

PAYMENT IN LIEU OF TAXES AGREEMENT (“PILOT”)

Project: Carrollton Station

This Payment in Lieu of Taxes Agreement (this “**Agreement**”), is made this _____ day of _____, 2014, by and between BE NC STATION HOLDINGS LLC acting for itself and its Affiliates (as defined herein) (collectively the “**Developer**”), and PRINCE GEORGE'S COUNTY, MARYLAND, a body corporate and politic (the “**County**”).

WHEREAS, Section 7-516 of the Tax-Property Article of the Annotated Code of Maryland, as amended (the “**Act**”) provides that the County may exempt or partially exempt an “**Economic Development Project**” within the meaning of the Act from County real property taxes under certain conditions; and

WHEREAS, the Developer is proposing to develop 13.67 acres of land located in Prince George's County, Maryland near the New Carrollton Metro Station and more particularly identified on Exhibit A attached hereto (the “**Property**”), as may be amended from time to time in accordance with Paragraph 13 of this Agreement; and

WHEREAS, the Property is currently owned by the entities described in Exhibit C. Portions of the Property will be assigned to entities controlled by Developer and at such time such transferees will be listed on an amended Exhibit C provided to the County. All of the entities now or hereafter listed on Exhibit C shall be referred to herein as “Affiliates”;

WHEREAS, the Developer proposes to develop the Property into a mixed-use project consisting of an approximately 113,000 square foot office building for the Maryland Department of Housing and Community Development, retail space totaling 61,000 square feet, and approximately 556 multi-family units, which is projected to add approximately 450 full-time, permanent jobs upon its completion, including 60 jobs expected to be held by County residents; and

WHEREAS, the Developer hereby represents that the Project will qualify under the provisions of said Act for an agreement for payments in lieu of County real property taxes upon the Property; and

WHEREAS, pursuant to Council Resolution No. _____ adopted on _____, 2014, the County Council approved the exemption of the Property from County real property taxes, and an agreement for payments in lieu of taxes for the Project, and authorized the County Executive to enter into such an agreement; and

WHEREAS, the County is entering into this Agreement for the payment of negotiated amounts in lieu of County real property taxes, provided that the Developer complies with the terms of this Agreement.

NOW THEREFORE, THIS AGREEMENT WITNESSETH:

In consideration of the mutual covenants, terms and agreements hereof and pursuant to the power and authority of the Act, it is hereby agreed as follows:

1. The payments to be made by the Developer to the County, provided for herein with respect to the Property, shall be in lieu of all County real property taxes on the Property under the Tax-Property Article of the Annotated Code of Maryland, as amended. Such payments shall be made by the Developer and shall be accepted by the County only as long as the Developer shall comply with all of its obligations under this Agreement and the requirements of the Act.

2. The Property shall be exempt from County real property taxes commencing on the date a certificate of occupancy for the tenancy of Maryland Department of Housing and Community is issued and continuing each County tax year for 15 years thereafter (the "**Term**").

3. The Parties agree that pursuant to the Act, the Payment in Lieu of Taxes (the "**PILOT Amount**") during the Term due from the Developer shall, subject to Paragraph 9 hereof, be equal to the sum of (a) the real property taxes assessed on the Property as of July 1, 2013 (i.e., the July 1st date prior to the commencement of construction of the Project) (the "**Pre-Use & Occupancy Taxes**"), which the parties hereto agree is equal to \$29,438.40, plus (b) for each County tax year of the Term, twenty-five percent (25%) of the difference between (i) the Taxes (as defined in Paragraph 4 hereof) on the Property for such County tax year over (ii) the Pre-Use and Occupancy Taxes.

4. During the Term, the Developer will be obligated to pay an amount equal to 100% of the County real property taxes that would otherwise be due on or before September 30th of each year based on the assessed value of the Property (the "**Taxes**").

5. During the Term, the County shall refund an amount equal to the Taxes paid by the Developer less the PILOT Amount (the "**Refund**") to the Developer. The Refund shall be paid by the County to the Developer no later than sixty (60) days after receipt of 100% of the real property taxes. If the County is in default with respect to any payment required under this Agreement, the Developer may declare a default by providing written notice of such default to the County. If within 30 days of such notice the full Refund is not paid, then the Developer may seek all available remedies in law and equity including, but not limited to, specific performance, and if so litigated, be entitled to all reasonable attorneys' fees, litigation costs and expenses.

6. Each year after the expiration of the Term, the Developer shall pay all County real property taxes on the Property when due and the County's obligations hereunder with respect to the Refund shall terminate.

7. All payments due under this Agreement shall be subject to the same interest rate, collection, and tax sale provisions of the Prince George's County Code as for the collection of County real property taxes, except as otherwise expressly set forth in this Agreement.

8. If the Developer is in default for 60 days with respect to any payments or obligations required under this Agreement, the County may declare a default by providing

written notice of such default to the Developer. If within 30 days of such notice, the payments have not been brought current, then the County may declare all taxes due as follows: a sum equal to the total current real property taxes which would have been due from the Developer based on the current assessed value of the Property, plus all interest, if any, which may be assessed pursuant to Paragraph 7, less all amounts actually paid by the Developer. If there is a default on the part of the Developer, the County may either renegotiate this Agreement, or seek any other remedy available at law or in equity. All payments past due under this Agreement shall be considered a lien against the Property.

9. The payments in lieu of taxes shall at no time exceed the amount of County taxes otherwise payable on the Property based on the current assessment for County real property taxes.

10. During the Term, the Developer shall not take any action with respect to the Project which would change its use as an Economic Development Project within the meaning of the Act, except as expressly permitted in writing by the County. For this purpose, any action by a tenant to terminate the applicable lease or to move out of the Property, or Developer's termination of a tenant's lease as a result of a tenant's default, or as a result of any casualty or condemnation, shall not be considered to change the use of the Project as an Economic Development Project.

11. The Developer has submitted a Minority Business Enterprise Plan which includes a goal of twenty-five percent (25%) for County-based business enterprise (CBE), minority business enterprise (MBE) and County-based minority business enterprise (CMBE), with a minimum CBE, MBE and CMBE participation of twenty percent (20%) of the Developer's total project building costs, site work costs, and related construction services, as depicted in the project pro forma. The Parties agree that no less than fifteen (15%) of the Developer's total project building costs, site work costs, and related construction services must be allocated to CBEs or CMBEs. The Plan has also been approved by the County's Minority Business Compliance Officer (Exhibit B).

12. Until the earlier of the end of the Term or ratification of any foreclosure sale, this Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns and shall bind and run with the Property; provided, however, that in the event of foreclosure by the holder of any mortgage or deed of trust on the Property, the foreclosing party shall have the option to continue this Agreement by written election filed among the Land Records of Prince George's County, but only if the purchaser at said foreclosure sale shall assume in writing the terms and conditions of this Agreement. The written assumption shall be delivered to the County in accordance with Paragraph 16 of this Agreement.

13. Exhibit A may be amended from time to time to take into account the future subdivision of the Property. If, as a result of the subdivision of the Property, there are new parcels (within the boundaries of the Property), such parcels shall be identified in a new Exhibit A provided by the Owner to the County and attached to this Agreement. In such event, the Pre-Use and Occupancy Tax Amount shall be recalculated using the 2013 assessed value of the added parcels.

14. On or before December 1st of each year, commencing in the year 2014, the Developer agrees to supply such information as may be reasonably required by the County in order to comply with its reporting requirements under the Act.

15. The Developer agrees to provide the County with the right to access and inspect the employment information collected by the Developer during the term of the PILOT Agreement within thirty (30) days of notice by the County. A failure to do so by the Developer will be deemed a default under Paragraph 8 of the PILOT Agreement.

16. This Agreement shall not waive or defer the payment of other County taxes, assessments and fees, including but not limited to sanitation taxes, County solid waste service charges, or other taxes assessed by entities or jurisdictions other than the county, including but not limited to State of Maryland taxes, municipal taxes, the Washington Suburban Sanitary Commission, Washington Suburban Transit Commission and the Maryland-National Capital Park and Planning Commission by Developer.

17. All notices or other communication required to be given or authorized to be given pursuant to this Agreement shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, or by hand delivery to:

County: Office of the County Executive
14741 Governor Oden Bowie Drive, 5th Floor
Upper Marlboro, Maryland 20772
Attention: Thomas Himler, Deputy Chief Administrative Officer
for Budget, Finance and Administration

With a copy to: Prince George's County Office of Law
14741 Governor Oden Bowie Drive, 5th Floor
Upper Marlboro, Maryland 20772
Attention: County Attorney

Developer: BE NC Station Holdings LLC
c/o Berman Enterprises
5410 Edson Lane, Suite 220
Rockville, MD 20852
Attention: Adam Berman

With a copy to: Greenberg Traurig LLP
1750 Tysons Boulevard, Suite 1200
McLean, VA 22102
Attention: Rick Melnick

or at such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this Paragraph.

18. This Agreement shall be governed and construed in accordance with the laws of the State of Maryland, and any action for enforcement shall be brought in the Circuit Court for Prince George's County.

19. If any clause, covenant, paragraph or provision herein shall be declared fully or partially invalid or unenforceable, the remaining clauses, covenants, paragraphs and provisions shall remain enforceable and valid to the fullest extent permitted by law.

20. This Agreement constitutes the full and complete agreement between the parties, and no amendments thereto shall be valid, except in writing and dully approved and executed by the parties.

21. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Signatures to this Agreement may be delivered by facsimile, pdf or other electronic means, and each such signature shall be considered an original for all purposes of this Agreement.

22. All understandings and agreements, oral or written, previously made between the parties are merged into this Agreement and this Agreement fully and completely expresses the agreement between the parties with respect to the PILOT. This Agreement cannot be amended, modified or terminated except by a written instrument executed by both parties hereto.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and date first above written.

WITNESS:

BE NC STATION HOLDINGS, LLC

By:

Adam Berman, Vice President

WITNESS:

PRINCE GEORGE'S COUNTY, MARYLAND

By:

Thomas Himler, Deputy Chief
Administrative Officer for Budget, Finance,
and Administration

APPROVED FOR LEGAL FORM AND SUFFICIENCY:

OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A

PROPERTY DESCRIPTION

Address: Various parcels on Cross Street and Harkins Road

Legal Description: Tax Map 51 in Grid F-1

Tax ID: 20-3432358
20-2209328
20-2209260
20-2209278
20-2219814
20-2273076
20-2173961
20-2192573
20-2192581
20-2245298
20-2177798
20-2227049
20-2204733
20-2204741
20-2251759
20-2173896
20-2270577
20-2226074
20-2226066
20-2253219
20-2210441
20-2202026
20-2269892
20-2207397
20-2211381
20-2199941
20-2221778
20-3432291
20-2213189

Property Land Area: 13.67 acres

Primary Structure Built: Not Applicable

Assessed Value – Base: \$3,066,500

EXHIBIT B

MINORITY BUSINESS ENTERPRISE PLAN

EXHIBIT C
AFFILIATES

7801 Cross Street LLC

7807 Cross Street LLC

BE Cross Street LLC

Metroview LLC

Vingarden Associates LP