



City of Virginia Beach

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November 25, 2015

The Honorable William D. Sessoms, Jr., Mayor
Members of City Council
Municipal Center
Virginia Beach, Virginia 23456

Re: Town Center Phase VI Term Sheet

Dear Mayor Sessoms and Members of Council:

Included in your packages this week is a proposed term sheet for Phase VI of Town Center. We have scheduled a public hearing and vote on this non-binding term sheet for your December 1, 2015 meeting. The City of Virginia Beach Development Authority will consider this matter on December 15, 2015.

Phase VI of Town Center is proposed to be a single-block mixed-use development on Block 9 of Town Center. Block 9 is the surface parking lot between the Westin Hotel and Cosmopolitan Apartments.

The structure is proposed to be nine levels consisting of: (i) 33,000 square feet of first level retail, (ii) 5,000 square feet of restaurant space on the second level, (iii) a public staircase leading to an 11,000 square foot public plaza on the second level, (iv) 17,000 square feet on the second level for the Zeiders American Dream Theater, (v) a pedestrian bridge connecting the second level to the parking garage below the Cosmopolitan Apartments and (vi) 120 apartment units from the second through ninth level.

We are happy to answer any questions you might have, or to sit down and provide a more thorough explanation of the proposed transaction. We are also planning on posting the term sheet on the City's website for public inspection and comment.

Sincerely,

Alexander W. Stiles
Senior City Attorney

AWS/csk

cc: Mark D. Stiles, City Attorney
James K. Spore, City Manager
Ruth Hodges Fraser, MMC, City Clerk

TERM SHEET
PHASE VI

December __, 2015

Representatives of the City of Virginia Beach (the “**City**”), the City of Virginia Beach Development Authority (the “**Authority**”), Town Center Associates, L.L.C. (“**TCA**”), and Town Center Associates 9, L.L.C. (“**TCA 9**” and, collectively with TCA, the “**Developer**”) desire to develop the sixth phase (“**Phase VI**”) of the mixed-use commercial development known as The Town Center of Virginia Beach (the “**Project**”). The development arrangements for Phase I, Phase II, Phase III and Phase V of the Project are set forth, respectively, in (i) a Development Agreement (the “**Development Agreement**”), made as of March 6, 2000 between the Developer and the Authority, as supplemented by First Supplement to Development Agreement, made as of February 28, 2000, and a Second Modification to Development Agreement dated as of August 30, 2001; (ii) a Phase II Development Agreement (the “**Phase II Development Agreement**”) dated June 17, 2003 between the Developer and the Authority, as amended by a First Modification to Development Agreement dated as of July 12, 2004; (iii) a Phase III Development Agreement (the “**Phase III Development Agreement**”) dated September 15, 2005 between the Developer and the Authority, as amended by a First Modification to Development Agreement dated as of June 20, 2006, and a Second Modification to Phase III Development Agreement dated as of August 21, 2007; and (iv) a Phase V Development Agreement (the “**Phase V Development Agreement**”) between Developer and Authority dated as of November 30, 2012, as amended by the First Modification to Phase V Development Agreement dated as of April 25, 2013 and the Second Modification to Phase V Development Agreement dated as of October 1, 2014. Developer and Authority also entered into a Phase IV Development Agreement the (“**Phase IV Development Agreement**”), dated January 29, 2009. The Phase IV Agreement has expired. The Developer has proposed a development transaction (the “**Transaction**”) that envisions a comprehensive development plan for Phase VI. The proposed Transaction contemplates a development involving the Developer, City, Authority and Zeiders American Dream Theater (the “**Foundation**”). This Term Sheet outlines the principal terms of a public/private development arrangement for the Transaction.

This Term Sheet is an outline of terms. Moreover, this Term Sheet is not, nor is it intended to be, an offer, an acceptance, or a binding agreement of any kind. To the contrary, this Term Sheet is only a summary of the basic terms of a possible transaction, which may be agreed in principle only. Although this Term Sheet identifies many of the material issues, any possible Transaction is complex and issues may arise during preparation and negotiation of definitive documentation that have not been discussed in this Term Sheet. Accordingly, legal obligations to each party will only be as specified in any definitive agreements that ultimately may be approved by City Council and the Authority’s board, and executed by all of the parties. Additionally, none of the parties to this Term Sheet are under any obligation or duty to attempt to negotiate a Transaction or any related documentation or, if such negotiations commence, to continue such negotiations. Nonetheless, by approving this Term Sheet, each party indicates its belief

that this Term Sheet can form the basis for the Transaction and the willingness to commence negotiation and preparation of definitive documentation toward that end.

1. **General Description of Phase VI.**

(a) **Single-Block, Mixed-Use Project.** Under the Transaction, Phase VI will be a single-block, multi-facility mixed-use development constructed on Block 9 of the Project estimated at a total investment of \$41 million, and shall be subject to a condominium regime (the “**Phase VI Condominium**”). Phase VI will be comprised of:

(i) **Ground Level:** 33,000 square feet of retail space fronting the entire block (Central Park Avenue, Commerce Street, Columbus Street and Market Street), as well as building support space facing Market Street;

(ii) **Second Level:** (a) 17,000 square feet for the Zeiders American Dream Theater (“**Zeiders Theater**”) to be operated by the Foundation, (b) 5,000 square foot restaurant with outdoor seating capacity, (c) a 11,000 square foot public area consisting of a plaza and staircase down to Commerce Street (the “**Public Space**”) and (c) a pedestrian bridge across Central Park Avenue linking the public parking garage on Block 10 to Public Space and Zeiders Theater on the second level of Block 9; and

(iii) **Second through Ninth Levels.** 120+/- apartments to supplement the Cosmopolitan Apartment complex located on Block 10 across Central Park Avenue.

All square footages and unit counts are approximate.

The total private investment (including Zeiders Theater) in Phase VI shall be no less than \$37 million.

(b) **Acquisition and Construction Schedule.** Block 9 was acquired by TCA 9 from the Authority on April 2, 2015 for a purchase price of \$1,003,040.14.

Developer shall cause the construction of Phase VI and shall comply with the City Council’s Small Business Enhancement Program. In addition, Developer acknowledges the City Council’s 10% minority subcontractor goal, and will work with the City to identify and use minority subcontractors to the maximum extent possible.

Construction of Phase VI will take approximately twenty four (24) months.

2. **City Obligations.**

(a) **Scope of Obligations.** In order to provide a higher level of quality to the Project, to add the cultural benefits of the Zeiders Theater to the Project, and to make it economically feasible for Developer, the Authority will provide funding of up to \$2,933,374 to Developer (the “**Authority Participation**”). The Authority Participation

represents the additional design and construction costs of locating the Zeiders Theater on the second level of Phase VI, including the cost of vertical transportation from ground level to the second floor, as well as additional costs for sound-proofing and load-bearing (the “Theater Enhancements”) and the costs of the Public Space. As compared to the Developer’s initial plans for the development of Block 9, the proposed design increases the amount of first floor retail in the Project and brings the cultural benefits of the Zeiders Theater to the Project. Further, Phase VI represents a private investment in excess of \$37 million.

(b) Source of Public Funds. The Authority Participation will be made from funds derived from bonds sold by the Authority and financed with sums appropriated to it by the City from the Central Business District –South Tax Increment Financing Fund (the “TIF”). The Authority Participation shall be paid upon substantial completion of the Theater Enhancements and the Public Space.

3. Infrastructure Funding.

The cost of public infrastructure components to be comprised of the streetscapes around Block 9 and the pedestrian bridge across Central Park Avenue between Blocks 9 and 10 shall be funded through and shall be subject to Authority EDIP appropriations. The municipal investment for Phase VI streetscapes shall not exceed \$1,000,000.

4. Zeiders Theater.

(a) Description of Zeiders Theater. The Zeiders Theater will be an approximately 17,000 square foot performing arts theater consisting of (i) a 300+/- seat theater, (ii) 2,200+/- square foot practice studio, (iii) 5,000+/- square feet of pre-function space, and (iv) 3,000+/- square feet of back of house and support space. Zeiders Theater is to be operated by the Foundation as a performing arts center with five primary activities: concert and theatre performance series; talent competitions; community arts programs; audio and video recording studio; and community education and fundraising.

(b) Design, Ownership and Construction of Zeiders Theater. The Zeiders Theater will be a separate condominium unit on the second level of the Phase VI structure (the “Theater Unit”). The Foundation will be the owner of the Zeiders Theater. The Zeiders Theater will be designed to specifications of the Foundation and will be constructed pursuant to a “build to suit” agreement between the Foundation, as owner, and the Developer/construction contractor (the “Theater Construction Agreement”).

(c) Terms of Theater Construction Agreement. The Theater Construction Agreement will generally provide:

(i) Construction. The Foundation will have the right to employ a construction manager to ensure the construction of the Zeiders Theater in compliance with approved plans and specifications.

(ii) Progress Payments. The cost of the Theater Unit, inclusive of land costs, but exclusive of the Theater Enhancements, is currently estimated to be \$7,651,312. The exact cost of construction for the Zeiders Theater will be negotiated prior to execution of the Theater Construction Agreement and Phase VI Development Agreement. During construction, the Foundation will make progress payments to the Developer/construction contractor for the costs associated with the construction of the Zeiders Unit. Such payments will be made on a schedule and on conditions as agreed to by the Foundation and Developer/construction contractor, and the ability of the Foundation to make such payments will be demonstrated to the Developer/construction contractor's satisfaction prior to execution of the Theater Construction Agreement and Phase VI Development Agreement.

(iii) Conditions to Final Construction Advance. Generally, the Foundation's obligation to make the last advance for construction costs for the Zeiders Theater will be conditioned on Zeiders Theater being substantially complete and equipped and ready for legal occupancy (i.e.: move-in ready). The Foundation will also receive commercially typical representations and warranties, closing deliveries and assurances in connection with the construction.

(iv) Memorandum of Agreement. Upon construction completion, the City/Authority will enter into a memorandum of agreement ("MOA") with the Foundation related to the ownership and operation of the Theater Unit.

(d) Terms of MOA re: Zeiders Theater. The MOA between the City/Authority and the Foundation for the operation of the Zeiders Theater will generally provide:

(i) Operation and Maintenance. Foundation will be responsible for all costs associated with operation and maintenance of Theater Unit (including allocable costs associated with maintenance of the common areas of Phase VI Condominium).

(ii) Programming. Foundation will be solely responsible for programming and operation of the Zeiders Theater.

(iii) City Use. City will be allowed to use the Zeiders Theater up to twenty-four (24) days per year. City and Foundation to meet every six months to establish a schedule for City events. Foundation to have right to refuse dates requested by City if Foundation believes it will interfere with an upcoming event or events at the Zeiders Theater. The City's use of the Zeiders Theater will be at no cost to the City with the understanding that the Foundation will not be expected to incur any costs relating to a City event unless such cost is reimbursed by the City. The City will be responsible to the extent allowed by law for any liability incurred as a result of the City's use of the Theater.

(iv) “Going Dark”. In the event the Zeiders Theater ceases to operate (goes dark) for six months or more, and such closure was not the result of a casualty or condemnation, or the result of any other cause outside the Foundation’s control and the Foundation has no intention to resume operations at the Zeiders Theater, title to and possession of the Theater Unit shall automatically vest in the City.

(e) Use Restrictions. The Theater Unit shall be subject to the master declaration covering the Project which contains use restrictions and easements related to the Project as a whole. Additionally, the Theater Unit shall be subject to an operating covenant providing that it can only be used as a theater unless otherwise agreed to by the City and Developer.

(f) Parking/ Special Service District. Parking will be available for staff and patrons of the Zeiders Theater in existing and future Town Center parking garages. After 2037, the City may elect to establish parking fees for the garages. If this occurs, the Zeiders Theater staff and patrons will be charged per the established rates. In lieu of paying for parking, the Zeiders Theater shall be subject to the special assessment established pursuant to the Special Services District (the “SSD”) at Town Center, which special assessment is in addition to the real estate tax and is used to pay for enhanced services at Town Center and for maintenance and upkeep of the free public parking at Town Center. The parties acknowledge that the Foundation, a 501(c)(3) public charity, will apply to the City of Virginia Beach for exemption from real estate taxes. The parties further acknowledge that in no event will the Foundation or the Theater Unit seek to be exempt from payment of the special assessments levied against the Zeiders Theater by the SSD.

5. Modifications to Phase V RA Note.

Pursuant to the Phase V Development Agreement, Developer is required to make payments to the Authority to ensure adequate balances in the TIF to meet public obligations for Phase V, and Developer is to receive a credit against those payment obligations if the actual real estate taxes paid into the TIF for improvements in the so-called “Core Area” of the Project equal the amount of real estate tax revenue projected by the City. In connection with the Development Agreement for Phase VI, the Phase V RA Note will be modified to provide that (a) Developer shall be entitled to a credit, if earned, notwithstanding that the balance in the Town Center TIF account may be reduced to zero, (b) Developer’s entitlement to credits will be based on actual real estate taxes paid, notwithstanding that a portion of those revenues may from time to time be earmarked for other City projects (i.e.: light rail), and (c) the baseline for determination of whether a credit has been earned (the projected real estate taxes paid in the Core Area) shall be increased to reflect the added expenses to the TIF for the payment of the debt associated with the Authority Participation. Schedule 1, attached hereto, shows the new baseline calculations.

Therefore, Developer’s annual RA Payments shall be up to \$400,000 in FY15-16 through FY 17-18 and \$450,000 in FY 18-19 through 22-23. The actual amount of each

payment shall be the amount, if any, that the actual revenues received by the TIF from the Core Area plus the projected Block 9 Debt Service is less than the New Baseline shown on Schedule 1. By way of example, in FY19-20 the baseline is \$4,454,312, and if the actual taxes generated by the Core Area plus the Block 9 Debt Service was \$4,400,000; the RA Payment would be \$54,312.

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AUTHORITY:

**CITY OF VIRGINIA BEACH
DEVELOPMENT AUTHORITY, a
political subdivision of the Commonwealth
of Virginia**

(SEAL)

ATTEST:

Secretary / Assistant Secretary

By: _____
Name: _____
Title: [Chair] [Vice Chair]

Date: December __, 2015

CITY:

CITY OF VIRGINIA BEACH

By: _____
Title: _____

Date: December __, 2015

ATTEST:

Ruth Hodges Fraser, City Clerk MMC

DEVELOPER:

TOWN CENTER ASSOCIATES, L.L.C.,
a Virginia limited liability company

By: _____(SEAL)
Louis S. Haddad, Manager

By: _____(SEAL)
Anthony P. Nero, Manager

Date: December __, 2015

TOWN CENTER ASSOCIATES 9, L.L.C.,
a Virginia limited liability company

By: Armada Hoffer Manager, LLC, a
Virginia limited liability company

By: _____(SEAL)
Louis S. Haddad, Manager

Date: December __, 2015

FOUNDATION:

ZEIDERS AMERICAN DREAM THEATER,
a Virginia nonstock corporation

By: _____(SEAL)
Michael D. Zeiders, Chairman, Vice-President

Date: December __, 2015

Schedule 1

SCHEDULE 1 Projected Core Area TIF Revenues*

	<u>Original Projection</u>	<u>Block 9 Debt Service</u>	<u>New Baseline</u>
Fiscal Year 14-15 (July 1 2014- June 30, 2015)	\$3,785,963		\$3,785,963
Fiscal Year 15-16 (July 1, 2015- June 30, 2016)	\$3,865,535		\$3,865,535
Fiscal Year 16-17 (July 1, 2016- June 30, 2017)	\$3,946,698		\$3,946,698
Fiscal Year 17-18 (July 1, 2017- June 30, 2018)	\$4,029,485		\$4,029,485
Fiscal Year 18-19 (July 1, 2018- June 30, 2019)	\$4,135,038	\$211,083	\$4,346,121
Fiscal Year 19-20 (July 1, 2019- June 30, 2020)	\$4,243,229	\$211,083	\$4,454,312
Fiscal Year 20-21 (July 1, 2020- June 30, 2021)	\$4,354,126	\$211,083	\$4,565,209
Fiscal Year 21-22 (July 1, 2021- June 30, 2022)	\$4,467,795	\$211,083	\$4,678,878
Fiscal Year 22-23 (July 1, 2022- June 30, 2023)	\$4,584,305	\$211,083	\$4,795,388

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