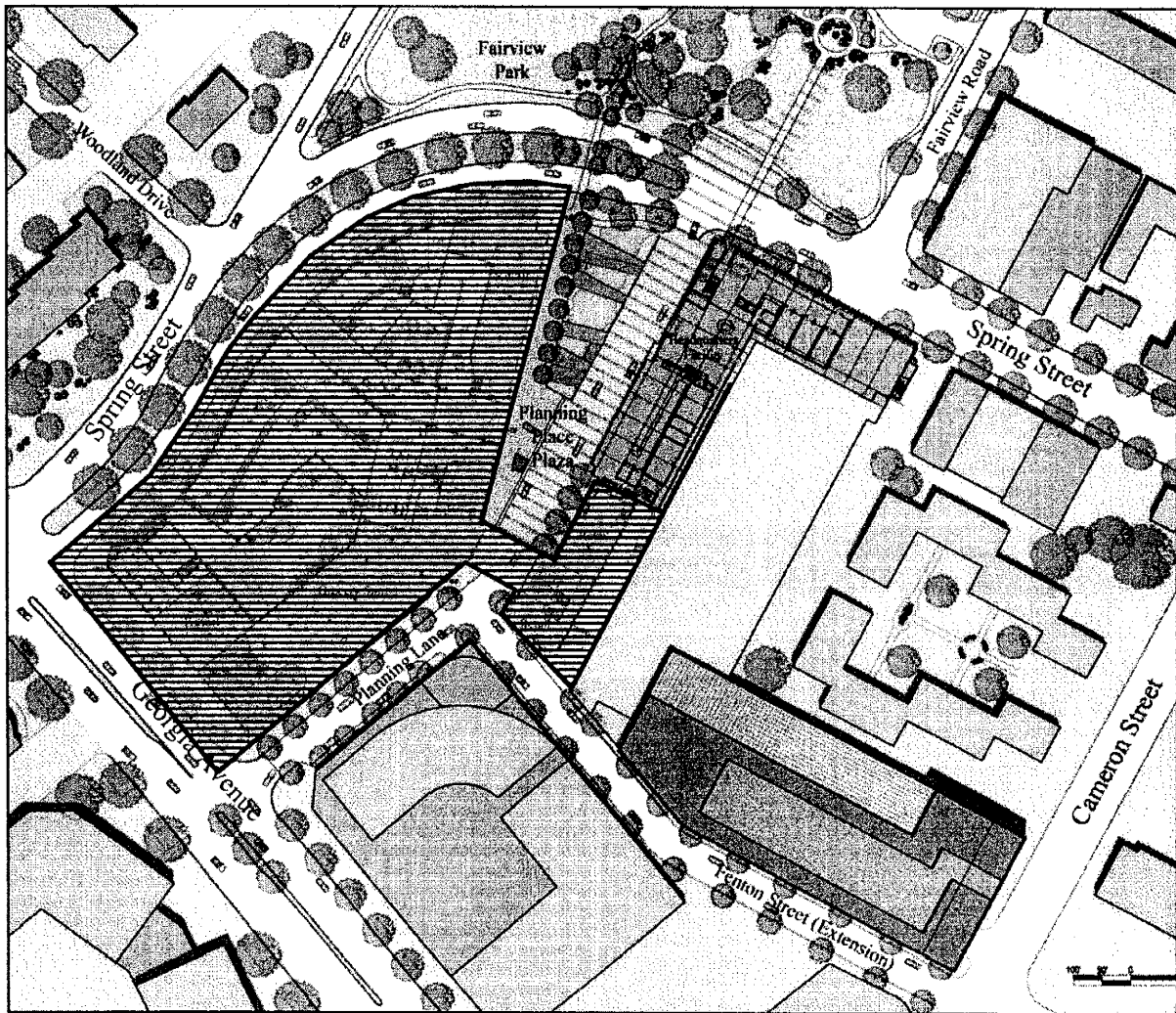
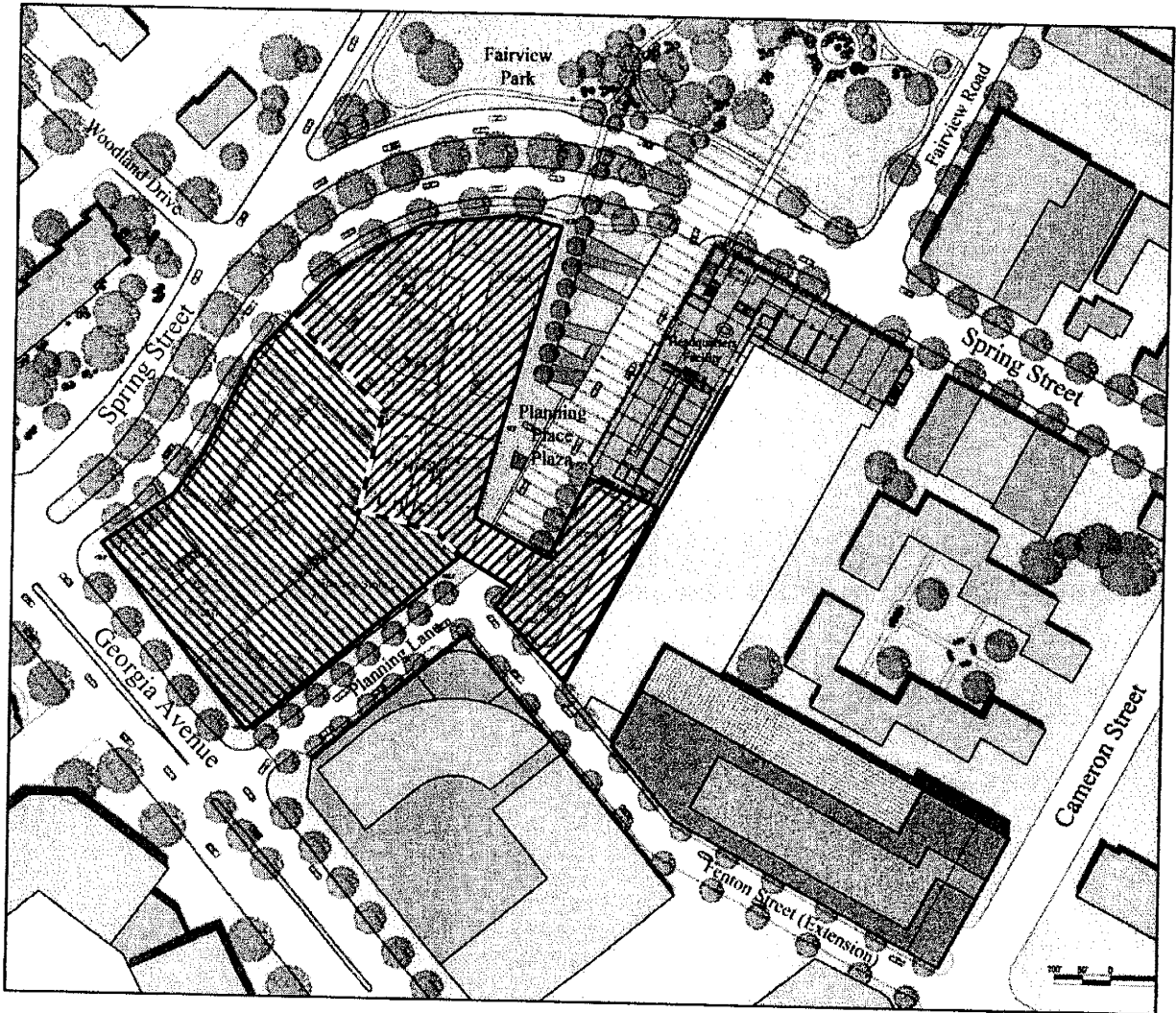
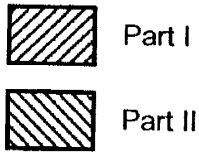




Exhibit D-2:  
The Private Land



D-3:  
Private Improvements Part I & II





## **EXHIBIT E**

(Eligible Costs and Proposed Budget)

<b><u>COST RECOVERY ELIGIBLE COSTS</u></b>	<b><u>BUDGET</u></b>
<b>I. ARCHITECTURE &amp; ENGINEERING</b>	<b>\$2,663,394</b>
Environmental Phase I & II	
Geotech	
Civil Engineer	
Survey	
Site Plan	
Construction Documents	
Architecture	
Site Plan	
Schematic Design	
Design Development	
Construction Documents Phase I	
Unit Review	
MEP	
LEED	
Structural Engineer	
Landscape	
Traffic Study	
Utility Design	
Fire Protection	
Reproduction Costs	
Value Engineering	
<b>II. ADMINISTRATION AND TRANSACTION COSTS</b>	<b>\$201,606</b>
Legal - Land-use	
Legal - Project (MOU/DSA/GDA) 50%	
Title & Recording	
Development Travel	
<b>III. FINANCING COSTS</b>	<b>\$35,000</b>
Market Study	
Lender Appraisal	
<b>IV. CAPPED COST RECOVERY</b>	<b>\$2,900,000</b>

**Preliminary Development Schedule**  
**"Silver Place" Silver Spring, MD**  
**6/15/2007**

EXHIBIT F

SilverPlace, LLC

