



2017 NOV -6 AM 9:48
OFFICE OF THE
SECRETARY

MURIEL BOWSER
MAYOR

NOV 6 2017

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, DC 20004

Dear Chairman Mendelson,

Enclosed for consideration by the Council is a resolution entitled the "Fifth Street, N.W. and I Street, N.W. Term Sheet Amendment Resolution of 2017".

The Council approved the disposition of District-owned real property, located at 901 Fifth Street, N.W. with the "Fifth Street, N.W. and I Street, N.W. Disposition Emergency Approval Act of 2014", effective December 23, 2014 (D.C. Act 20-543; 62 DCR 240) ("Disposition Act") and the "Fifth Street, N.W. and I Street, N.W. Disposition Extension Approval Resolution of 2016", effective December 6, 2016 (Resolution R21-0669). Accompanying the Disposition Act was an executed term sheet, dated November 12, 2014, signed by the Deputy Mayor for Planning and Economic Development and the proposed developer. The term sheet outlined certain terms and conditions of the disposition of real property located in Ward 6 as defined in the Disposition Act as the "Property".

Pursuant to D.C. Official Code §10-801 (b-4)(1), as amended, the enclosed resolution approves amendments to the term sheet that reflect substantive changes to the business terms of the transaction as outlined in the Council-approved term sheet.

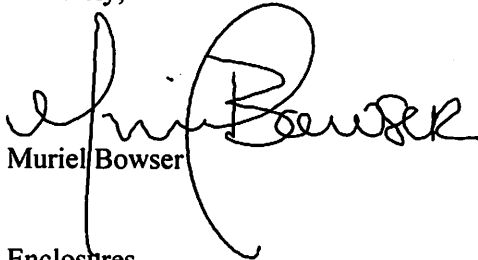
The proposed redevelopment plan for the "Fifth Street, N.W. and I Street, N.W. Project (the "Project") under the amended term sheet includes: (i) a commercial building at 901 5th Street, N.W. that includes a limited-service hotel, condominiums, approximately 7,600 square feet of retail, and an underground garage, and 2) the renovation of Milian Park and the Chinatown Park. The amended term sheet also requires of the Developer to complete the Affordable Housing Project, that will result in the development of at least 61 affordable dwelling units ("ADUs). The Developer shall construct a building at 2100 Martin Luther King Jr. Ave, SE ("2100 MLK") containing no less than 20 ADUs reserved for leasing to households at or below 60% of Area

Median Income (AMI). If the minimum of 61 units cannot be met at the 2100 MLK location, or if the developer identifies another site subject to District approval that provides a more expedient rout to construction of the ADUs, then some or all of the ADUs may be constructed at an alternate site.

The changes to the term sheet will allow a portion of the project's total affordable housing units to be constructed at an alternate location from the originally approved location at 2100 Martin Luther King Jr. Avenue, S.E. The total number of previously approved affordable housing units will not be affected. If the developer fails to construct the total amount of required affordable housing units amongst the 2100 Martin Luther King Avenue, S.E. location and the alternate location, it shall pay a penalty to District. These amendments will allow the development plan to proceed.


As always, I am available to discuss any questions you may have regarding this resolution. I urge the Council to take favorable consideration on this resolution.

Sincerely,



Muriel Bowser

Enclosures


Chairman Phil Mendleson
at the request of the Mayor

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8 A PROPOSED RESOLUTION
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12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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16 To approve an amendment to the term sheet for the disposition of 5th Street N.W. and I
17 Street N.W., District-owned real property, located at 901 Fifth Street, N.W., and
18 known for tax and assessment purposes as Lot 59 in Square 516.
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21 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That
22 this resolution may be cited as the “Fifth Street N.W. and I Street N.W. Term Sheet
23 Amendment Approval Resolution of 2017”.

24 Sec. 2. (a) The Council approved the Fifth Street, N.W. and I Street, N.W.
25 Disposition Emergency Approval Act of 2014, effective December 23, 2014 (D.C. Act
26 20-543; 62 DCR 240) and the Fifth Street, N.W. and I Street, N.W. Disposition Extension
27 Approval Resolution of 2016, effective December 6, 2016 (Resolution R21-0669), which
28 was accompanied by a term sheet, dated November 12, 2014, that was executed by the
29 Deputy Mayor for Planning and Economic Development and the proposed developer.
30 The term sheet outlined certain terms and conditions of the disposition of real property
31 located in Ward 4 and defined in section 2 (4) of the Act as the “Property.”

32 (b) Pursuant to section 1(b-4)(1) of An Act Authorizing the sale of certain real
33 estate in the District of Columbia no longer required for public purposes, approved

34 August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801(b-4)(1)), the Mayor has
35 submitted, along with this resolution, an amended term sheet, in redline form, that
36 reflects certain changes to allow a portion of the total required affordable housing units,
37 which were originally all contemplated to be constructed at 2100 Martin Luther King Jr.
38 Avenue, S.E., to be constructed at an alternate location. The total number of affordable
39 units will not change, but will be divided between 2100 Martin Luther King Jr. Avenue,
40 S.E., and an alternate location. If Developer fails to construct the affordable housing units
41 at an alternate location, it shall pay a penalty to District.

42 (c) The Council hereby approves the amendments to the term sheet submitted
43 with this resolution and authorizes disposition of the Property in accordance with the
44 terms and conditions set forth in the term sheet.

45 Sec. 3. Fiscal impact statement.

46 The Council adopts the fiscal impact statement in the committee report as the
47 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home
48 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02
49 (c)(3)).

50 Sec. 4. Transmittal of resolution.

51 The Secretary to the Council shall transmit a copy of this resolution, upon its
52 adoption, to the Mayor.

53 Sec. 5. Effective date.

54 This resolution shall take effect immediately.

AMENDED TERM SHEET
Disposition of 901 5th Street, NW

Date	_____, 2017
Seller	District of Columbia (“ District ”), acting by and through the Office of the Deputy Mayor for Planning and Economic Development (“ DMPED ”).
Developers	TPC 5TH & I PARTNERS LLC (the “ Developer ”), an affiliate of The Peebles Corporation, a District of Columbia corporation, and MLK DC AH DEVELOPER, LLC <u>or other entity</u> (the “ Affordable Housing Developer ”), <u>in all events</u> also an affiliate of The Peebles Corporation (collectively, the “ Developers ” <u>or “TPC”</u>).
The 5th & I Property	The real property located at 901 5 th Street, NW, Washington, DC and known for tax and assessment purposes as Lot 59 in Square 516 (the “ 5th & I Property ”).
Land Disposition Agreement	All of the terms and conditions of the sale and purchase of the 5th & I Property will be governed by the terms of <u>the</u> Land Disposition and Development Agreement (the “ LDDA ”) to be negotiated and entered into by dated December 24, 2014 between District, Developer, and the Affordable Housing Developer, <u>which will be amended in accordance with the terms of this Amended Term Sheet.</u>
Method of Disposition	The 5th & I Property will be conveyed in fee by District to Developer pursuant to D.C. Official Code § 10-801(b)(8)(F).
Purchase Price	As consideration for the transfer of the 5th & I Property , Developer shall pay to District Twenty-Eight Million Dollars (\$28,000,000.00).
The 5th & I Project	The 5th & I Project will consist of: 1) the construction on the 5th & I Property of a mixed-use structure of approximately 170,000 sq. ft. above grade consisting of a hotel (approximately 200 keys), condominiums (approximately 60 units), approximately 7,600 sq. ft. of retail, and approximately 132 underground parking spaces; and 2) the renovation of Milian Park located along Massachusetts Avenue to the immediate south of the 5th & I Property , and the renovation of Seaton <u>Chinatown</u> Park located across Massachusetts Avenue to the west (collectively, the “ 5th & I Project ”).
The Affordable Housing Project	As additional consideration for the conveyance of the 5th & I Property , the <u>TPC shall complete the “Affordable Housing Project.”</u> The Affordable Housing Project will result in the <u>development of at least sixty (61) affordable dwelling units (“ADUs”), which requirement may be satisfied as follows.</u> Affordable Housing Developer shall construct a building at 2100 Martin Luther King, Jr. Ave., SE (the “Affordable Housing Property (“2100 MLK”) containing <u>approximately 61 units, all of which will be affordable dwelling units (“ADUs”) no less than twenty (20) ADUs reserved for leasing to households at or below 60% of AMI (the “Affordable Housing Project”)-2100 MLK Required ADUs</u>). TPC agrees to work in good faith with the <u>Anacostia community and pursue the approvals from the applicable government agencies and bodies necessary for the development of the 2100 MLK Required ADUs at 2100 MLK, but if the minimum number of 2100 MLK Required ADUs cannot be met at 2100 MLK, or if TPC identifies another site subject to District approval that provides a more expedient route to construction of the 2100 MLK Required ADUs (the “Alternate Site”), then some or all of the ADUs may be constructed at the Alternate Site.</u>

	<p><u>TPC will have five (5) years from commencement of construction on the 5th & I Property within which to deliver for occupancy the “Remaining ADUs” (i.e., the difference between the number of 2100 MLK Required ADUs actually constructed at 2100 MLK or an Alternate Site and sixty-one (61) ADUs required by the terms hereof) on the Alternate Site.</u></p> <p><u>If the Remaining ADUs are not available for occupancy within five (5) years of commencement of construction on the 5th & I Property, then TPC shall pay a penalty to District equal to the average cost of developing comparable ADUs as determined by the District of Columbia Department of Housing and Community Development at that time; provided, however, in no circumstance shall that amount be less than \$150,000 nor greater than \$200,000 per ADU (the “Remaining ADUs Penalty”).</u></p>
<p>Conditions of Closing</p>	<p><u>District’s obligation to convey the 5th & I Property to Developer shall be conditioned on the conditions to closing set forth in the LDDA, except as modified in accordance with this Term Sheet. In addition to the other District standard conditions of closing of sale pursuant to the LDDA, District’s obligation to convey the Property is conditioned upon:</u></p> <ul style="list-style-type: none"> <u>• Developer having obtained financing and equity to fund 100% of the development costs for the Project</u> <u>• the Affordable Housing Financing Closing shall have occurred, or shall occur simultaneously with the Closing</u> <u>• Developer shall have obtained all Permits for construction of the Project, and Affordable Housing Developer shall have obtained all Permits for the construction of the Affordable Housing Project, except for those Permits which are normally obtained during the course of construction of each project, such as elevator permits and landscaping permits</u>
<p>Schedule of Performance</p>	<p>Following is the Schedule of Performance with estimated dates, which may be amended and extended with the approval of DMPED, or otherwise <u>extended</u> upon an event of force majeure:</p> <ul style="list-style-type: none"> <u>■ Outside Closing Date of Project under LDDA within 2 years of Council approval for the 5th & I Property- December 23, 2018</u> <u>■ Affordable Housing Financing Closing on or before Closing Date of Project</u> <u>■ Commence Construction for the Project within 4 months of Closing Date of Project</u> <u>■ Commence Construction for of the Affordable Housing 5th & I Project- within 30 days of Closing Date of the Affordable Housing Financing Closing 5th & I Property</u> <u>■ Commence Construction of the 2100 MLK Required ADUs- within 30 days of the Affordable Housing Financing Closing</u> <u>■ Substantial Completion of Construction for the 5th & I Project- within 24 months of Commencement of Construction</u> <u>■ Substantial Completion of Construction for the Affordable Housing Project 2100 MLK Required ADUs- within 18 months of Commencement of Construction</u> <u>■ Remaining ADUs available for Occupancy- 5 years after commencement of construction of the 5th & I Project</u>
<p>Post Closing Requirements</p>	<p>Developer shall be bound by the Project Construction and Use Covenant for the construction of the <u>5th & I Project</u>. The Affordable Housing Developer shall be bound by <u>an Affordable</u></p>

	<p>Housing Covenant and a separate Construction and Use Covenant for the construction of the 2100 MLK Required ADUs. All ADUs created by the Affordable Housing Project, <u>will be encumbered by an Affordable Housing Covenant(s).</u> The forms of these documents shall be attached to the LDDA. <u>The Construction and Use Covenant and Affordable Housing Covenant for 2100 MLK will be recorded simultaneously with the Closing of the 5th & I Project.</u></p>
Project Completion	<p>Developer shall provide a completion guaranty for the construction of the 5th & I Project from a guarantor approved by District. <u>in accordance with the terms of the LDDA.</u> The Affordable Housing Developer shall provide a completion guaranty for the construction of the Affordable Housing Project <u>2100 MLK Required ADUs</u> from a guarantor approved by District. <u>in accordance with the terms of the LDDA. TPC's obligations regarding the Remaining ADUs shall be secured by a payment guaranty of the Remaining ADUs Penalty by either the same guarantor as the 5th & I Project or, if not, another guarantor approved by District in its sole and absolute discretion and also by covenants recorded against the 5th & I Property.</u> The forms of these guaranties will be attached to the LDDA.</p>
CBE Agreements	<p>Developers have entered into CBE Agreements for their respective projects reflecting that Developers' 20% CBE developer/equity requirement and 35% CBE contracting requirement have been satisfied for each project.</p>
First Source Requirements	<p>The Developers have entered into a First Source Agreement for their respective projects with the Department of Employment Services, which shall govern certain obligations of the Developers pursuant to D.C. Official Code § 2-219.03, as amended, and Mayor's Order 83-265 (November 9, 1983) regarding job creation and employment generated as a result of the projects.</p>

INTENTION AND LIMITATIONS OF THIS AMENDED TERM SHEET

1. Developers and DMPED acknowledge that they have prepared and signed this Amended Term Sheet for the sole purpose of obtaining the approval of the Council of the District of Columbia (the "Council") pursuant to D.C. Official Code § 10-801. Developers acknowledge that DMPED's negotiation of this Amended Term Sheet, DMPED's signature on this Amended Term Sheet, and submission of this Amended Term Sheet to the Council shall not bind the District to amend the LDDA or to convey the 5th & I Property to the Developer pursuant to the terms herein. Developers further acknowledge that, notwithstanding Council approving this Amended Term Sheet, District has no obligation to proceed pursuant to the terms contained herein absent the District and the Developers duly executing an amendment to the LDDA and satisfaction of the conditions contained therein. In the event DMPED or the Mayor determine, in their sole and absolute discretion, to withhold submission of this Amended Term Sheet to the Council or to otherwise decline to secure Council's approval of this Amended Term Sheet, DMPED may terminate negotiations with the Developers, District shall not be responsible for the Developers' costs and expenses incurred in relation this Amended Term Sheet, and the Parties shall proceed under the existing LDDA.

2. Developers acknowledge that all approvals required of the Council will be granted or withheld in the sole and absolute discretion of the Council and that, absent Council approval under D.C. Official Code § 10-801, DMPED has no authority to convey the 5th & I Property to the Developer pursuant to the terms contained herein. Developers acknowledge that they are entering into this Amended Term Sheet prior to obtaining all necessary Council approvals. Developers agree they are proceeding at their sole risk and expense, in the absence of such approvals and execution of an amendment to the LDDA, Developers shall have no recourse whatsoever against the District.

3. Developers and DMPED agree that upon receipt of all necessary Council approvals under D.C. Official Code § 10-801, Developers and DMPED shall prepare and execute an amendment to the LDDA in accordance with the terms contained herein. Upon the execution of the amendment to the LDDA, Developers and DMPED shall proceed in accordance with the terms of the LDDA, as amended; provided, however, that Developers and DMPED acknowledge and agree that any substantive change in the terms set forth in this Amended Term Sheet shall be subject to further Council review and approval in accordance with D.C. Official Code 10-801(b-4).

IN WITNESS WHEREOF, DMPED, Developer, and Affordable Housing Developer have, as of the date first written above, caused this Amended Term Sheet to be executed and attested by their respective duly authorized representatives.

DISTRICT:

**DISTRICT OF COLUMBIA, by and through the
Office of the Deputy Mayor for Planning
and Economic Development**

**By: _____
Brian T. Kenner
Deputy Mayor for Planning and
Economic Development**

DEVELOPER:

**TPC 5TH & I PARTNERS LLC, a District of
Columbia limited liability company**

**BY: TPC 5th & I Manager LLC, a District of
Columbia limited liability company**

**By: _____
R. Donahue Peebles, Jr.
Managing Member**

AFFORDABLE HOUSING DEVELOPER:

**MLK DC AH Developer, LLC, a Delaware
limited liability company**

**By: _____
R. Donahue Peebles, Jr.
Managing Member**

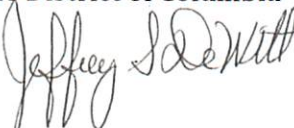
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

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

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: November 1, 2017

SUBJECT: Fiscal Impact Statement – Fifth Street N.W. and I Street N.W. Term Sheet
Amendment Approval Resolution of 2017

REFERENCE: Draft Proposed Resolution as shared with the Office of Revenue
Analysis on October 25, 2017

Conclusion

Funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the proposed resolution.

Background

In 2014, the District approved the disposition of property located at 901 5th Street, N.W.¹ to a private developer – TPC 5th & I Partners LLC and MLK DC AH Developer, LLC.² The developer will build a commercial building at 901 5th Street, N.W. that includes a hotel, condominiums, and approximately 7,600 square feet of retail. Since the developer is benefiting from the disposition of District property,³ it will also build approximately 61 units of affordable housing.⁴

The developer planned to build all 61 units of affordable housing at 2100 Martin Luther King, Jr. Avenue, S.E., but the amended term sheet will allow the developer to split the affordable housing units across multiple sites. At least 20 of the units must still be built at 2100 Martin Luther King, Jr. Avenue, S.E., but the developer can determine an alternative site to accommodate any affordable

¹ Known for tax assessment purposes as Square 516, Lot 59.

² Fifth Street, N.W. and I Street, N.W. Disposition Emergency Approval Act of 2014, effective December 23, 2014 (D.C. Act 20-543; 62 DCR 240). As extended by the Fifth Street, NW and I Street, NW Disposition Extension Approval Resolution of 2016, effective December 6, 2016 (D.C. Resolution 21-669).

³ Disposition of District Land for Affordable Housing Amendment Act of 2014, effective March 10, 2015 (D.C. Law 20-193; D.C. Official Code § 10-801).

⁴ Affordable to households at or below 60 percent of the Area Median Income.

The Honorable Phil Mendelson

FIS: "Fifth Street N.W. and I Street N.W. Term Sheet Amendment Approval Resolution of 2017," Draft
Proposed Resolution as shared with the Office of Revenue Analysis on October 25, 2017

units that cannot be accommodated at the Martin Luther King, Jr. Avenue site. The developer is required to make all affordable units available for occupancy within five years of the commencement of construction at the 901 5th Street, N.W. property, or it is required to pay the District between \$150,000 and \$200,000 per affordable unit that is not available for occupancy.

Financial Plan Impact

Funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the proposed resolution. There are no costs associated with providing the developer with flexibility on the location of the affordable housing units.

The District and the developer have not changed other terms of the land disposition and development agreement and the developer will pay \$28 million when the property closes prior to December 23, 2018.⁵

⁵ The term sheet is updated to reflect the December 23, 2018 closing deadline that was approved in 2016, but this is a conforming update.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

MEMORANDUM

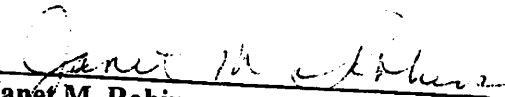
TO: Alana Intrieri
Director
Office of Legislative Support

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: October 31, 2017

RE: Fifth and I Streets NW Term Sheet Amendment Approval Resolution of 2017
(AE-17-640)

This is to Certify that this Office has reviewed the legislation entitled the "Fifth Street N.W. and I Street N.W. Term Sheet Amendment Approval Resolution of 2017" and found it to be legally unobjectionable. If you have any questions, please do not hesitate to call me at 724-5524.



Janet M. Robins