



MURIEL BOWSER
MAYOR

June 7, 2021

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration by the Council of the District of Columbia is legislation entitled the "Wilkinson School Disposition Authorization Emergency Act of 2021" and the accompanying "Wilkinson School Disposition Authorization Emergency Declaration Resolution of 2021", "Wilkinson School Disposition Temporary Act of 2021" and the "Wilkinson School Disposition Act of 2021." The legislation authorizes the Mayor to dispose of real property located at 2330 Pomeroy Road, S.E., Washington, DC, commonly known as the Wilkinson School and known for tax and assessment purposes as Square 5828, Lot 0806 (the "Property"), to D.C. Preparatory Academy, a District of Columbia non-profit, pursuant to a 25-year lease, with a 25-year extension option.

The Property is located in Ward 8, in Southeast DC. The land area of the Property is approximately 4.21 acres. The Property is improved with a building consisting of approximately 138,578 square feet of gross building area. The Property was last used as a public school in approximately 2009 and has been used as temporary location for the Department of Employment Services' DC Infrastructure Academy since 2018. On March 31, 2021, a combined surplus and disposition hearing was held virtually.

I urge the Council to take prompt and favorable action on the proposed Act. If you have any questions regarding this legislation, please contact Keith A. Anderson, Director, Department of General Services, at (202) 727-2800.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser", written over a circular stamp or seal.

Muriel Bowser

Enclosure


Chairman Phil Mendelson
at the request of the Mayor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To authorize the disposition of the disposition of District-owned real property located at 2330 Pomeroy Road, S.E., Washington, D.C., commonly known as the Wilkinson School, and known for real property taxation and assessment purposes as Square 5828, Lot 0806.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the “Wilkinson School Disposition Authorization Act of 2021”.

Sec. 2. Notwithstanding any other provision of law, including but not limited to An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code §10-801), and section 2209 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.09), the Mayor may dispose of the real property located at 2330 Pomeroy Road, S.E., commonly known as the Wilkinson School, and known for real property taxation and assessment purposes as Square 5828, Lot 0806 (the “Property”) to D.C. Preparatory Academy, a District of Columbia non-profit corporation, pursuant to a 25-year lease with a 25-year extension option, and to execute any documents related to the disposition.

35 Sec. 3. Fiscal impact statement.

36 The Council adopts the fiscal impact statement provided by the Office of the
37 Chief Financial Officer as the fiscal impact statement required by section 4a of the
38 General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038;
39 D.C. Official Code § 1-301.47a).

40 Sec. 4. Effective date.

41 This act shall take effect following approval by the Mayor (or in the event of veto
42 by the Mayor, action by the Council to override the veto), a 30-day period of Congressional
43 review as provided in section 602(c)(1) of the District of Columbia Home Rule Act,
44 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1), and
45 publication in the District of Columbia Register.


Government of the District of Columbia
Office of the Chief Financial Officer



Fitzroy Lee
Interim Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Fitzroy Lee
Interim Chief Financial Officer 

DATE: May 17, 2021

SUBJECT: Fiscal Impact Statement - Wilkinson School Disposition Emergency Act of 2021

REFERENCE: Draft bill provided to the Office of Revenue Analysis on May 5, 2021

Conclusion

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

Background

The bill authorizes the Mayor to dispose of the property known as the Wilkinson School, located at 2330 Pomeroy Road, S.E.¹, to D.C. Preparatory Academy ("D.C. Prep") via a 25-year lease with a 25-year extension option. The building is currently occupied by the Department of Employment Services' D.C. Infrastructure Academy, which will relocate to Spingarn High School in 2024.

The Department of General Services (DGS) intends to enter into a lease with D.C. Prep, which will renovate the school in two phases. Rent will commence upon completion of the first phase of renovations but no later than 18 months after signing.² Construction for phase two will begin when D.C. Infrastructure Academy vacates and rent for the second phase will commence when that renovation is completed. However, D.C. Prep will be entitled to a full rent credit for construction costs, provided at least \$7.5 million in construction costs have been incurred. The cost of construction is expected to exceed the estimated rent payments in the first 25 years. So, D.C. Prep is unlikely to owe any rent during the initial term of the lease.

¹ For real property taxation and assessment purposes as Square 5828, Lot 0806.

² The proposed rent is \$6.78 per square foot, escalating 2 percent each year.

The Honorable Phil Mendelson

FIS: "Wilkinson School Disposition Emergency Act of 2021," Draft bill provided to the Office of Revenue Analysis on May 5, 2021.

Financial Plan Impact

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. Because no rent is currently being collected on the property, and D.C. Prep will be responsible for construction and operation of the property during the lease term, there is no cost to the District. Additionally, the Department of General Services fiscal year 2021 through fiscal year 2026 capital budget allocates \$40 million to the renovation of Spingarn High School for use by the D.C. Infrastructure Academy.³

³ See Project No. SNTRC – DC Infrastructure Academy in the capital budget for Agency AM0.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: Ronan Gulstone
Executive Director
Office of Policy and Legislative Affairs

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: May 6, 2021

SUBJECT: Legal Sufficiency Review of the Legal Sufficiency Review of the “Wilkinson School Disposition Act of 2021”
(AE-21-251)

This is to Certify that this Office has reviewed the above-referenced legislation and that we have found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

Brian K. Flowers

Brian K. Flowers

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



May 6, 2021

Ms. Laura Maestas
Chief Executive Officer
D.C. Preparatory Academy
707 Edgewood Street, N.E.
Washington, D.C. 20017

Re: Letter of Intent for the lease of premises at 2330 Pomeroy Road, S.E. in Washington, D.C., commonly known as the Wilkinson School

Dear Ms. Maestas:

The Department of General Services, on behalf of the District of Columbia, presents this letter of intent (this “**LOI**”) to D.C. Preparatory Academy for the lease of certain premises located at 2330 Pomeroy Road, S.E. in Washington, D.C., commonly known as the Wilkinson School. Outlined below are the principal terms and conditions that would serve as the basis for a lease agreement for the Premises, as defined below (the “**Lease**”).

LANDLORD

The District of Columbia, a municipal corporation, by and through the Department of General Services (the “**District**”).

TENANT

D.C. Preparatory Academy, a District of Columbia non-profit corporation (“**Tenant**”).

PREMISES

That certain real property located at 2330 Pomeroy Road, S.E. in Washington D.C., known for real property taxation and assessment purposes as Square 5828, Lot 0806 (the “**Land**”), together with any improvements that are or may be located thereon (“**Improvements**”), including an existing building consisting of approximately 138,578 square feet of floor area (the “**Building**”; together with the Land and any other Improvements, the “**Premises**”); provided, however, that during Phase

EXECUTION VERSION

I (hereinafter defined), the Premises shall consist of 58,975 square feet of floor area within the Building, a depiction of which is set forth in "**Exhibit A**", attached hereto and made a part hereof (the "**Phase I Premises**", and the remainder of the Premises being the "**Phase II Premises**"). During Phase I, Tenant shall not have use of or access to any portion of the Phase II Premises (including but not limited to the portion of the Building not included within the Phase I Premises or the playing field on the Land); provided, however, that (a) Tenant shall have the right to use the existing playground on the Land as well as the other outdoor areas depicted on "**Exhibit B**", attached hereto and made a part hereof, and a reasonably proportionate number of parking spaces based on the size of the Phase I Premises in the existing parking garage in the Building, and (b) Tenant shall have non-exclusive use of those portions of the Phase II Premises as may be required for access to the Phase I Premises, and also for the purpose of maintenance, repair, and upgrade of electrical, plumbing and other Building systems in the Phase I Premises (including without limitation connecting to the Building's fire suppression system, or to run electrical or telecommunications cable), so long as such access does not affect or impair the use by and enjoyment of the District. The Phase II Premises shall be delivered to Tenant by Landlord no later than September 29, 2024, or such earlier date (but not before February 1, 2022), which Landlord sets forth in a written notice to Tenant, which earlier date shall be in Landlord's sole discretion (the "**Phase II Delivery Date**").

CONDITION OF PREMISES

"AS-IS", "WHERE-IS", "WITH ALL FAULTS" condition to be delivered upon the Lease Commencement Date (defined below).

USE

The Premises shall be used solely for one or more of the following uses (each, a "**Permitted Use**"): (i) the operation of one or more charter schools to include pre-school through secondary school level programs, and related administrative uses; (ii) the operation of a District of Columbia public school; (iii) educational purposes (such as day care, adult education and post-secondary education) under an assignment or sublease of the Lease; or (iv) any other educational purpose in the event of any transfer of the Tenant's interest in the Lease as a result of a foreclosure or deed in lieu of foreclosure.

LEASE COMMENCEMENT DATE

The date of full execution and delivery of the Lease.

RENT COMMENCEMENT DATE

The rent commencement date for Phase I shall be the earliest to occur of the following dates: (a) the date upon which Tenant initially opens the Phase I Premises for a Permitted Use; (b) the date upon which Tenant obtains a certificate of occupancy for the Phase I Premises (in its name) from the District of Columbia as a sovereign entity and not as a landlord under the Lease; or (c) the date that is 18 months following the Lease Commencement Date (the "**Phase I Rent Commencement Date**").

EXECUTION VERSION

The rent commencement date for Phase II (hereinafter defined) shall be the earliest to occur of the following dates: (a) the date upon which Tenant initially opens the Phase II Premises for a Permitted Use after the Phase II Delivery Date; (b) the date upon which Tenant's Work (as defined below) is complete, subject to "punch list" items; or (c) the date that is 18 months following the Phase II Delivery Date (the "**Phase II Rent Commencement Date**").

LEASE TERM

The initial term of the Lease shall commence on the Lease Commencement Date and continue for a period of twenty-five (25) years following the Phase II Delivery Date (the "**Initial Lease Term**", and as may be extended below, the "**Term**"). For the avoidance of doubt, the Initial Lease Term may be for a period of time that is longer than twenty-five (25) years based on the establishment of the date constituting the Phase II Delivery Date, with the period of time between the Lease Commencement Date and the Phase II Delivery Date being "**Phase I**" of the Initial Lease Term, and the period of time between the Phase II Delivery Date and the expiration or early termination of the Initial Lease Term being "**Phase II**" of the Initial Lease Term, regardless of what dates the Phase I Rent Commencement Date and the Phase II Rent Commencement Date are established to be.

OPTION TO EXTEND

Tenant shall have one (1) option to extend the Initial Lease Term for a twenty-five (25) year period (the "**Option Term**"), which option may be exercised by Tenant upon 12 months' prior written notice to the District, provided that Tenant is not then in default under the Lease beyond any applicable notice and cure periods at the time of such exercise. Annual Base Rent (defined below) for the Option Term shall be adjusted to fair market value pursuant to an appraisal method to be set forth in the Lease.

ANNUAL BASE RENT

The annual rental amount for the Phase I Premises, payable in equal monthly installments in advance commencing as of the Phase I Rent Commencement Date, shall be equal to \$399,851.00 for the first year of Phase I, which represents the per Building square foot fair market value (i.e., \$6.78 per Building square foot) as determined in accordance with an appraisal performed by the District (the "**Phase I Annual Base Rent**"). As such, the equal monthly installments of the Phase I Annual Base Rent for the first year of Phase I shall be \$33,321.00. On the first anniversary of the Phase I Rent Commencement Date, and upon any subsequent anniversary of the Phase I Rent Commencement Date, the Phase I Annual Base Rent shall escalate by an amount equal to two percent (2.0%) of the then existing Phase I Annual Base Rent.

Commencing as of the Phase II Rent Commencement Date, the per Building square foot rental rate used for the Phase I Annual Base Rent (i.e., \$6.78 per Building square foot), as escalated pursuant to the foregoing based on the length of Phase I, shall be applied to the Building's entire 138,578 square feet to obtain the annual base rent for Phase II (the "**Phase II Annual Base Rent**"). Such Phase II Annual Base Rent shall similarly be payable in equal monthly installments in advance, and shall escalate on the first and every subsequent anniversary of the Phase II Rent Commencement Date by an amount equal to two percent (2.0%) of the then existing Phase II Annual Base Rent.

EXECUTION VERSION

The Phase I Annual Base Rent and the Phase II Annual Base Rent (collectively, as applicable, the “**Annual Base Rent**”) shall be subject to adjustment and credit as hereinafter provided.

TENANT’S WORK; CAPITAL ALTERATIONS

Tenant, for Tenant’s own use, enjoyment and benefit, shall furnish all labor and materials to design, construct, furnish and complete all alterations, additions, renovations, improvements and installations in or to the Premises that has then been delivered to it, in accordance with applicable laws, including building codes, as are necessary to enable Tenant to properly use the Premises for the Permitted Use (collectively, “**Tenant’s Work**”). For the avoidance of doubt, Tenant may not perform any Tenant’s Work or Capital Alterations outside of the Phase I Premises during Phase I except as may be reasonably necessary for purposes of its maintenance, repair, and upgrade of electrical, plumbing and other Building systems in the Phase I Premises (including without limitation connecting to the Building’s fire suppression system, or to run electrical or telecommunications cable), so long as such access does not affect or impair the use by and enjoyment of the District.

Pursuant to the Schedule (defined below) and prior to the performance of any Tenant’s Work or Capital Alterations (defined below), Tenant shall deliver to the District: (i) detailed plans and specifications, to be prepared by Tenant’s architect and provided to the District in one (1) set of blue line plans and a CAD disk; and (ii) Tenant’s material sample board. Such plans and specifications and material sample board shall be subject to the District’s written approval, which shall not be unreasonably withheld, conditioned or delayed. Tenant’s Work and Capital Alterations, as applicable, shall be performed in accordance with the plans and specifications and material sample board approved by the District. “**Capital Alterations**” means any alterations, additions, renovations, improvements or installations in or to the Premises which are considered capital improvements or capital expenditures under generally accepted accounting principles.

In addition, Tenant shall submit to the District for the Tenant’s Work or Capital Alterations: (i) a detailed scope of work (“**Scope**”); (ii) a schedule (“**Schedule**”); and (iii) a budget (“**Budget**”), which Scope, Schedule and Budget shall be subject to the District’s written approval, which shall not be unreasonably withheld, conditioned or delayed. The approved Scope, Schedule and Budget for Tenant’s Work shall be attached to the Lease as exhibits. Tenant may not modify any approved Scope, Schedule or Budget without the District’s prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Upon completion of the Tenant’s Work or Capital Alterations, as applicable, the Budget shall be adjusted based upon a final accounting of the applicable Construction Costs (defined below).

Tenant shall perform and complete Tenant’s Work and Capital Alterations, as applicable, in accordance with the timelines and dates set forth in the Schedule. Subject to force majeure and any actual delays caused by the District or its agents, employees or contractors, if Tenant, based on the Schedule: (i) fails to timely commence Tenant’s Work or Capital Alterations; (ii) fails to diligently pursue completion of Tenant’s Work or Capital Alterations; or (iii) fails to complete Tenant’s Work or Capital Alterations, then Tenant shall be deemed to be in default under the Lease.

RENT CREDIT

Tenant shall be entitled to apply an amount equal to Tenant's Construction Costs (defined below) for Tenant's Work (the "**Rent Credit**"), on a dollar-for-dollar basis, against the full amount of each installment of Annual Base Rent, as the same becomes due and payable, commencing upon the accrual of such Rent Credit, and continuing until such Rent Credit is exhausted, but in no event beyond the end of the Term of the Lease, including the Option Term ; provided that, on the date that Tenant submits a written request for the Rent Credit, Tenant: (i) is not then in default under the Lease; and (ii) has incurred at least \$7,500,000.00 in Construction Costs for Tenant's Work. "**Construction Costs**" means the actual construction costs (including both hard and soft costs) incurred by Tenant for Tenant's Work or Capital Alterations (as applicable) approved by the District, based upon paid invoices and other evidence of payment, but specifically excluding: (a) the costs of purchasing and/or installing Tenant's movable furniture, furnishings and equipment (the "**Movable Property**"); and (b) costs which are required or incurred as a result of damage to the Premises caused by Tenant or its employees, licensees, invitees, subtenants, agents, representatives, contractors or subcontractors ("**Tenant's Agents**"). For the avoidance of doubt, if any installments of the Phase I Annual Rental or the Phase II Annual Rental become due and payable before any Rent Credit accrues pursuant to the foregoing provisions, such installment of Phase I Annual Rental or Phase II Annual Rental shall be due and payable by Tenant to Landlord without the benefit of any offsetting Rent Credit.

ADDITIONAL RENT CREDIT

In the event that at any time during the Term, and after substantial completion of Tenant's Work, Tenant makes or causes to be made any additional Capital Alterations to the Premises, Tenant shall be entitled to apply an amount equal to Tenant's Construction Costs for such Capital Alterations (the "**Additional Rent Credit**"), on a dollar-for-dollar basis, against each installment of Annual Base Rent, as the same becomes due and payable, until the entire Additional Rent Credit has been so applied; provided that the maximum amount of such Additional Rent Credit has been approved in writing by the District, in its sole and absolute discretion, prior to Tenant undertaking any such Capital Alterations to the Premises that would give rise to such Additional Rent Credit; and provided further that on the date that Tenant submits a written request to apply the Additional Rent Credit following completion of such Capital Alterations, Tenant: (i) is not then in default under the Lease; and (ii) has incurred, individually or in the aggregate during any consecutive five-year period, at least \$500,000.00 in Construction Costs for such Capital Alterations. The Additional Rent Credit may be so applied at any time during the Term. Each Additional Rent Credit shall be available in addition to the Rent Credit, which credits may each be applied in any particular month.

SUBLEASE AND ASSIGNMENT

Tenant shall not assign, transfer or mortgage any or all of Tenant's rights or interests under the Lease or sublease any or all of the Premises (each, a "**Transfer**") without the District's prior written consent, which consent the District may withhold in its sole and absolute discretion; provided, however, that Tenant may, upon the District's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, Transfer the Lease to: (i) a subsidiary, affiliate, or parent of Tenant which such other entity controls, is controlled by, or is under common control with, Tenant; (ii) a successor entity to Tenant resulting from a merger, consolidation,

EXECUTION VERSION

non-bankruptcy reorganization, or governmental action; or (iii) a purchaser of all or a substantial portion of Tenant's ownership interests or assets. The Lease shall include the District's standard leasehold mortgage provisions.

CONTINUOUS OPERATION

Tenant shall operate the entire Premises for the Permitted Use continuously and uninterruptedly during the Term, subject to periods of closure due to: (i) force majeure; (ii) performance of Tenant's Work or Capital Alterations; and (iii) Tenant's standard operational calendar, as shall be more fully set forth in the Lease.

STANDARD LEASE TERMS OF DISTRICT

Set forth below are the District's standard lease terms, **which are not subject to negotiation.**

LEASE FORM

The Lease shall be on the District's standard form lease.

OPERATING EXPENSES AND REAL ESTATE TAXES

The rent due and payable under the Lease shall be absolutely net to the District, so that the Lease shall yield to the District the Annual Base Rent, subject to application of the Rent Credit, the Additional Rent Credit and the Operating Rent Credit (hereinafter defined), and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises shall be paid by Tenant (including, without limitation, real estate and possessory taxes assessed against the Premises then leased to Tenant, water and sewer use (including stormwater and impervious area) fees, insurance premiums, utility expenses, and any and all costs of operating, maintaining and repairing all or any portion of the Premises then delivered to Tenant); provided, however, that during Phase I (i.e., prior to the entire Premises being delivered to Tenant), Tenant shall nevertheless: (a) place all utilities for the Building and the Land in the name of Tenant, and shall be responsible for the timely payment of all utility bills during such period; and (b) be responsible for the repair of, and maintenance to (i) the electrical, plumbing and other Building systems as more particularly set forth in the Lease, excluding the HVAC system exclusively serving the portion of the Building not constituting a part of the Phase I Premises, and (ii) the outdoor areas on the Land and those parking spaces it has a right to use during Phase I. As such, during Phase I only, Tenant shall be entitled to a rent credit of \$ \$149,471.00 per annum, accruing in equal monthly installments (the "**Operating Rent Credit**"). The Operating Rent Credit is based on the pro rata share of the Building square footage not contained within the Phase I Premises, and is in addition to the Rent Credit and the Additional Rent Credit.

INSURANCE

Tenant's insurance shall be as required by the District with consultation from the D.C. Office of Risk Management. The District shall not be required to carry any insurance with respect to the Lease.

LIABILITY

Tenant shall be liable to the District, and shall indemnify, defend and hold the District harmless from any damage, injury, loss or claim based on or arising out of the Lease or any agreement executed in connection with the Lease if the same is due to the acts or omissions of Tenant or Tenant's Agents. Based upon the Anti-Deficiency Acts, the Lease shall not include any provision requiring the District to indemnify Tenant, reimburse Tenant, or make any payment to Tenant unless subject to the District's prior approval (which payments are all subject to the Anti-Deficiency Acts).

CBE REQUIREMENTS

With respect to the Tenant's Work or any Capital Alterations, Tenant shall enter into an agreement with the District of Columbia, through its Department of Small and Local Business Development, which shall require Tenant to, at a minimum, contract with Certified Business Enterprises for at least thirty five percent (35%) of the contract dollar volume of the project (as described in such agreement) and shall require at least twenty percent (20%) equity and twenty percent (20%) development participation of Certified Business Enterprises (or such other greater amounts, as required by law).

GREEN BUILDING REQUIREMENTS

With respect to the Tenant's Work or any Capital Alterations, Tenant shall comply with Title 6, Chapter 14A of the D.C. Official Code entitled "*Green Building Requirements*," as may be amended, supplemented, or recodified from time to time.

FIRST SOURCE REQUIREMENTS

With respect to the Tenant's Work or any Capital Alterations, Tenant shall execute a First Source Agreement with the District of Columbia, through its Department of Employment Services, in a form mutually acceptable to the parties thereto.

ANTI-DEFICIENCY

The following limitations exist as to each and every purported obligation of the District set forth in the Lease, whether or not expressly conditioned:

The obligations of the District to fulfill any financial obligation pursuant to the Lease or any subsequent agreement entered into pursuant to the Lease to which the District is a party (an "**Other Agreement**"; together with the Lease, "**Any Agreement**"), or referenced in Any Agreement, are and shall remain subject to the provisions of (a) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341-1351 and 1511-1519 (2004), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2012 Repl.); (b) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 et seq. (2012 Repl. and 2014 Supp.) ((a) and (b) collectively, the "**Anti-Deficiency Acts**"); and (c) § 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2012 Repl.), as each may be amended from time to time and each to the extent applicable to Any Agreement. Pursuant to the Anti-Deficiency Acts, nothing in the Lease shall create an obligation of the District in

EXECUTION VERSION

anticipation of an appropriation by the United States Congress (“**Congress**”) for such purpose, and the District’s legal liability for the payment of any financial obligation, including but not limited to any Annual Rental or Additional Rent, under any Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress and the District of Columbia (references in this Section to “District of Columbia” shall mean the District of Columbia as a sovereign entity, and not as a landlord under the Lease). Tenant confirms that it has read and familiarized itself with the Anti-Deficiency Acts and has full knowledge of such laws and the impact on Landlord’s financial obligations hereunder.

If no appropriation is made by the District of Columbia or Congress to pay any financial obligation under Any Agreement for any period after the District of Columbia fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the District shall not be liable to make any payment under Any Agreement upon the expiration of any then-existing appropriation.

Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District of Columbia shall have any personal liability in connection with a breach of the provisions of this Section or in the event of a default by the District under Any Agreement.

Neither the Lease nor any Other Agreement shall constitute an indebtedness of the District of Columbia nor shall it constitute an obligation for which the District of Columbia is obligated to levy or pledge any form of taxation or for which the District of Columbia has levied or pledged any form of taxation.

No agent, employee, contractor or officer of the District is authorized to obligate or expend any amount under Any Agreement unless such amount has been appropriated by act of Congress and is lawfully available.

AUTHORITY

Execution of the Lease or any other agreement between the parties may be subject to authorization by the Council of the District of Columbia pursuant to D.C. Official Code § 10-801 (2001), as may be amended from time to time (“**Council Approval**”).

COUNTERPARTS

This LOI may be executed in multiple counterparts and delivered by e-mail .pdf transmission, each of which shall be deemed an original and all of which together shall constitute one and the same document.

NON-BINDING PROVISIONS

Notwithstanding any provision of this LOI to the contrary, this LOI constitutes a general, non-binding letter of intent and is not intended to, and does not, create a legal, binding commitment or obligation on the part of Tenant or the District or any of their affiliates to pursue the transaction contemplated by this LOI or any other transaction. Each of Tenant and the District understand and agree that neither of them is or shall be legally bound to the other by reason of this LOI, nor shall any rights, liabilities or obligations (including the obligation to negotiate in good faith) arise as a

EXECUTION VERSION

result of this LOI or any other written or oral communications between Tenant and the District, whether directly or through a broker. It is further understood that the only agreement binding upon Tenant and the District would be the Lease, subject to prior Council Approval, if applicable.

[SIGNATURE PAGE AND EXHIBITS TO FOLLOW]

EXECUTION VERSION

If the terms and conditions set forth in this LOI are acceptable to you, please sign and date below and return one (1) original to my office.

Sincerely,

DISTRICT OF COLUMBIA,
a municipal corporation,
acting by and through its Department of General Services



By: _____
Name: Yohance Fuller
Title: Chief Operating Officer

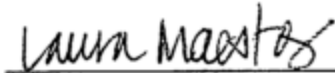
APPROVED:



By: _____
Name: Keith A. Anderson
Title: Director, Department of General Services

AGREED AND ACCEPTED:

D.C. PREPARATORY ACADEMY, a
District of Columbia non-profit corporation

By:  _____
Name: Laura Maestas
Title: Chief Executive Officer
Date: 5/7/21

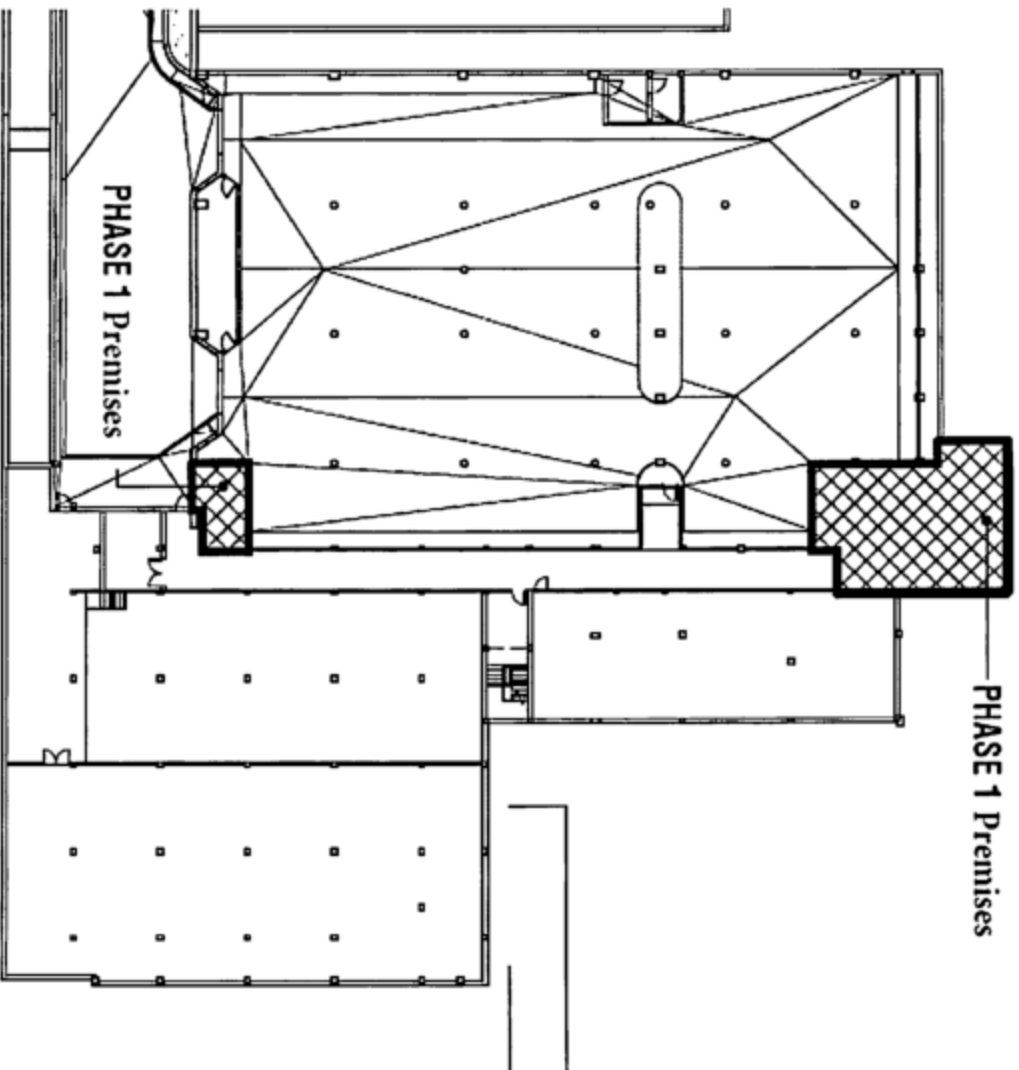
[EXHIBITS TO FOLLOW]

EXECUTION VERSION

EXHIBIT A

Depiction of Phase I Premises

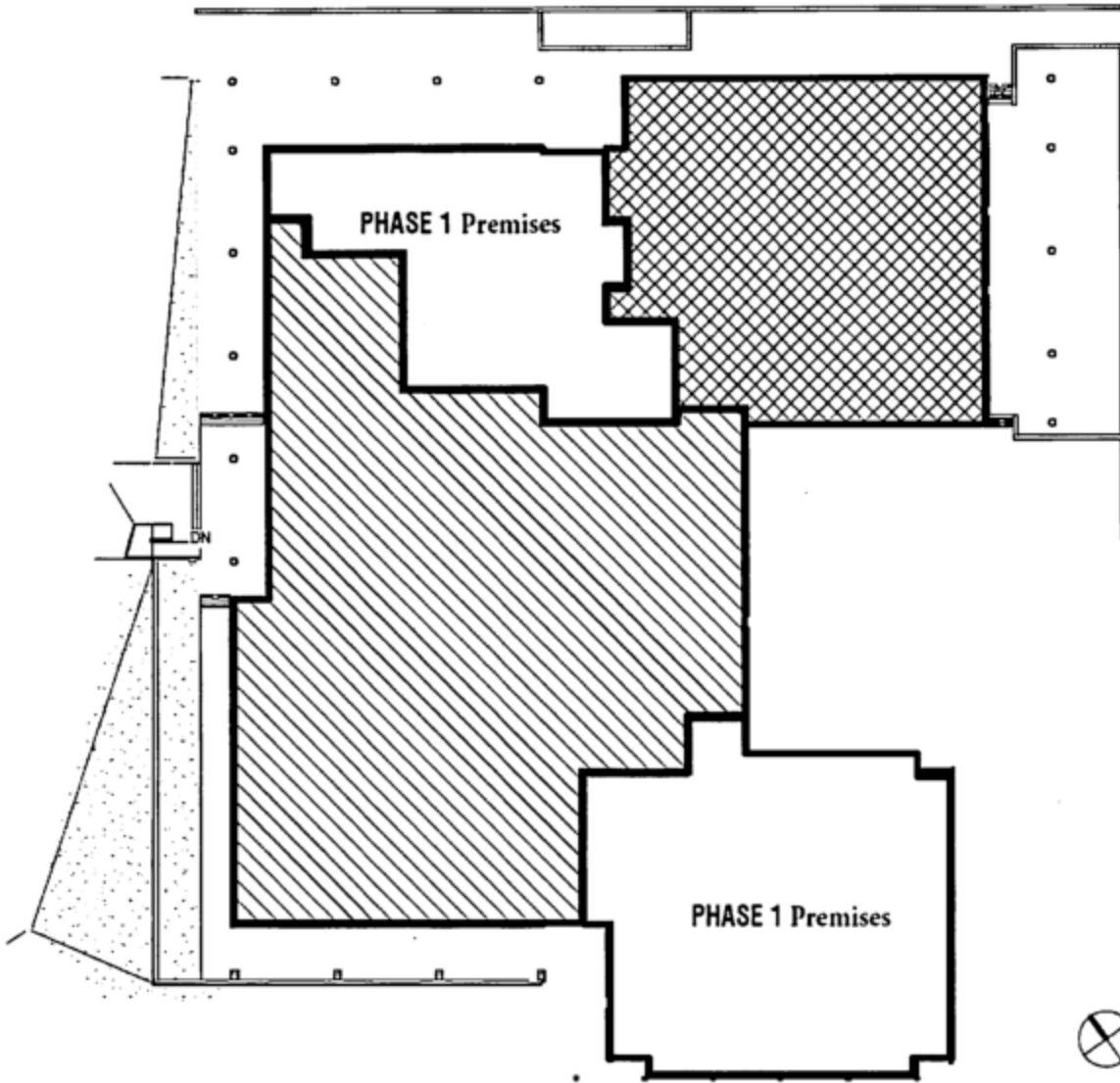
Basement:



PHASE 1 PREMISES DIAGRAM - LOWER FLOOR

[continued]

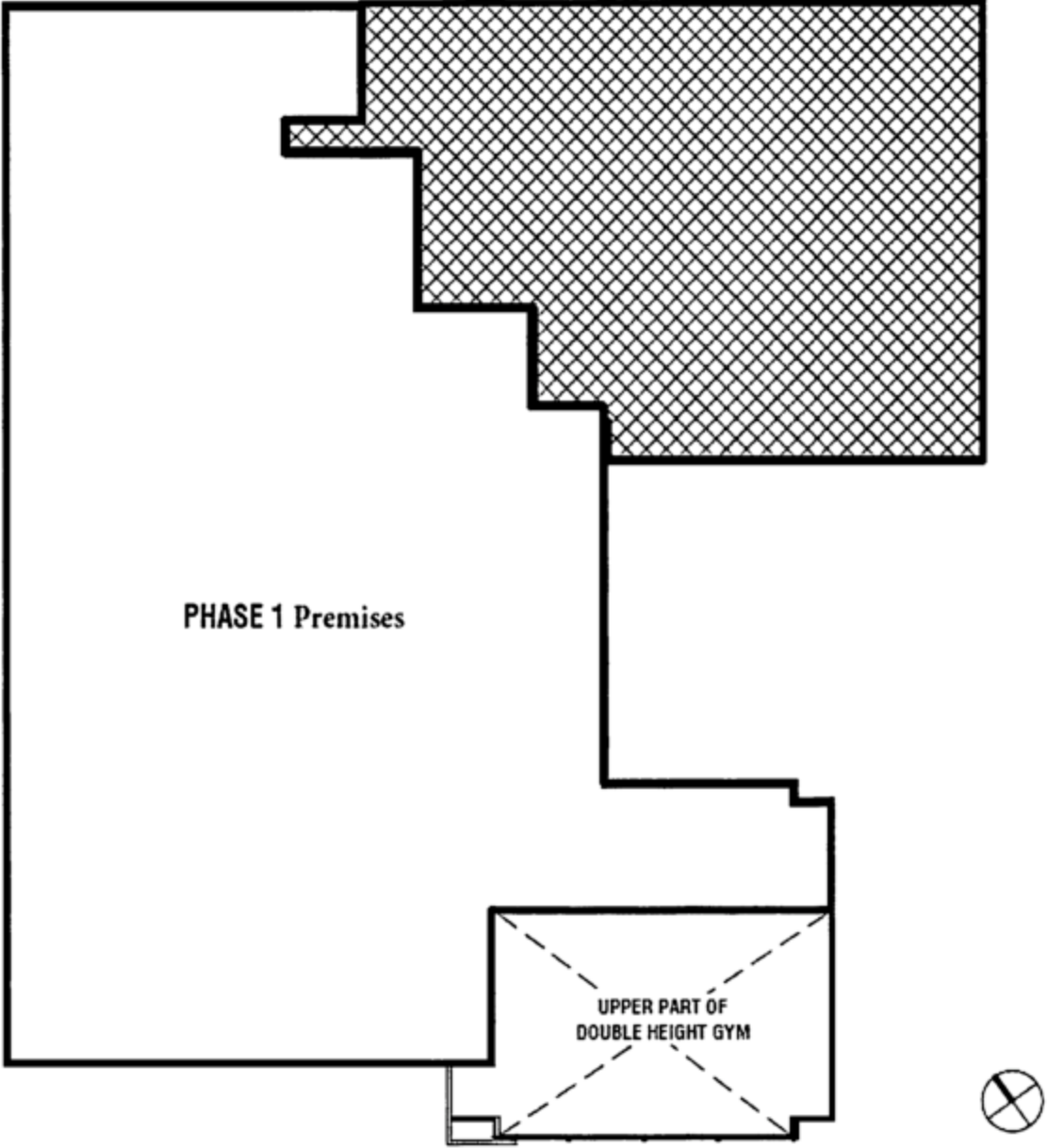
First Floor:



PHASE 1 PREMISES DIAGRAM - 1ST FLOOR

[continued]

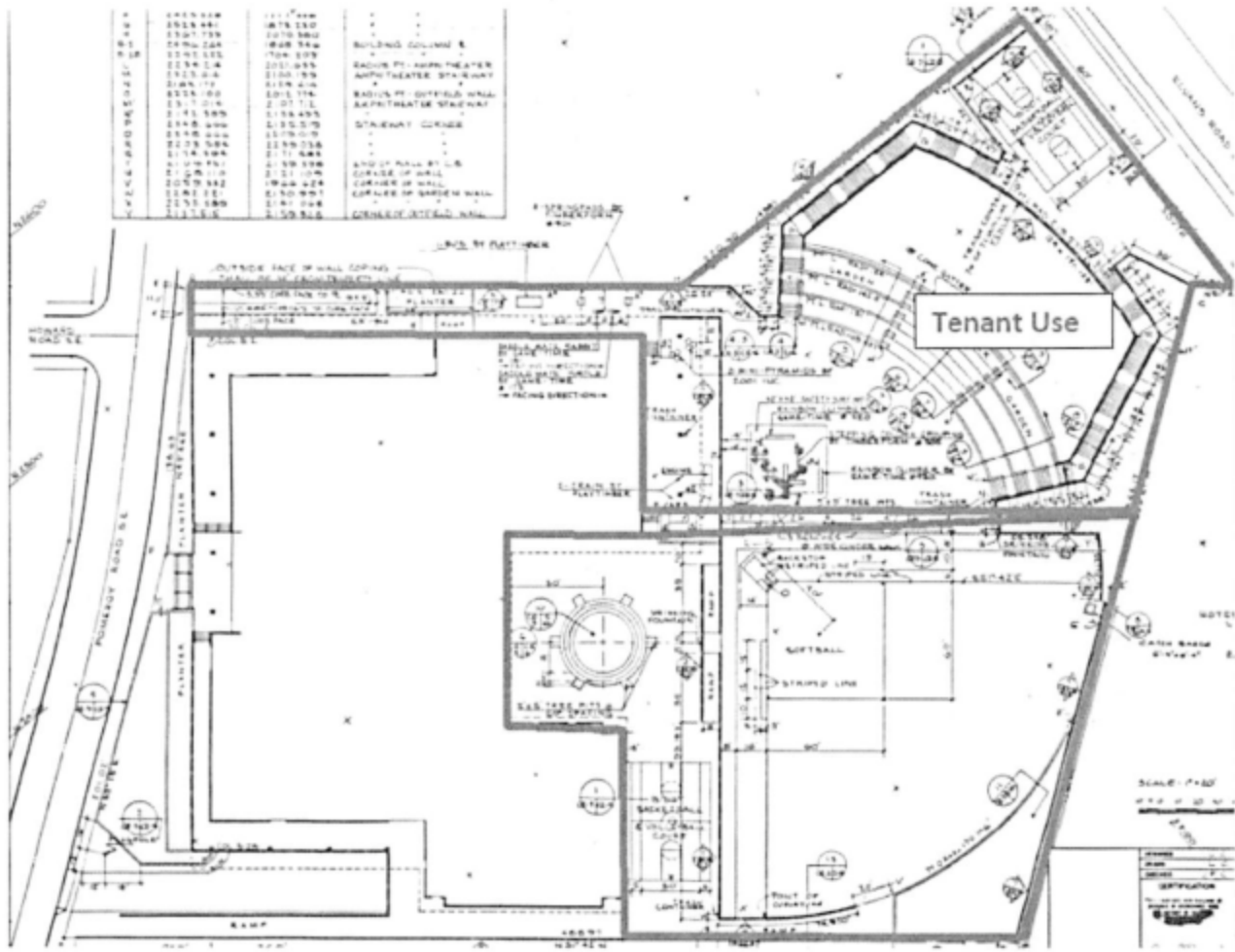
Second Floor:



PHASE 1 PREMISES DIAGRAM - 2ND FLOOR

EXHIBIT B

Phase I Outdoor Areas



Link to 3/30/21 public surplus/disposition meeting :

<https://dcnet.webex.com/dcnet/lr.php?RCID=bf4ce7858c934412978859939e2c7607>

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



DISPOSITION ANALYSIS

Project Name: Lease of Wilkinson School
Property Description: 2330 Pomeroy Road, SE, Washington, DC, commonly known as Wilkinson School, and known for tax and assessment purposes as Square 5828, Lot 0806 (the "Property")
Size of Property: Land Area: 4.21 acres
Building Area: approximately 138,578 square feet
Assessed Value: \$21,076,130.00
Zoning of Property: R-3
Ward: 8

Introduction

This Disposition Analysis is hereby submitted to the Council of the District of Columbia for the proposed disposition of the Property. The Property is improved with a school building known as the former Wilkinson School, athletic fields, a playground, and an athletic court. The District has not used the Property as a public school since 2009. Since 2018, portions of the school building have been used by the Department of Employment Services' District of Columbia Infrastructure Academy ("DCIA"). DCIA is scheduled to move to a new location in 2024. The Property is not on the DC Historic Preservation List. The Mayor intends to dispose of the Property by lease to D.C. Preparatory Academy, a District of Columbia non-profit corporation ("DC Prep"), as intended by the Wilkinson School Disposition Process Amendment Act of 2020.

- 1. Provide a description of all disposition methods considered and an accompanying narrative for the proposed disposition method that contains comparisons to the other methods and shows why the proposed method was more beneficial for the District than the others in the areas of return on investment, subsidies required, revenues paid to the District, and any other relevant category, or why it is being proposed despite it being less beneficial to the District in any of the measured categories.**

A lease of the Property is the most beneficial method of disposition for the District because a lease would: (a) allow the District to retain ownership of the Property while shifting responsibility for maintenance, operations, capital improvements and repairs to the tenant; (b) permit the District to impose restrictions on the use and development of the Property; (c) allow the District to regain possession of the Property in the event of the tenant's non-compliance under the terms of the lease; and, (d) facilitate approximately \$35,000,000.00

in needed capital improvements to the Property. Other disposition methods, including transferring title through a deed, would not provide these benefits to the District, as the District could lose its interest in and control over the Property. In addition, a lease will ensure the continued use of the Property for its original educational purpose.

- 2. Provide a pre-disposition economic impact statement in the form of a quantitative analysis that estimates the economic benefits, including revenues, tax receipts, and job creation, that will result from the disposition, including the anticipated benefits of any development project to be undertaken at the property and any offsite property, including direct, indirect, or induced outcomes.**

The lease will result in approximately \$35,000,000.00 in capital improvements to the Property, thereby increasing the value of the Property. The lease will also result in rent paid to the District in the initial annual amount of \$399,851.00, with an annual escalation of 2 %. The rent amount will be subject to rent credits for the capital improvement costs. The proposed disposition is expected to generate approximately \$577,500.00.00 each year in real property possessory taxes. In addition, the proposed disposition is anticipated to create approximately 125 jobs during the project construction and another 25 to 50 permanent jobs after completion of the capital improvements.

- 3. Provide a summary of public comments received at the public hearing.**

As intended by the Wilkinson School Disposition Process Amendment Act of 2020, the District held a combined surplus and disposition public hearing on March 31, 2021. Meeting participants expressed concerns about community outreach for the meeting, although it was confirmed that all notices for the meeting required by law (such as publication in the DC Register and delivery of notice to ANC 8B) were provided. Meeting participants indicated that they were unable to find a link to the meeting on either the Department of General Services or the Office of the Deputy Mayor for Education's website. In addition, community members discussed the traffic and parking conditions in and around the Property and were interested in learning if a traffic study would be done for the Property. DC Prep confirmed that a traffic study would be conducted in the future, and that it had not yet completed a traffic study because of the change in traffic due to COVID-19. The Advisory Neighborhood Commissioner for the Single Member District adjacent to the Property expressed the need for further community engagement and participation with his single member district as any potential traffic and parking concerns would impact his constituents. Participants noted that the current school ecosystem included two middle schools in the area and that the current DCPS Master Facilities Plan indicated that no new middle school should be created. DME clarified that DC Prep is an existing charter school housed in a temporary location in Ward 8, so their move to the Wilkinson School is not bringing a new charter school to the area but instead moving the school from its current, temporary location, to this new location. The community was interested in learning what would happen to the property DC Prep initially purchased to house its middle school program. DC Prep noted that they did not have a plan for the property at this time. There was also some discussion about whether DC Prep had sought approval from the District of Columbia Public Charter School Board to relocate to this site. DC Prep clarified that

approval of this site by the District of Columbia Charter School Board was not needed at this point in the process but would be sought in the near future. Finally, community members expressed concern regarding the Wilkinson School Disposition Process Amendment Act of 2020, which, in part, combined the surplus and disposition public hearings. Community members were concerned that the Act expedited the typical disposition process.

Conclusion

In providing this Disposition Analysis to the Council, the Mayor has concluded that the lease of the Property to DC Prep, as intended by the Wilkinson School Disposition Process Amendment Act of 2020, is in the best interest of the District of Columbia. As such, the Mayor recommends the disposition of the Property in accordance with the terms of the executed Letter of Intent submitted herewith.