

Appendix C: Development Agreement for the Redevelopment of Parking Lot 3

GENERAL DEVELOPMENT AGREEMENT

BETWEEN

MICHAEL, L.L.C.

AND

MONTGOMERY COUNTY, MARYLAND

**PUBLIC PARKING LOT #3
SILVER SPRING, MARYLAND**

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Exhibit A-1	Description of County Land
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GENERAL DEVELOPMENT AGREEMENT

THIS GENERAL DEVELOPMENT AGREEMENT (this "Agreement") dated the ___ day of October 2008, (the "Effective Date"), by and between MONTGOMERY COUNTY, MARYLAND (the "County") and MICHAEL, L.L.C., a Maryland limited liability company, its successors and assigns (the "Developer"), (County and Developer are sometimes referred to herein individually as "Party" and collectively as the "Parties") is intended to establish an agreement between the County and Developer in a public-private initiative, to develop and construct on a Turnkey Delivery (as defined below) basis, the Public Garage (as defined below) and residential and/or non residential improvements on certain parcels of real estate located in the Central Business District of Silver Spring, Maryland, including that parcel of real estate identified by the County as Montgomery County Public Parking Lot #3 (as defined below). It is understood and agreed that the County is entering into this Agreement in its capacity as a property owner and not in its capacity as a governing body and nothing herein shall be construed as a determination or agreement or act as an estoppel with respect to the County as a governing body or with respect to any of its regulatory powers including any subsequent determinations with respect to matters contained herein which may come before the County or one or more of its agencies in their capacity as a governing body or regulatory authority.

RECITALS:

WHEREAS, the County is the owner of Montgomery County Public Parking Lot #3, located in the Central Business District of Silver Spring, Maryland, and more particularly described on Exhibit A-1, attached hereto ("Lot 3") plus that portion of certain alleys as shown on Exhibit A-1, such alleys being subject to certain existing easements (to the extent such easements are not abandoned in accordance with the terms of this Agreement), (the "Alley Land") (Lot 3 and the Alley Land, collectively the "County Land"); and

WHEREAS, the County has created the Silver Spring Parking Lot District pursuant to the Montgomery County Code (2004), as amended and desires to enhance the quality of available public parking in the Silver Spring Parking Lot District; and

WHEREAS, the Montgomery County Department of Transportation (the "DOT") formerly known as the Montgomery County Department of Public Works and Transportation (the "DPW&T") issued Request for Proposal for Mixed Use Development of Public Parking Lot #3 on December 2, 2005, (the "RFP") and in response thereto Developer submitted a proposal (the "Proposal") to DPW&T on January 31, 2006, as amended on December 21, 2007; and

WHEREAS, the County desires to designate Developer to be the developer of a project substantially in accordance with the Proposal and upon terms and conditions contained herein, that will accommodate public parking in the Fenton Village area of the Silver Spring Central Business District; and

WHEREAS, Developer is the fee simple owner and either is or may become the contract purchaser of certain adjacent parcels of land located in the Central Business District of Silver Spring, Maryland, adjacent to the County Land and more particularly described on Exhibit A-2

attached hereto (the "**Developer Land**" and, collectively with the County Land, the "**Land**"). The Land is shown attached hereto as **Exhibit A-3**; and

WHEREAS, Developer desires to purchase the County Land from the County to develop a project (the "**Project**") on the Land consisting of (i) the public garage (the "**Public Garage**"), as hereinafter defined and (ii) the "**Private Buildings**" (as hereinafter defined). For purposes of this Agreement, the Public Garage shall mean an underground public parking structure containing 152 parking spaces which Public Garage shall be a "**Turnkey Delivery**" (as hereinafter defined) subject to a final design reasonably approved by the County in accordance with the terms of this Agreement, and which shall be designed and constructed in accordance with the Public Garage Design Guidelines (as hereinafter defined) and shall also include a revenue collection system (the "**Revenue Collection System**") but with Developer responsible for only up to \$50,000 of the cost for the Revenue Collection System. The foregoing notwithstanding, if Developer constructs in excess of 152 parking spaces in the Public Garage (which it is not obligated to do), then, in such event, any such excess spaces shall be conveyed to the County as part of the Parking Garage at no additional cost or expense to the County. The Public Garage shall be built as all or a portion of Phase I of the development of the Project. The foregoing notwithstanding, in the event that the Public Garage is the only improvement initially constructed in Phase I of the Project (as defined in **Exhibit "F"** – Definitions), any subsequent construction shall not materially impair the use and enjoyment of the Parking Garage by the public. The Developer shall provide pedestrian and vehicular ingress and egress easement(s) to public rights of ways for the benefit of any unabandoned alleys within the Project. For purposes of this Agreement, the "**Private Buildings**", which may be developed in phases, shall consist of a mixed-use development with layout and uses, including parking and amenities, substantially as shown on **Exhibit B** attached hereto; provided, however that Developer shall retain flexibility to alter the location, mix and percentages of uses in order to allow for adjustments and modifications to meet market demand and to accommodate prospective tenants, provided that the same shall not without the consent of the County alter the Final Design Approval for the Public Garage, such consent not to be unreasonably withheld, conditioned or delayed; and

WHEREAS, Developer agrees to provide a certain minimum amount of residential development in the Project attributable to the County Land (the "**Residential Density**"). Such Residential Density shall be equivalent to fifty percent (50%) of the maximum achievable density on the County Land and Developer further agrees to provide fifteen percent (15%) of such Residential Density as Workforce Housing Units ("Workforce Housing Units," as defined in Chapter 25B of the Montgomery County Code, as amended (the "**Code**"). The Parties agree that the method for determining the number of Workforce Housing Units attributable to the Residential Density shall be as follows:

The Gross Tract Area of the County Land shall be divided by the Gross Tract Area of the Land, which quotient shall be multiplied by fifty percent (50%) (the required residential density on the County Land), which product shall then be multiplied by fifteen percent (15%) (the required amount of workforce housing on the County Land), which product shall be multiplied by the FAR approved by the Maryland-National Capital Park and Planning Commission (the, "**M-NCPPC**" or "**Planning Board**"), (but excluding any bonus density attributable to the provision of moderately priced dwelling units pursuant to Chapter 25A of the Code –

“MPDUs”), which product shall be divided by the average unit size, which quotient shall equal the number of Workforce Housing Units to be constructed.

By way of illustrative example only and not assuming the Gross Tract Area numbers provided below are accurate:

$75,000$ square feet (the Gross Tract Area of the County Land) \div by $200,000$ square feet (the Gross Tract Area of the Land) = $.375$ X 50% (the required Residential Density on the County Land) = $.1875$ X 15% (the required amount of Workforce Housing on the County Land) = $.0281$ X $600,000$ square feet (the FAR @ 3 approved by the Montgomery County Planning Board of the M-NCPPC, excluding MPDU bonus density) = $16,860$ square feet \div $1,000$ square feet (the average unit size) = 17 Workforce Housing Units.

WHEREAS, in addition to Workforce Housing Units, Developer agrees to provide fifteen percent (15%) of the Residential Density as MPDUs. Therefore, except as otherwise provided herein, Developer agrees to provide fifteen percent (15%) of the Residential Density as Workforce Housing Units and fifteen percent (15%) of the Residential Density as MPDUs for a total of thirty percent (30%) of the Residential Density; and

WHEREAS, the Workforce Housing Units and MPDUs may be located anywhere within the Project; and

WHEREAS, in addition to the Public Garage (none of which parking spaces shall be included as part of the Project’s Code required parking), Developer shall provide private parking for the Project to satisfy at least fifty percent (50%) of the required parking for the Project in accordance with Section 59E of the Code, unless a lesser number of spaces is required by the Planning Board as a condition of site plan approval and may include such additional parking (above the 50%) as the Developer may so determine subject to Planning Board approval; and

WHEREAS, the County, subject to the terms of this Agreement, has agreed to convey the County Land to Developer in exchange for Developer’s provision of the turnkey planning, design, development, construction and construction management of the Public Garage and thereafter delivering title (in the form of a condominium unit as more fully described herein) and possession of the complete, ready to operate Public Garage (including the installation of the Revenue Collection System), to the County together with an assignment of any and all warranties obtained by Developer in connection with the construction of the Public Garage (collectively the “**Turnkey Delivery**”), at which time the County (subject to the terms of this Agreement) will be solely responsible for the costs of operation, maintenance, repair and replacement, if any, of the Public Garage; and

WHEREAS, in order to separately develop, lease, sell, finance, transfer and convey the different elements of the Project (including the conveyance of the Public Garage to the County), the Project will be subjected to a condominium regime consisting of multiple units, including the Public Garage (the “**Public Garage Unit**”) and all or certain portions of the Private Buildings, each of which would constitute a separate condominium unit. It is, however, agreed that the

condominium documents establishing and governing the condominium regime shall further be subject to the reasonable approval of the County and shall provide among other matters that (i) no assessments or cost may be imposed on the Public Garage Unit without the County's express written consent, except with respect to shared components as to which the Parties shall reasonably agree in the condominium documents (ii) that each condominium unit shall be responsible for its own operation, maintenance and repair costs and (iii) that the County shall have no responsibility for the maintenance of the common elements or the public use space in the Project; and

WHEREAS, the County has determined that the public interest can be best served by the utilization of the County Land as hereinabove described.

NOW, THEREFORE, and in consideration of the mutual promises, the Parties agree as follows:

1. INCORPORATION INTO AGREEMENT

The Recitals to this Agreement as well as all Exhibits attached to this Agreement, are hereby incorporated in this Agreement and made a part hereof by this reference.

2. COMMITMENTS OF THE PARTIES

(a) County Commitments.

(i) Subject to the terms and conditions of this Agreement, the County agrees that on or before the Outside Land Settlement Date (as hereinafter defined) it will convey the County Land to Developer in consideration for the Land Purchase Price (as hereinafter defined).

(ii) The County shall, if requested by Developer, solely in its capacity as a land owner, and subject to the terms of Section 15 hereof, and without cost to the County, promptly take all necessary action and join in and execute all applications, submissions, plats, plans, proffers, development conditions, easements, rights of way, and other documents as may be required to close and abandon the Alley Land (the "Alley Closings") which shall, if Developer so elects, be initiated and undertaken in the name of and on behalf of the Developer at its cost.

(iii) In connection with the Developer's obtaining and securing the Land Use Approvals (as hereinafter defined), the County shall, solely in its capacity as a land owner, and subject to the terms of Section 15 hereof and without cost to the County, (1) take all necessary action and join in and execute all such applications, submissions, plats, plans, proffers, development conditions, easements, rights of way, or other documents as may be required to enable the Developer and/or any governmental authority, as applicable, to obtain the Land Use Approvals for the Private Buildings and the Public Garage, and (2) promptly take all necessary steps to obtain the County Approvals (as hereinafter defined).

(iv) On the Effective Date, the County shall permit the Developer, its agents and contactors, to have access to the County Land, subject to the terms of a Right of Entry Agreement to be entered into promptly after the date hereof.

(b) Developer Commitments.

(i) After the County has conveyed the County Land to Developer, Developer will be responsible for the Turnkey Delivery of the Public Garage in accordance with the terms of this Agreement. Subject to Force Majeure (as hereinafter defined), construction of the Public Garage shall be Substantially Completed (as hereinafter defined) no later than twenty-four (24) months after the Land Settlement (as hereinafter defined).

(ii) Developer shall, at its sole cost and expense, and promptly after the Effective Date, diligently seek all necessary Land Use Approvals in connection with Phase I of the Project. As used herein, the term "Land Use Approvals" shall mean the securing of the necessary approvals from the applicable governmental authorities, including but not limited to, project plan, preliminary plan of subdivision and record plat, site plan and all other approvals and permits necessary for the development of the Project (including any building permits).

(iv) Developer will be solely responsible for its legal fees and the County will be solely responsible for its legal fees associated with negotiating and drafting of any and all agreements between the County and Developer including but not limited to this Agreement.

(v) At the Land Settlement, Developer shall record among the Land Records of the County, a covenant, (the "Covenant") binding on its successors and assigns, the terms of which shall provide that the Project shall be burdened with the obligation to construct the Residential Density, as set forth in the Recitals, to this Agreement. The Covenant shall automatically be extinguished and of no further force or effect upon completion of construction of the Residential Density.

3. SETTLEMENT

(a) Land Settlement.

(i) Settlement on the County Land (the "Land Settlement") shall be held on or before the expiration of thirty-six (36) months after the Effective Date, as the same may be extended in accordance with Section 3(iii) below, and upon not less than thirty (30) days' prior written notice from Developer to the County (the "Outside Land Settlement Date"). The Land Settlement may not occur unless the County's Conditions Precedent and the Developer's Conditions Precedent (both as hereinafter defined) shall have been satisfied or waived by the benefited Party.

(ii) Settlement on the Public Garage (the "Public Garage Settlement") shall be held on a date not later than thirty (30) days after Substantial Completion (as defined in Section 7 (h)) of the Public Garage.

(iii) If all Conditions Precedent (as described in Section 4) are not finally satisfied or waived by the benefited Party on or before the Outside Land Settlement Date, then Developer shall have the right, exercisable by written notice given to the County on or before the Outside Land Settlement Date, to terminate this Agreement whereupon except as otherwise expressly provide in this Agreement, both Developer and the County shall be relieved of further liability under this Agreement. The foregoing notwithstanding, if the Conditions Precedent are not satisfied or waived by the benefited Party on or before the Outside Land Settlement Date, Developer shall have the right, exercisable by written notice given to the County on or before the Outside Land Settlement Date, and provided that Developer has diligently pursued the satisfaction of the Conditions Precedent to be satisfied by Developer, to extend the Outside Land Settlement Date for up to twelve (12) months (the "**First Extended Outside Land Settlement Date**") to allow further time for satisfaction of the Conditions Precedent. In such event, the Developer shall pay the County, simultaneous with said notice to extend, the sum of Fifty Thousand and NO/100ths Dollars (\$50,000.00) (the "**First Extension Deposit**"). The First Extension Deposit shall be (a) returned to Developer if Developer consummates closing on the County Land within the First Extended Outside Land Settlement Date, or (b) forfeited to the County if Developer fails to consummate closing on the County Land within the First Extended Outside Land Settlement Date, as full and complete liquidated damages and as the County's sole and exclusive remedy on account of Developer's failure to consummate the Land Settlement as provided herein; and provided further, if the Conditions Precedent are not satisfied or waived by the benefited Party on or before the expiration of the First Extended Outside Land Settlement Date, and provided that Developer has diligently pursued the satisfaction of the Conditions Precedent to be satisfied by Developer, Developer shall have the additional right, exercisable by written notice given to the County on or before the expiration of the First Extended Outside Land Settlement Date, to extend the First Extended Outside Land Settlement Date for up to an additional twelve (12) month period (the "**Second Extended Outside Land Settlement Date**") to allow further time for satisfaction of the Conditions Precedent. In such event, the Developer shall pay the County, simultaneous with said second notice to extend, the sum of Fifty Thousand and No/100ths Dollars (\$50,000.00) (the "**Second Extension Deposit**"). In this event the First Extension Deposit shall be forfeited to the County and the Second Extension Deposit shall be (a) returned to Developer if Developer consummates closing on the County Land within the Second Extended Outside Land Settlement Date, or (b) forfeited to the County if Developer fails to consummate closing on the County Land within the Second Extended Outside Land Settlement Date, as full and complete liquidated damages and as the County's sole and exclusive remedy on account of Developer's failure to consummate the Land Settlement as provided herein. Developer shall not receive interest on either the First Extension Deposit or Second Extension Deposits.

Notwithstanding anything to the contrary set forth in this Section, if in the reasonable judgment of the Developer any Condition Precedent is not being satisfied as a result of delays by the County (in the County's capacity as a land owner and not in its regulatory or governmental capacity). Developer shall have the right to send written notice to the County (a "**Noncompliance Letter**") stating with specificity (i) the Condition Precedent which Developer contends is being delayed by the County and (ii) what it believes the County is doing or failing to do that Developer contends is causing the delay in the satisfaction of the Condition Precedent. If during the thirty (30) day period (the "**Compliance Period**") following County's receipt of the

Noncompliance Letter, the County is unable to reasonably demonstrate that the County is not the cause of the delay, then, in such an event, the Outside Land Settlement Date shall be extended for an amount of time equal to the time of the delay. Furthermore, if any Condition Precedent is not satisfied and/or the Land Settlement is not consummated as a result of a default by the County, Developer shall be entitled to seek specific performance of this Agreement against the County, Developer hereby waiving its right to recover any damages (monetary or otherwise) against the County for Default.

(b) Developer shall have the right, but not the obligation, to pursue or defend any appeals or litigation that may be necessary in order to obtain the Land Use Approvals for Phase I prior to the Outside Land Settlement Date, as the same may be extended, and to the extent legally necessary, the County, in its capacity as owner of the County Land, authorizes Developer, to take such actions, at no expense to the County. If the Developer elects to defend one or more appeal(s) or litigation that may be necessary in order to obtain the Land Use Approvals for Phase I prior to the Outside Land Settlement Date, as the same may be extended, the Outside Land Settlement Date shall be further extended during the pendency of such appeal(s), provided that Developer is duly and diligently pursuing such appeal(s). If the Developer elects not to pursue or defend any appeals or litigation that may be necessary in order to obtain the Land Use Approvals for Phase I prior to the Outside Land Settlement Date, as may have been extended, then the County shall have the right to terminate this Agreement upon written notice to Developer, and if such termination occurs prior to the Outside Settlement Date, except as otherwise expressly provided herein, the Parties shall thereafter be relieved of all liability hereunder at law or in equity; provided that, if such termination occurs after the Outside Settlement Date, but before the First Extended Outside Settlement Date, the County shall be entitled to retain the First Extension Deposit and all interest accrued thereon; and, if such termination occurs after the First Extended Outside Settlement Date, but before the Second Extended Outside Settlement Date, the County shall be entitled to retain both the First Extension Deposit and the Second Extension Deposit and all interest accrued thereon, and except as otherwise expressly provided herein, the Parties shall thereafter be relieved of all liability hereunder at law or in equity.

(c) The settlements are to be held at a location in Montgomery County, Maryland and shall be handled by a recognized title company licensed to do business in the State of Maryland (the "**Title Company**") designated by Developer as to the Land Settlement and as to the Public Garage Settlement by a Title Company designated by the County.

(d) **Land Purchase Price.**

(i) The consideration to be paid by Developer to the County for the purchase of the County Land (the "**Land Purchase Price**") shall be an amount equal to the "in kind" Turnkey Delivery of the Public Garage which the Parties acknowledge equals or exceeds the fair market value of the County Land.

(ii) To secure Developer's obligation for the Turnkey Delivery of the Public Garage at the Public Garage Settlement, at the Land Settlement, Developer shall deliver to the County, an irrevocable completion guaranty, in form and content and backed by a surety or other credit worthy entity reasonably acceptable to the County and Developer's lender and providing

for (A) the Turnkey Delivery of the Public Garage in accordance with the Final Design Approval and applicable law, and (B) payment of any Developer Liquidated Damages due and owing (the "Public Garage Security"). The Public Garage Security shall be released to Developer at the Public Garage Settlement.

(e) Settlement Documents.

At the Land Settlement, Developer shall be required to deliver the following amounts and documents (all properly executed) into escrow with the Title Company:

(i) The Covenant;

(ii) signed condominium plat and by-laws with respect to the Public Garage Unit.

(iii) The settlement statement for the transaction contemplated by this Agreement reflecting the Land Purchase Price and all adjustments required to be made in accordance with this Agreement or otherwise agreed upon by the Parties (the "Land Settlement Statement");

(iv) Such other documents and materials as are required by either Party under the terms of this Agreement or, subject to the reasonable approval of Developer as to form, substance and content, as required by the Title Company pursuant to any title commitment it issues to Developer with respect to the acquisition of the Land; and

(v) The Public Garage Security.

(f) At the Land Settlement, the County shall be required to deliver the following amounts and documents (all properly executed) into escrow with the Title Company:

(i) special warranty deed to the County Land, subject to the County Land Permitted Exceptions;

(ii) Land Settlement Statement;

(iii) signed condominium plat and by-laws with respect to the Public Garage Unit; and

(iv) such other documents and materials as are required by either Party under the terms of this Agreement or, subject to the reasonable approval of the County as to form, substance and content, as required by the Title Company pursuant to any title commitment it issues to Developer with respect to the acquisition of the County Land, all of which when properly executed, shall be considered good and sufficient tender of performance.

(g) At the Public Garage Settlement, the Developer shall be required to deliver the following documents (all properly executed) into escrow with the Title Company:

(i) special warranty deed with respect to the Public Garage Unit; and

(ii) to the extent applicable, such other documents and materials as are required by either Party under the terms of this Agreement or subject to the reasonable approval of the County as to form, substance and content as required by the Title Company pursuant to the Public Garage title commitment it issues to the County with respect to acquisition of the Public Garage Unit; and

(iii) A settlement statement for the transaction contemplated by this Agreement reflecting all adjustments required to be made in accordance with this Agreement or otherwise agreed upon by the Parties (the "Public Garage Settlement Statement"); and

(h) At the Public Garage Settlement, the County shall be required to deliver the following (all properly executed where applicable) into escrow with the Title Company:

(i) The Public Garage Settlement Statement;

(ii) Such other documents and materials as are required by either Party under the terms of this Agreement or, subject to the reasonable approval of Developer as to form, substance and content, as required by the Title Company pursuant to the title commitment it issues to the County with respect to the acquisition of the Public Garage Unit;

(iii) A release of the Public Garage Security; and

(iv) Any sum due pursuant to Section 7(n).

(i) State and County transfer taxes and State recordation tax charged in connection with the conveyance of the County Land to Developer by the County, shall be paid by the Developer. Any recordation and transfer taxes charged in connection with the conveyance of the Public Garage Unit at the Public Garage Settlement, if any, shall be paid by the County. General real estate taxes and special assessments with respect to both the County Land and the Public Garage shall be paid and adjusted as of the date of the Land Settlement and the Public Garage Settlement, respectively.

(j) If Developer defaults in its obligation to settle at the Parking Garage Settlement, County shall be entitled to either:

(i) Terminate this Agreement and retain the First Extension Deposit and Second Extension Deposit (and all accrued interest thereon, if any) as agreed liquidated damages (and not as a penalty) and as County's sole and exclusive remedy, in lieu of, and as full compensation for, all other rights or claims of County against Developer by reason of such default. Upon such payment, this Agreement shall terminate and, except as expressly provided for in this Agreement, neither County nor Developer shall have any further liability or obligation under this Agreement; or

(ii) bring an action for specific performance of Developer's obligation to consummate the Public Garage Settlement, including bringing a separate suit to enforce the Public Garage Security.

(k) If County shall be in default in its obligation to settle at the Parking Garage Settlement, Developer shall have, as its sole remedy therefor, the right to bring an action for specific performance of County's obligation to consummate the Public Garage Settlement.

4. CONDITIONS PRECEDENT

(a) (i) The following, which may be satisfied on or before the Land Settlement, shall be express conditions precedent to Developer's obligation to proceed to the Land Settlement (collectively, the "**Developer's Conditions Precedent**"):

(1) Developer shall have obtained the Land Use Approvals for Phase I. The foregoing notwithstanding, the Parties acknowledge that the Planning Board may undertake amendment to the Silver Spring CBD Sector Plan (the "Sector Plan") prior to the Land Use Approvals that may include the Land and that could potentially result in 1) the suspension by the Planning Board for a period of time of any and all action on the Land Use Approvals during the pendency of the Sector Plan approval process and/or 2) material changes to land uses (such as but not limited to changes to required greenspace, public use space, parking, mixed-use, height, moderately priced commercial uses, as well as MPDU and/or Workforce Housing Units requirements, limitations on the location and size of commercial uses). In the event the Planning Board undertakes any such Sector Plan process, and Developer determines, in its sole and absolute discretion, that such proposed Sector Plan amendment would materially and adversely affect the economic viability of the Project contemplated herein, then in such event, Developer shall have the right, upon written notice to the County, to terminate this Agreement, whereupon, if such termination occurs prior to the Outside Settlement Date, except as otherwise expressly provided herein, the Parties shall be released of all further liability or obligation hereunder; provided that, if such termination occurs after the Outside Settlement Date, but before the First Extended Outside Settlement Date, the County shall be entitled to retain the First Extension Deposit and all interest accrued thereon; and, if such termination occurs after the First Extended Outside Settlement Date, but before the Second Extended Outside Settlement Date, the County shall be entitled to retain both the First Extension Deposit and the Second Extension Deposit and all interest accrued thereon, and except as otherwise expressly provided herein, the Parties shall thereafter be relieved of all liability hereunder at law or in equity.

(2) Developer shall have, at least twenty-one (21) days prior to the Land Settlement, obtained commitment for the necessary financing and/or equity to fund the construction of Phase I, on terms and conditions reasonably satisfactory to Developer (the "**Financial Contingency**"). Developer, commencing one hundred twenty (120) days after its Site Plan for the Project is deemed by law to be final and non-appealable, shall begin providing the County with monthly status reports on its efforts to obtain such financing and/or equity; and

(3) Developer shall have received County's Final Design Approval (as hereinafter defined); and

(4) Developer shall have entered into a construction contract with a general contractor for the construction of Phase I, inclusive of the Public Garage, the terms of which shall provide, inter alia, for the Substantial Completion of the Public Garage within twenty

four (24) months after the Land Settlement, subject to Force Majeure (the "Construction Contract").

(5) the County shall have obtained all required approvals including without limitation all advertisements, compliance with any bond covenants, mandatory referral, an Executive order finding the County Land to no longer be necessary for public use and other steps necessary to authorize the conveyance of the County Land to Developer all in accordance with the terms of this Agreement (provided, however that the County shall not be required to undertake any optional method zoning approval as part of its obligations hereunder) (collectively, the "County Approvals"). Promptly after the Effective Date, the County shall make diligent efforts to obtain the County Approvals. Notwithstanding anything contained in this Agreement to the contrary, Developer shall have the right to terminate this Agreement if the County Approvals have not been obtained by the date which is one hundred eighty (180) days after the Effective Date; and

(6) The Parties shall have agreed to the terms of the documents necessary to establish the condominium regime as said documents relate to the Public Garage Unit; and

(7) title to the County Land shall be in the condition required by this Agreement; and

(ii) In the event the County reasonably determines, prior to the Land Settlement, that Developer is not diligently pursuing the satisfaction of the Developer's Conditions Precedent (other than the issuance of the County Approvals) due consideration being given to third party consultants and experts as to the appropriate sequence and timing of seeking satisfaction of such Conditions Precedent, or has abandoned the Project, the County shall have the right to send written notice to the Developer (a "Diligence Letter") stating with specificity why it believes Developer is not diligently pursuing the satisfaction of the Developer's Conditions Precedent. If during the thirty (30) day period (the "Due Diligence Period") following Developer's receipt of the Diligence Letter, Developer is unable to demonstrate to the County's reasonable satisfaction (in the County's capacity as a land owner) that Developer is diligently pursuing the satisfaction of the Developer's Conditions Precedent or that Developer has not in fact abandoned the Project, as the case may be, the County shall have the right to terminate this Agreement by delivering written notice to the Developer within ten (10) days after the expiration of the Due Diligence Period, whereupon, if such termination occurs prior to the Outside Settlement Date, except as otherwise expressly provided herein, the Parties shall be relieved of further liability under this Agreement; provided that, if such termination occurs after the Outside Settlement Date, but before the First Extended Outside Settlement Date, the County shall be entitled to retain the First Extension Deposit and all interest accrued thereon; and, if such termination occurs after the First Extended Outside Settlement Date, but before the Second Extended Outside Settlement Date, the County shall be entitled to retain both the First Extension Deposit and the Second Extension Deposit and all interest accrued thereon, and except as otherwise expressly provided herein, the Parties shall thereafter be relieved of all liability hereunder at law or in equity.

(b) The following shall be express conditions precedent to the County's obligation to proceed to the Land Settlement (collectively, the "**County's Conditions Precedent**"):

(i) Developer shall have obtained and provided County with evidence of the Phase I Land Use Approvals; and

(ii) The Financial Contingency shall be satisfied and reasonable evidence of the satisfaction of the Financial Contingency shall have been provided to the County; and

(iii) Final Design Approval shall have been issued to Developer; and

(iv) Developer shall have entered into a binding Construction Contract; and

(v) Developer shall have delivered the Public Garage Security to the County;
and

(vi) the County shall have obtained the County Approvals; and

(vii) The Parties shall have agreed to the terms of the documents necessary to establish the condominium regime as said documents relate to the Public Garage Unit; and

(viii) Developer shall not be in material default of any provision of this Agreement or the Right of Entry Agreement as to which the County has notified Developer in writing that Developer is in violation.

The County shall have the right to waive some or all of the foregoing conditions in its sole and absolute discretion; provided, however, that no such waiver shall be effective or binding on the County unless it is in writing and executed by an official of the County authorized to execute this Agreement.

5. TITLE TO COUNTY LAND

(a) Absolute fee simple title in and to the County Land shall be conveyed at the time of the Land Settlement, free of all liens, encumbrances, judgments, occupancy agreements, but subject to covenants, conditions, restrictions, easements and rights-of-way of record as of the Effective Date (the "**County Land Permitted Exceptions**"). Title to the County Land is to be merchantable, good of record and in fact, and insurable without exceptions except for any covenants, conditions, restrictions, easements and rights-of-way of record as of the Effective Date and the documents establishing and governing the Condominium Regime that have been reasonably accepted as to form, substance and content by the County. Prior to the Land Settlement, Developer may, at its election, obtain an updated ALTA/ACSM survey of the Property certified to the County and Developer and sufficient in form and substance to enable Title Company to remove its standard survey exception (the "**Survey**").

(b) Notwithstanding the above, any deeds of trust, mortgages, judgment liens, bond covenants and other monetary liens against the County Land shall be removed by the County at or before the time of the Land Settlement.

(c) Unless removed on or before the Land Settlement, after the Effective Date, the County shall not, without Developers prior written consent, which consent may be withheld for any or no reason, mortgage, lease or otherwise encumber the County Land, execute any easements, covenants, conditions or restrictions with respect to the County Land, otherwise alter or permit the alteration of title to the County Land, or seek any zoning changes or other governmental approvals with respect to the County Land.

(d) Upon request by Developer, the County shall use good faith efforts to cause to be executed a FIRPTA Affidavit and owner's affidavit (in the form which the County generally executes owner's affidavits); and furnish such written evidence of the County's status and authority to consummate this transaction as the Title Company may reasonably require (and the County generally provides).

6. TITLE TO PUBLIC GARAGE UNIT

(a) Title to the Public Garage Unit shall be good and marketable and shall be conveyed at the Public Garage Settlement to the County by a deed conveying absolute fee simple title in and to the Public Garage Unit. Title to the Public Garage Unit shall be conveyed free of all liens, encumbrances, judgments, occupancy agreements, covenants, conditions, restrictions, easements and rights-of-way, recorded or unrecorded; subject, however, to the following (collectively, the "Public Garage Unit Permitted Exceptions"): (i) covenants, conditions, restrictions, easements and rights-of-way of record as of the Effective Date or as may otherwise be established in accordance with and in furtherance of the terms of this Agreement, and (ii) the documents establishing and governing the Condominium Regime which must be in form, substance and content reasonably acceptable to the County. Title is to be merchantable, good of record and in fact, and insurable without exceptions (other than the Public Garage Unit Permitted Exceptions) at standard rates by the Title Company.

(b) Any deeds of trust, mortgages, judgment liens and other monetary liens against the Public Garage Unit shall be removed by Developer at or before the time of the Public Garage Unit Settlement.

(c) Unless removed on or before the Public Garage Unit Settlement or otherwise provided under the terms of this Agreement, after the date of this Agreement, Developer shall not execute any easements, covenants, conditions or restrictions with respect to the Public Garage Unit, otherwise alter or permit the alteration of title to the Public Garage Unit or seek any zoning changes or other governmental approvals with respect to the Public Garage Unit, except as are consistent with this Agreement or first approved in writing by the County, which approval shall not be unreasonably withheld, conditioned or delayed.

(d) Upon request by the County, Developer shall use good faith efforts to cause to be executed, affidavits and other similar type instruments which are reasonably required by the Title Company for the elimination of any standard or printed exceptions in the County's final policy of title insurance (which such affidavits or other instruments shall be based on knowledge (or to the extent acceptable to the Title Company, to the best of Developer's knowledge without inquiry)); and furnish such written evidence of Developer's status and authority to consummate this transaction as the Title Company may reasonably require.

(e) The County acknowledges that it shall only be conveyed title to the Public Garage Unit and that Developer shall retain ownership of all of the land and airspace above and below the Public Garage Unit, including the right from time to time to construct improvements and structures above and below the Public Garage Unit, including multi-story buildings and/or parking for the Private Buildings, subject, however to the terms and conditions of the documents establishing and governing the Condominium. The foregoing notwithstanding, after the Public Garage Settlement, Developer shall not construct any improvements below the Public Garage without first obtaining the County's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed, provided that consideration of structural and stability issues, useful life, ingress and egress, the cost of repairs, maintenance, operation, and replacement, safety, ventilation and similar issues shall not be deemed unreasonable.

7. PUBLIC GARAGE

(a) The Public Garage shall contain 152 parking spaces to be located as generally shown on Exhibit B attached hereto (the "Preliminary Parking Plan") as the same may be amended in accordance with the terms of this Agreement. The Parties acknowledge that the final location and configuration of the Public Garage and parking spaces within the Public Garage shall be conclusively established upon Final Design Approval (as hereinafter defined).

(b) The Developer shall develop a design for the Public Garage complying in all material respects with all applicable statutes, laws, ordinances, building codes, regulations and rules and the Parking Garage Design Criteria (revised May 2007) and the referenced Parking Facility Sign Standards, collectively, the "Parking Garage Design Guidelines"; provided, however, in the event of a conflict between any requirement of applicable law and the Parking Garage Design Guidelines, as may be revised by agreement of the Parties, the more stringent of such requirements shall control. The Parking Garage Design Guidelines are attached hereto as Exhibit E. The Parties acknowledge and agree that the design of the Project may require certain exceptions to the Parking Garage Design Guidelines, which exceptions will be subject to agreement between the Parties (with each Party agreeing to act reasonably, it being agreed that "acting reasonably" for the County includes, but is not limited to considerations of maintainability, durability, operability, security, cost implications and County standard expectations as to useful life of public parking garages). The County is not assuming any responsibility for the construction costs or incremental additional maintenance of the oversized footings and other infrastructure structures necessary for the construction of the Private Buildings or any other structures now or hereafter constructed on the surface of or above the Public Garage Unit.

(c) The County acknowledges and consents to Developer collaterally assigning this Agreement, and all related agreements, documents, certificates and instruments to its lender(s) providing financing for the Project, from time to time. At Developer's request, the County shall enter into a tri-Party agreement with Developer's lender(s), from time to time evidencing the agreement by the County to accept performance by the lender or its designee under this Agreement in the event the lender exercises its rights under such collateral assignment.

(d) During design of the Public Garage, Developer will provide the County with design documents at various stages of design development as stated herein. Within twenty-one

(21) business days after receipt by County of seven (7) sets of any concept finalization documents ("**Concept Finalization Documents**"), schematic design documents ("**Schematic Design Documents**"), design development documents ("**Design Development Documents**"), or construction documents ("**Construction Documents**") for the Public Garage submitted by Developer to the County under this Agreement for County review and approval as an owner (not in its capacity as a governing or regulatory body), the County shall promptly and diligently review the items submitted and either approve them as submitted or notify Developer in writing of the required changes (review by permitting agencies is not subject to this time limitation). If the County fails to approve or disapprove the Concept Finalization Documents, Schematic Design Documents, Design Development Documents, or Construction Documents submitted for review and approval within such twenty-one (21) business day period, Developer shall send to the County Executive, the Chief Administrative Officer, the County Attorney, and the Director of DOT, a notice that it has not received a response to its submission; if the County fails to respond within five (5) business days of such notice, then Developer shall send a second notice to the County Executive, the Chief Administrative Officer, the County Attorney, and the Director of DOT, stating that Developer has not received a response to its submission; if the County fails to respond within five (5) business days of such second notice, the Concept Finalization Documents, Schematic Design Documents, Design Development Documents, or Construction Documents submitted shall be deemed approved. Each notice required in this Section must state in bold all capitalized letters, the date of the required response by the County and the automatic approval of the submission should the County fail to provide a timely response. In the event the applicable Concept Finalization Documents, Schematic Design Documents, Design Development Documents, or Construction Documents are deemed approved due to a failure to reply under this Section, any subsequent changes by the County shall be treated as a County Change Order, as defined hereinafter. The foregoing provision shall be repeated as to each successive stage of Concept Finalization Documents, Schematic Design Documents, Design Development Documents, and Construction Documents. If any submittal or subsequent resubmittal is disapproved by the County (other than as a consequence of a failure to respond to the two (2) notices), the modification and resubmittal review process shall continue until the issues in question are resolved (except the review period shall be reduced from twenty-one (21) business days to fourteen (14) business days. Each resubmission must fully respond with respect to any previously requested changes and/or comments. The final approval (or deemed approval) by the County in accordance with the provisions of this Section 7(d) of the Concept Finalization Documents, Schematic Design Documents, Design Development Documents and Construction Documents shall be the "**Final Design Approval**" for purposes of this Agreement.

Notwithstanding anything contained in this Section 7 or elsewhere in this Agreement to the contrary, the County does not accept any design or construction liability for the Public Garage, including, without limitation, compliance or noncompliance with the Parking Garage Design Guidelines (all of which are and shall remain the responsibility of the Developer) and the County shall have no such liability and waives none of its rights under this Agreement by reason of its approval of the Concept Finalization Documents, Schematic Design Documents, Design Development Documents, Construction Documents, or as a result of its Final Design Approval or by reason of its exercise of its inspection rights or as a result of any validly issued Stop-Order, both as provided under Section 7(f) of this Agreement. All cost and liability associated with the proper design and construction of the Public Garage shall be borne solely and

exclusively by the Developer, excepting only the cost of any County Change Order (as defined in Section 7(m)), the cost of all contractor change orders, field orders and claims shall be at the sole and exclusive cost and responsibility of the Developer.

(e) No later than thirty (30) days after the Effective Date, Developer shall provide the County with a copy of its proposed schedule for pursuing its Project Plan. No later than forty-five (45) days after the Project Plan for the Project is deemed by law to be final and non-appealable, Developer shall submit for the County's review and comment (but not approval) a critical path bar chart schedule listing all major activities; durations and milestone completion dates required for the design through Final Design Approval. Not later than thirty (30) days after Final Design Approval Developer shall provide, or shall have its contractor provide, to the County for its review and comment (but not approval) a Critical Path Method (CPM) schedule for construction of the Public Garage from the date of the Notice to Proceed (NTP) issued to Developer's contractor through final completion of the Public Garage and its acceptance by the County. Developer shall meet with the County on a regular basis (but not less than once per month), from the start of the design phase through the final completion of the Public Garage, to update the critical path bar chart for design and the CPM schedule for construction and to discuss the progress made on the Public Garage during the proceeding time period and highlighting the current and critical activities. The County shall be notified of and shall have the right to attend all pre-construction and construction progress meetings. In addition to such scheduled meetings, within three (3) business days after the written request of either Party hereto, the Parties shall meet to evaluate solutions to design, construction and other problems related to the development and construction of the Public Garage. Within five (5) business days after each such meeting, Developer shall distribute minutes of such meeting to the County and any other person designated by the County. Developer shall notify County in writing of any single or aggregated slippage of thirty (30) days or more in the schedule.

(f) The County shall have the right to inspect the construction of the Public Garage during normal business hours provided that (i) any inspector shall first check in with the on-site Project supervisor, (ii) such inspector shall observe all Project site safety requirements, and (iii) prior to any inspection, the County shall have provided Developer with evidence from the County's third party inspector, of appropriate and customary indemnity and insurance coverage and naming Developer, its members, general contractor and lender(s) as additional insureds. If the County's inspector reasonably determines in a detailed written report, a copy of which is provided to Developer, that Developer has failed to execute a material element of the construction of the Public Garage in substantial conformity with the Final Design Approval and/or the building permit and that the defective work cited in said report is not readily correctable by Developer, the County shall have the right to direct that the Developer cease its construction of the Public Garage (a "**Stop-Order**"). If the County issues a Stop-Order, and prior to Developer ceasing work, the Developer shall have the right to present evidence to the County that the issuance of the Stop-Order is not justified and, within three (3) business days after submission of said evidence, the County and the Developer shall meet to discuss the County's concerns and the resolution thereof and the County and the Developer shall attempt in good faith to reach a prompt resolution of the issues underlying the Stop-Order. Any validly issued Stop-Order shall not be considered a County Change Order (as defined in Section 7(m)) or otherwise subject the County to any cost or liability

(g) Developer must commence construction of Phase I, including the Public Garage, within thirty (30) days after Land Settlement. Developer shall be required to deliver the Public Garage Substantially Completed (as hereinafter defined) on or before the date that is twenty-four (24) months after Land Settlement, subject to Force Majeure; and shall pay to the County as liquidated damages and not as a penalty Four Hundred Eighty Dollars (\$480.00) per day for every day that Substantial Completion is delayed beyond twenty-four (24) months from the Land Settlement Date (excepting delays due to Force Majeure) ("**Developer Liquidated Damages**"). In the event of a delay which Developer contends is a consequence of Force Majeure, Developer shall provide the County with written notice of the delay and the act of Force Majeure which Developer contends caused the delay within ten (10) days of occurrence of such delay or the delay shall irrevocably and conclusively be deemed to have not occurred as a result of Force Majeure. In connection with the construction of the Public Garage, Developer shall take appropriate measures to remediate the presence of hazardous materials on or about the Public Garage Unit in violation of applicable laws (the "**Developer Remediation Obligations**"). Developer agrees that it shall indemnify and hold harmless County against all loss, cost, damage or expense incurred by County as a result of Developer's failure to undertake the Developer Remediation Obligations.

(h) Developer shall provide the County with no less than thirty (30) days advance notice of the anticipated date of Substantial Completion and delivery of the Public Garage. Construction of the Public Garage shall be deemed to be "**Substantially Completed**" at such time as: (i) Developer's architect or engineer issues an AIA substantial completion certificate including a punchlist, which punchlist items shall not materially impair the beneficial use of the Public Garage); (ii) a temporary certificate of occupancy has been issued for the Public Garage, and (iii) Developer has provided all operating and maintenance manuals and training to the County for systems and equipment within the Public Garage. Promptly after the Public Garage has been Substantially Completed, the Developer and the County shall schedule a mutually agreeable time to walk through the Public Garage and review and/or revise as appropriate, the punchlist, which shall be signed and dated by representatives of both the County and the Developer (the "**Punchlist**") setting forth any defects or incomplete work (each a "**Punchlist Item**"). Developer shall deliver to the County, as security for the completion of the Punchlist Items, cash or a letter of credit, in an amount equal to one hundred fifty percent (150%) of the cost of any remaining Punchlist Items to be held by the County pursuant to an agreement reasonably acceptable to the Parties. Developer shall use its good faith efforts to complete such Punchlist Items within sixty (60) days after Substantial Completion of the Public Garage or at the earliest reasonable date given the nature of the particular Punchlist Item.

(i) The Land Purchase Price shall be deemed to be paid in full and the Turnkey Delivery of the Public Garage shall be deemed to occur ("**Final Completion**") upon the last to occur of the following: (1) the Public Garage is Substantially Completed and the Punchlist Items are completed, (2) waivers of liens from the general contractor, all subcontractors, and all materialmen and suppliers, and any other persons who by law could file a mechanics lien against the Public Garage or the payment bond have been provided to the County, (3) any mortgage or financing lien or security interest encumbering the Public Garage Unit must be discharged as of the Parking Garage Settlement, (4) a final certificate of occupancy shall have been issued for the Public Garage, (5) a certificate of final completion from Developer's architect/engineer for the

Public Garage shall have been issued; (6) Developer shall provide to the County "**As-Built**" plans for the Public Garage on a CAD diskette; and (7) Developer has provided to the County an assignment of all warranties obtained by Developer for work on the Public Garage; and (8) the Public Garage Settlement shall have occurred.

(j) In addition to any other warranties at law, the Developer warrants for one (1) year from the date of Substantial Completion, that the Public Garage is free from any defect of equipment, material or design furnished, or workmanship performed by, or on behalf of the Developer, or any of its contractors, subcontractors or suppliers and that all materials are new and conform to the Final Design Approval, and the Parking Garage Design Guidelines (the "**Developer's Warranty**"). Under the Developer's Warranty, the Developer shall remedy at its own expense any such failure to conform or remedy any such defect. In addition, the Developer shall remedy at its own expense any damage to County-owned or controlled real or personal property if said damage is the result of any failure or defect covered by the Developer's Warranty or if said damage results from any work carried out under the Developer's Warranty. All work performed under the Developer's Warranty shall be warranted for one (1) year after the completion of said work. The County shall notify the Developer in writing within a reasonable time after the discovery of any condition covered by the Developer's Warranty. Should the Developer fail to commence to remedy any such condition within thirty (30) days after receipt of written notice thereof, the County shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Developer's expense, which costs shall be payable by Developer promptly after receipt of a proper invoice therefor.

(k) Developer shall provide to the County copies of all agreements (and amendments) to be entered into with all architects, engineers, contractors and other third Party consultants with respect to the Public Garage. Developer shall also provide to the County copies of all bid submissions and requests for information, qualification or clarification delivered to it or its architects, engineers and contractors with respect to the Public Garage. Developer is aware of the County's Minority, Female and Disadvantaged ("**MFD**") program and agrees that it shall use good faith efforts to provide twenty percent (20%) MFD participation on the construction of the Public Garage. Developer further agrees that the contracts with its architects, engineers and general contractor for the Public Garage will require that the architects, engineers and general contractor name the County as a third Party beneficiary of all contracts, warranties and/or guarantees (the form of which provisions must be in form and substance approved by the County) with rights of enforcement in connection with the design, construction, and construction management/oversight of the Public Garage.

(l) As the same may relate to the Public Garage, Developer shall neither issue, agree to, nor permit any additions to, modifications or amendments of, departures from or change orders to the Final Design Approval during the construction of the Public Garage excluding immaterial field modifications (collectively, "**Developer Change Order**") without the prior written approval of the County, which approval shall not be unreasonably withheld, conditioned or delayed, it being agreed that "acting reasonably" for the County includes, but is not limited to considerations of maintainability, durability, operability, security, cost implications and County standard expectations as to useful life of public parking garages, and provided that the provisions of this sentence regarding approval shall not apply to any such additions, modifications,

amendments, departures or change orders to those portions of the Project which do not concern the Public Garage, which do not materially affect the Public Garage, and which do not materially interfere with or make more costly the operation, maintenance, or repair of the Public Garage or impair its structural integrity or useful life. Developer shall provide the County with written notice of any proposed additions, modifications, amendments, departures or change orders for which the County's approval is required-hereunder, which notice shall contain a copy of such proposed additions, modifications, amendments, departures or change orders, and the County shall use diligent efforts to give Developer prompt written notice of its approval or its disapproval thereof. Any approved Developer Change Order cost shall be funded by the Developer.

(m) Any requested change orders initiated or requested by the County with respect to the Public Garage after the Final Design Approval ("County Change Order") shall be communicated to Developer in writing. Developer shall determine what effect such requested County Change Order has on the schedule and/or cost of the Project. Provided that such requested County Change Order does not adversely affect the Private Buildings in any material manner or materially delay the schedule for completion of the Private Buildings, and further provided that the County and Developer agree in advance on the cost of the change order, which cost shall include all costs associated with any delay caused by such County Change Order, such requested County Change Order shall be approved and performed by Developer. Any approved County Change Order cost shall be funded by the County and shall not be commenced by Developer until appropriation or other evidence of funding is provided to Developer. Any such County Change Order cost shall be paid within thirty (30) days of receipt of a draw request prepared and approved by the Developer's architect and/or engineer.

(n) The cost of the Revenue Collection System in the Final Design Approval in excess of Fifty Thousand Dollars (\$50,000) shall be paid by the County at the Public Garage Settlement.

(o) Notwithstanding anything to the contrary set forth in this Agreement, the County shall be solely responsible for the cost of any third party contractors retained by the County in connection with the Public Garage.

8. CONDOMINIUM REGIME

Developer intends to subject various components of the Project to a condominium regime (the "Condominium Regime") with the Public Garage being one unit in such regime. To the extent that the Condominium Regime impacts upon the Public Garage or the County, the terms of the declaration of the condominium regime shall be subject to the County's reasonable approval, which approval shall not be unreasonably withheld, conditioned or delayed.

9. PROJECT REPRESENTATIVES.

Each Party will designate an individual as its Project representative (respectively, the "County Project Representative", and the "Developer Project Representative" and collectively the "Project Representatives"), for purposes of coordinating the exchange of information, processing of requests, and agreeing on solutions relevant to the Project and

otherwise implementing the terms of this Agreement but not amending or otherwise altering or modifying the terms of this Agreement. As of the date of this Agreement, (a) the County Project Representative shall be Rick Siebert, (b) the Developer Project Representative shall be Robert P. Hillerson. Each party shall deliver to the other notice of any change in the identity of its Project Representative. Each Party shall be entitled to rely upon the designations made in this Section or subsequently made, and upon the full authority of each of the representatives named in this Section to act on behalf of its Party to coordinate the Project, until such Party receives written notice of a change of designation or limitation of authority from the other Party. Any agreement relative to expenditure of, or a commitment for expenditure of, funds must be reduced to writing and signed by a person with authority to contractually bind the Party.

10. REPRESENTATIONS, WARRANTIES AND COVENANTS

(a) Developer's Representations, Warranties and Covenants. To induce the County to enter into this Agreement, Developer covenants, warrants and agrees that:

(i) Developer is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Maryland, and is duly qualified to enter into this Agreement and undertake the obligations provided for herein.

(ii) Developer has the full and unrestricted lawful power and authority to enter into and carry out the terms of this Agreement or other agreement contemplated herein. The execution, delivery and performance of this Agreement and any other agreement contemplated herein and the consummation of the transactions contemplated hereby and thereby have been or will be as of the date of execution hereof, duly authorized and approved by all requisite action, as the case may be, and this Agreement and all other agreements contemplated herein, documents contemplated hereby or thereby, when duly executed and delivered, will each constitute a valid and binding agreement of Developer and, as applicable, its affiliates, enforceable in accordance with its terms.

(iii) To Developer's knowledge, except for the Land Use Approvals and the Alley Closings for the Project, no consent, approval or authorization of any other person or entity is required to be obtained by Developer in connection with the execution, delivery or performance of this Agreement or any other agreement contemplated herein.

(iv) To Developer's knowledge, neither the execution or delivery of this Agreement or any other agreement contemplated herein, nor the consummation of the transactions contemplated hereby or thereby, will: (a) conflict with, or result in a breach of, the terms, conditions or provisions of or constitute a default under its operating agreement or any agreement or instrument to which it is a Party or is subject; (b) violate any agreement, restriction, easement, restrictive covenant, or instrument to which it is a Party or to which it or any of its assets is subject; or (c) constitute a violation of any applicable code, resolution, law, statute, regulation, ordinance, rule, judgment, decree or order.

(v) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Developer, threatened against or affecting Developer which question the validity of this Agreement or any agreement, instrument or document delivered or to be delivered

pursuant hereto or thereto, or any action taken in, under or in connection with any of the provisions hereof or thereof, at law or in equity, before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality; and Developer has no reason to believe that any such action, suits proceeding or investigation may be brought or threatened against Developer and subject to the satisfaction of all terms and conditions of this Agreement.

(vi) Developer has not retained any person or entity to solicit or secure this Agreement from the County upon an agreement or understanding for a commission, percentage or brokerage fee, other than bona fide employees or bona fide established commercial selling agencies retained by Developer for the purpose of securing business, and other than attorneys rendering legal services.

(vii) Developer shall use commercially reasonable efforts to take, or cause to be taken, all actions necessary or desirable to cause the representations and warranties of Developer set forth herein to be true and correct until final completion of the development and construction of the Project. Developer shall use commercially reasonable efforts to refrain from taking any action which would cause, or threaten to cause, any such representation or warranty to become untrue or incorrect at any time during such period.

(viii) Subject to the terms of this Agreement, Developer shall reasonably cooperate with the County, to facilitate the processing of such plans, permit applications and easements as are necessary for the development of the Project.

(b) County Representations and Warranties. To induce Developer to enter into this Agreement, the County represents and warrants to, and covenants and agrees with, Developer as follows:

(i) The County is a political subdivision of the State of Maryland and has the full and unrestricted lawful power and authority to enter into and carry out the terms of this Agreement. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and thereby have, except for advertisement of the disposition of County property pursuant to Maryland Annotated Code, Article 25A, Section 5(B), an Executive Order finding the County Land to no longer be necessary for public use, compliance with any bond covenants and mandatory referral review, has been (or at the time of the Land Settlement will be) duly authorized and approved, and this Agreement and all other agreements, documents and instruments contemplated hereby or thereby, subject to advertisement of the disposition of County property pursuant to Maryland Annotated Code, Article 25A, Section 5(B), any bond covenants, an Executive Order finding the County Land to no longer be necessary for public use, and mandatory referral once duly executed and delivered, each will constitute a valid and binding agreement of the County, enforceable in accordance with its terms, all of which the County shall use diligent efforts to accomplish on or before the expiration of one hundred eighty (180) days after the Effective Date.

(ii) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby or thereby will: (a) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, the County's

Charter or the Code, or any agreement or instrument to which it is a Party or (b) constitute a violation of any applicable judgment, decree or order or, to the County's knowledge, any applicable code, resolution, law, statute, regulation, ordinance or rule.

(iii) The County shall use diligent efforts to take, or cause to be taken, all actions necessary or desirable to cause the representations and warranties of the County set forth herein to be true and correct until the Public Garage Settlement.

In the event that the lender or lenders providing construction and/or permanent financing for the Project so require, the County will execute an estoppel certificate in form and substance reasonably acceptable to the County certifying as to the status of the Agreement.

11. INDEMNIFICATION

Except to the extent such is due solely to the negligence or willful misconduct of the Indemnified Parties (as hereinafter defined), the Developer hereby agrees, covenants, and warrants to protect, indemnify, and hold the County and its respective officers, members, employees, contractors and agents (collectively, the "**Indemnified Parties**") harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, liens, encumbrances, suits or actions and reasonable attorneys' fees, and the cost of the defense of the Indemnified Parties in any suit, including appeals, arising out of, or relating in any manner to all work or obligations undertaken by Developer pursuant hereto, activities resulting therefrom and/or as a result of the Developer's, or its contractors, subcontractors, agents, employees or invitees presence on, access to, or activities on or about the County Land.

12. DISPUTES

Each Party hereby consents and submits to the jurisdiction of the courts of the State of Maryland, and the Montgomery County Circuit Court, specifically, for all purposes in connection with the resolution of controversies or disputes hereunder. Each Party irrevocably consents to the service of process or notice of motion or other application to any of the aforementioned courts, and any papers in connection with any proceedings before any of such courts, by the mailing of copies thereof by certified or registered mail, postage prepaid, to such Party at its address designated in Section 22 hereof; except, however, the County's agreement to accept service does not constitute a waiver of any of the notice of claim or other procedures or liability caps required by the Local Government Tort Claims Act. Developer's resident agent is Robert P. Hillerson with an address of 801 Wayne Avenue, Suite 300, Silver Spring, MD 20910.

13. USE OF WORDS AND PHRASES

Use of the singular shall include the plural and use of the plural shall include the singular as appropriate. Where this Agreement requires the performance of obligations, such performance, unless otherwise stated, may be performed by the Party or its contractor or agent on its behalf.

14. CONSTRUCTION OF DOCUMENT

All Parties to this Agreement are represented by counsel and this Agreement reflects input from both Parties. Therefore, in the event of a dispute over, or any ambiguity of the terms of this Agreement, the Parties agree that common law rules of construction in favor of one Party or against another Party shall not apply.

15. COUNTY CONSENT AND APPROPRIATION

Approvals and consents required from the County in this Agreement do not substitute for regulatory approvals required under applicable law. Regulatory approvals by the County required by law or regulation do not substitute for approvals and consents required from the County in this Agreement. Any time Developer's or the County's approval or permission is required by this Agreement, such approval must be in writing. Nothing in this Agreement is intended to be, and shall not be construed as, a limitation of the police powers of the County. The Parties further acknowledge that any payment required from the County pursuant to this Agreement is expressly subject to the appropriation of funds by the County for such payment and failure to make such appropriation is not a breach or default of this Agreement by the County.

16. WAIVER

Waiver of any requirements of this Agreement by any Party may only be granted by the waiving Party pursuant to a formal written waiver executed by the waiving Party and signed by a Party having authority to execute the Agreement. Failure of any Party to exercise any right or remedy hereunder shall not impair any of its rights nor be deemed a waiver thereof and no waiver of any of its rights shall be deemed to apply to any other such rights, nor shall it be effective unless in writing and signed by the waiving Party.

17. DEFINITIONS

Capitalized terms in this Agreement have the meanings ascribed herein and are listed on **Exhibit F** attached hereto. All other capitalized terms have common meanings, unless they are terms of art used in the proper context.

18. TIME OF THE ESSENCE

The Parties acknowledge and agree that time is of essence in the performance of their obligations under this Agreement. The Parties shall cooperate with each other to ensure the deadlines provided for herein are met; provided that the same shall not require either Party to relinquish any right provided it under this Agreement or to undertake any obligation not otherwise required of it under this Agreement.

19. APPROVALS

Where any Party's approval is required under this Agreement, the Party whose approval is required must not unreasonably withhold, condition or delay the rendering of such approval; unless otherwise expressly provided in this Agreement as to such approval.

20. NO DISCRIMINATION

No covenant, agreement, lease, rental contract, conveyance, or other instrument shall be effected or executed by Developer, or any of its successors or assigns, whereby the Project, or any portion of the Project, is restricted upon the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, genetic status, presence of children, family responsibilities, source of income, or sexual orientation in the sale, lease, rental, use, or occupancy thereof, or otherwise prohibited by any existing or hereafter adopted local, State or federal law. Developer will comply with federal, state, and local laws prohibiting discrimination upon the basis of race, color, religious creed, ancestry, national origin, sex, marital status, age, disability, presence of children, family responsibilities, source of income, sexual orientation, or genetic status in the development and operation of the Project.

21. FORCE MAJEURE

If Developer is actually delayed in the performance of its obligations under this Agreement or any document executed pursuant to this Agreement as a direct result of unforeseeable causes beyond its control and without its fault or negligence, including, without limitation, acts of God or of the public enemy, riot, insurrection, war, terrorism, casualty, flood, epidemic, quarantine restrictions, freight embargoes, unusually severe weather, shortage of materials or labor, County Delays (collectively, "Force Majeure"), the time for performance of said obligations shall be extended for the period of the enforced delay; provided, however, that the Developer shall, within ten (10) business days after the beginning of such enforced delay, have first notified the County in writing of the causes thereof and shall be proceeding diligently during such period in good faith to perform all of its other obligations hereunder, and to overcome to the extent commercially reasonable, the cause of such Force Majeure. Increase in cost shall not be an event of Force Majeure.

22. NO PARTNERSHIP OR JOINT VENTURE

It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture by or between the County and Developer or as constituting Developer as the agent or representative of the County for any purpose or in any manner under this Agreement, it being understood that Developer is a separate entity.

23. NOTICE

A notice or communication under this Agreement by or between the County and Developer shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service, or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed:

- (a) In the case of a notice or communication to Developer, as follows:

c/o 801 Wayne Avenue
Suite 300
Silver Spring, MD 20910
Attention: Robert P. Hillerson

with a copy not constituting notice to:

Linowes and Blocher LLP
7200 Wisconsin Avenue, Suite 800
Bethesda, Maryland 20814
Attention: C. Robert Dalrymple, Esq. And Richard M. Zeidman, Esq.

(b) in the case of a notice or communication to the County, as follows:

Montgomery County Government
Office of the County Executive
101 Monroe Street, Second Floor
Rockville, Maryland 20850
Attention: Chief Administrative Officer

with copies not constituting notice to:

Montgomery County Government
Department of Transportation
101 Monroe Street, Tenth Floor
Rockville, Maryland 20850
Attention: Arthur Holmes, Jr., Director

and to:

Montgomery County Department of Transportation
Division of Parking Management
101 Orchard Ridge Road, Second Floor
Gaithersburg, Maryland 20878
Attention: Stephen C. Nash, Chief

and:

Montgomery County Government
Office of the County Attorney
101 Monroe Street, Third Floor
Rockville, Maryland 20850
Attention: John Fisher, Associate County Attorney

Notices may be addressed to such other address in respect to any of the foregoing Parties as that Party may, from time to time, designate in writing, dispatched as provided in this Section.

All notices and approvals required in this Agreement must be in writing to bind the submitting or receiving Party.

24. EXECUTED IN MARYLAND

This Agreement has been executed by the County and Developer in the State of Maryland.

25. CONFLICTS OF INTEREST

No member, official, representative, or employee of the County or Developer shall take any action regarding this Agreement, the Project or any agreements relating to either which conflicts with, or is prohibited by, any ethical requirements to which they are subject.

26. TITLES OF PARAGRAPHS AND SUBPARAGRAPHS

Any titles of the several parts, sections, subsections, paragraphs and subparagraphs of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

27. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

28. ANCILLARY DOCUMENTS AND FURTHER ASSURANCES

The County and Developer shall execute such further assurances as are necessary to effectuate the intentions of this Agreement or to offer further assurances with respect to such matters as the Parties may reasonably require provided that the terms of the Agreement are not thereby changed.

29. AMENDMENTS

Any amendment to this Agreement must be executed in writing and, except as otherwise expressly provided in this Agreement, with the same formality as this Agreement.

30. PERFORMANCE ON SATURDAY, SUNDAY, OR HOLIDAY

Whenever the provisions of this Agreement call for the performance of any act on or by a date that is not a County business day, including the expiration date of any cure periods provided herein, then such payment or such performance shall be required on or by the immediately succeeding County business day.

31. STATE LAW

This Agreement shall be interpreted in accordance with the laws of the State of Maryland.

32. INVALIDITY OF PARTICULAR PROVISIONS

If any term, covenant, condition, or provision of this Agreement, or its application to any person or circumstance shall, at any time or to any extent, be held to be invalid or unenforceable, then the balance of the Agreement shall (except to, the extent such, result, materially changes the obligations or expectations of the Parties under the terms of this Agreement) not be affected thereby, and under such circumstances each term, covenant, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

33. COMPLIANCE WITH LAWS

The County and Developer shall, at all times, be subject to all applicable law pertinent hereto.

34. EFFECTIVE DATE

The Effective Date of this Agreement shall be the date of the last signature upon which this Agreement has been approved and executed by the County and Developer.

35. NO RECORDATION

This Agreement shall not be recorded without the prior written consent of the County and Developer.

36. SURVIVAL

(a) The terms and provisions of this Agreement shall survive the execution and delivery of any deed to the County Land or any deed to the Public Parking Garage Unit.

(b) Upon request by Developer, the County shall, subject to the provisions of Article 15 above, do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all further acts and deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required to better effectuate the transaction contemplated by this Agreement, provided the same do not require the County to relinquish any rights under this Agreement or incur any costs not otherwise required by this Agreement. Upon request by the County, Developer shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all further acts and deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required to better effectuate the transaction contemplated by this Agreement, provided the same do not require the Developer to relinquish any rights under this Agreement or incur any costs not otherwise required by this Agreement.

(c) The indemnity obligations of Developer set forth in Section 11 and Developer's obligations under the Right of Entry Agreement shall survive the expiration or earlier termination of this Agreement.

37. ASSIGNMENTS

Developer may not assign its interest in this Agreement without the consent of the County which consent shall not be unreasonably withheld conditioned or delayed, provided that consideration of assignee's development, design and construction experience and financial condition and key personnel and similar factors effecting the assignees ability to perform under this Agreement shall not be considered unreasonable. The foregoing notwithstanding, Developer shall have the right without obtaining the County's approval to make assignments of this Agreement to any Affiliate, parent or wholly owned subsidiary entities or to its bona fide lender as security, in which event, in order for such assignee to realize the benefits of this Agreement the assignee must assume and fulfill all of Developer's obligations hereunder.

38. ENTIRE UNDERSTANDING

This Agreement expresses the entire understanding by and between the County and Developer with respect to the matters set forth herein and no Party shall be bound by any terms, covenants, or agreements not herein contained.

39. BINDING EFFECT

All of the covenants, conditions and obligations contained in this Agreement shall be binding upon, and inure to the benefit of the respective successors and assigns of the County and Developer.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the County and Developer have caused this Agreement to be duly executed as of the date first above written.

MICHAEL, L.L.C., a Maryland limited liability company

By: Robert P. Hillerson
Robert P. Hillerson
Title: Managing Member

Date: 10/06/08

MONTGOMERY COUNTY, MARYLAND

By: Diane R. Schwartz-Jones
Diane Schwartz-Jones
Assistant Chief Administrative Officer

Date: 10/24/08

RECOMMENDED BY:

By: Arthur Holmes, Jr.
Arthur Holmes, Jr.
Director, Department of
Transportation

Date: 13 OCT '08

APPROVED AS TO FORM AND LEGALITY:

OFFICE OF THE COUNTY ATTORNEY

By: John Fisher
John Fisher
Associate County Attorney

Date: 10/19/08

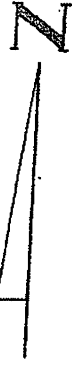
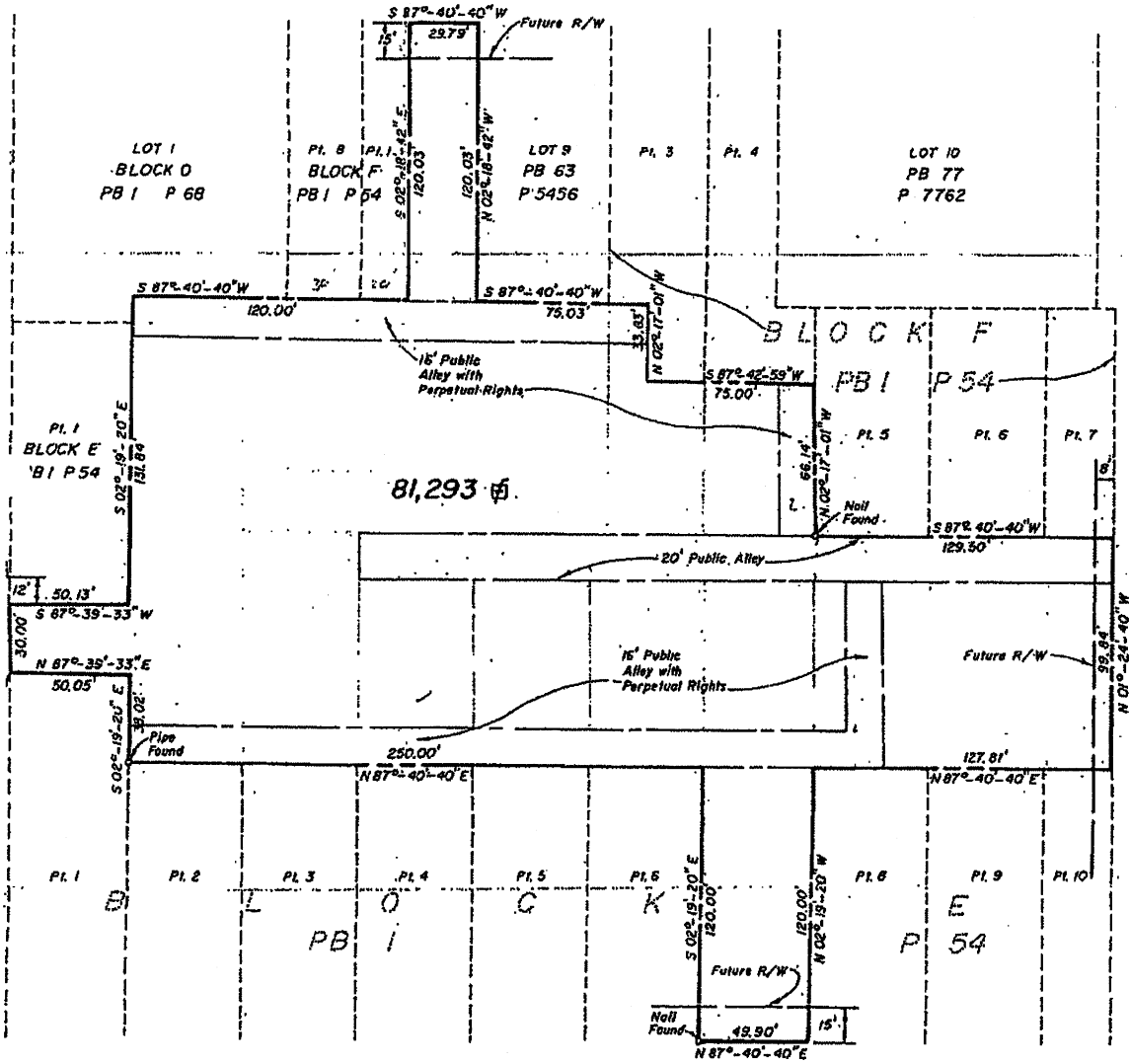


Exhibit A-1

THAYER AVENUE



SILVER SPRING AVENUE

FENTON STREET

Location Plat
PUBLIC PARKING LOT #3

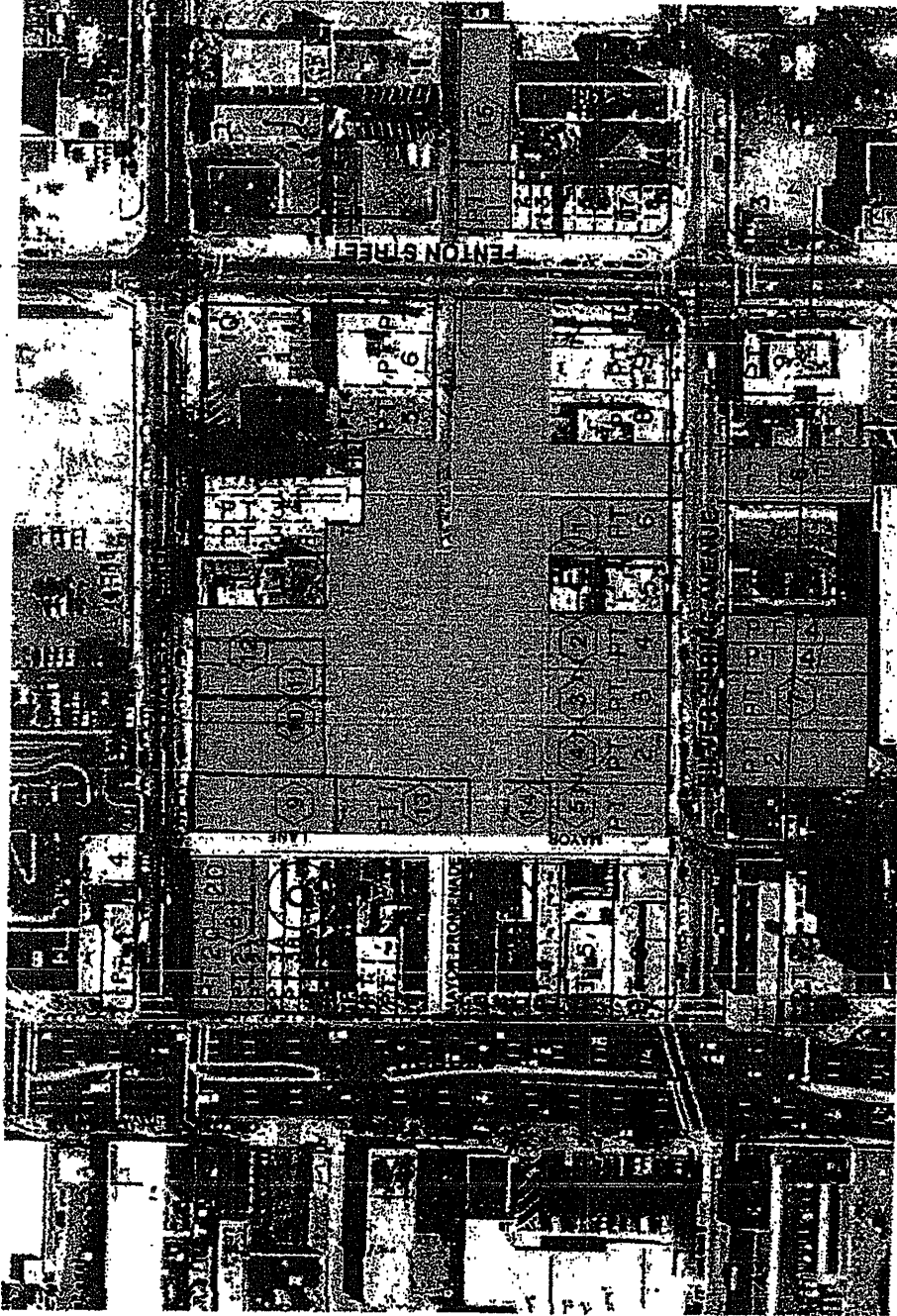
February 1974 Scale: 1" = 50'
Prepared By Montgomery County, Md
Department of Transportation

Public Parking Lot 3

Proposer Properties ¹

- 1. 909 Silver Spring Avenue
- 2. 913 Silver Spring Avenue
- 3. 915 Silver Spring Avenue
- 4. 917 Silver Spring Avenue
- 5. 919 Silver Spring Avenue
- 6. 906 Silver Spring Avenue
- 7. 914 Silver Spring Avenue
- 8. 8241 Georgia Avenue
- 9. 954 Thayer Avenue
- 10. 916 Thayer Avenue
- 11. 914 Thayer Avenue
- 12. 916A Thayer Avenue
- 13. 8225 Mayor Lane
- 14. 8211 Mayor Lane (aka 8225 Georgia Ave.) ²
- 15. 8215 Fenton Street

Exhibit A-2
and Exhibit A-3



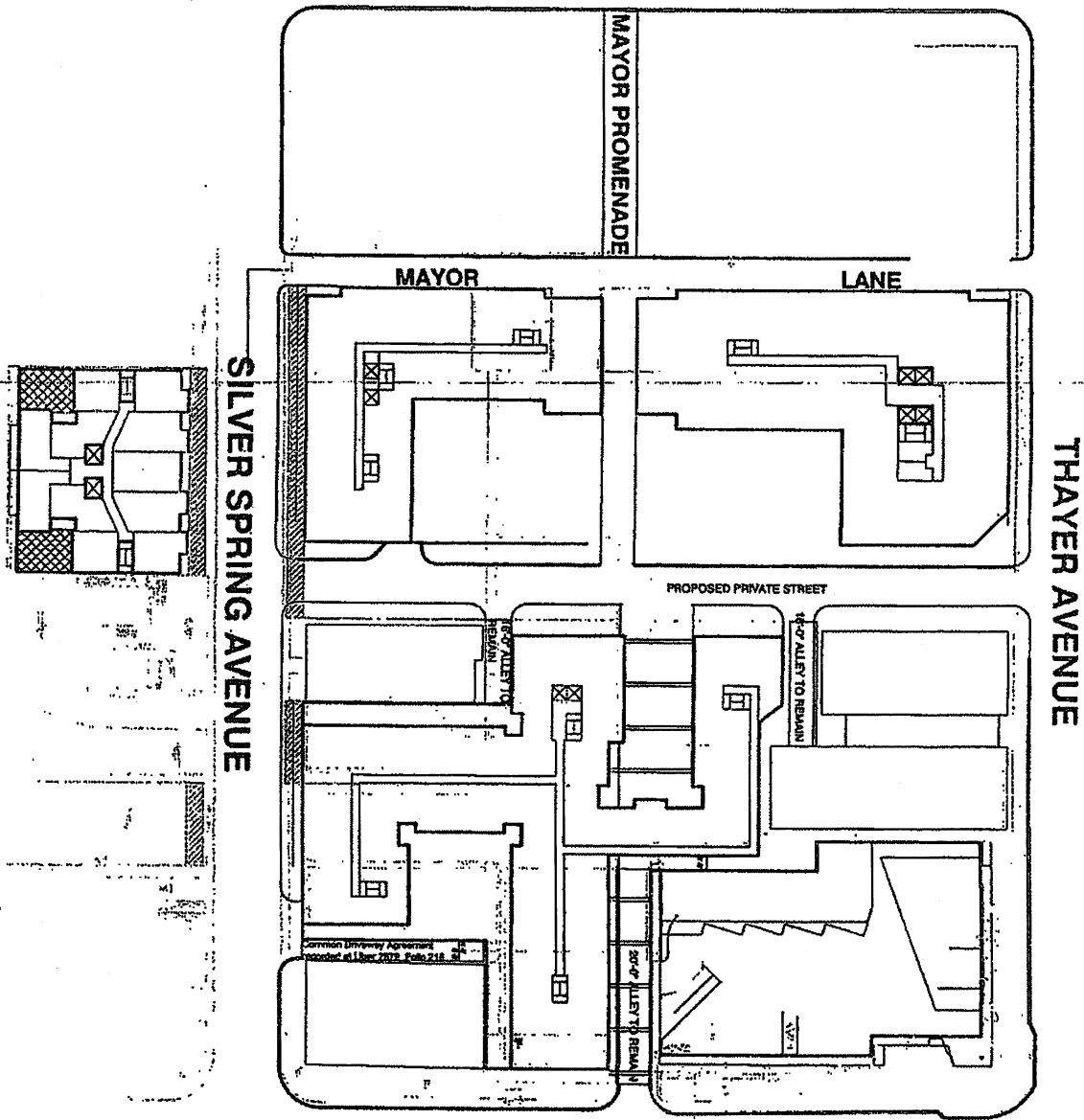
1 PROPERTY OWNERSHIP
SCALE: NIS

STUDIO PLAZA - LOT #3
MICHAEI, L.L.C.
SILVER SPRING, MD

Notes:
1. Properties owned by Michael, L.L.C. and/or owned by Robert Paul Hillerson.
2. Property shown in RFP exhibit as owned by the Silver Spring Parking Lot District, but actually owned by Proposer.

SK&I
A0-1
Genster

GEORGIA AVE.



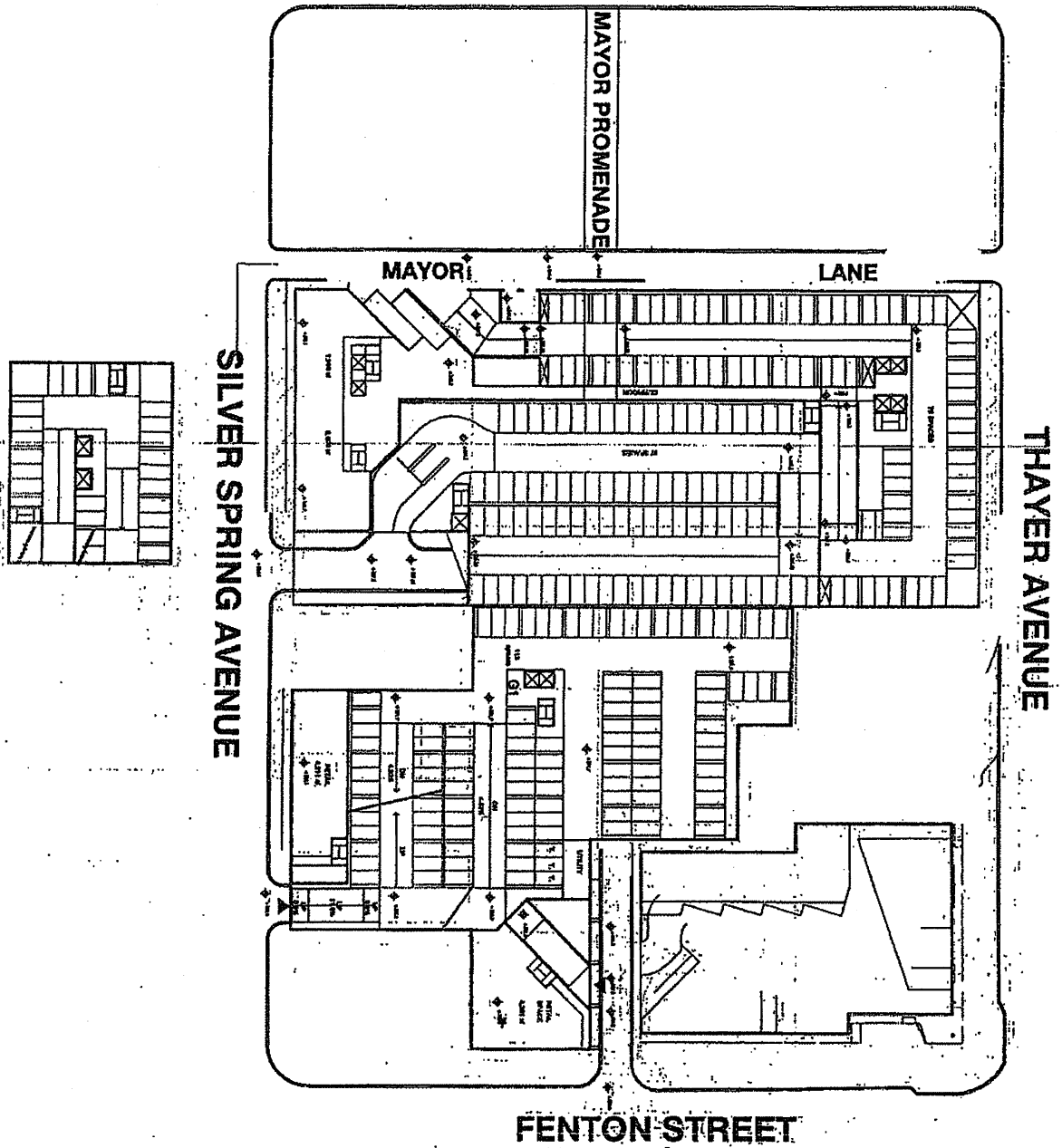
SILVER SPRING AVENUE

THAYER AVENUE

FENTON STREET

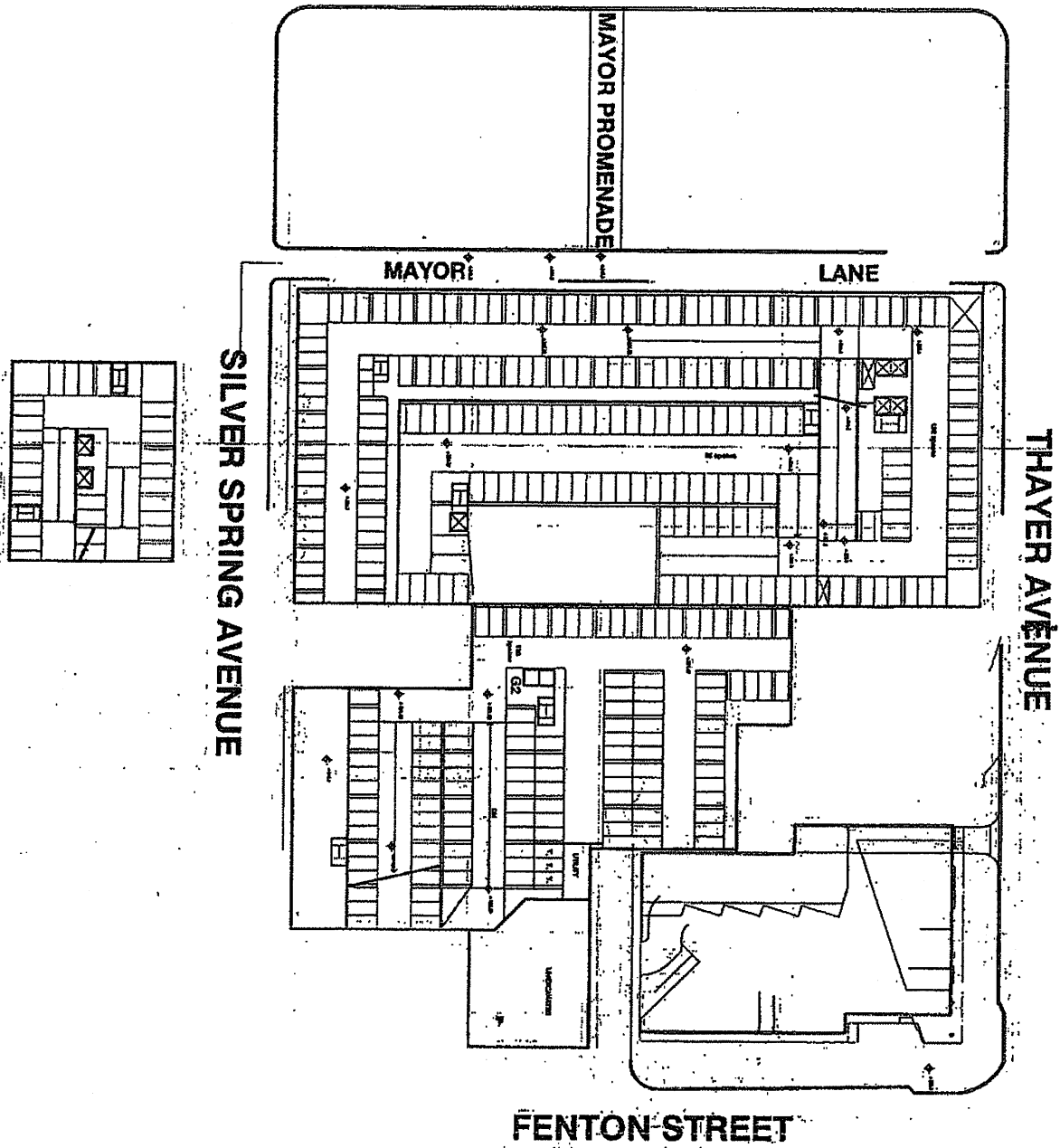
Common Utility Agreement
dated 11/18/2012, File 218

GEORGIA AVE.

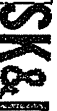


Proposed 152-Space Public Garage

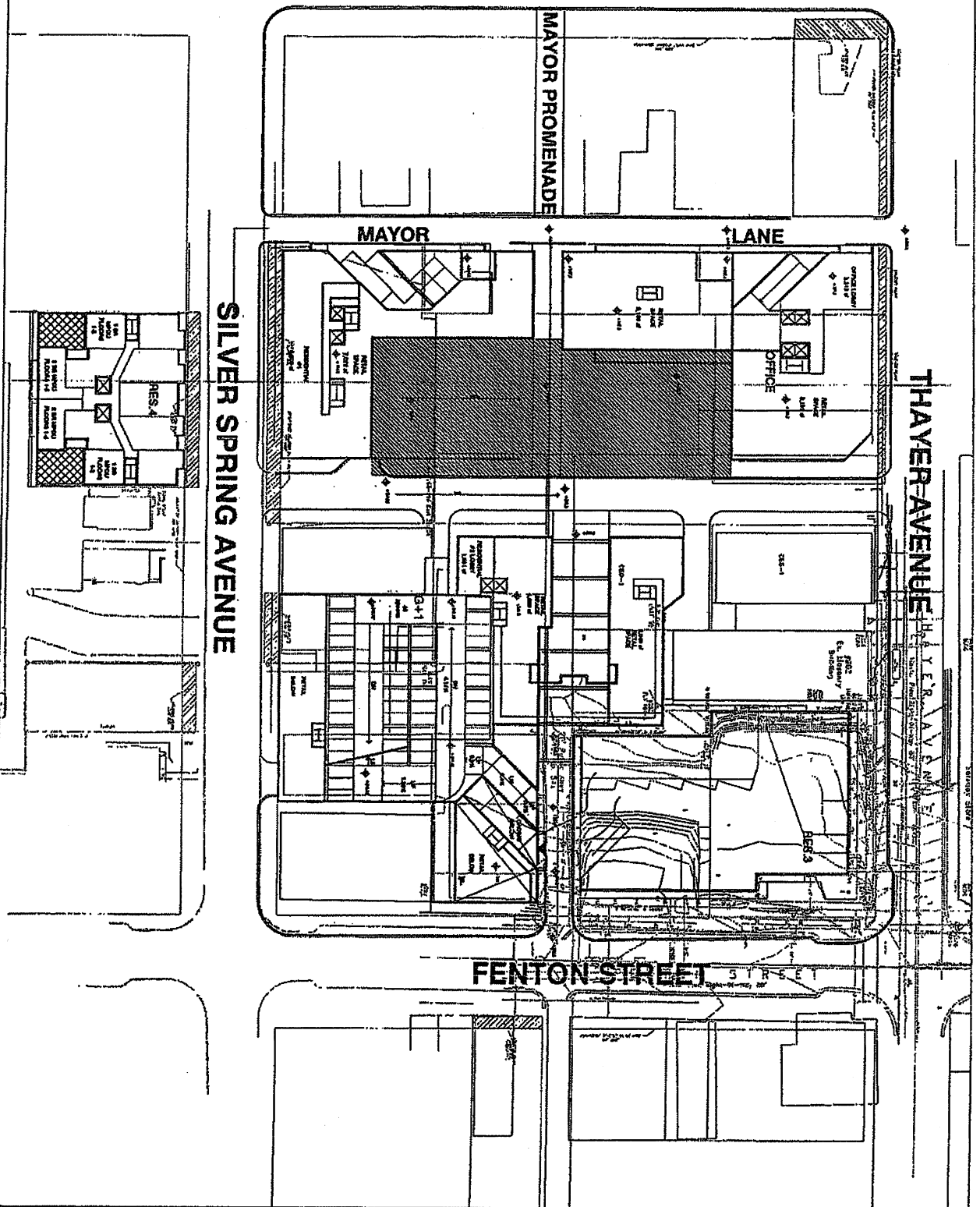
GEORGIA AVE.



Proposed 152-Space Public Garage



GEORGIA AVE.



STUDIO PLAZA
SILVER SPRING, MARYLAND

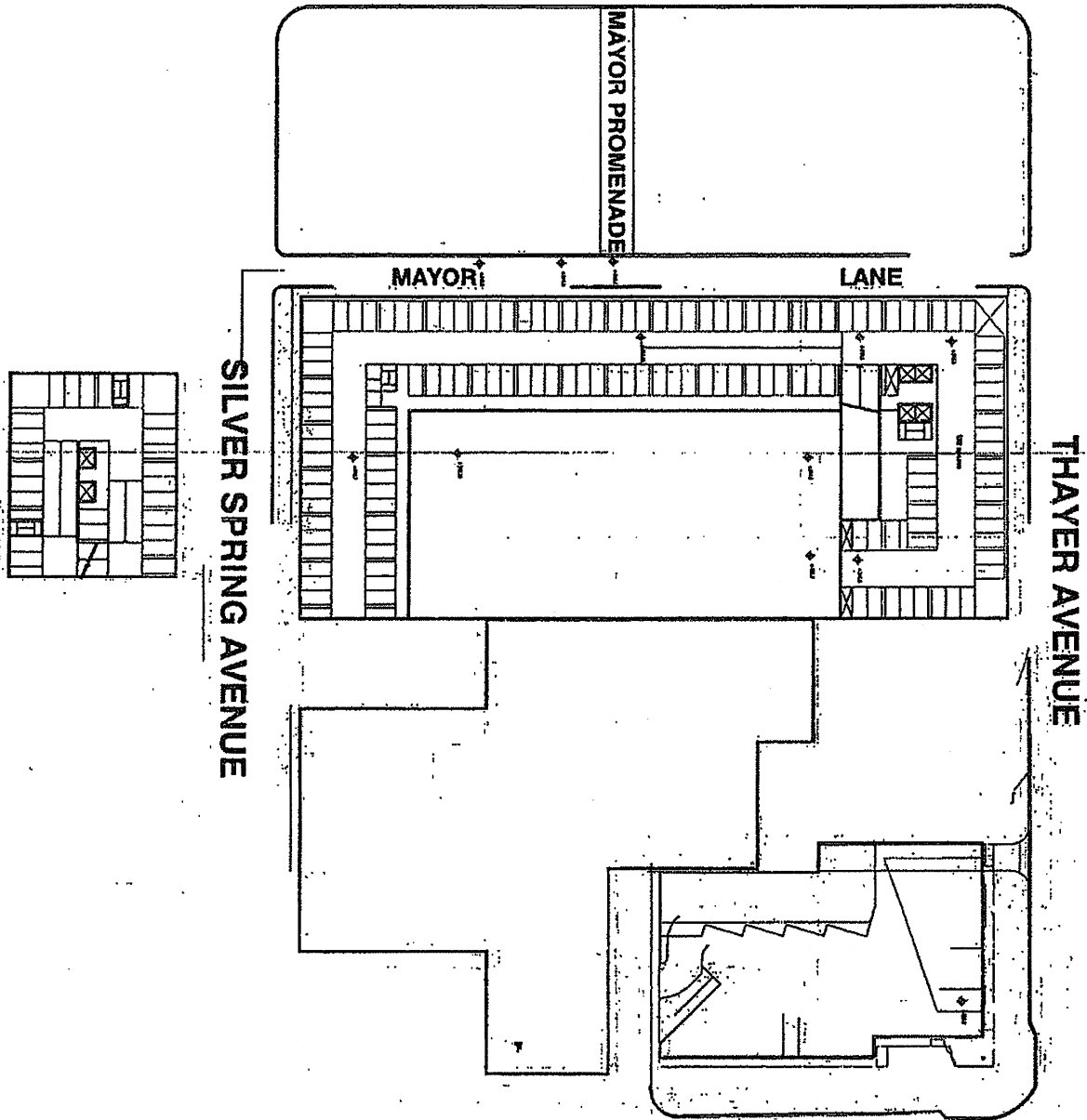
G+1 THAYER AVE. FLOOR PLAN
MICHAELL, LLC

Project No. 1000000000
Job No. 1000000000
Scale: 1/8" = 1'-0"
2008-09-10

SK&I

1.04

GEORGIA AVE.



SILVER SPRING AVENUE

THAYER AVENUE

FENTON STREET

A 1.01

STUDIO PLAZA
SILVER SPRING, MARYLAND

G3 FLOOR PLAN
MICHAELL, LLC

Project # 12111
Job Name: SCHWAB 14
SCALE: 1/8" = 1'-0"
2004-07-10
SK&I