

K. Mitchell

SHARED PARKING AGREEMENT

THIS SHARED PARKING AGREEMENT (this “**Agreement**”), made this 5th day of FEBRUARY, 2007, by and between the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY** (“**WMATA**”), a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324, Maryland Acts of General Assembly, Chapter 869-1965, Virginia Acts of Assembly, Chapter 2-1966, and Resolution of the D.C. Board of Commissioners adopted November 15, 1966, having its principal office and place of business at 600 Fifth Street, N.W., Washington, D.C. 20001; and **RHODE ISLAND AVENUE METRO, LLC**, having its principal office and place of business at Suite 400, 8403 Colesville Road, Silver Spring, Maryland 20910 (hereinafter called “**Developer**”).

RECITALS:

R-1. WMATA and Developer have entered into that certain Joint Development Agreement dated as of March 31, 2005 (the “**JDA**”). The JDA contemplates the development of the site adjacent to the Rhode Island Avenue Metro Station (the “**Site**”). The Site is further described and defined in the JDA.

R-2. The JDA provides that portions of the Site will be leased to and operated by “**Component Tenants**”, which will be entities to be formed by and affiliated with the Developer.

R-3. The Site presently contains 387 surface parking spaces (340 long-term spaces; 40 short-term metered spaces; 5 “**A**” Kiss-N-Ride spaces; 2 handicapped spaces); plus 8 motorcycle spaces and bus loading facilities. The present parking spaces and bus facilities will be relocated and reconfigured in connection with the development of the site.

R-4. The current surface parking and bus facilities will be replaced with a new parking structure for approximately 215 vehicles (the “**WMATA Replacement Garage**”) as well as 13 short term metered spaces on the project’s main street retail parking area; 14 Kiss and Ride spaces; 6 taxi spaces (replacing the 6 current taxi spaces) and approximately 140 parking spaces in the two parking garages to be constructed by the Component Tenants that will be made available both for WMATA customers and residents of the Component Tenant’s residential units , as well as replacement bus facilities (the 140 parking spaces made available to WMATA’s customers in the two private parking garages are referred to as the “**Shared Parking**” and, along, with the above-referenced WMATA Replacement Garage and the metered and other parking comprise, collectively, the “**WMATA Replacement Facilities**”). The WMATA Replacement Facilities will be constructed at no cost to WMATA and certain of those facilities, *viz.*, the WMATA Replacement Garage and the replacement bus facilities, will be owned and operated by WMATA while the remaining WMATA Replacement Facilities, including the Shared Parking, will be located on property leased by the

Component Tenants and operated by those Component Tenants. The JDA contains provisions for the design and construction of the WMATA Replacement Facilities.

R-5. The Government of the District of Columbia requested a reduction in parking to be included in the WMATA Replacement Facilities, and WMATA concurred with this request, subject to the requirement that any changes to the station had to be approved first by FTA and WMATA's Board of Directors (after Compact Hearing). FTA did not approve the agreement, but instead proposed that the parties enter into a shared parking agreement. At the Compact Hearing, a number of citizens opposed reducing parking while other citizens supported reduced parking. WMATA and the Developer desire to provide for long-term parking capacity to address both FTA's and certain local citizens' concerns and have entered into this Agreement in furtherance thereof.

R-6. The Developer has designed the improvements to be constructed on the Site to include parking facilities that will be available to tenants of the residential components (the "**Private Parking Facilities**"), their guests and business invitees. The improvements will be constructed by the Component Tenants subsequent to their executing Component Leases in substantially the form attached to the JDA as an Exhibit.

R-7. To address FTA and community concerns regarding reduced parking, the Developer hereby wishes to provide the use of a portion of its Private Parking Facilities to accommodate parking by WMATA's customers subject to the terms and conditions that are contained herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. The foregoing Recitals are incorporated herein by reference.
2. The Developer agrees to cause Component Tenants to include the provisions of this Agreement in an easement or other similar recorded instrument that is superior to their Ground Leases but subordinate to WMATA's reversionary interest in the Site (the "Easements"). The "Shared Parking" provided for herein may be allocated among multiple Component Tenants in such proportions allocating the total 140 spaces, as they agree provided that the specified aggregate number of 140 Shared Parking Spaces is furnished across the entire Site. Developer will submit and pursue a PUD application that seeks approval of the number and type of parking spaces as set forth in Recital 4, above.
3. [Intentionally omitted].
4. The Developer will cause the Component Tenant or Tenants constructing and owning the Private Parking Facilities to, at no cost to WMATA, make the required number of Shared Parking spaces available to WMATA patrons on the property leased by the Component Tenants, on the terms specified in this Agreement, such that the total number of parking spaces available to WMATA patrons shall not be less than 387 and to provide reasonable identification of the location of such parking spaces to WMATA's

customers. As a condition precedent to both parties' obligation to proceed to Closing on the first Component Lease, WMATA and Developer shall agree to, and include in a recorded instrument, a parking management plan detailing how parking will be accessed and used by WMATA customers. Such plan shall include a visual depiction demonstrating location of Shared Parking, the size of parking spaces, the proposed access thereto, proposed signage directing WMATA customers out of the Shared Parking to the Station.

5. The Shared Parking will be available to WMATA patrons on the following terms and conditions:

a. The Shared Parking will be made available to WMATA's patrons between the hours of 7:00 a.m. and 10:00 p.m. on weekdays that are business days. Neither Developer nor any Component Tenant can guaranty the availability of any specific parking space or number of spaces actually available to WMATA's customers during the specified time period. Nor can WMATA assure Developer or any Component Tenant that all WMATA customers will vacate all of the Shared Parking by 10:00 p.m. on any day. Neither WMATA, Developer, nor any Component Tenant shall represent otherwise to any WMATA customer or to any residential user of the Private Parking Facilities.

b. Developer, through its Component Tenants, and at no current or future cost to WMATA (i) shall institute a program to clearly designate areas for not fewer than 140 spaces of Shared Parking, including installation of a signage package and entry control, and fee collection that is reasonably satisfactory to WMATA, and (ii) with written notice to, and approval by, WMATA (such approval not to be unreasonably withheld, conditioned or delayed) may institute a system of valet parking, reserved parking or monthly contracts to accommodate WMATA's customers. The Developer will pay all costs of building, equipping, managing, maintaining, fee collection and providing signage for the Shared Parking.

c. The Component Tenants may establish reasonable rules and regulations for the orderly safe and efficient use of Shared Parking by WMATA's customers, which will be reviewed with WMATA not less than thirty (30) days before their anticipated implementation date and which will be uniformly and fairly enforced. The rules and regulations shall not permit towing of WMATA's customers parked in designated spaces beyond the designated times; except that towing of vehicles will be permitted in cases where the violating vehicle endangers persons or property, effectively deprives other WMATA customers the right to use the Shared Parking, vehicles are parked for protracted periods of time (*i.e.*, for multiple days), or a vehicle blocks access to other spaces or drive or pedestrian aisles. In addition, the Component Tenants reserve the right to deny parking privileges to individual WMATA customers who repeatedly violate the rules and regulations or who, by their conduct endanger persons or property or effectively deprive other of WMATA's customers the right to use the Shared Parking.

d. A Component Tenant may lease or enter into other arrangements for the operation of its parking facilities with a third party operator or otherwise engage a third party to operate its parking facilities, so long as any such third party is obligated to

observe the provisions of this Agreement and the additional Easement that is contemplated hereby.

e. The rates and terms of parking within the Shared Parking will not be greater than WMATA's highest full-day daily parking rate then charged to WMATA's customers in the WMATA Replacement Facilities, provided, that in no event will the rates charged to WMATA's customers be reduced even if WMATA reduces its full-day daily parking rates. The parking rates charged to WMATA customers will be net of applicable District of Columbia taxes as in effect from time to time. The parties agree, however, that the Shared Parking is intended to exclusively benefit WMATA and its customers and is being implemented as part of WMATA's corporate purposes and for a public purpose and that this Agreement, and the anticipated use of the Shared Parking by WMATA's customers constitute an activity in the operation and maintenance of a transit facility, notwithstanding WMATA's non-ownership of the Private Parking Facilities. To that end, the parties agree to reasonably cooperate to enforce WMATA's tax exemption set forth in Section 78 of the WMATA Compact to the fullest extent applicable under these circumstances. Some party other than WMATA (i.e. Developer, Component Tenant, garage operator) shall collect parking fees. Developer or Component Tenant will display conspicuous signage identifying, and providing contact information for, the garage operator.

f. The design, configuration and location of the Shared Parking will be determined by the Developer and the Component Tenants in their reasonable discretion, which, though not requiring construction pursuant to WMATA's standards, shall nevertheless provide for construction, parking space size and safety standards that comply with the applicable codes, regulations and orders of the District of Columbia and its instrumentalities.

g. Upon not less than 30 days notice to WMATA, to allow WMATA adequate time to notify its customers (except in the event of emergency), the Component Tenant and its operator reserve the right to close the parking facilities or to restrict or deny access thereto for reasonable periods of time where such closure, limiting or denial of access is reasonably necessary to (i) prevent dedication to the public; (ii) assure public safety; (iii) to perform cleaning, maintenance, repairs or reconstruction; (iv) comply with the orders or directives of governmental authorities having jurisdiction; or (v) to make repairs or modifications required by casualty or condemnation. Each Component Tenant further reserves the right to post appropriate signs and notices of pending closures.

h. Each Component Tenant further reserves the right to make modifications to or to relocate areas in its Private Parking Facilities that are to be used for Shared Parking so long as such modifications or relocations do not materially reduce the accessibility or functionality of the Shared Parking that is to be provided by it.

6. The Component Tenant who is the owner of any portion of the Shared Parking shall be solely responsible for the maintenance, repair (capital or otherwise), replacement and insurance of that Shared Parking. In no event shall WMATA have any responsibility or liability for the costs of maintenance, repair, replacement, taxes, or insurance during

the term of the applicable Component Lease. The responsible Component Tenant shall, in fact, maintain and repair, and purchase liability insurance for, the Private Parking Facilities, all in a manner, and in policy amounts, consistent with industry standards in the Washington, D.C. metropolitan area.

7. [Intentionally omitted]

8. The Developer shall cause its Component Tenants to separately price the rent for apartments and the rental of those parking spaces that are to be used as Shared Parking.

9. Developer shall cause each Component Tenant, at no cost to WMATA, and solely with respect to the portion of the Shared Parking owned by it, to indemnify, defend (with counsel reasonably acceptable to WMATA), and hold WMATA and its officers, directors, employees, and agents harmless against all claims, liabilities, settlements, compromises, and costs of whatsoever kind and nature (including reasonable attorneys' fees and expenses, expert witness fees, court costs, and costs of collection) which may be imposed upon, or incurred by, or asserted against WMATA or any of its officers, directors, employees, and agents by reason of: (a) WMATA's fee simple ownership of the property demised by the Component Lease; (b) any accident, occurrence, injury to or death of persons on or loss of or damage to property, on the Shared Parking as a consequence of a negligent or intentional act or occurrence by the Component Tenant or its agents, employees, representatives or contractors. Such indemnification shall not include any loss or damage that results solely from the acts or omissions of WMATA, its officers, directors, employees, business invitees, or contractors. Nothing in this Agreement or inferable herefrom shall make the Developer or any Component Tenant liable to WMATA for the acts of WMATA's patrons, or make WMATA liable to the Developer or any Component Tenant for the acts of WMATA's patrons.

10. Developer agrees to submit a site plan seeking not fewer than 168 parking spaces that are privately owned but that are available for use by the public associated with retail use at the development (the "Public Parking Spaces"). Developer shall seek approval to have these Public Parking Spaces be spaces available to the general public, with fees no greater than those charged by WMATA for its short-term metered parking, having a minimum 4 hour parking and agrees that, once established, it will not change the retail/public nature of these spaces or the time duration 4-hour minimum without WMATA approval, including, where required, WMATA Board's approval. That notwithstanding, the parties acknowledge that government authorities have final authority on the number of Public Parking Spaces and conditions associated with such uses. If Developer, despite reasonable effort, cannot obtain the number or nature of Public Parking Spaces required herein (or if any future governmental determination affects the provision of such Public Parking Spaces), then the parties agree to negotiate in good faith to obtain functionally equivalent public parking at or near this location, to the extent feasible.

11. This Agreement shall become effective with respect to each portion of Shared Parking upon the opening of the Private Parking Facilities that contain that Shared

Parking for use by the public after receipt of all required inspections, approvals, licenses and permissions therefor.

12. This Agreement shall be incorporated into an Easement governing the leasehold property designated to contain Shared Parking. As a condition to its execution of any Component Lease, WMATA and Developer must have entered into a subsequent agreement which specifically defines, describes and governs, the number of spaces and location of the Shared Parking, as well as the location and operating requirements for interim parking as contemplated by the JDA.

13 (a) If any provision of this Agreement or the application of such provision to any person or situation shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons or situations other than those held invalid or unenforceable shall not be affected and shall continue valid and be enforced to the fullest extent permitted by law. Any such invalid or unenforceable provision shall be deemed automatically reformed to render it as close in meaning and effect as the original provision but still valid and enforceable.

(b) Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders. Unless the context shall otherwise indicate, the word "person" or any word having a similar meaning shall include any individual, corporation, partnership, joint venture, company, association, trust, or government or any agency or political subdivision thereof.

(c) This Agreement contains the entire agreement between the parties with respect to the subject hereof, and all other prior communications and agreements, written or oral, with respect to the subject hereof are superseded hereby. This Agreement may be amended or modified only by an instrument in writing executed by the parties.

(d) The terms herein contained shall bind and inure to the benefit WMATA, the Developer and the Component Tenants and shall be binding upon the successors to and assignees of the Component Tenants to the extent Shared Parking is located on their property. WMATA may not assign its rights under this Agreement.

(e) This Agreement may be executed in one or more duplicates, each of which shall be deemed an original.

(f) In no event shall this Agreement be construed more strongly against any one person solely because such person or its representative acted as draftsman hereof, it being agreed by the parties hereto that both have been represented by competent legal counsel, that this Agreement has been subject to substantial negotiation, and that all parties have contributed substantially to the preparation of this Agreement.

(g) This Agreement shall be governed by the laws of the District of Columbia without regard to its principles of conflicts of law.

(h) In the computation of any period of time provided for by this Agreement or by law, the day of the act or event from which such period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until the end of the next business day. Any force majeure event shall extend the time for performance and/or completion of any action or matter under this Agreement; *provided* that the party seeking to extend such time shall have notified the other party of the occurrence and duration of such force majeure event within a reasonable time after the commencement thereof. Such extension shall be for an appropriate period of time taking into consideration the nature of the force majeure and the impact of such event on the time required for performance or completion.

(i) Except as otherwise specified in this Agreement, wherever an approval or consent is required by WMATA under this Agreement, such approval or consent shall be deemed to have been validly given only if given by WMATA's Contracting Officer or such Contracting Officer's designee.

(j) All notices required or permitted to be given hereunder shall be in writing and shall be: (1) personally delivered; (2) only when expressly required by this Agreement, sent by registered or certified United States mail, postage prepaid, return receipt requested; or (3) sent by a prepaid for next Business Day delivery nationally available courier service (including United States Express Mail). Notices and other communications shall be deemed to have been given on the earlier of actual receipt or, in the case of delivery by United States mail or overnight courier, on the first Business Day upon which delivery is attempted but cannot be made due to refusal of, or failure by the addressee to accept, such attempted delivery. Notices to the Developer shall be sent:

To:
Mid-City Urban, LLC
8403 Colesville Road
2Suite 400
Silver Spring, Maryland 20910
Attn: William M. Harvey

One copy to:
A&R Development Corporation
650 Pennsylvania Avenue
Suite 430
Washington, D.C. 20003
Attn: Mr. Tony Rodgers

One copy to: Womble Carlyle Sandridge & Rice, PLLC
1401 Eye Street, N.W.
Seventh Floor
Washington, D.C. 20005-2225
Attn: John D. Hagner, Esquire

One copy to: Each Mortgagee registered with WMATA pursuant to Section 17.6 of the JDA, at such Mortgagee's address as shall have been provided so WMATA.

Notices to a Component Tenant shall be sent to the persons and in the manner specified in that Component Tenant's Component Lease.

Notices to other parties designated by Developer or a Component Tenant shall be sent to such other addresses and to the attention of such other parties may be designate by Notice to WMATA.

All notices to WMATA from any party shall be deemed to have been properly served or given if addressed to WMATA as follows:

Original to: Director
Office of Property Development and Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

One copy to: General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

and to such other addresses and to the attention of such other parties as WMATA may designate by notice to all other parties entitled to give or receive. If WMATA changes its office address as herein stated, WMATA promptly shall give Notice to Developer.

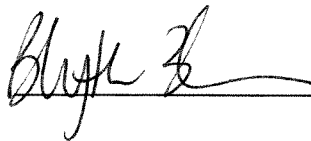
If a party entitled to give or receive notices hereunder changes its office address, it promptly shall give notice thereof to all other parties entitled to give or receive notice hereunder.

(k) Upon the termination of this Agreement, whether by expiration of the Term of a Component Lease, any replacement of either, or for any other reason, the parties shall execute, acknowledge, and deliver a Memorandum of Termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal as of the date first above written.

[SIGNATURE PAGE TO FOLLOW]


WITNESS:



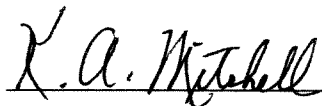
DEVELOPER:

RHODE ISLAND AVENUE METRO, LLC
A District of Columbia Limited Liability Company

By: Mid-City Urban, LLC
A Delaware Limited Liability Company
A Managing Member

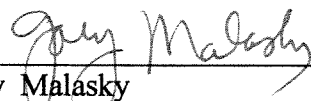
By:  [Seal]
William M. Harvey,
Executive Vice President

WITNESS:



WMATA:

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

By:  (Seal)
Name: Gary Malasky
Contracting Officer