

Introduced and Read: May 5, 2015
Adopted: May 5, 2015
Posted: _____, 2015
Effective Date: _____, 2015

CITY OF MOUNT RAINIER, MARYLAND

RESOLUTION NO. 9-2015
(Drafted by City Attorney)

Introduced by: Councilmember Knedler

Approving a Land Development Agreement between the City of Mount Rainier and Streetsense Development Partners, LLC and The Neighborhood Development Company, L.L.C. for the acquisition of property in the Mount Rainier Town Center and the development of a mixed-use project on the property.

WHEREAS, the Mount Rainier Charter, Appendix I. Urban Renewal Authority for Slum Clearance, Section A1-102 empowers the City to carry out urban renewal projects in slum or blighted areas and, in connection with such projects, acquire property for the redevelopment or the rehabilitation of such slum or blighted areas; and

WHEREAS, in accordance with Section A1-105 of the Mount Rainier Charter, the City prepared an urban renewal plan for slum or blighted areas and the City Council approved such plan by Ordinance 6-2004 adopting the Mount Rainier Town Center Urban Renewal Plan; and

WHEREAS, by Resolution No. 3-2008, the City Council initiated an urban renewal project by identifying certain properties, located in the Urban Renewal Area of the Mount Rainier Town Center, as blighted and authorizing the acquisition of such properties for redevelopment and revitalization; and

WHEREAS, in furtherance of such urban renewal project the City purchased the properties located at the northeast corner of Rhode Island Avenue and Eastern Avenue in the City consisting of approximately 32,906 square feet, located at 3701, 3703, 3705 Eastern Avenue and 3200, 3204, 3208 Rhode Island Avenue (hereinafter collectively referred to as the "Property"); and

WHEREAS, the City, on January 31, 2012, issued a Request for Proposals (hereinafter "RFP") seeking proposals for acquisition of the Property and the development of a mixed-use project on the Property; and

WHEREAS, Streetsense Development Partners, LLC and Neighborhood Development Company, LLC (hereinafter collectively referred to as "Developer") submitted a proposal for the acquisition of the Property and for the development of residential (apartments), retail, and parking uses on the Property; and

WHEREAS, the City Council, based on the development proposal by Developer, on November 8, 2012, voted to award a contract for the conveyance and redevelopment of the Property to the Developer; and

WHEREAS, there have been lengthy negotiations over the terms of the parties' agreement for the development of the Property; and

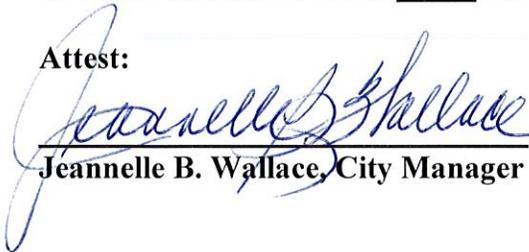
WHEREAS, the City and the Developer desire to enter into a Land Development Agreement to set forth their mutual understandings and responsibilities with regard to the purchase and development of the Property.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MOUNT RAINIER, MARYLAND, that the Land Development Agreement between the City and Developer, in substantially the form set forth on Exhibit 1 to this Resolution, is approved.

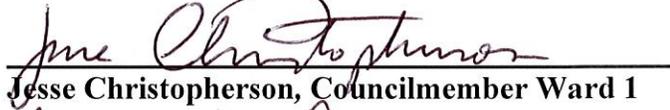
BE IT FURTHER RESOLVED, that the Mayor is authorized to execute such Land Development Agreement with the Developer for the conveyance of the Property and development of a mixed use project on the Property.

THIS RESOLUTION IS ADOPTED BY THE COUNCIL OF THE CITY OF MOUNT RAINIER THIS 5th DAY OF May, 2015.

Attest:


Jeannelle B. Wallace, City Manager


Malinda Miles, Mayor


Jesse Christopherson, Councilmember Ward 1


Jacquyn W. Riposo, Councilmember Ward 1


Brent Bolin, Councilmember Ward 2


Bryan Knedler, Councilmember Ward 2

CITY OF MOUNT RAINIER
LAND DEVELOPMENT AGREEMENT

THIS LAND DEVELOPMENT AGREEMENT (hereinafter referred to as “Agreement”) is made this ___ day of _____, 2015, by and between the City of Mount Rainier, a Maryland municipal corporation, (hereinafter referred to as “City”) and Streetsense Development Partners, LLC, a Maryland limited liability company (“Streetsense”), and The Neighborhood Development Company, L.L.C, a District of Columbia limited liability company (“NDC”) (hereinafter collectively referred to as “Developer”) (each a “Party” and collectively the “Parties”) or its permitted successors and assigns.

WHEREAS, the Mount Rainier Charter, Appendix I. Urban Renewal Authority for Slum Clearance, Section A1-102 empowers the City to carry out urban renewal projects in slum or blighted areas and, in connection with such projects, acquire property for the redevelopment or the rehabilitation of such slum or blighted areas; and

WHEREAS, in accordance with Section A1-105 of the Mount Rainier Charter, the City prepared an urban renewal plan for slum or blighted areas and the City Council approved such plan by Ordinance 6-2004 adopting the Mount Rainier Town Center Urban Renewal Plan; and

WHEREAS, by Resolution No. 3-2008, the City Council initiated an urban renewal project by identifying certain properties, located in the Urban Renewal Area of the Mount Rainier Town Center, as blighted and authorizing the acquisition of such properties for redevelopment and revitalization; and

WHEREAS, in furtherance of such urban renewal project the City purchased the properties located at the northeast corner of Rhode Island Avenue and Eastern Avenue in the City consisting of approximately 32,906 square feet, located at 3701, 3703, 3705 Eastern Avenue and 3200, 3204, 3208 Rhode Island Avenue, being Lots 7-13 of Block 5 of “Rogers Second Addition to Mt. Rainier Subdivision” as per Prince George's County Tax Map 49-Grid F-4, as more particularly described in Deeds recorded in the Land Records of Prince George’s County, Maryland at Liber 30465, Folio 225, at Liber 31302, Folio 32, and at Liber 31302, Folio 37 (hereinafter collectively referred to as the “Property”); and

WHEREAS, the City, on January 31, 2012, issued a Request for Proposals (hereinafter “RFP”) seeking proposals for acquisition of the Property and the development of a mixed-use project (the “Project”) on the Property; and

WHEREAS, the Developer submitted its proposal for the acquisition of the Property and for the development of residential (apartments), retail, and parking uses on the Property; and

WHEREAS, the City Council, based on the development proposal by Developer and Developer's track record and experience in developing similar viable mixed-use projects, on November 8, 2012, voted to award a contract for the conveyance and redevelopment of the Property to the Developer; and

WHEREAS, the City and the Developer desire to enter into this Agreement to set forth their mutual understandings and responsibilities with regard to the purchase and development of the Property.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and undertakings provided for herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties, intending to be legally bound, agree as follows:

1. Sale of Property. The City agrees to sell and transfer its fee simple interest to Developer in the properties located at the northeast corner of Rhode Island Avenue and Eastern Avenue in the City, consisting of approximately 32,906 square feet, located at 3701, 3703, 3705 Eastern Avenue and 3200, 3204, 3208 Rhode Island Avenue, being Lots 7-13 of Block 5 of "Rogers Second Addition to Mt. Rainier Subdivision" as per Prince George's County Tax Map 49-Grid F-4, as more particularly described in Deeds recorded in the Land Records of Prince George's County, Maryland at Liber 30465, Folio 225, at Liber 31302, Folio 32, and at Liber 31302, Folio 37, upon the terms and conditions hereinafter set forth. In accordance with its initial proposal, Developer intended to plan, finance, design, develop, and build approximately 210 residential units (*i.e.*, apartments), 18,255 square feet of retail space, and a parking garage (177 spaces for residential and 73 spaces for retail) on the Property (the "Initial Development Plan"). As part of Developer's formal application to the MUTC Design Review Committee, the Developer revised its design proposal to provide for approximately 191 residential units (*i.e.*, apartments), 19,650 square feet of retail space, and a 270 space parking garage (191 spaces for residential and 79 spaces for retail) on the Property (the "Revised Development Plan"). The Revised Development Plan for the Property was approved by the MUTC Committee at its July 10, 2013, meeting. Any change to the Revised Development Plan is subject to approval by the City Council as hereinafter provided in this Agreement.

2. Purchase Price. In consideration for the rights to develop the Property as stated in this Agreement and good and marketable fee simple title to the Property, Developer shall pay the City the sum of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) to be payable by Developer as follows:
 - a. The City and Developer acknowledge that, upon submission of a proposal to the City in response to the RFP, the Developer paid a good faith deposit in the sum of \$10,000.00 to the City.
 - b. Upon execution of this Agreement by the City and Developer, the Developer shall provide an additional deposit in a sum equal to five percent (5%) of the purchase price of which the aforesaid \$10,000.00 good faith deposit shall be a part (the "Deposit"). The entire Deposit shall be credited to the purchase price at settlement, unless otherwise provided herein.
 - c. All deposits shall be held in escrow by Answer Title and Escrow, 938 E. Swan Creek Road, Suite 347, Fort Washington, MD 20744 (the "Escrow Agent") in a non-interest bearing attorney's trust or escrow account in a federally insured financial institution designated by Escrow Agent.
 - d. The full purchase price, less the Deposit, shall be due at settlement from the Developer, and paid in cash, wired funds, bank treasurer's check, or certified check.
3. Site Control of Arrow, Inc. Property. Within one week of the date of execution of this Agreement, Developer shall submit a signed contract, option agreement or binding letter of intent to the City providing for Developer to acquire the adjacent property owned by Arrow, Inc. (Larry Solomon, principal) for the development project on the Property (the "Thrifty Parcel"). Developer shall acquire title to the Thrifty Parcel no later than the date of final settlement of Developer's purchase of the Property from the City. Developer's failure to provide proof of site control of the Thrifty parcel to the City within one week of this Agreement and/or to make full settlement on the acquisition of the Thrifty Parcel by the date of final settlement on Developer's purchase of the Property from the City shall be defaults under this Agreement.
4. Physical Inspection. The Developer shall have ninety (90) calendar days following execution of this Agreement by both parties to have a Phase 1 Environmental Site Assessment ("Phase 1 ESA") performed and otherwise inspect the physical condition of

the Property and to notify the City that the Developer approves the same. If a Recognized Environmental Condition is found during the Phase 1 ESA process, then the parties agree to extend the physical inspection contingency to one hundred twenty (120) calendar days following execution of this Agreement by both parties, to have a Phase 2 Environmental Site Assessment (“Phase 2 ESA”) performed. If the Developer fails to notify the City that the Developer approves the physical condition of the Property within the specified time, this Agreement shall be null and void, the Developer’s deposit shall be returned, and the City and the Developer shall have no further obligations hereunder.

5. Development of Property.

- a. The Developer agrees to fully develop the Property in accordance with the Revised Development Plan or in accordance with the Revised Development Plan, as modified, and as approved by the City in accordance with this Agreement.
- b. LEED Gold Certification. The Developer shall design and construct the Project in such manner that it would qualify for LEED Gold certification. The Developer shall submit its LEED Project Checklist for Building Design and Construction: Multifamily Midrise, Project Name: Mt. Rainier Town Center, to the City for approval as part of the Development Plan for the Project to be submitted to the Mixed Use Town Center Committee and approved by the City Council, as provided by this Agreement. The Developer further shall submit any material changes or revisions to such LEED Project Checklist to the City on not less than a quarterly basis from and after the date of execution of this Agreement until completion of the planned development of the Property and Project. Following completion of the Project, Developer agrees, at its expense, to retain a mutually-agreeable independent third party to verify that the Project qualifies for LEED Gold certification. Failure of the Project to qualify for LEED Gold certification shall be a default under this Agreement.
- c. City Additions. The Developer agrees to use its Best Efforts to incorporate the following elements in the development of the Property. As used in this Agreement, “Best Efforts” means that such party shall endeavor in good faith to employ all commercially reasonable measures available to that party and within that party’s power, with promptness and due diligence, to bring about the event

or result to which the “best efforts” obligation refers. Such obligation shall include a requirement that the party make affirmative efforts to accomplish the objective in question.

- i. Green Elements. In addition to obtaining LEED Gold certification for the building, the Developer agrees to use its Best Efforts to incorporate green building strategies in the project, including the planned structured (garage) parking (such as, but not limited to a green roof and additional vegetation and plantings).
 - ii. Artwork. Developer will incorporate public artwork created by local artists into the design of the development on the Property.
 - iii. Residential Units. The apartment building should include a mixture of unit styles/floor plans; incorporate universal design features in unit interiors and include individual metering of units.
 - iv. Retail Space. Developer shall use its best efforts to obtain an anchor tenant for the retail space that is mutually acceptable to both Parties.
 - v. Solar Access Analysis. The Developer shall do a solar access analysis of the site for noon on the winter solstice, to be shared with the City and residents of the south side of the 3100 and 3200 blocks Perry Street, for the purpose of limiting shading of these properties to the maximum extent practicable. Given the change in elevation from Rhode Island and Eastern Avenues down to the Perry Street homes, it is the City's wish to minimize the impact of the development's massing on these properties.
 - vi. Main Alley. The public alley running west from the intersection of Rhode Island Avenue and 33rd Street as shown on the survey attached as Exhibit A (“Main Alley”) should not be used as the main entrance to and/or exit from the parking garage. Developer will be responsible for repaving the Main Alley with a permeable surface upon completion of construction on the Property. Developer also will use its Best Efforts to minimize traffic in the Main Alley.
- d. Development Plan. Developer agrees to proceed with the development of the Property in accordance with the Revised Development Plan approved by the “Mixed Use Town Center Committee” (“MUTC”) at the MUTC meeting on

July 10, 2013, and approved by the City Council, as modified by the Developer (the "Second Revised Development Plan").

- e. If the MUTC determines that the Developer's changes to the Revised Development Plan for the Property, as reflected in the Second Revised Development Plan (*e.g.*, removing units from above the garage or other design changes) require additional MUTC review and approval, then the Developer agrees to submit a revised application for approval of the Second Revised Development Plan for the Property to the MUTC within sixty (60) days after the date of this Agreement, TIME BEING OF THE ESSENCE. Upon approval by the MUTC of Developer's Second Revised Development Plan, the Developer shall apply to the City Council, at the first Council meeting following MUTC's decision, for approval of such Second Revised Development Plan.
- f. If the MUTC does not approve the Second Revised Development Plan, the Developer may choose to submit the Second Revised Development Plan to the City Council which has the final authority for the approval of such Second Revised Development Plan.
- g. In the event the City Council does not approve the Second Revised Development Plan, or does not approve a mutually agreed upon alternate development plan, Developer shall have the right to terminate this Agreement, in which event the Developer's Deposit shall be returned, and the City and the Developer shall have no further obligations hereunder.
- h. Once a development plan has been approved by the City Council (the "Approved Development Plan"), the City may not require the Developer to modify the Approved Development Plan. Any future requests by the Developer to materially amend, change or modify the Approved Development Plan shall require review by the MUTC and approval by the City Council; provided, however, that such approval shall not be unreasonably withheld, conditioned or delayed if the amendment, change or modification is in response to the requirement of a governmental body with authority over the zoning, permitting, licensing, or other approvals related to the Project.
- i. In addition, the Developer shall provide periodic updates on its development activities and progress to the City on not less than a quarterly basis from and

after the date of the execution of this Agreement until completion of the planned development of the Property.

- j. Gap Financing. The City acknowledges that there will be a “gap” in the financing required to develop the Property in accordance with the Approved Development Plan, meaning that the anticipated revenue from the Project is insufficient to support enough private financing to cover all Project development costs. It is anticipated that Prince George’s County will provide a minimum of \$3.5 million of the needed “gap” financing, and the City agrees to provide a minimum of \$1 million and a maximum of \$1.5 million towards the “gap” financing for the Project. This financing will be provided through a tax increment or other financing arrangement established by Prince George’s County to assist the development of the Property.

6. Settlement.

- a. Final settlement on the Developer’s purchase of the Property, pursuant to the terms and conditions of this Agreement, shall take place at the offices of a settlement attorney or title company selected by the Developer. Settlement shall occur on or before the earlier of July 31, 2016, or within thirty (30) days after Developer has received each of the following: (i) all required approvals and permits to construct the project, (ii) approval by the City and Prince George’s County for all public gap financing, (iii) firm commitments for project financing, and (iv) confirmation from Prince George’s County that the “V-shaped” public alley bordering Lot 35 of Block 5 has been vacated; and (v) the final approval of the Approved Development Plan for the Property by the City Council. Notwithstanding the preceding, the Closing Date shall be extended one day for each day a lender providing project financing, including, but not limited to the City and Prince George’s County, request an extension of the Closing Date.
- b. The Developer agrees to pay settlement costs and charges related to, title examination and title insurance fees, document preparation, notary fees, survey fees where required, and recording charges, except that the City shall be responsible, at its expense, for complying with its obligation to deliver good and marketable title to the Property free and clear of all liens and encumbrances and free of all tenants and rights of occupancy. The cost of State of Maryland and

Prince George's County transfer and recordation taxes shall be shared equally between the City and Developer. The City and Developer shall execute a HUD-1 Settlement Statement with respect to the Property setting forth the purchase price, deposit, settlement costs, and any settlement adjustments and prorations as set forth in this Agreement. Any utilities, water and sewer charges, rents, real estate taxes, both general and special, and all other public or governmental charges or assessments against the Property, shall be adjusted as of midnight of the day preceding settlement and shall be assumed by the Developer thereafter.

- c. The parties agree that settlement is contingent upon the Developer's acquisition of the adjacent Thrifty parcel property owned by Arrow, Inc. (Larry Solomon, principal).

7. Project Schedule.

- a. Within fifteen (15) days of the effective date of this Agreement, Developer shall provide City with an update to the Mount Rainier Town Center Preliminary Development Schedule, March 20, 2015 (hereinafter "Project Schedule"), a copy of which is attached as Exhibit B. The City will have ten (10) business days after receipt to review and either approve or reject the updated Project Schedule. If the City rejects the updated Project Schedule, Developer shall use its Best Efforts to incorporate suggestions received from the City into the revised Project Schedule and shall continue to resubmit the Project Schedule for approval until such approval is obtained.
- b. If at any time a task set forth on the approved Project Schedule cannot be completed by the "Finish" date, then Developer shall notify the City in writing at least fifteen (15) days before the deadline. Such notification must state the additional time needed for the task and include a justification for the request for additional time. Requests for reasonable extensions of time shall be approved; however, requests will not be approved by the City if the reason for the failure to meet the Finish date for a task is within the Developer's control.

8. Approvals. As soon as practicable after settlement on Developer's purchase of the Property, but in no case later than 30 days after settlement, the Developer agrees to initiate the development of the Property in accordance with the Approved Development Plan. The Approved Development Plan shall be in accordance with and comply with all of the

terms and conditions of the Prince George's County Zoning Ordinance as set forth in Section 27 thereof, known as the "M-U-T-C" zone designation (mixed-use town center) and the "Design Standards and Guidelines" (DSG) set forth therein, or such other zoning regulation and design standards that apply by code to the Property.

9. V-Shaped Public Alley. Prior to settlement on the Developer's purchase of the Property, the City, in cooperation with the Developer, agrees to file a Vacation Petition with the Prince George's County Planning Board to vacate the "V-shaped" public alley bordering Lot 35 of Block 5 to the southeast and southwest, as shown on the survey attached hereto as Exhibit A. This alley also is shown on the subdivision plat of "Rogers' Second Addition to Mount Rainier," recorded in Plat Book BDS1 at Plat 48 among the Land Records of Prince George's County, Maryland. The vacation of the V-shaped public alley will allow the alley land to be included in the development of the Property as set forth in this Agreement. The Vacation Petition will comply with the vacation requirements set forth in Section 24-112 of the Subdivision Regulations, Prince George's County Code, as amended.
10. Performance Bond. Developer shall, upon demand of City, furnish a performance bond issued by a reputable surety company in such sum as may be reasonably required by City, up to \$250,000.00, as a guarantee of Developer's meeting the milestone "Finish" dates outlined in the approved Project Development Schedule ("Project Schedule") and any revisions thereto. Said performance bond shall be subject to the approval of City and shall be with a surety and in a form each satisfactory to City. The total amount of the performance bond shall be forfeited in favor of the City if Developer fails to complete a material task by the "Finish" date outlined in the Project Schedule although the City may, in its sole reasonable discretion, allow for an extension of time or for a forfeiture of less than the total amount of the performance bond. A material task shall be defined as an item on the Project Schedule whose failure to achieve the stated "Finish" date shall jeopardize the completion of the development of the Property in a timeframe consistent with the Development Plan and Project Schedule and shall include, but not be limited to, Building Permit issuance, Construction Launch Date, Final Inspection Date, achieving LEED Gold certification for the building to be constructed on the Property, and Marketing and Leasing.

11. Default. City and Developer are required and agree to comply with all of the terms and conditions of this Agreement and to make full settlement and construct the development in accordance with the terms of this Agreement and acknowledge that failure to do so constitutes a default hereof. The term "Default" shall include, but not be limited to: (i) Developer's failure to pay the additional deposit as set forth in paragraph 2.b of this Agreement and such failure remains uncorrected for ten (10) days after written notice that a payment is past due; (ii) Developer's failure to submit the Second Revised Development Plan to the MUTC within sixty (60) days after the date of this Agreement, and such failure remains uncorrected for ten (10) days after written notice; (iii) Developer's failure to submit the Second Revised Development Plan to the City Council for approval, and such failure remains uncorrected for ten (10) days after written notice is received from the City; (iv) Developer's failure to provide the City with an update to the Mount Rainier Town Center Preliminary Development Schedule, March 20, 2015, ("Project Schedule") within fifteen (15) days of the date of this Agreement and then to obtain the City Council's approval of such Project Schedule, and such failure remains uncorrected for ten (10) days after written notice; (v) Developer's failure to make full settlement on the Property within the timeframe set out in this Agreement; (vi) Developer's failure to meet any deadlines in the Project Schedule, as may be extended, that will materially affect the Completion Date where such failure is not caused by Force Majeure event as defined herein; (vii) the City fails to provide evidence of good and marketable title to the Property free and clear of all liens and encumbrances and free of all tenants and rights of occupancy for the purposes of transferring title to Developer and such that failure remains uncured for thirty (30) days after written notice; (viii) the filing of bankruptcy or a general assignment for the benefit of creditors by Developer or the City; (ix) Developer's failure to design and construct the Project in such manner that it would qualify for LEED Gold certification and, upon completion of construction, to have the Project's qualification for LEED Gold certification verified by a mutually agreed upon independent third party; (x) Developer's failure to provide proof of site control of the Thrifty Parcel to the City within one week of the effective date of this Agreement; (xi) Developer's failure to make full settlement on the acquisition of the Thrifty Parcel by the date of final settlement of Developer's purchase of the Property from the City; provided, however, that Developer's failure to purchase the Thrifty Parcel is not due to Arrow, Inc.'s failure to perform under the sales

contract between the parties and further provided that, within thirty (30) days after Arrow, Inc.'s failure to perform under the sales contract between the Developer and Arrow, Inc., the Developer institutes appropriate legal action against Arrow, Inc. for specific performance or for other legal or equitable remedy for the Developer to acquire the Thrifty Parcel and diligently prosecutes such legal action to completion within ninety (90) days after the action is initiated, unless the City and the Developer mutually agree to a longer time period; (xii) Developer's failure to furnish a performance bond issued by a reputable surety company in a sum and form satisfactory to the City; and/or (xiii) any other material default by either Party of the terms and conditions of this Agreement and such material default remains uncured for thirty (30) days after written notice; provided, however, that if such failure is capable of cure but cannot reasonably be cured within thirty (30) days, such failure shall not constitute a default so long as the defaulting party is proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed ninety (90) days after such written notice.

12. Remedies.

- a. Developer's Default. If the Developer is in default prior to settlement on Developer's purchase of the Property and such default has not been timely cured, then, at the option of the City, the City may elect to terminate this Agreement. Except for cases where Developer's default is for failure to provide proof of site control of the Thrifty Parcel to the City within one (1) week of the effective date of this Agreement or timely submit the Second Revised Development Plan, if the City elects to terminate this Agreement for default prior to settlement, then the full amount of Developer's deposits shall be paid over to City as liquidated damages, and not as a penalty, it being understood that City's damages for a default by Developer are not subject to accurate determination. If Developer's default is for failure to timely provide proof of site control of the Thrifty Parcel to the City within one (1) week of the effective date of this Agreement, then Developer or the City may elect to terminate this Agreement and refund the Deposit to Developer. If Developer's default is for failure to timely submit a the Second Revised Development Plan or other revised development plan, then the City may retain \$10,000.00 of the Deposit with the remaining amount to be refunded to

Developer. If Developer's default is due to Arrow, Inc.'s failure to go to settlement on Developer's purchase of the Thrifty Parcel and Developer either (1) does not institute legal action against Arrow, Inc. within thirty (30) days for Developer to purchase the Thrifty Parcel and diligently prosecute such legal action to completion, or (2) such legal action is not successfully completed within ninety (90) days after it is initiated, unless the City and the Developer mutually agree to a longer time period, then either the City or the Developer may elect to terminate this Agreement. In the event of such termination of this Agreement, the full amount of the Developer's Deposit shall be paid to the City as liquidated damages and not as a penalty. If the Developer is in default following settlement on Developer's purchase of the Property and such default has not been timely cured, then the City may avail itself of all remedies of law and equity, including, but not limited to, specific performance and/or monetary damages where applicable.

- b. City Default. If, prior to settlement, the City fails to provide evidence of marketable title and such failure remains uncured, Developer may elect to terminate this Agreement and have the Deposit returned to Developer in which event the City and Developer shall be relieved from all further liability under this Agreement. If, for any reason other than failure of the City to produce marketable title, the City is in material default under this Agreement and such default goes uncured, then the Developer may seek specific performance, or monetary damages. If such material default by City occurs prior to or at settlement, then Developer may also elect to terminate this Agreement and receive the return of Developer's Deposit.

13. Property Condition. The parties agree that the City has made no warranties with reference to the condition of the Property or improvements thereon and they are being conveyed to the Developer in "as is" condition. The Developer specifically acknowledges and agrees that the City is selling, and the Developer is purchasing the Property on an "as is" basis and that the Developer is not relying on any representations or warranties, express or implied, from the City or its agents, as to any matters concerning the Property, including and without limitation any aspect thereof, other than standard warranties of title. Further, the Developer, on behalf of itself and its successors and assigns, waives its rights to recover, and forever releases and discharges, the City, its officers, employers and agents,

and each of them, and the respective heirs, successors, representatives and assigns from any and all demands, claims, legal or administrative proceedings, losses, liabilities, penalties, fines, liens, judgments, costs or expenses whatsoever (including without limitation, attorneys fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way connected with the Property, other than claims and liabilities arising from City's breach of standard warranties of title or City's gross negligence or willful misconduct.

14. Indemnification/Limitations of Liability.

- a. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, EXEMPLARY, PUNATIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF THIS AGREEMENT OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SAME. This clause shall survive termination of this Agreement.
- b. Indemnification by Developer. Developer hereby agrees to defend, indemnify and hold City and its employees and agents harmless from and against any and all claims, judgments, liabilities, damages (excluding lost profits or other consequential or indirect damages), costs and expenses (including reasonable attorneys' fees): (i) arising out of or relating to Developer's negligence or willful misconduct; (ii) arising out of a violation of applicable law by Developer; (iii) arising out of or relating to a claim brought by a third party against City that any design of Developer infringes or violates any intellectual property or proprietary right of a third party; and/or (iv) arising out of or related to Developer's breach of this Agreement.

15. Notices. Any notices required pursuant to the terms of this Agreement shall be in writing and sent to the parties at the following addresses (or to such other person or address as either party shall designate by written notice to the other):

a. If to the City:

Mayor Malinda Miles
Jeannelle B. Wallace, City Manager
City of Mount Rainier
One Municipal Place, Mount Rainier, MD 20712
Phone: (301) 985-6585; fax (301) 985-6595

E-mail: JWallace@mountrainiermd.org and mayormiles@gmail.com

With a copy to the City Attorney:

Linda S. Perlman, Attorney for the City of Mount Rainier
Silber, Perlman, Sigman & Tilev, P.A.
7000 Carroll Avenue, Suite 200, Takoma Park, MD 20912
Phone: (301) 891-2200; fax (301) 891-2206
E-mail: Perlman@sp-law.com

b. If to the Developer:

Guy E. Silverman, President
Steetsense Development Partners, LLC
3 Bethesda Metro, Suite 140, Bethesda, MD 20814
Phone (301) 652-9020; fax (301) 652-9166
E-mail: gsilverman@streetsense.com

and:

Adrian G. Washington, Manager
Neighborhood Development Company, LLC
3232 Georgia Avenue, NW, Suite 100, Washington, DC 20010
Phone (202) 722-6002, ext. 2211; fax (202) 722-6509
E-mail: AWashington@neighborhooddevelopment.com

With a copy to:

Joel F. Bonder, Esq.
JF Bonder PLLC
3610 Livingston St., NW
Washington, DC 20015
Phone (301) 529-1422
Email: jbonder@jfbonder.com

16. Miscellaneous.

- a. Successors and Assigns. The parties to this Agreement mutually agree that all of the terms and provisions of this Agreement shall be binding upon them, their and each of their respective successors, transferees, and assigns.
- b. Entire Understanding. This Agreement contains the final and entire agreement between the parties. Neither the parties, nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained or contained in a written amendment. Once signed, the terms of this Agreement may only be changed by a document executed by all parties. The invalidity of any clause or portion of any provision of this Agreement shall not

affect the validity of the remaining portions thereof. This Agreement shall be interpreted and construed according to the laws of the State of Maryland.

- c. Waiver. Waiver of any requirement of this Agreement by either party may only be granted by the waiving party pursuant to a written waiver executed by the waiving party. Failure of any party to exercise any right or remedy hereunder shall not impair any of its rights or be deemed a waiver thereof.
- d. Paragraph Headings. The paragraph headings of this Agreement are for convenience and reference only, and in no way define or limit the intent, rights or obligations of the parties.
- e. Assignment. This Agreement may be assigned by Streetsense and/or NDC prior to settlement only with the express prior written consent of the City which shall not be unreasonably withheld, conditioned or delayed, except that no consent shall be required to assign to an entity owned or controlled by Streetsense and/or NDC or their respective affiliates. If Streetsense and/or NDC assigns this Agreement to an entity owned or controlled by Streetsense and/or NDC or their respective affiliates, then the Developer shall provide prompt notice of such assignment to the City along with information and documentation regarding the formation and ownership of such entity.
- f. No Merger. The provisions of this Agreement shall survive settlement and the execution and delivery of the Deed to the Property and shall not merge in the Deed.
- g. Attorney's Fees. In any action or proceeding involving a dispute between the City and the Developer arising out of this Agreement, the prevailing party shall be entitled to receive from the other party, reasonable attorney's fees and costs as determined by the court or arbitrator.
- h. Force Majeure. Except for Developer's obligation to make payments under this Agreement, each Party to this Agreement shall be excused from performance hereunder for any period of time to the extent that it is prevented from performing any of its obligations pursuant hereto, in whole or in part, as a result of delays caused by an act of God, fire, explosion, transportation contingencies, unusually severe weather, quarantine, restriction, epidemic, natural catastrophe, war, civil disturbance, acts of the government of any country or of any governmental agency or official thereof, court order, labor dispute or shortage, third party

non-performance, or other unforeseen causes, events, or circumstances beyond its reasonable control (“Force Majeure”), and such non-performance shall not be a default under this Agreement nor a ground for termination of this Agreement as long as the excused Party makes reasonable efforts to remedy, if and to the extent reasonably possible, the cause for such non-performance. Each Party shall use commercially reasonable efforts to mitigate the effects of any Force Majeure. If any Force Majeure has been prevailing for a continuous period of six (6) months or more, then either Party shall have the right to terminate this Agreement upon written notice given to the other, the effectiveness of such notice to occur thirty (30) days following receipt of such notice.

- i. Governing Law/Venue. This Agreement and all of the rights and obligations of the Parties hereunder shall be construed in accordance with, and shall be governed by, the laws of the State of Maryland, without giving effect to principles of conflicts of law. The Parties agree that any and all causes of action between the Parties arising from or in relation to this Agreement shall be brought exclusively in State and Federal courts located in the State of Maryland and Developer hereby waives any objection as to venue.
- j. Insurance. Developer shall maintain during the term of this Agreement such public liability, automobile, and workers’ compensation insurance as will adequately protect City from all claims for damages, including claims for personal injury (including death) or damage to property, which may arise or result from Developer’s performance hereunder. This insurance shall include, but is not limited to: (1) worker's compensation and related insurance as prescribed by the law of the state in which the work is performed; (2) employer's liability insurance with limits of at least Two Million Dollars (\$2,000,000) for each occurrence; and (3) comprehensive general liability insurance with limits of at least Five Million Dollars (\$5,000,000), including contractual liability, products and completed operations coverage; and (4) comprehensive motor vehicle liability insurance, with limits of at least One Million Dollars (\$1,000,000). Developer shall, prior to the start of work, furnish certificates or adequate proof of the foregoing insurance. Certificates furnished by Developer shall contain a clause stating that City shall be notified in writing at least thirty (30) days prior to the cancellation of, or material

change, in the policy. The City shall be specified as an additional insured on all liability policies, except worker's compensation.

17. Time. The parties agree that with respect to all of the terms and conditions hereof, TIME IS OF THE ESSENCE.

18. Effective Date. The effective date of this Agreement is the later of the date this Agreement is signed by the City or Developer. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one agreement.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the City and the Developer have signed this Agreement under seal.

Attest:

CITY OF MOUNT RAINIER, MARYLAND

By: _____ (SEAL)
Malinda Miles, Mayor

Date: _____

Attest:

**STREETSENSE DEVELOPMENT PARTNERS, LLC,
Developer**

_____ (SEAL)
Guy E. Silverman, President

Date: _____

Attest:

**THE NEIGHBORHOOD DEVELOPMENT
COMPANY, L.L.C., Developer**

_____ (SEAL)
Adrian G. Washington, Manager

Date: _____



EXHIBIT
A

Main Alley (pink)
 (Public Alley)
 V-shaped Public Alley (yellow)
 (to be vacated)



Survey Information

2
 Civil Info
 Mt Rainier, MD

Mt Rainier Town Center

06/01/2013

NeighborhoodDevelopmentCompany & streetsense.
 invest • develop • revitalize
 streetsense.com

**Mount Rainier Town Center
Preliminary Development Schedule
March 20, 2015**

Neighborhood Development Company
Sheetsville
Updated March 20, 2015

ID	Task Name	Duration	Start	Finish	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
1	Land Disposition Agreement	61 days	1/14/2015	4/8/2015	1/19	2/15	3/12	4/18	5/14	6/11	7/8	8/4	9/1	9/28	10/25	11/22	12/19
2	Negotiations	3 mos	1/14/2015	4/7/2015	1/19	2/15	3/12	4/18	5/14	6/11	7/8	8/4	9/1	9/28	10/25	11/22	12/19
3	Finalize Agreement	1 day	4/8/2015	4/8/2015	4/8	4/8	4/8	4/8	4/8	4/8	4/8	4/8	4/8	4/8	4/8	4/8	4/8
4	Signed Agreement	0 days	4/8/2015	4/8/2015	4/8	4/8	4/8	4/8	4/8	4/8	4/8	4/8	4/8	4/8	4/8	4/8	4/8
5	Multi-TC Approval	30 days	4/12/2015	5/12/2015	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12
6	Meetings with MLLTC	4 wks	4/12/2015	4/28/2015	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12
7	Approval of Revised Plan	2 wks	4/20/2015	5/12/2015	4/20	4/20	4/20	4/20	4/20	4/20	4/20	4/20	4/20	4/20	4/20	4/20	4/20
8	Preliminary Plan of Subdivision	170 days	4/12/2015	11/24/2015	4/12	5/12	6/11	7/10	8/9	9/8	10/7	11/6	12/5	1/4	2/3	3/3	4/1
9	Forest Stand Delination	6 wks	4/12/2015	5/12/2015	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12	4/12
10	Prepare Application for submission	7 wks	4/15/2015	6/2/2015	4/15	4/15	4/15	4/15	4/15	4/15	4/15	4/15	4/15	4/15	4/15	4/15	4/15
11	Application Accepted by MNCCP	0 days	6/2/2015	6/2/2015	6/2	6/2	6/2	6/2	6/2	6/2	6/2	6/2	6/2	6/2	6/2	6/2	6/2
12	Planning Staff Review	5 wks	6/2/2015	7/7/2015	6/2	6/2	6/2	6/2	6/2	6/2	6/2	6/2	6/2	6/2	6/2	6/2	6/2
13	Planning Referrals	4 wks	7/6/2015	8/13/2015	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6
14	Subdivision Dev Rev Committee	4 wks	8/5/2015	9/12/2015	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5
15	Planning Board / Director Approval	4 wks	9/2/2015	9/29/2015	9/2	9/2	9/2	9/2	9/2	9/2	9/2	9/2	9/2	9/2	9/2	9/2	9/2
16	Preliminary Plan Approval	0 days	9/29/2015	9/29/2015	9/29	9/29	9/29	9/29	9/29	9/29	9/29	9/29	9/29	9/29	9/29	9/29	9/29
17	Final Plat Preparation	3 wks	9/29/2015	10/20/2015	9/29	9/29	9/29	9/29	9/29	9/29	9/29	9/29	9/29	9/29	9/29	9/29	9/29
18	Planning Board Approval	3 wks	10/21/2015	11/10/2015	10/21	10/21	10/21	10/21	10/21	10/21	10/21	10/21	10/21	10/21	10/21	10/21	10/21
19	Entered into land records	2 wks	11/11/2015	11/24/2015	11/11	11/11	11/11	11/11	11/11	11/11	11/11	11/11	11/11	11/11	11/11	11/11	11/11
20	Final Plats Received	0 days	11/24/2015	11/24/2015	11/24	11/24	11/24	11/24	11/24	11/24	11/24	11/24	11/24	11/24	11/24	11/24	11/24
21	Implementation of TIF	90 days	9/12/2015	9/15/2015	9/12	9/12	9/12	9/12	9/12	9/12	9/12	9/12	9/12	9/12	9/12	9/12	9/12
22	Preparation of Application	6 wks	5/12/2015	6/23/2015	5/12	5/12	5/12	5/12	5/12	5/12	5/12	5/12	5/12	5/12	5/12	5/12	5/12
23	Initial review by the County and City	2 wks	6/24/2015	7/7/2015	6/24	6/24	6/24	6/24	6/24	6/24	6/24	6/24	6/24	6/24	6/24	6/24	6/24
24	Address Initial Questions	2 wks	7/6/2015	7/21/2015	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6
25	Prepare Ordinances (County / City)	40 days	7/22/2015	9/15/2015	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22
26	TIF District Boundaries	8 wks	7/22/2015	9/15/2015	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22
27	Board Authorization	8 wks	7/22/2015	9/15/2015	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22	7/22
28	Meetings and public hearings	4 wks	7/6/2015	8/4/2015	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6	7/6
29	Follow up information	3 wks	8/5/2015	8/25/2015	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5
30	County Approval	3 wks	8/26/2015	9/15/2015	8/26	8/26	8/26	8/26	8/26	8/26	8/26	8/26	8/26	8/26	8/26	8/26	8/26
31	Design Phase	220 days	6/23/2015	4/8/2016	6/23	6/23	6/23	6/23	6/23	6/23	6/23	6/23	6/23	6/23	6/23	6/23	6/23
32	Concept Design / Staff Comments	20 days	6/23/2015	6/30/2015	6/23	6/23	6/23	6/23	6/23	6/23	6/23	6/23	6/23	6/23	6/23	6/23	6/23
33	Schematic Design	9 wks	8/5/2015	10/6/2015	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5	8/5
34	Design Development	5 wks	10/7/2015	12/6/2015	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7
35	Construction Documents	35 days	12/9/2015	4/5/2016	12/9	12/9	12/9	12/9	12/9	12/9	12/9	12/9	12/9	12/9	12/9	12/9	12/9
36	Permit Set	5 wks	12/9/2015	2/6/2016	12/9	12/9	12/9	12/9	12/9	12/9	12/9	12/9	12/9	12/9	12/9	12/9	12/9
37	Finalize Construction Set	8 wks	2/10/2016	4/5/2016	2/10	2/10	2/10	2/10	2/10	2/10	2/10	2/10	2/10	2/10	2/10	2/10	2/10
38	Building Permit	80 days	2/9/2016	5/31/2016	2/9	2/9	2/9	2/9	2/9	2/9	2/9	2/9	2/9	2/9	2/9	2/9	2/9
39	Submit for Building Permit	0 days	2/9/2016	2/9/2016	2/9	2/9	2/9	2/9	2/9	2/9	2/9	2/9	2/9	2/9	2/9	2/9	2/9
40	County Review Period	12 wks	2/10/2016	5/2/2016	2/10	2/10	2/10	2/10	2/10	2/10	2/10	2/10	2/10	2/10	2/10	2/10	2/10
41	Address Comments	2 wks	5/4/2016	5/17/2016	5/4	5/4	5/4	5/4	5/4	5/4	5/4	5/4	5/4	5/4	5/4	5/4	5/4
42	Complete Permit Review	2 wks	5/18/2016	5/31/2016	5/18	5/18	5/18	5/18	5/18	5/18	5/18	5/18	5/18	5/18	5/18	5/18	5/18
43	Receive Building Permit	0 days	5/31/2016	5/31/2016	5/31	5/31	5/31	5/31	5/31	5/31	5/31	5/31	5/31	5/31	5/31	5/31	5/31
44	Preconstruction	145 days	10/7/2015	4/26/2016	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7
45	Receive Schematic Drawings	1 day	10/7/2015	10/7/2015	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7	10/7

Project: M/R Rainier - development
Date: 3/20/2015

Task Progress:

Critical Task Progress:

Milestone:

Summary:

Roll Up Task:

Roll Up Milestone:

Roll Up Progress:

Split:

External Tasks:

Project Summary:

Group By Summary:

Inactive Milestone:

Inactive Summary:

Manual Task:

Duration-only:

Manual Summary Rollup:

Manual Summary:

Externally:

External Tasks:

External Milestone:

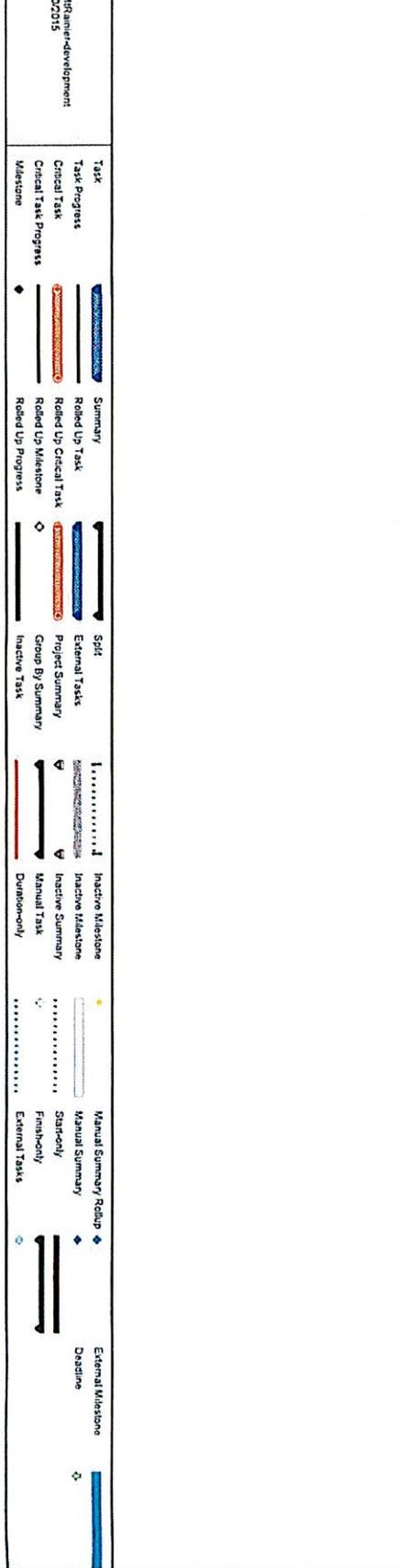
Deadline:

EXHIBIT
B
(2 pages)

Mount Rainier Town Center
Preliminary Development Schedule
March 20, 2015

Neighborhood Development Company
Spretnak
Updated March 20, 2015

ID	Task Name	Duration	Start	Finish	Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	
53	Drawing Review and Budgeting	3 wks	10/8/2015	10/29/2015	11/9	1/2/8	1/2/15													
54	Receive DD Drawings	1 day	12/8/2015	12/9/2015																
55	Drawing Review and Budgeting	1 mon	12/10/2015	1/6/2016																
56	Receive Permit Set	0 days	2/8/2016	2/8/2016																
57	Permit Set Pricing	1 mon	2/10/2016	3/8/2016																
58	Issue Preliminary CMP	1 day	3/8/2016	3/8/2016																
59	Receive Contract Docs	0 days	4/5/2016	4/5/2016																
60	Finalize CMP Pricing	3 wks	4/10/2016	4/26/2016																
61																				
62	Financing	162 days	6/1/2015	1/12/2016																
63	Request Proposals from Brokers	3 wks	6/1/2015	6/15/2015																
64	Review proposals	2 wks	6/22/2015	7/2/2015																
65	Select broker	1 wk	7/10/2015	7/10/2015																
66	Prepare financing Package	3 wks	7/13/2015	7/27/2015																
67	Obtain Plan of Subdivision	0 days	1/24/2015	1/24/2015																
68	Market the project	3 wks	1/25/2015	1/25/2015																
69	Select Equity Provider	2 wks	1/26/2015	1/29/2015																
70	Select Debt Provider	2 wks	1/26/2015	1/29/2015																
71																				
72	Closing	25 days	4/26/2016	5/1/2016																
73	Obtain Building Permit	0 days	5/1/2016	5/1/2016																
74	Finalize CMP Pricing	0 days	4/26/2016	4/26/2016																
75	Closing Document Preparation	3 wks	4/27/2016	5/17/2016																
76	Closing	1 wk	5/18/2016	5/24/2016																
77																				
78	Construction Phase	465 days	4/26/2016	2/8/2018																
79	Finalize CMP	0 days	4/26/2016	4/26/2016																
80	Purchasing and Mobilization	3 wks	4/27/2016	5/17/2016																
81	Construction Launch	0 days	5/17/2016	5/17/2016																
82	Building Construction	22 mos	5/18/2016	1/23/2018																
83	Final Inspections	4 wks	12/27/2017	1/23/2018																
84	Punch/F.F.E./E.D. Commissioning	2 wks	1/24/2018	2/6/2018																
85																				
86	Marketing and Leasing	260 days	2/22/2017	2/8/2018																
87	Preliminary Project Marketing	8 mos	2/22/2017	10/2/2017																
88	Lease up Marketing	5 mos	10/4/2017	2/29/2018																
89	Building Pre-Leasing	2 mos	12/27/2017	2/9/2018																



Project Milestones: Development Date: 5/20/2015

Task Progress: █ Task Progress █ Critical Task Progress

Summary: █ Summary █ Rolled Up Task █ Rolled Up Milestone █ Rolled Up Progress

Split: █ Split █ External Tasks █ Project Summary █ Group By Summary █ Inactive Task

Inactive Milestone: █ Inactive Milestone █ Inactive Milestone █ Inactive Summary █ Manual Task █ Duration-only

Manual Summary Redup: █ Manual Summary Redup █ Manual Summary █ Start-only █ Finish-only █ External Tasks

External Milestone: █ External Milestone █ External Milestone █ External Milestone █ External Milestone

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