

OPERATIONS AGREEMENT  
(WISCONSIN PLACE COMMUNITY RECREATION CENTER)

between

MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

and

MONTGOMERY COUNTY, MARYLAND

Dated:

## OPERATIONS AGREEMENT

This operations agreement ("Agreement") is by and between MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a body corporate and politic (the "Commission"), and MONTGOMERY COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland (the "County"). The Commission and the County are hereinafter referred to collectively as the "Parties".

### WITNESSETH:

WHEREAS, Commission has planning jurisdiction within that part of the Maryland-Washington Metropolitan District which includes Montgomery County, Maryland (the "County"); and

WHEREAS, on April 10, 2003 the Montgomery County Planning Board approved a mixed-use development (the "Development"), commonly known as Wisconsin Place, consisting of certain improvements (including a below-grade parking structure), retail buildings, a residential building, and an office building, to be constructed by WP Project Developer, LLC (the "Developer") upon a parcel of land (the "Project Development Parcel") at the corner of Wisconsin and Western Avenues in Chevy Chase, Maryland; and

WHEREAS, the Development (or "Wisconsin Place") is located within the boundaries of the Friendship Heights Central Business District Sector Plan (the "Sector Plan") in an area zoned CBD-2, and occupies a city block, approximately eight (8) acres in area, immediately north of the District of Columbia line and bounded by Wisconsin Avenue, Western Avenue, Willard Avenue and Friendship Boulevard; and

WHEREAS, Wisconsin Place is being constructed as an Optional Method Development project and will include a 20,500 square foot recreational community center (the "Premises" or "Center") as its major public amenity substantially in accordance with the Sector Plan; and

WHEREAS, in satisfaction of the guidelines of the Sector Plan the Commission has entered into a multi-year lease (the "Lease Agreement") with WP Owner Trust (predecessor in interest to the Developer), owner of the fee simple title to the Project Development Parcel, which provides for the Commission to be responsible for the installation of any and all fixtures, furniture, and equipment needed for the planned community center to provide various recreational services as described in the Lease Agreement; and

WHEREAS, the Lease Agreement also requires the Commission to employ a full onsite staff, including a qualified manager headquartered and working full-time at the Center to manage and control the operations of the Premises; and

WHEREAS, the County is willing to staff and operate the Center in accordance with the terms of this Agreement (and also as described in the Lease Agreement) for the purpose of providing recreational opportunities for the general public; and

WHEREAS, the Montgomery County Council approved operating funds of \$572,100 in Fiscal Year 2009 for the center and \$380,600 for the Commission to fit out the center by installing the fixtures, furniture, and equipment needed for the Center to operate as a public recreational facility; and

WHEREAS, the purpose of this Agreement is to set forth the respective responsibilities and obligations of the Parties relative to the operations and maintenance of the Premises, and to authorize the County to staff, operate, and provide certain maintenance to the Premises for use by the general public;

NOW, THEREFORE, in consideration of the mutual promises of the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

A. Exhibits. The following drawings and special provisions are attached hereto as exhibits and hereby made a part of this Agreement:

- Exhibit A. Site Plan of the Project Development Parcel
- Exhibit B. Legal Description of the Project Development Parcel
- Exhibit C. Site Plan of the Premises
- Exhibit D. Lease to Maryland National Capital Park & Planning Commission
- Exhibit E. Furniture, Fixtures & Equipment (FF&E) List

B. Definitions. The following terms have the indicated meanings as set forth below:

- 1) "Business Day" means any Monday through Friday, except any Commission-authorized holiday.
- 2) "Commission" means the Maryland-National Capital Park and Planning Commission.
- 3) "County" means Montgomery County, Maryland.

- 4) "Days" means calendar days, unless specific reference is made to Business Days.
- 5) "Governmental Authorities" means all public officials, agencies, municipalities, counties and courts having jurisdiction over the Project Development Parcel.
- 6) "Hazardous Material" means any hazardous or toxic substance, material, or waste including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172. 101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable federal, state, or local law, ordinance, or regulation including, but not limited to, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Air Act, and the Clean Water Act.
- 7) "Hours of Operation" means the time period during each day when the Center is open to the public as set forth in Section K of this Agreement, which Hours of Operations must be posted and included in the Rules and Regulations.
- 8) "Improvements" means the improvements to the Premises provided by the Commission as part of the Premises as further described in Section D of this Agreement.
- 9) "Laws" means any and all applicable laws, orders, ordinances, codes and regulations, including, without limitation, all zoning, subdivision, building and land use laws, orders, ordinances and regulations of any and all courts and governmental bodies, agencies and authorities having jurisdiction over the Project Development Parcel and the Premises, including, without limitation, all zoning, subdivision, building and land use laws.
- 10) "Minor Repair" means repair, refurbishment, or replacement of any furniture, fixtures, or equipment provided by the Commission under this Agreement that does not exceed twenty-five thousand dollars (\$25,000) or a industry accepted life-expectancy of 15 years.
- 11) "Notice" means any written notice, demand, request or other instrument which may or is required or permitted to be given from one party to another under this Agreement by either (i) hand-delivery (with a receipt therefor), (ii) delivery by a nationally-recognized courier service with a reliable tracking-delivery

system, or (iii) mailing through the United States Mail (Registered or Certified), postage prepaid, return receipt requested.

12) "Parking Areas" means those areas within the Project Development Parcel designated for the parking of motorized vehicles for use in connection with the Development.

13) "REA" means the Construction, Operation, and Reciprocal Easement Agreement that provides for the improvement and operation of certain parcels referred to herein as the Development recorded with the Land Records of Montgomery County, Maryland in Liber 27987, at folio 738, as amended from time to time.

C. The Premises. The Premises, designed, developed, and constructed by WP Project Developer, LLC, includes approximately 21,500 gross square feet of indoor space shown on the Site Plan of the Premises and described in Article II, Premises, of the Lease Agreement. The Legal Description of the Project Development Parcel, the Site Plan of the Premises, and the Lease Agreement are attached as Exhibits B, C, and D respectively.

D. Improvements. The Commission must outfit the Premises by providing and installing any and all furniture, fixtures, and equipment necessary and appropriate for the Center to operate as a public recreational facility. The improvements include, but are not necessarily limited to the following:

- 1) Cable television, telephone, and internet service;
- 2) Exercise equipment;
- 3) Furniture
- 4) Security system
- 5) Play equipment

The Commission will convey to the County ownership of all furniture and equipment that the Commission installs on the Premises.

E. Use of Premises. The Commission must turn over the Premises as described above to the County for operations in accordance with the provisions of this Agreement and the Commission's obligations under the Lease Agreement. The County agrees to use the Premises to staff and operate a community center as a public recreational facility providing athletic events; exercise facilities and classes; theatrical, musical and other performance events; art shows, temporary community fairs and events (including sale as well as display of items); meetings, classes, lectures, gatherings and other neighborhood functions or events; incidental sales of food, drinks and items related to

events at the demised premises; and such other uses that are from time to time usual and customary for a community center. The County also agrees to perform Minor Repairs in accordance with the terms, covenants, and conditions set forth herein. To whatever extent the Commission has a nonexclusive right under the Lease Agreement to use any otherwise restricted common areas providing ingress and egress to the Premises, the County, its agents, employees, contractors, licensees and invitees will also have the nonexclusive right to use those common areas for ingress and egress to the Premises (including, without limitation, the Parking Areas). It is the express intention of the Parties that any actions taken by the County, or by any agent or employee of the County, in the course of operating a community center not be in conflict with the Lease Agreement. Therefore, the County must not take any action or refrain from taking any action in connection with its use of the Premises to the extent that any such action or inaction would cause the Commission to be in violation, or presumed to be in violation, of Article IX of the Lease Agreement, or any other applicable provisions of either the Lease Agreement or the REA.

F. Constraints on Use of Premises. The County agrees not to commit waste on the Premises and not to knowingly use the Premises for any unlawful purpose or in violation of any certificate of occupancy, nor suffer any dangerous article to be brought on the Premises unless safeguarded as required by law. The County agrees to comply reasonably, promptly, and effectively with all applicable Laws of all Governmental Authorities. The Commission agrees to give Notice promptly to the County of any notice from any Governmental Authorities, person, group or organization in respect of the Premises including, without limitation, any notice pertaining to air and water quality, Hazardous Materials, waste disposal, air emissions, and other environmental matters, and any direction of any public agency that imposes any duty upon the Commission or the County with respect to the use or occupancy of the Premises. The County may, in good faith, dispute the validity of any complaint or action taken pursuant to or under color of any of the foregoing, defend against the same, provided, (i) such proceedings shall be permitted under and be conducted in accordance with all applicable statutes, laws and ordinances; (ii) neither the Development, the Premises nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost (iii) the County shall promptly upon final determination thereof comply with any such Law determined to be valid or applicable or cure any violation of any Law; (iv) such proceeding shall suspend the enforcement of the contested Law against the County or the Premises; and (v) the County shall furnish such security as may be required in the proceeding, or as may be reasonably requested by the Commission, to insure compliance with such Law, together with all interest and penalties payable in connection therewith and in good faith, diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. The County agrees that any such contest will be prosecuted to a final conclusion with reasonable dispatch, and the

County will hold Commission harmless with respect to any actions taken by any Governmental Authorities with respect thereto.

G. Term. The term of this Agreement ("Agreement Term") is for the period commencing at 12:00 a.m. on the date that Commission tenders possession of the Premises to the County ("Commencement Date") and will expire at 11:59 p.m. on the anniversary date that is three (3) years thereafter; provided however, that this Agreement may be extended in writing by the Parties. For purposes of this Agreement, possession of the Premises will be deemed tendered to the County when the Commission has verified that occupancy permits are in place, determined that the Improvements are substantially completed, and provides Notice to the County thereof. The Improvements will be deemed substantially completed when the Improvements have been completed except for minor items or defects that can be completed or remedied thereafter without causing substantial interference with the County's ability to operate the Premises in accordance with the provisions of this Agreement.

H. Operations. The County will staff and operate the Center, and also:

- 1) Promulgate Rules and Regulations pertaining to the use of the Premises ("Rules and Regulations"), including but not limited to, Hours of Operation (as set forth herein), closure for inclement weather (including ample time as may be necessary for clearance of snow and ice as provided in paragraph K herein), use of safety equipment, and assure that the Rules and Regulations are followed with appropriate consequences established and imposed for noncompliance;
- 2) Design, organize and run programs and special events to be conducted on the Premises;
- 3) Collect from patrons any fees that the County requires for the use of equipment or participation in programs at the Center;
- 4) Monitor patrons' use of the Premises in accordance with the Rules and Regulations;
- 5) Provide for all custodial, janitorial, and Minor Repair services needed to keep that the Premises clean and free of debris and to ensure that all trash, refuse, and the like are removed from Premises and disposed of in a manner designated by the Commission;
- 6) Report to the Commission any defects with respect to punch list or warranty items that the Commission has supplied under its obligation to outfit the

Premises with the furniture, fixtures and equipment needed for the Premises to operate as a public recreational facility; and

- 7) Perform, at the County's own cost and expense, any minor repairs or space modifications in accordance with any written authorization requested and received from the Commission.
- 8) Employ an onsite staff, including a qualified manager headquartered and working full-time at the Center, of sufficient size to manage and control the operations of the Premises.

I. Maintenance and Repair.

1) The County's Maintenance Responsibilities. Throughout the Agreement Term, the County will monitor patrons' use of the Center and provide for routine daily upkeep of the Premises by (i) providing custodial and janitorial services, (ii) performing any Minor Repairs needed to maintain the Premises in a safe, sanitary, and orderly condition, and (iii) notifying the Commission of any damage to the Premises or need for repairs or maintenance for which the Commission is responsible under this Agreement. The County will forward to the Developer a courtesy copy of any written notification provided hereunder or under any other Section of this Agreement to the Commission.

2) The Commission's Maintenance Responsibilities. Throughout the Agreement Term, the Commission must, at its sole cost and expense, perform any and all maintenance to the Premises in accordance with the terms, covenants, and conditions set forth herein. The Commission's obligations hereunder exclude both the performance of Minor Repairs and custodial/janitorial services. Those responsibilities include, but are not necessarily limited to:

- a) Capital repair/replacement/maintenance of the Premises and any other improvements such as mechanical, electrical, plumbing, fire protection, security (excluding the portions of the fire protection system and sprinkler system located outside of the Premises), and HVAC systems or other equipment whose repair or replacement cost exceeds twenty-five thousand dollars (\$25,000) or an industry accepted life-expectancy of 15 years; and



b) Maintenance of the interior walls, partitions, floors, and similar elements associated with the building structure, as well as exterior windows, doors, and signage.

3) The Commission and the County will cooperate with one another and coordinate their respective maintenance responsibilities in such a manner that does not interfere with the operations or activities on the Premises.

4) The Commission must provide to the County a copy of any written warranty that the Commission receives from the Owner under the Lease in connection with the Development.

J. Right to Enter.

1) By Commission. Any member, employee or agent of Commission may, at all reasonable hours, enter onto the Premises.

2) By WSSC. The County will grant any member, employee or agent of Washington Suburban Sanitary Commission (WSSC) access, at all reasonable hours, to the Premises.

3) By Developer. The County will grant any member, employee or agent of the Developer access, at all reasonable hours, to the Premises.

K. Hours of Operation. The Hours of Operation of the Premises will be generally consistent with the hours of operation of the Development. However, the Premises will not be open between the hours of 12:00 a.m. and 6:00 a.m.

L. Security and Parking.

1) The County must provide and maintain a security system that will: (i) allow for the County staff to contact the County Police in the event of an emergency, or (ii) automatically contact the County Police in the event of a system breach.

2) The Commission must provide two (2) reserved parking spaces for exclusive use by County employees or other staff affiliated with the Center.

M. Utilities. The County will be responsible for paying the cost of all utilities supplied to the Premises, including, but not limited to, heating and air conditioning, water and sewer, electricity, and telecommunications services.



N. Hazardous Materials. The County will not use, store, manage or dispose of any Hazardous Materials on the Premises other than the use, storage, management and disposal of Hazardous Materials in de minimis quantities customarily used in the operation of a community center in accordance with all applicable Laws. If the presence of any Hazardous Material on the Premises and/or the adjacent properties caused or permitted by County results in any contamination of the Premises and/or the adjacent properties, County, at County's expense, will promptly take all actions as are necessary to return the Premises and/or the adjacent properties to the condition existing prior to the introduction of any such Hazardous Material to the Premises and/or the adjacent properties.

O. Insurance. The County and the Commission may each provide self-insurance to cover their respective obligations under this Agreement.

P. Indemnity.

- 1) By County. The County will indemnify and save harmless the Commission, its officers, employees, agents and representatives from and against all actions, liability, claims, suits, damages, cost or expenses of any kind which are made against or incurred by the Commission arising from the County's negligence, negligent performance of or failure to perform any of its obligations under the terms of this Agreement. The indemnifications provided by the County under this paragraph are limited by the notice requirements, types of liabilities, and damage limits stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. § 5-301 et seq. These indemnifications are not intended to create any rights in any third parties.
- 2) By Commission. The Commission will indemnify and save harmless the County, its officers, employees, agents and representatives from and against all actions, liability, claims, suits, damages, cost or expenses of any kind which are made against or incurred by the County arising from the Commission's negligence, negligent performance of or failure to perform any of its obligations under the terms of this Agreement. The indemnifications provided by the Commission under this paragraph are limited by the notice requirements, types of liabilities, and damage limits stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. Sec 5-301 et seq. and the Maryland Tort Claims Act, Md. Code Ann., State Gov't Art., Sec. 12-101 et seq. These indemnifications are not intended to create any rights in any third parties.
- 3) Survival. The indemnities provided under this Section P will survive the expiration or termination of the Agreement.

R. Assignment. Other than licenses set forth in Section S below, the County will have no right to transfer or assign this Agreement, in whole or in part, or sublet any part of the Premises, by operation of law or otherwise, without the prior written consent of Commission, which consent may be withheld in the sole and absolute subjective discretion of Commission. Any transfer assignment or subletting consented to by Commission will be at all times subject to this Agreement and the prior right, title, and interest of Commission in and to the Premises. In the event of an assignment of this Agreement by the County, the County will be released from any responsibility for obligations hereunder accruing after the date of the assignment, and Commission agrees to look solely to such successor in interest of the County for performance of such obligations.

S. Licenses or Concessions. The County may grant licenses and concessions for incidental retail, food and beverage and sport-related uses allowed under this Agreement within the Premises. Such licensees or concessionaires may distribute their products anywhere within the Premises. Any license or concession will be at all times subject to this Agreement and to the prior right, title, and interest of Commission in and to the Premises.

T. Default by County.

- 1) Notice of Default and Cure Period. Upon the occurrence of a material default by the County in the performance of its obligations under the terms, covenants, or conditions contained in this Agreement, the Commission must serve a "Notice of Default" upon the County, which Notice of Default will provide that County must cure such default within thirty (30) days—or if the default is of such nature that it cannot, by due diligence, be cured within the thirty (30) day period, then whatever longer period of time as is reasonably required for the County to cure the default— from the date of the Notice of Default ("County's Cure Period").
- 2) Commission's Remedies Other than Termination. If a County default occurs, the Commission serves upon the County a Notice of Default, and the County fails to cure the specified default within the Cure Period, then the Commission may make such payment or do such act as may be reasonably necessary to cure such event of default, and charge the amount of the expense thereof to County, which amount will be due and payable by County upon demand, or Commission may, without terminating this Agreement, bring an action in a court of law for injunctive relief and/or monetary damages suffered as a result of the County's default.
- 3) Termination. If a County default occurs, the Commission serves upon the County a Notice of Default, and the County fails to cure the specified default

within the County's Cure Period, then the Commission may serve a "Notice of Termination", terminating this Agreement as of a date specified therein, upon County, whereupon the Agreement Term will expire and terminate with the same force and effect as though the date so specified was the date herein originally fixed as the Agreement expiration date. Such termination will not limit the right of the Commission to any other remedies it may have for the County's default with respect to the Premises.

- 4) Budget Appropriations. Notwithstanding anything to the contrary in this Section, the County will not be in default in the performance of, or compliance with, any of the terms, conditions, covenants contained in this Agreement if funds are not specifically budgeted and appropriated therefore at the time of the alleged default. Certification by the Budget Director of the County that funds are not specifically budgeted and appropriated therefore will be conclusive as to that issue. The County will, in accordance with its normal budgetary procedures, make timely application for, and use reasonable efforts to obtain, budget appropriations reasonably calculated to provide all funds necessary for its performance of and compliance with all of the material terms, conditions and covenants contained in this Agreement.

U. Default by Commission.

- 1) Notice of Default and Cure Period. Upon the occurrence of a material default by the Commission in the performance of its obligations under the terms, covenants, or conditions contained in this Agreement, the County must serve a "Notice of Default" upon the Commission, which Notice of Default will provide that the Commission must cure the default within thirty (30) days—or if the default is of such nature that it cannot, by due diligence, be cured within the thirty (30) day period, then whatever longer period of time as is reasonably required for the Commission to cure the default—from the date of the Notice of Default ("Commission's Cure Period").
- 2) County's Remedies Other than Termination. If a Commission default occurs, the County serves upon the Commission a Notice of Default, and the Commission fails to cure the specified default within the Cure Period, then the County may make such payment or do such act as may be reasonably necessary to cure such event of default, and charge the amount of the expense thereof to County, which amount will be due and payable by the Commission upon demand, or the County may, without terminating this Agreement, bring an action in a court of law for injunctive relief and/or monetary damages suffered as a result of the Commission's default.

3) Termination. If a Commission default occurs, the County serves upon the Commission a Notice of Default, and the Commission fails to cure the specified default within the Commission's Cure Period, then the County may serve a "Notice of Termination", terminating this Agreement as of a date specified therein, upon the Commission, whereupon the Agreement Term will expire and terminate with the same force and effect as though the date so specified was the date herein originally fixed as the Agreement expiration date. Such termination will not limit the right of the County to any other remedies it may have for the Commission's default with respect to the Premises.

4) Budget Appropriations. Notwithstanding anything to the contrary in this Section, the Commission will not be in default in the performance of, or compliance with, any of the terms, conditions, covenants contained in this Agreement if funds are not specifically budgeted and appropriated therefor at the time of the alleged default. Certification by the Secretary-Treasurer of the Commission that funds are not specifically budgeted and appropriated therefor will be conclusive as to that issue. The Commission must, in accordance with its normal budgetary procedures, make timely application for, and use reasonable efforts to obtain, budget appropriations reasonably calculated to provide all funds necessary for its performance of and compliance with all of the material terms, conditions and covenants contained in this Agreement.

V. Miscellaneous Provisions

1) Quiet Enjoyment. Commission warrants that if and so long as the County will not be in default hereunder, the County will quietly hold, occupy, and enjoy the Premises and all rights relating thereto during the Agreement Term, without hindrance, ejection, or interference by the Commission or any party claiming by, through or under Commission, subject nevertheless to the terms and conditions of this Agreement.

2) Notices.

Commission's Notice Address

The Maryland-National Capital Park & Planning Commission  
6611 Kenilworth Avenue  
Riverdale, Maryland 20737  
Attention: General Counsel

with a copy to:

The Maryland-National Capital Park & Planning Commission  
Department of Parks  
9500 Brunett Avenue  
Silver Spring, Maryland 20901  
Attention: Director of Parks

And with a courtesy copy to:

WP Project Developer LLC  
c/o New England Development  
One Wells Avenue  
Newton, Massachusetts 02459

County's Notice Address  
Montgomery County, Maryland  
Department of Recreation  
4010 Randolph Road  
Silver Spring, Maryland 20902  
Attention: Director of Recreation

with a copy to:

Office of the County Attorney  
Third Floor  
101 Monroe Street  
Rockville, Maryland 20850

Any and all notices, requests or other communications hereunder will be deemed to have been duly given if in writing and if transmitted by hand delivery or overnight delivery with receipt therefor, or by registered or certified mail, return receipt requested, and first-class postage prepaid, to Commission or County at their respective addresses set forth in this Section. The foregoing addresses maybe changed by any party by giving Notice in accordance with this Section. Notices will be deemed effective when delivered by hand or overnight delivery service, or three (3) business days after mailing. Any notice, request or other communication must include a reference to the section of this Agreement to which such notice, request or communication relates and, if any specific time period has been established herein for action, review and approval, or other response, such time period must be stated in capital letters.

3) Consents and Approvals.

- a) By Commission. Whenever consent or approval of the Commission is required under this Agreement, only the Executive Director of the Commission or the Director of Parks of the Commission's Montgomery County Department of Parks (or their respective designees to grant consents and approvals under this Agreement, by written and personally signed notice to the County) may grant such consent or approval, unless the provision requiring such consent or approval clearly states otherwise.
  - b) By County. Whenever consent or approval of County is required under this Agreement, only the County Executive or Chief Administrative Officer (or their respective designees to grant consents and approvals under this Agreement, by written and personally signed notice to the Commission) may grant such consent or approval, unless the provision requiring such consent or approval clearly states otherwise.
  - c) Consents and Approvals Not Unreasonably Withheld. Whenever consent or approval of the Commission or County is required under this Agreement, such consent or approval will not be unreasonably withheld, conditioned or delayed, unless the provision requiring such consent or approval clearly states otherwise.
- 4) No Broker. Commission and County each represent and warrant to the other that they have not authorized any broker, agent or finder to act on their behalf, nor do they have any knowledge of any broker, agent or finder purporting to act on their behalf in connection with this transaction, and the Commission and the County each hereby agree to indemnify, defend and hold harmless the other from and against any cost, expense, claim, liability, or damage resulting from a breach of the representation and warranty contained herein.
  - 5) Responsibility for Acts of Others. The County will be liable for any violation of the terms and conditions of this Agreement by the County, its agents, or employees. The Commission will be liable for any violation of the terms and conditions of this Agreement by Commission, its agents, or employees.
  - 6) Limitation of Commission's Liability. No member, official, representative or employee of the Commission will be personally liable to with respect to any claim arising out of or related to this Agreement.
  - 7) Limitation of County's Liability. No member, official, representative or employee of the County will be personally liable to with respect to any claim arising out of or related to this Agreement.

- 8) No Partnership. Nothing contained in this Agreement will be deemed or construed to create a partnership or joint venture of or between the Commission and the County, or to create any other relationship between the Parties other than that which is described herein.
- 9) Time of the Essence. Time is of the essence with respect to all provisions of this Agreement.
- 10) Force Majeure. Neither the Commission nor the County will be considered in default of any of its obligations if it is delayed in the performance of such obligations by causes beyond its control, including but not restricted to, strikes, lockouts, actions of labor unions, riots, storms, floods, explosions, acts of God or of the public enemy, insurrection, mob violence, civil commotion, sabotage, malicious mischief, vandalism, inability (notwithstanding good faith and diligent efforts) to procure, or general shortage of labor, equipment, facilities, materials, or supplies in the open market, failures of transportation, fires, other casualties, epidemics, quarantine restrictions, freight embargoes, severe weather, inability (notwithstanding good faith and diligent efforts) to obtain governmental permits or approvals, or delays of contractors or subcontractors due to such causes, it being the purpose and intent of this paragraph that in the event of the occurrence of any such delays, the time or times for the performance of the covenants, provisions and agreements of this Agreement will be extended for the period of the delay (including any time reasonably required to recommence performance due to such delay). The affected party must use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements. The settlement of strikes, lockouts, and other industrial disturbances will be entirely within the discretion of the affected party, and the affected party will not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected party, unfavorable to the affected party. Notwithstanding the above, (i) the County may not rely on its own acts or omissions as grounds for delay in its performance, and (ii) Commission may not rely on its own acts or omissions as grounds for delay in its performance.
- 11) Non-Discrimination. The County will not discriminate against any person, group or organization because of age, sex, race, creed, national origin or disability. The County will take action to ensure that applicants are employed and that employees are treated equally during employment without regard to their age, sex, race, creed, national origin or disability. The County will comply with the spirit of the Commission's anti-discrimination policy with respect to any expenditure of public funds.



- 12) Invalidity of Particular Provisions. If any provisions of this Agreement or the application thereof to any person or circumstances will to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.
- 13) Gender and Number. Masculine, feminine, or neuter pronouns will be substituted for one another, and the plural will be substituted for the singular number, in any place or places herein in which the context may require such substitution.
- 14) Governing Law. This Agreement will be construed in accordance with the laws of Maryland and enforced in the Circuit Court in Montgomery County, Maryland.
- 15) Headings. The captions and headings herein are for convenience of reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.
- 16) Counterpart Copies. This Agreement may be executed in two or more counterpart copies, all of which counterparts will have the same force and effect as if all parties hereto had executed a single copy of this Agreement.
- 17) Binding Effect. This Agreement is binding upon and will inure to the benefit of the Parties and their respective legal representatives, executors, administrators, successors and/or assigns, provided that nothing herein will be construed to permit a transfer or assignment expressly prohibited by the provisions of this Agreement.
- 18) Entire Agreement. This Agreement contains the final and entire agreement between the Parties and is intended to be an integration of all prior negotiations and understandings. The Parties and their respective representatives and agents are not bound by any terms, conditions, statements, warranties, or representations, oral or written, not contained herein, unless contained in a modification which meets the criteria of this Section. No change or modification of this Agreement will be valid unless the same is in writing and signed by the parties hereto or thereto. No waiver of any of the provisions of this Agreement will be valid unless the same is in writing and is signed by the party against which it is sought to be enforced.
- 19) Limitations on Commission Responsibilities and Obligations. Notwithstanding any other provision of this Agreement, all responsibilities and obligations of the Commission pursuant to this Agreement will be subject to the Commission's

normal operating procedures and plans therefor and the Commission's adopted and approved budget for the specific responsibility and/or obligation.

- 20) Limitations on the County's Responsibilities and Obligations. Notwithstanding any other provision of this Agreement, all responsibilities and obligations of the County under this Agreement are subject to the appropriation of funds.
- 21) Rights of Third Parties. Except as specifically set forth herein, nothing contained in this Agreement shall be construed as creating any rights or claims in any third parties.
- 22) Lease Agreement. Nothing in this Agreement shall be deemed to modify or waive any of the Commission's rights or obligations as Tenant under the Lease Agreement. This Agreement is subordinate to the Lease Agreement. In the event of termination or cancellation of the Lease Agreement for any reason whatsoever with respect to all or any portion of the Premises, this Agreement shall automatically terminate with respect to all or such portion of the Premises.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written below.

MONTGOMERY COUNTY,  
MARYLAND

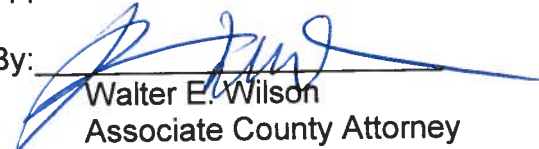
Date: 9/9/09

By:   
Kathleen Boucher  
Asst. Chief Administrative Officer

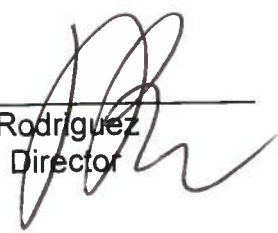
Date: 9/9/09

RECOMMENDED  
By:   
Gabriel Albornoz  
Director  
Department of Recreation

Date: \_\_\_\_\_

Approved as to Form and Legality  
By:   
Walter E. Wilson  
Associate County Attorney

Date: 9-11-09

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION  
By:   
Oscar S. Rodriguez  
Executive Director

Date: 9/16/09

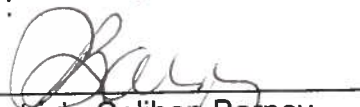
ATTEST:  
By:   
Patricia Colihan Barney  
Secretary-Treasurer

EXHIBIT "A"

SITE PLAN

NOTE: TENANT TO VERIFY ALL EXISTING CONDITIONS, DIMENSIONS, AND UTILITIES WITHIN THE DEMISED SPACE.  
Disclaimer:  
This is a preliminary site plan subject to modification based on final permits and approvals. Landlord reserves the right to make changes to the plan including, without limitation, buildings, and parking. Landlord makes no warranties or representations concerning any matter contained on this plan.



Wisconsin Place  
CHEVY CHASE

CHEVY CHASE, MD

EXHIBIT A

COMMUNITY CENTER

SITE PLAN

JUNE 19, 2008

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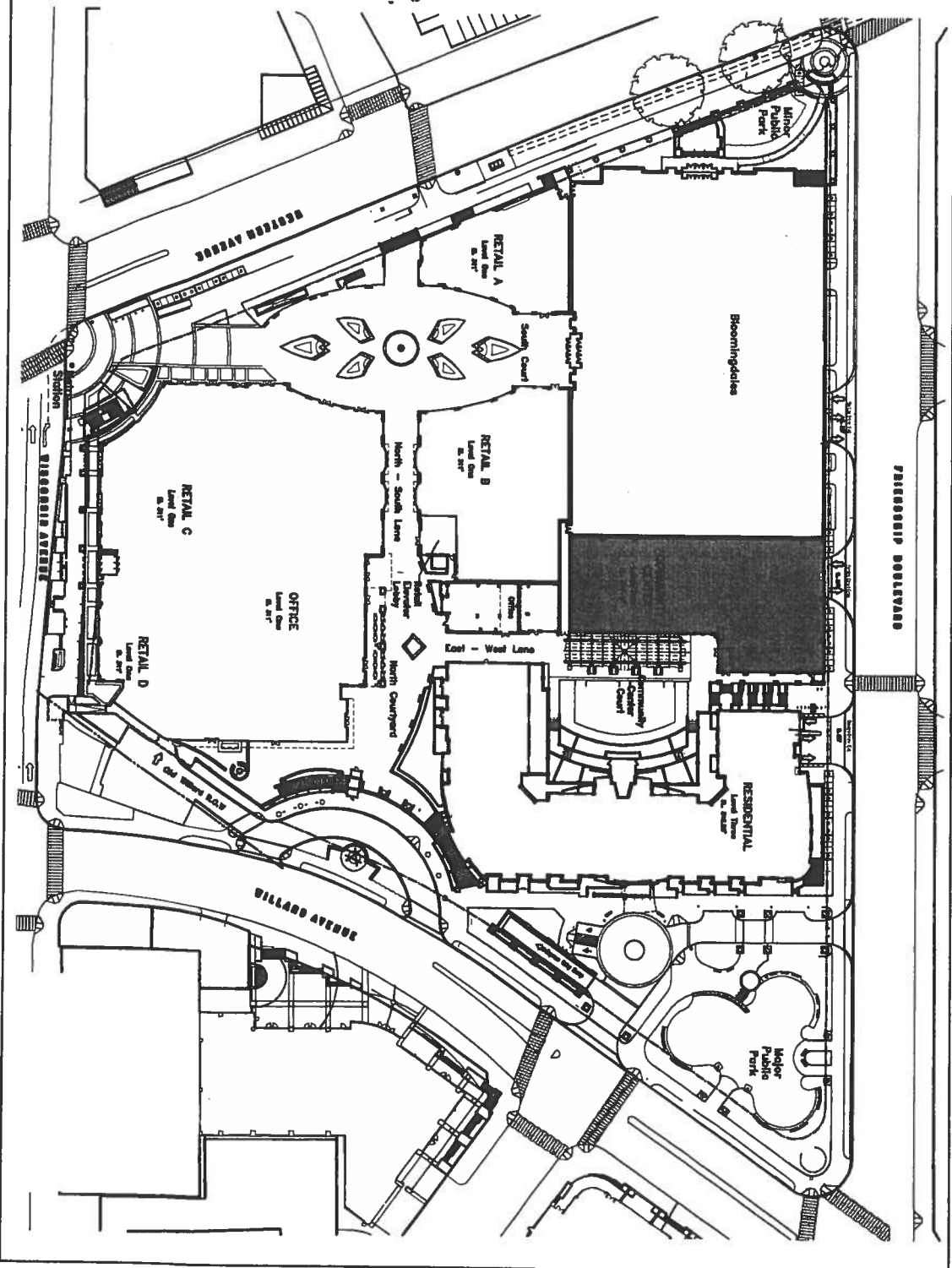


EXHIBIT "A-1"

DEMISED PREMISES

NOTE: TENANT TO VERIFY ALL EXISTING CONDITIONS, DIMENSIONS, AND UTILITIES WITHIN THE DEMISED SPACE.



CHERRY CHASE, MD  
**EXHIBIT A-1**  
 COMMUNITY CENTER  
 DEMISED PREMISES  
 20,589 S.F.  
 JUNE 19, 2008

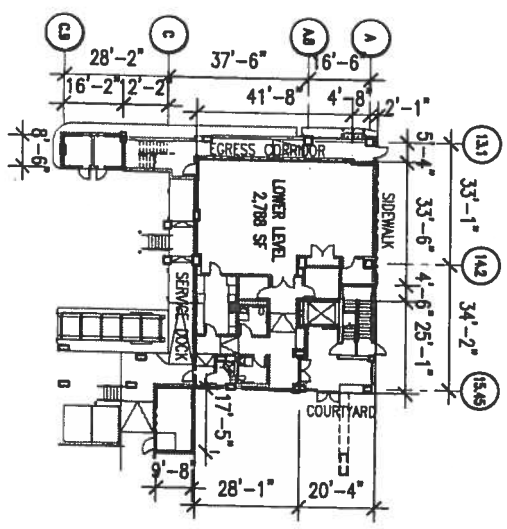
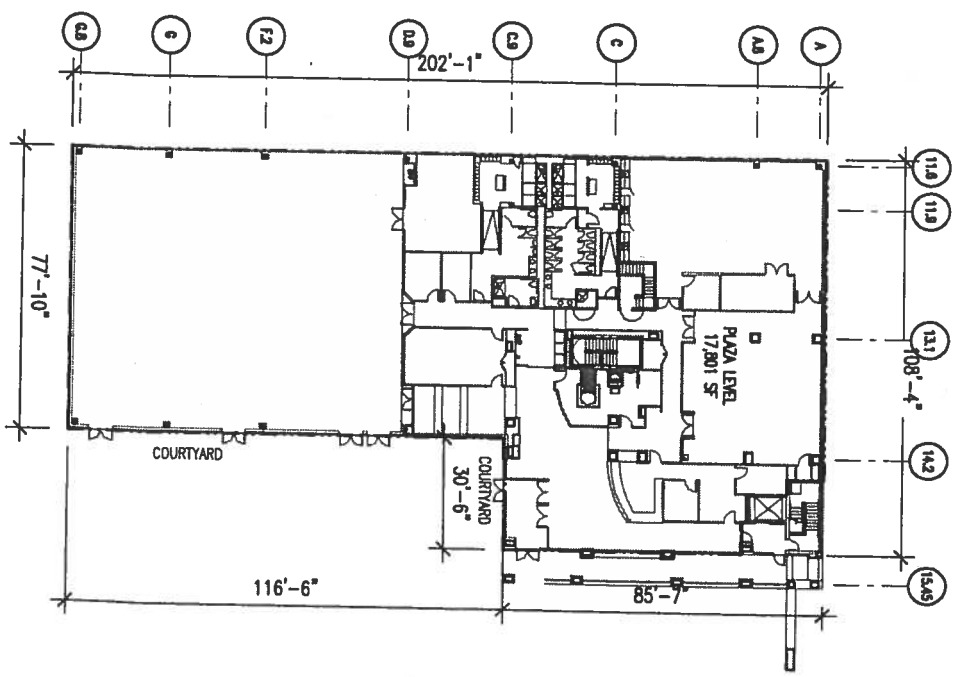


EXHIBIT "B"

CONSTRUCTION

WISCONSIN PLACE  
CHEVY CHASE, MARYLAND

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CONTENTS:

- I. THE LANDLORD'S WORK
  - II. DESCRIPTION OF THE TENANT'S WORK
  - III. WORK PERFORMED FOR THE TENANT
- 

LANDLORD: WP OWNER TRUST  
c/o New England Development  
One Wells Avenue  
Newton, Massachusetts 02459  
617/965-8700

LANDLORD'S ARCHITECT:

ARROWSTREET INC.  
212 Elm Street  
Somerville, Massachusetts 02138  
Attn: Mike Manship  
617/623-5555



EXHIBIT "B"

CONSTRUCTION

I. THE LANDLORD'S WORK

See attached Landlord's Work Exhibit

II. DESCRIPTION OF THE TENANT'S WORK

All work (other than Landlord's Work) required to complete and fully equip the demised premises shall be done by the Tenant at the Tenant's sole cost and expense. All alterations, including any Tenant Work, shall be subject to compliance with the following requirements, and any and all work undertaken by Tenant shall comply with said requirements:

A. GENERAL CONDITIONS

All work done by the Tenant in the demised premises shall be governed in all respects by, and be subject to, the following:

1. The Tenant shall not commence the Tenant's work until the Tenant has secured the Landlord's written approval of all contractors to be used in performing the Tenant's work and of the plans and specifications for such work. The Tenant's work shall be coordinated with the work being done by the Landlord and/or other tenants of the Landlord in order that such work will not interfere with nor delay the completion of work by the Landlord and/or other tenants of the Landlord. The performance of the Tenant's work shall cause no interference whatsoever with the completion of the Landlord's work in the demised premises, nor Landlord's or Landlord's other tenants in the remainder of the Development.
2. The Tenant's work shall be performed in a first-class workmanlike manner and shall be in good and usable condition at the date of completion thereof.
3. Compliance with Laws: All of the Tenant's work shall conform to applicable statutes, ordinances, regulations, codes and to requirements of the Landlord's insurance underwriters. The Landlord's approval of plans and specifications shall not constitute an acknowledgment that work done in accordance therewith will so conform, and the Tenant shall be solely responsible for corrections

in the Tenant's work required by any governmental agency or insurance underwriters. To the extent not required of Landlord as part of Landlord's Work, the Tenant shall obtain and convey to the Landlord approvals from all agencies having jurisdiction over matters relative to electrical, gas, water, heating and cooling, and telephone work, and shall secure its own building and occupancy permits. The Landlord reserves the right to require changes in the Tenant's work when necessary by reason of code requirements or directives of governmental authorities having jurisdiction over the demised premises.

4. Approvals: No approval by the Landlord shall be valid unless the same be in writing and signed on behalf of the Landlord.
5. Insurance: Prior to commencement of the Tenant's work and until the completion of the Tenant's work, the Tenant shall maintain, or cause to be maintained, property insurance under an all risk form, covering the Landlord, Bloomingdale's, the Retail Owner, the Residential Owner, the Office Owner, the Landlord's agents and beneficiaries, the Landlord's Architect, the Landlord's contractor or subcontractors, the Tenant and the Tenant's contractors as their interests may appear, against loss or damage by fire, vandalism and malicious mischief, and such other risks as are customarily covered by the so-called all risk of physical loss form upon all the Tenant's work in place, and all materials stored at the site of the Tenant's work and all materials, equipment, supplies and temporary structures of all kinds incident to the Tenant's work, all while forming a part of, or contained in, such improvements or temporary structures while on the demised premises or when adjacent thereto while on malls, drives, sidewalks, streets or alleys, all in the full insurable value thereof at all times by reputable insurance companies licensed and admitted to do business in the State with an A+ financial rating. In addition, the Tenant agrees to require all contractors and subcontractors engaged in the performance of the Tenant's work to effect and maintain and deliver to the Tenant and the Landlord certificates evidencing the existence of, prior to the commencement of the Tenant's work and until completion thereof, the following insurance coverages:
  - a. Worker's Compensation Insurance - In accordance with the laws of the State, including Employer's Liability Insurance, to the limit of \$1,000,000 each accident.
  - b. Commercial General Liability Insurance in the same form as the Tenant is required hereunder to carry, with a

minimum limit of liability of \$5,000,000 combined liability and property damage on an occurrence form; or in such greater reasonable amounts as the Landlord may hereafter from time to time advise the Tenant in writing.

- c. Business Automobile Liability, including “non-owned and hired” automobiles, with a combined single limit of \$5,000,000.

The Commercial General Liability and Business Automobile Liability policies described above shall include the Landlord, the Landlord’s managing agent, Bloomingdale’s, Wisconsin Place Retail LLC, Wisconsin Place Office LLC, Wisconsin Place Residential LLC, any holder of a first mortgage on all or any portion of the Development (and such other entities as are reasonably designated by Landlord as may be set out in a written notice from time to time) as additional insureds.

Prior to the commencement of the Tenant’s work, the Tenant shall deliver to the Landlord certificates of all required insurance, and evidence of the payment of premiums thereon (and certificates of renewal, and evidence of premium payments with reference thereto, where appropriate). All such insurance shall provide, and certificates thereof shall state, that the same is non-cancellable and non-amendable without twenty (20) days’ prior written notice to the Landlord.

- 6. In any contract or undertaking which the Tenant may make with a contractor for work in the demised premises, provision shall be made for the dismissal from the job of workmen whose work is, in the Landlord’s reasonable judgment, unskilled or otherwise objectionable, and any such workmen shall be discharged, and the Tenant shall exonerate, indemnify and hold the Landlord harmless from any loss, cost, damage or liability incurred by reason of compliance with any such demand.
- 7. The Tenant shall promptly discharge of record by payment or bond any lien filed against the demised premises in connection with any such work.
- 8. All improvements or installations (other than furnishings) made to or upon the demised premises shall upon the termination of the term of this lease be the property of the Landlord and shall remain upon and be surrendered with the demised premises as a part

thereof. Upon written request from Landlord to Tenant, Tenant shall, at the expiration of the term of this lease, remove from the demised premises its furnishing in the demised premises, or such items as may be specified in such request from Landlord.

B. GENERAL CONSTRUCTION

The Tenant shall perform all work necessary to prepare the demised premises for opening for business. The finish work which the Tenant is to perform shall include, but not be limited to, the following:

See attached Landlord's Work Exhibit

\_\_\_\_\_  
HERE ENDS EXHIBIT "B" \_\_\_\_\_

AGREED TO AND ACCEPTED:

Maryland-National Capital Park &  
Planning Commission

By: \_\_\_\_\_

Date: \_\_\_\_\_

COMMUNITY CENTER

WISCONSIN PLACE®

LANDLORD'S WORK EXHIBIT

October 6, 2005

Landlord shall produce shell and core and interior fit-out drawing packages in compliance with applicable local, state and national laws, rules, regulations, and codes. Tenant review of Landlord Construction Documents prior to the beginning of construction shall be as provided in the Lease.

1. Floor Slabs:

- A. Shall be conventionally reinforced concrete, adequate for supporting the following live loads:
- 1) 100 lb. per square foot in all areas unless specifically noted below.
  - 2) 150 lb. per square foot in rooms containing exercise equipment.
- B. Landlord shall coordinate the design of structural slabs with drains, plumbing and other utility lines to the Demised Premises pursuant to approved plans.

2. Roof Structure:

- A. Minimum clearances to underside of structure:
- 1) 22 feet above the finished first floor in the gymnasium.
  - 2) All other clearance to be as required to provide minimum 8'-0" ceiling heights as per approved plans.
- B. R-value at roof deck shall be a minimum of R-15.0 and as necessary to comply with applicable energy codes.

3. Roofing at Tenant's Roof-top MEP Equipment:

- A. Landlord shall provide access to Tenant's rooftop MEP equipment and a continuous path of roof protection pads around Tenant's major equipment. Access shall be equal to or larger than a 2'-6" x 3'-0" roof hatch, with necessary steel ladders.
- B. Roof shall be designed to be structurally adequate to support the Landlord's rooftop equipment, and also to accommodate snow drifting. Any rooftop equipment required by the Tenant shall be reviewed by the Landlord to determine support requirements. Any additional structural requirements caused by the Tenant's rooftop equipment, may be accommodated if deemed practical by the Landlord at the sole expense of the Tenant.
- B. Landlord shall coordinate the location and design of the roof penetrations and MEP components required by rooftop equipment provided and installed by Landlord. If required for aesthetic reasons, at the Landlord's discretion, Landlord may furnish and install roof screens for Tenant's rooftop MEP equipment, at Landlord's discretion.

4. Demising Walls:

- A. Exterior Demising Walls shall be 8" reinforced concrete block, full height to under-side of structure above per the approved plans and specifications.
- B. Landlord shall furnish and install storefront shown in Landlord Construction Documents at Exterior Demising Wall at building entrance areas on the upper and lower levels.
- C. R-value at exterior walls shall be a minimum of R-19.0 and as necessary to comply with applicable energy codes.

5. Signage:

- A. Building identity signage shall be furnished and installed by tenant. The design and location of any signage proposed to be furnished and installed outside the Demised Premises by the Tenant shall be first approved by the Landlord. Landlord shall seek approval for Tenant building identity signage at Friendship Blvd. and courtyard entrance as part of the Landlord's overall project signage package.

- B. Landlord shall represent Tenant in seeking approval of Tenant's design and location for exterior signs from local authorities.
- C. Landlord shall furnish and install exterior common area environment graphics or way-finding signage.
- D. Landlord shall furnish and install common area traffic and pedestrian directional signage at parking garage facilities.
- E. Landlord shall furnish and install structural support and empty conduit from the Community Center electrical panel to a junction box immediately inside the exterior wall of the Tenant space, as necessary for Tenant to furnish and install its main identity signage to be located on the Exterior Demising Wall (exterior elevation).
- F. Landlord shall furnish and install life safety signage at all service and emergency exit doors as required to meet minimum code requirements.
- G. Any additional signage to be installed by tenant shall be done at the sole expense of the Tenant only after Landlord approval.

6. Doors:

- A. Landlord shall furnish and install all exterior and interior doors as required per the approved plans.
- B. Landlord shall furnish and install insulated, flush hollow metal doors in Tenant's Demising wall as required by code for egress.
- C. Landlord shall furnish and install entrances at storefront and interior vestibule(s).

7. Loading Dock and Receiving Area:

- A. Landlord shall manage the dock areas for common use of all project Tenants.
- B. The maximum size Tenant delivery truck shall be a 55 feet long, WB-50 design vehicle.
- C. Trash:
  - 1) Landlord shall provide shared, common facilities for wet and dry waste.
  - 2) Space in the truck dock area will be available to the Tenant to accommodate recycling in accordance with local regulations.

- E. Truck dock bays shall slope away from the dock edge to a trench drain, at a max. slope of 2%.



8. Utilities:

Landlord shall install to the Demised Premises, at agreed to locations, and preserve throughout the Demised Term access to the following utilities. Said utilities shall be separately metered to Tenant and shall include, without limitation, the following utilities in the amounts, sizes, and pressures indicated:

- A. Electricity                      Source of power as follows: One thousand six hundred (1,600) AMP, 120/208 volt, three (3) phase, four (4) wire.
  
- B. Natural Gas                      Landlord shall be responsible for paying all back charges, if any, to the gas company for installing the gas line from the gas main to the gas meter and for the meter and manifold (all of which shall be located at the common gas service entrance), as engineered by the gas company. Landlord to provide all piping system components commencing from the manifold to equipment to be installed by Landlord. Tenant to provide all piping system components for Tenant installed equipment. Gas service shall provide 1500 CFH at 2 PSIG.
  
- C. Water (potable)                      Two-inch (2") diameter site domestic water feed (terminated inside the building with a flanged fitting).
  
- D. Water (fire protection)                      Four-inch (4") sprinkler lines with a pressure which is sufficient to meet the requirements of the Building Code and insurance company regulations.
  
- E. Sanitary sewer                      Six-inch (6") sanitary line to agreed location.
  
- F. Telephone                      Four inch (4") conduit from telephone company facilities.
  
- G. Plumbing                      The Landlord shall furnish and install all plumbing work within the demised premises, including but not limited to toilets, urinals, lavatories, drinking fountains, electric hot water systems and other fixtures per the approved plans. Work shall include all waste

pipng, vent piping, and water and waste connections to laterals and stubs.

H. Fire Protection

The Landlord shall furnish and install a complete fire protection system, including sprinklers and fire extinguishers, within the demised premises in accordance with the approved plans, all applicable codes, ordinances and regulations, and approved by the Landlord's insurance carrier(s).

I. Electrical

The Landlord shall furnish and install a complete electrical system for fire alarm, power and lighting as required by the approved plans and all applicable codes ordinances and regulations. The Landlord shall furnish, install, support and connect all fixed lighting fixtures.

9. HVAC System:

- A. Landlord shall initially furnish and install Tenant's HVAC equipment serving Tenant's Demised Premises.
- B. When Tenant HVAC equipment is located outside the limits of Tenant's Demised Premises, Landlord shall coordinate practical and acceptable routes for connecting ductwork, piping and conduit to equipment and systems located inside the Demised Premises. In such cases, Landlord shall furnish and install all required shafts and chases outside of the Tenant's demised space; the Landlord shall furnish and install all required connecting duct work, piping, conduit, etc).
- C. The Landlord is responsible for inspecting, balancing and making operational the HVAC system prior to the Tenant taking possession of the demised premises.

10. Vertical Transportation:

- A. Landlord shall furnish and install passenger elevator and related equipment.
- B. Landlord shall coordinate concrete framed openings and pits for passenger elevator.

11. Ceilings:

- A. Landlord shall furnish and install all gypsum wall board or acoustical tile ceiling systems as required per Landlord Construction Documents.
- B. Clear ceilings heights are to be per the approved plans.

12. Interior Walls & Partitions:

- A. Landlord shall furnish and install all metal stud and gypsum wall board partitions, including any code required rated partitions per the approved plans and specifications.
- B. All interior finish materials shall meet the flamespread requirements of all applicable codes, ordinances and regulations.

13. Painting:

- A. The Landlord shall perform all interior painting within the demised premises per the approved plans and specifications.
- B. The Landlord shall paint all exposed roof deck, structure and ductwork per the approved plans and specifications.

14. Floor Covering:

- A. The Landlord shall furnish and install all floor covering within the demised premises per the approved plans and specifications.
- B. Any specialty floor covering such as rubber mats required in exercise rooms, locker rooms, etc. to be furnished and installed by Tenant.

15. Millwork & Misc. Interior Specialties:

- A. The Landlord shall furnish and install millwork for the customer service / reception desk and counters for toilet rooms, one activity room and the kitchen per the approved plans.
- B. The Landlord shall furnish and install manually operated folding partition(s) for one activity room per the approved plans.
- C. The Landlord shall furnish and install kitchen equipment, including standard grade refrigerator/freezer, oven/rangetop, microwave oven and dishwasher per the approved plans and specifications.

- D. The Landlord shall furnish and install the following gymnasium equipment: power retractable backboards, dividers and manually retractable bleacher systems per the approved plans and specifications.
- E. The Landlord shall furnish and install the following exercise room equipment: wall mirrors per the approved plans and specifications.
- F. The Landlord shall furnish and install the following shower area room equipment: wall mirrors, benches, and lockers per the approved plans and specifications.

16. Tenant Responsibilities:

- A. The Tenant shall furnish and install all cable television wiring, computers and printers, network wiring, administrative control center (reception desk) equipment.
- B. The Tenant shall furnish and install all energy management system controls, wiring and equipment per MC-Department of Recreation guidelines. Scheduling of installation of all such equipment to be coordinated with Landlord's installation of HVAC equipment and shall be approved by Landlord.
- C. The Tenant shall furnish and install all telephone / public address system wiring, computers and equipment.
- D. The Tenant shall furnish and install all security system wiring, cameras, monitors, recording equipment and programmable key pad access locksets. Scheduling of installation of all such equipment to be coordinated with Landlord's installation of door hardware and shall be approved by Landlord.
- E. The Tenant shall furnish and install all files, cabinets, desks, desk lamps, shelving, chairs, tables, vending machines, and indoor playground equipment.
- F. The Tenant shall furnish and install all window treatments, mirrors, dry erase boards, retractable overhead slide screens, and wall mounted television cabinets. Landlord to provide blocking in walls and empty conduit to Tenant's electrical panel as required per information provided by Tenant.

- G. The Tenant shall furnish and install all building identity signage as approved by the Landlord and per the approval of the Montgomery County Sign Review Board.
- H. The Tenant shall furnish and install all gymnasium equipment other than items listed above as by Landlord, including but not limited to wall mounted scoreboard, basketball shot clocks, scorer's table control panel, and floor and end wall safety mats. Landlord to provide empty conduit to Tenant's electrical panel as required per information provided by Tenant.
- I. The Tenant shall furnish and install all exercise equipment, including but not limited to shock absorbent flooring.

-END OF LANDLORD WORK LETTER-

EXHIBIT "C"

Parking Plan/Service Court



Wisconsin Place  
CHEVY CHASE

CHEVY CHASE, MD

EXHIBIT C

COMMUNITY CENTER

PARKING PLAN/ SERVICE DOCK

JUNE 19, 2008

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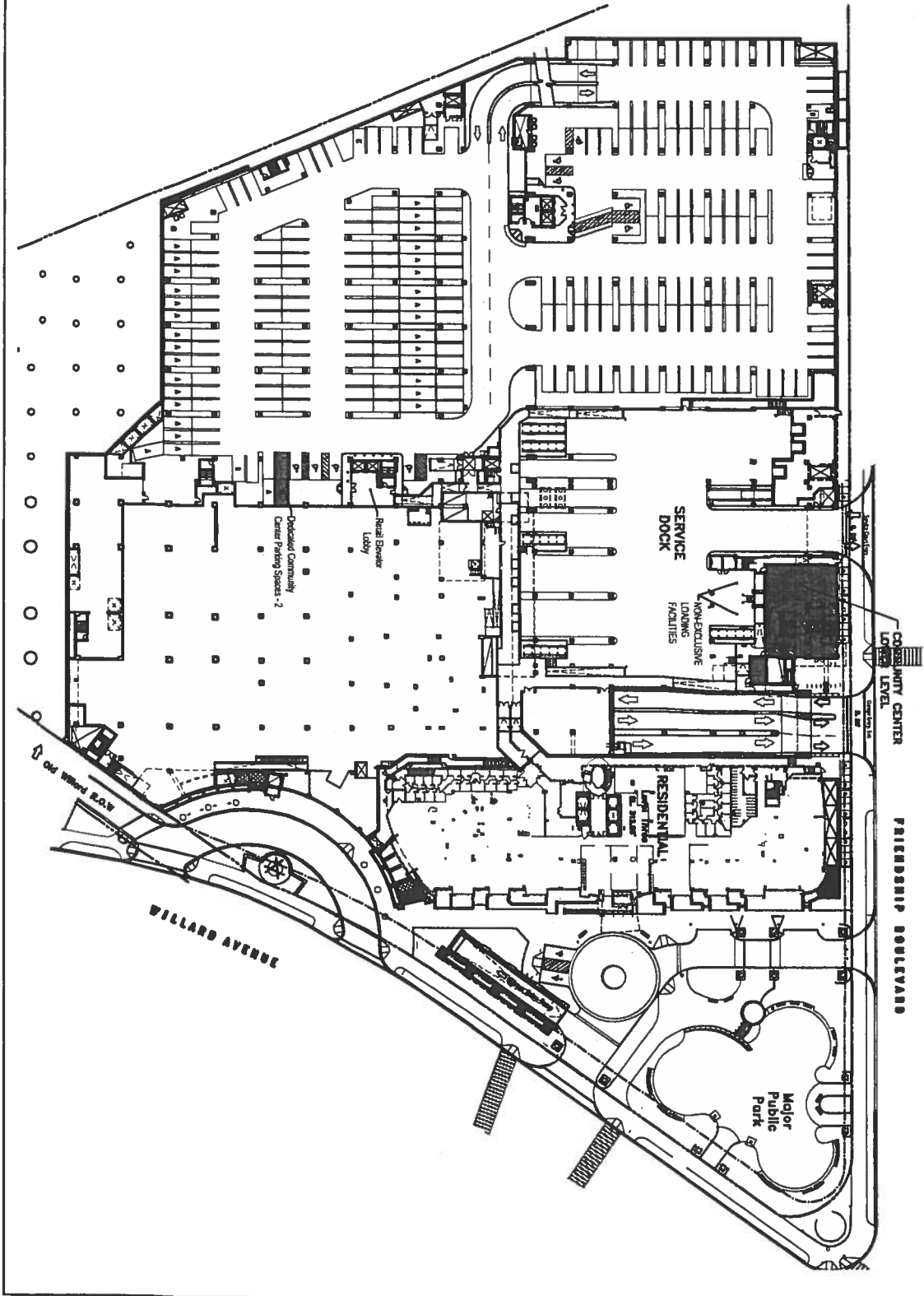


EXHIBIT "D"

Form of Operation Agreement