

AMENDMENT NO. ____
TO ORDINANCE NO. BL2024-258

Madam President –

I hereby move to amend Ordinance No. BL2024-258 as follows:

1. Delete Schedule 4.1.1.2 of the Master Development Agreement attached as Exhibit B to the Ordinance labeled “Base Rent Calculation Methodology” and replace it with Schedule 4.1.1.2 attached hereto.
2. Delete Exhibit B-7 to the Master Development Agreement attached as Exhibit B to the Ordinance labeled “TPAC Street Improvements” and replace it with the depiction attached hereto and labeled “Exhibit B-7”.
3. Revise Exhibit C-1 to the Master Development Agreement (Form of Ground Lease) attached as Exhibit B by amending the definition of “Prohibited Uses” as follows:

“Prohibited Uses” shall mean the following uses: (1) any discotheque (except as an ancillary use); (2) beauty school or barber college; (3) any gasoline or service station, automotive service or repair business; (4) ~~any dry cleaner that has on-site dry cleaning;~~ (5) ~~any “second hand” store, used clothing or thrift store,~~ pawn shop, salvation army type store, “surplus” store or liquidation outlet; (56) any mortuary or funeral parlor not part of a medical institutional use; (67) any coin operated laundry, except as an ancillary use in a residential, hotel, assisted living or similar facility; (78) the sale, display, cultivation, development, distribution, and/or administration of narcotics or any other controlled substances not part of a doctor’s office or laboratory, or full-service pharmacy, including any adult-use cannabis establishment, cannabis retailer, cannabis manufacturer, cannabis cultivator, or methadone clinic; (89) any massage parlor not accessory to a fitness center, residential or office building, spa or hotel; (940) “head” shop, adult book shop or adult movie house, or piercing parlor; (1044) sports betting and Casinos, provided, however the foregoing shall not prohibit gambling or games of chance unrelated to real world sports competition operated by the Tennessee Lottery or an event benefitting a non-profit organization that is permitted by other Governmental Authorities or legal online gambling by Persons using their own devices; (1142) short term rentals (such as, by way of example only, Air BnB and VRBO) of any non-hotel multifamily or other residential property; and (1243) any other use to the extent prohibited by the Campus Operations Agreement or by the Applicable Declaration.

4. Revise the Master Development Agreement attached as Exhibit B to the Ordinance as follows:
 - a. Add a new Section 5.16 as follows:

“Section 5.16 Archaeology Review. Prior to Commencement of Construction under any Ground Lease, Developer will obtain a Phase 1 archaeological survey in form and scope consistent with the Phase 1 archaeological survey of the East Bank Arterial Connector dated as of July 19, 2022 commissioned by Metro and prepared by Richard Grubb & Associates, with

respect to such applicable Ground Lease Parcel (or such larger area as may include one or more additional Ground Lease Parcels), provided that Owner provides Developer with access (which access shall be in accordance with the terms of Section 3.6 hereof) to the applicable Ground Lease Parcels as and when reasonably necessary to complete any such archaeological study and permits Developer to complete any excavation required in connection with the completion of such archaeological study. Upon completion of any such Phase 1 archaeological study, Developer shall provide Owner with a copy of any resulting report and if any archaeological issues are identified, Developer and Owner shall work together in good faith to determine a reasonable solution to such archaeological issues.”

5. Revise Exhibit D of the Master Development Agreement attached as Exhibit B to the Ordinance labeled “Scope of Work Document” as follows:

a. Revise the schedule of infrastructure work as follows:

- i. Revise the description for the South Second Street line item under Titans Infrastructure to read JRP to ~~Sylvan~~ Shelby.
- ii. Revise the below line item under “Fallon IDA (Infrastructure Required for Fallon and Related Development)” and add a footnote thereto that says:

“*Provided that the intersection of Shelby Avenue/Korean Veterans Boulevard and South 2nd Street has been (or contemporaneously will be) designed and constructed by Metro or others, Developer will, during Developer’s design and construction of Parcel G, design and construct the portion of South 2nd Street connecting Shelby Avenue/Korean Veterans Boulevard to Sylvan Street. Developer’s design and construction of South 2nd Street connecting Shelby Avenue/Korean Veterans Boulevard to Sylvan Street will be coordinated with StadCo and Metro in their design and construction of the South 2nd Street and Shelby Avenue/Korean Veterans Boulevard intersection and the design will comply with Nashville Department of Transportation’s customary engineering requirements.”

Item	Description	Funding Responsibility	Construction Responsibility	Affected Parcel	Exhibit
<u>South 2nd Street</u> Sylvan	<u>2nd Street from Shelby/KVB to Sylvan</u> 2nd Street to Interstate Drive Extension	Fallon*	Fallon*	G	N/A

- iii. Delete Exhibit 7 to the Scope of Work Document and replace it with the depiction attached hereto and labeled “Exhibit 7”.
- iv. Delete Exhibit 10 to the Scope of Work Document and replace it with the depiction attached hereto and labeled “Exhibit 10”.

- v. Delete Exhibit 16 to the Scope of Work Document.

SPONSORED BY:

Jacob Kupin
Member of Council

Schedule 4.1.1.2

OVERVIEW:

Base Rent shall be an annual amount paid monthly commencing on the Rent Commencement Date (as defined in the Ground Lease) calculated by multiplying the number of rentable square feet (or keys) of each use constructed on a Parcel, times a rental value for each use on a Parcel, times the applicable lease yield. The base rental value for each use shall be determined by an appraisal performed promptly following the later to occur of the execution of this Agreement and completion of the Rezoning. The application of such values to particular buildings will be determined at the time of execution of the Ground Lease, subject to escalation based on change in the CPI (as defined in the Ground Leases) from the initial calculation of the values to the time of execution of the applicable Ground Lease except as otherwise described below. The foregoing is described with more specificity below.

BASE VALUE DETERMINATION (ALL USES):

Promptly after the later to occur of the execution of this Agreement and completion of the Rezoning, the parties will engage a mutually-agreed upon appraiser to determine the value of the land as of such time with an appraisal of the fair market value of the land comprising the IDA Land as a whole, determined as if the land will be owned in fee simple and will be developed for each of the uses permitted in the IDA Land and otherwise in accordance with the Appraisal Instructions set forth below. Such fair market value will be expressed by the Appraiser as a per rentable square foot amount (or for hotels, a per key amount) for each applicable use on each parcel within the IDA Land. Such appraisal will identify a single per square foot (or per key) amount for each of the following uses: high-rise residential (eight stories or more); low-rise residential (seven stories or less); affordable residential (assumed to be financed with LIHTC and other customary local capital/grant sources); full-service hotel; limited-service hotel; retail; office; and any other applicable commercial use. Such per unit amounts will be called the “Base Value” for each applicable use.

~~If either Party does not agree with the results of the appraisal, [NTD: To include three appraiser method for disagreement over appraisal results.]~~

If either party disagrees in good faith with the result of the appraisal in connection with any of the Base Values, then within fifteen (15) Business Days after the parties’ receipt of the initial appraised Base Values, such party may provide notice of any such disagreement in writing, including the reasons for such disagreement and the manner in which the calculation of such disputed Base Values is inconsistent with the appraisal instructions, along with the alternative Base Values that such party believes in good faith would have resulted had the appraisal been consistent with such party’s good faith calculation. Promptly after receipt of such notice, the Senior Executives shall meet in accordance with the Expedited Dispute Resolution Procedure to resolve the dispute. If the Senior Executives are unable to resolve such dispute in accordance with the Expedited Dispute Resolution Procedure, then within ten (10) Business Days after expiration of the Second Resolution Deadline (as set forth in the Expedited Dispute Resolution Procedure), each party, at its own expense, shall obtain its own third-party appraisal using the appraisal instructions set forth herein, and calculation of the disputed Base Values. If such respective determinations are within five percent (5%) of each other, the applicable disputed Base Values shall be the average of such amounts. However, if after receiving such determinations, Owner and Developer are unable to agree on the disputed Base Values (and the respective amounts are not within five percent (5%) of each other), then, within fifteen (15) days after receipt of such determinations, Owner and Developer shall jointly appoint an independent appraiser (the “Second Joint Appraiser”) with experience in real estate activities, including at least ten (10) years’ experience serving as an appraiser in transactions involving commercial property in the Nashville, Tennessee area or similar markets, and the Second Joint

Appraiser shall, within twenty (20) days following the Second Joint Appraiser's appointment, determine and report in writing to Owner and Developer the applicable Base Value(s) using the appraisal instructions set forth herein by selecting either Owner or Developer's determination of such disputed Base Values, according to whichever of the applicable determinations is closer to the correct Base Value(s), as determined by the Second Joint Appraiser. The Second Joint Appraiser shall have no discretion other than to select Owner's or Developer's determination of the disputed Base Value(s) as aforesaid. The costs of the Second Joint Appraiser shall be shared equally by Owner and Developer, and each of Owner and Developer shall reasonably cooperate with the Second Joint Appraiser in providing documentation and any other reasonable evidence regarding how Owner and Developer, as applicable, arrived at its determination of the Base Value(s).

BASE RENT DETERMINATION (RESIDENTIAL/RETAIL/PARCEL B):

For any residential or retail uses, or any use located on Parcel B, Base Rent under the Ground Lease will be determined as follows:

After Developer has delivered a Closing Notice to Owner for any applicable Ground Lease Parcel, the Base Value for each use to be developed on the applicable Ground Lease Parcel will be adjusted to take into account changes in the CPI from the date of the appraisal to the date which is sixty (60) days prior to then-scheduled Closing Date (as the same may be extended in accordance with this Agreement) for such Ground Lease Parcel (such value, the "Adjusted Base Value").

The Adjusted Base Value will be multiplied by the number of rentable square feet or, with respect to hotel uses on Parcel B, keys in the building(s) to be constructed pursuant to such Parcel Ground Lease for each use (the product of such equation is referred to herein as the "Total Rent Value").

The Total Rent Value will be multiplied by a lease yield of 4.5% for any non-residential use, or 4% for any residential use, allocated according to the respective rentable square feet of residential use and non-residential use on the specific Parcel (if applicable), and the product of such equation is the "Base Rent" under the applicable Ground Lease.

BASE RENT DETERMINATION (HOTEL/OFFICE OTHER THAN PARCEL B):

For any hotel or office use, unless located on Parcel B, Base Rent under the Ground Lease will be determined as follows:

After Developer has delivered a Closing Notice to Owner for any applicable Ground Lease Parcel for hotel or office use (other than any Hotel or Office Project Component located on Parcel B), the Base Value for each such Parcel Ground Lease will be adjusted as follows to determine the Adjusted Base Value:

- (a) From the Effective Date through the 8th anniversary of the Effective Date: The Base Value for the applicable Ground Lease will be adjusted to take into account changes in the CPI from the Effective Date to the date which is sixty (60) days prior to then-scheduled Closing Date (as the same may be extended in accordance with this Agreement) for such Ground Lease Parcel.
- (b) From the 8th anniversary of the Effective Date through the 15th anniversary of the Effective Date: the Base Value for the applicable Ground Lease will be adjusted to take into account changes in the CPI plus 1% annually to the date which is sixty (60) prior to the applicable Ground Lease Closing Date (as the same may be extended in accordance with this Agreement).

- (c) On the 15th anniversary of the Effective Date: there will be a reappraisal for each applicable use on each non ground leased Parcel or portion thereof within the IDA Land using the Appraisal Instructions set forth below to reset the Base Value for such uses going forward, provided that if Excusable Delay has occurred, such reappraisal will be delayed for a period commensurate with the period in which the Excusable Delay delayed Developer's performance under this Agreement. For any Hotel or Office Project Component Ground Lease Closing occurring after any such reappraisal, the Adjusted Base Value for such Ground Lease Parcel will be adjusted to take into account changes in the CPI from the date of such reappraisal to the date which is sixty (60) days prior to then-scheduled Closing Date (as the same may be extended in accordance with this Agreement) for such applicable Ground Lease Parcel.
- (d) On and after the 20th anniversary (regardless of the occurrence of Excusable Delay): On the 20th anniversary of the Effective Date (regardless of whether Developer has delivered a Closing Notice but only if the Base Value has not previously been reset pursuant to (c) above), there will be a reappraisal for each applicable use on each undeveloped parcel or portion thereof within the IDA using the Appraisal Instructions set forth below to reset the Base Value for such uses going forward. For any Hotel or Office Project Component Ground Lease Closing occurring after any such reappraisal, the Adjusted Base Value for will be adjusted to take into account changes in the CPI from the date of such reappraisal to the date which is sixty (60) days prior to then-scheduled Closing Date (as the same may be extended in accordance with this Agreement) for any applicable Ground Lease Parcel.
- (e) If the reappraisal has been delayed for Excusable Delay pursuant to (c) above, from the 15th anniversary to the Effective Date through the 20th anniversary of the Effective Date, during the period of Excusable Delay prior to reappraisal, the Base Value for the applicable Ground Lease will be adjusted to take into account changes in the CPI plus 2% as determined on the date which is sixty (60) prior to the applicable Ground Lease Closing Date (as the same may be extended in accordance with this Agreement).
- (f) If either party disagrees in good faith with the result of the reappraisal described in (c) or (d), the disagreement shall be resolved in the same manner as described above under "BASE VALUE DETERMINATION (ALL USES)".

The Adjusted Base Value will be multiplied by the number of rentable square feet or, with respect to hotel uses, keys in the building(s) to be constructed pursuant to such Parcel Ground Lease for each use (the product of such equation is referred to herein as the "Total Rent Value").

The Total Rent Value will be multiplied by a lease yield of 4.5% for any non-residential use, or 4% for any residential use, allocated according to the respective rentable square feet of residential use and non-residential use on the specific Parcel (if applicable), and the product of such equation is the Base Rent under the applicable Ground Lease.

Appraisal Instructions:

1. The Appraiser will determine the fair market value of the land comprising the IDA Land as a whole, determined as if the land will be owned in fee simple, and will be developed for each of the uses permitted in the IDA Land. Such fair market value will be expressed by the Appraiser as a per rentable square foot amount (or for hotels, a per key amount) for each applicable use on each parcel within the IDA Land. Such appraisal will identify a single per square foot (or per key) amount for each of the following uses: high-rise residential (eight stories or more); low-rise residential (seven stories or less); affordable residential use (assumed to be financed with LIHTC

and other customary local capital/grant sources); full-service hotel; limited-service hotel; retail; office; and any other applicable commercial use. Such per unit amounts shall be the “IDA Fee Simple Land Values” for each applicable use.

2. The Appraiser will then make adjustments to the IDA Fee Simple Land Values to take into account the characteristics of the individual Parcels, by calculating adjustments to the per rentable square foot amount (or for hotels, per key amounts) to reflect each of the following matters, to the extent applicable to the Parcel:
 - a. Zoning limitations or ground lease restrictions applicable to the Parcel, including height restrictions, use provisions and any other matters affecting value.
 - b. Environmental conditions at the property, including clean-up and compliance costs as well as any premium costs (in excess of ordinary soil removal costs) for soil disposal assuming a proposed development of the parcel which requires excavation for an underground garage on substantially all of the property, but in each case excluding Owner’s reimbursement obligation for Premium Costs.
 - c. Restrictions or obligations under the applicable title documents and other agreements: Campus Operations and Use Agreement, any declarations, easements, or similar documents and title matters which impose obligations on the development or use of the parcel or require contribution to the maintenance of public or publicly accessible improvements in the IDA Land.
 - d. Infrastructure elements required to be funded by Developer or the tenant of such Parcel as defined in the Scope of Work Document and that the tenant is not otherwise being reimbursed for through other public financing mechanisms (including hard, soft, and financing costs to reflect the cost of upfront capital).
 - e. In the case of a residential parcel or use, any affordable housing obligations attributable to such parcel or use.
3. The Appraiser will set out the IDA Fee Simple Land Values for each applicable use and will list separately the adjustments to IDA Fee Simple Land Values, as applicable, the items listed in 2(a)-2(f) above to derive the Base Values.





