

**Washington Metropolitan Area Transportation Authority  
Board Action/Information Summary**

<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information	MEAD Number: 99912	Resolution: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	-----------------------	--

**PURPOSE**

To obtain Board of Directors approval of the 1) Amendment of the Silver Spring Station General Plans to accommodate a minor change resulting from the land use review process, and 2) related Memorandum of Understanding (“MOU”) with the Maryland National Capital Park and Planning Commission (“M-NCPPC”), and Montgomery County.

**DESCRIPTION**

As a result of the Mandatory Referral land use review process in Montgomery County for the Sliver Spring Transit Center, M-NCPPC sought to require design improvements because it considers the Transit Center and the Metrorail Station to be an important entry point to the Silver Spring business district.

M-NCPPC is currently the beneficiary of a park easement at the southern end of the land that will become the Transit Center. The proposed replacement site has recently been updated to consist of two parcels, one adjacent to the proposed joint development buildings, and the other on land across Wayne Avenue from the joint development site. In addition, WMATA will grant M-NCPPC a Transit Plaza easement between the Metrorail Station entrance and the Transit Center. The proposed MOU is also clear that if in the future the Bi-County Transit Way, also known as the Purple Line, is routed through the area of the Transit Plaza, the requirements of the Purple Line will take precedence over the Transit Plaza easement.

**FUNDING IMPACT**

There would be no financial impact beyond the amount (\$15,000 plus the cost of snow removal, annually adjusted) that WMATA currently experiences for maintaining the Transit Plaza itself without any of the upgrades required by M-NCPPC. The cost will continue to be part of WMATA's annual budget process.

## **RECOMMENDATION**

That the Board of Directors approve the 1) Amendment of the Silver Spring Station General Plans to accommodate changes resulting from the land use review process, and 2) related Memorandum of Understanding with the Maryland National Capital Park and Planning Commission and Montgomery County.

PRESENTED AND ADOPTED:

SUBJECT: SILVER SPRING TRANSIT CENTER-- APPROVAL OF AMENDED GENERAL PLANS AND ADOPTED REGIONAL SYSTEM PLAN; APPROVAL OF MEMORANDUM OF UNDERSTANDING WITH MARYLAND NATIONAL PARKING AND PLANNING COMMISSION AND MONTGOMERY COUNTY

PROPOSED  
RESOLUTION  
OF THE  
BOARD OF DIRECTORS  
OF THE  
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, On December 17, 2004, the WMATA Board of Directors ("Board") authorized staff to conduct a public hearing for the Silver Spring Transit Center ("Transit Center") and to release the draft public hearing staff report for public comment; and

WHEREAS, Following the completion of satisfactory concept plans, WMATA held a public hearing on April 24, 2006; and

WHEREAS, WMATA staff prepared a final report on the public hearing entitled, "Final Public Hearing Staff Report; Proposed Construction of Silver Spring Transit Center; Montgomery County, Maryland; Hearing No. 173; Docket No. R06-3" ("Final Staff Report") which described the public review process, summarized comments received during the public review period, responded to issues raised and presented the final staff recommendations; and

WHEREAS, The Final Staff Report and the proposed amended General Plans for the Silver Spring Metrorail Station ("General Plans") were made available to the Board and the Board considered the information; and

WHEREAS, On June 15, 2006 (Board Resolution #2006-33), the Board approved the final staff recommendations as presented in the Final Staff Report and the General Plans which described and showed the following facility:

A new three-level structure containing, among other elements, 32 bus bays, 22 Kiss & Ride parking spaces, a MARC commuter rail station, an intercity bus station, connections to bicycle trails, bicycle storage facilities, an open space urban park, a transit store, a transit police station, ancillary WMATA facilities, and infrastructure to support an intelligent transportation system; and

WHEREAS, The Board amended the Adopted Regional System ("ARS") plan and the General Plans for the Silver Spring Metrorail Station to include the Transit Center as described above and depicted in the Final Staff Report; and

WHEREAS, The construction of the Transit Center requires the relocation of a park easement previously granted by WMATA to Maryland-National Capital Park and Planning Commission ("M-NCPPC"); and

WHEREAS, The Final Staff Report stated that the relocated park easement would be moved to another portion of the Transit Center site, at the intersection of Wayne Avenue and Colesville Road, as shown on Exhibit A, attached hereto; and

WHEREAS, The land use approval process in Montgomery County, Maryland has resulted in a partial change to the location for the relocated park easement, and the relocated park easement will now be located in part on a triangular parcel of land (sometimes referred to as the WMATA Jug Handle or the WMATA Tip) at the intersection of Wayne and Colesville, as shown on Exhibit A, attached hereto ("Jug Handle Replacement Park"); and

WHEREAS, As previously described in the Final Staff Report, the remaining portion of the relocated park easement will be moved to another portion of the Transit Center site, at the intersection of Wayne Avenue and Colesville Road, as shown on Exhibit A, attached hereto; and

WHEREAS, In addition to the easement for the Jug Handle Replacement Park, WMATA staff propose to agree to grant M-NCPPC a surface easement over a portion of its property located near the entrance to the Silver Spring Metrorail Station for use as an open space area for ingress and egress out of the Transit Center, serving as an attractive portal into the Silver Spring Central Business District, as shown on Exhibit A, attached hereto ("Transit Plaza Easement Area"); and

WHEREAS, M-NCPPC, WMATA staff and Montgomery County have negotiated a Memorandum of Understanding ("MOU") which will govern the responsibilities of each party in regard to: design, construction and maintenance of the Jug Handle Replacement Park and the Transit Plaza Easement Area; reservation of rights for the potential future construction and operation of the Bi-County Transitway ("Purple Line"); non-interference with WMATA operations; and other related matters; attached hereto as Exhibit B; and

WHEREAS, WMATA staff recommends that the Board: i) amend the General Plans and the ARS plan for the Silver Spring Metrorail Station to incorporate the partial new location of the relocated park easement in the Jug Handle Replacement Park at the intersection of Wayne and Colesville and the addition of the Transit Plaza Easement Area located over a portion of WMATA's property near the entrance to the Silver Spring Metrorail Station, as shown on Exhibit A, attached hereto; and ii) approve and authorize staff to execute the

Park MOU between M-NCPPC, WMATA and Montgomery County, attached hereto as Exhibit B; now, therefore be it

*RESOLVED*, That the Board of Directors hereby amends the General Plans and the ARS plan for the Silver Spring Metrorail Station to incorporate the partial new location of the relocated park easement in the Jug Handle Replacement Park at the intersection of Wayne and Colesville and the addition of the Transit Plaza Easement Area located over a portion of WMATA's property near the entrance to the Silver Spring Metrorail Station, as shown on Exhibit A, attached hereto; and be it further

*RESOLVED*, That the Board of Directors hereby approves and authorizes staff to execute the Park MOU, attached hereto as Exhibit B; and be it further

*RESOLVED*, That this action does not obligate the Compact signatories, local governments or any regional entity to fund the construction of any facilities; and be it finally

*RESOLVED*, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

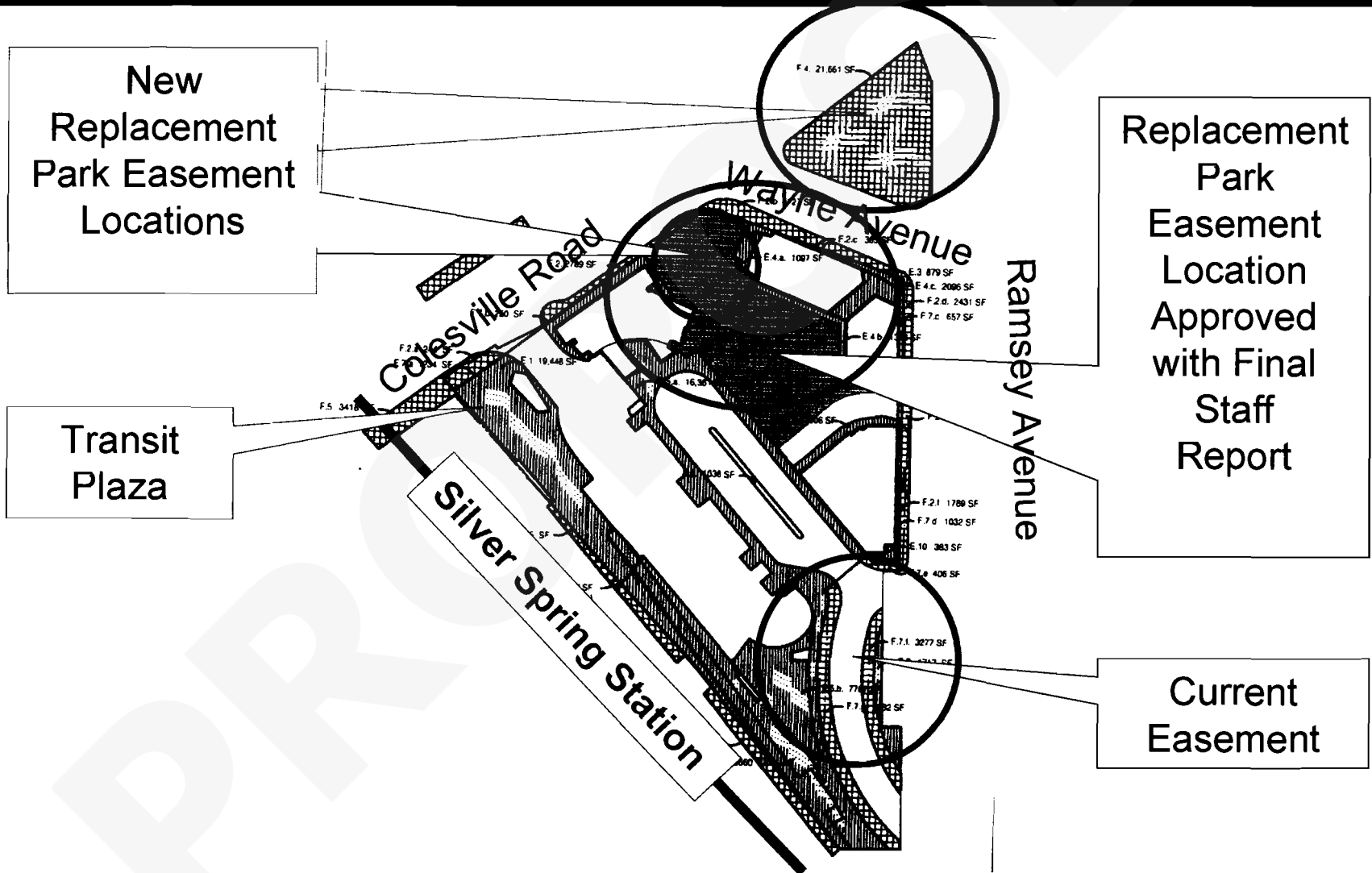


---

Carol B. O'Keeffe  
General Counsel



# Silver Spring Transit Center Exhibit A



**MEMORANDUM OF UNDERSTANDING FOR VACATING ORIGINAL PARK  
EASEMENT AND GRANTING REPLACEMENT EASEMENTS**

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) is entered into by and between the Maryland-National Capital Park and Planning Commission, a public corporation, organized and existing under the laws of the State of Maryland, (the “Commission”), the Washington Metropolitan Area Transit Authority, a regional body corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of the General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of the District of Columbia Board of Commissioners adopted November 15, 1966 (“WMATA”), and Montgomery County, Maryland, a body corporate and politic and subdivision of the State of Maryland (the “County”).

**W I T N E S S E T H**

**WHEREAS**, the Commission is authorized and empowered to provide parks and recreation facilities for the inhabitants of the Maryland-Washington Metropolitan District, and

**WHEREAS**, pursuant to a certain deed of easement for open space dated January 22, 1978, and that Agreement by and between the Commission and WMATA dated July 19, 1977 (the “1977 Agreement”), attached thereto, and together recorded in Liber 5262 at Folio 139 of the Land Records of Montgomery County, Maryland, WMATA granted to the Commission a permanent surface easement (the “Original Park Easement”) consisting of approximately 35,354 sq. ft., more or less, for the purpose of constructing, maintaining and operating an open space park facility for the benefit and use of the general public (the “Original Park Easement Area”), and

**WHEREAS**, the County, for and with the assistance of WMATA, intends to construct the Silver Spring Transit Center (the “Transit Center”), a multi-level, intermodal transit facility as part of a public/private development on property owned by WMATA and the County and including *inter alia* the Original Park Easement Area (hereinafter referred to as the “Transit Center Site”). That portion of the WMATA property to be developed privately (the “Private Development Site”), for purposes of Section 10 herein is set forth on Exhibit A attached hereto.

---

The entity to develop the Private Development Site shall be referred to as the "Private Developer."

**WHEREAS**, pursuant to Md. Ann. Code Article 28, § 7-112, the County, on behalf of WMATA, submitted certain plans and materials from November 2004 through February 2005 to the Commission for Mandatory Referral review of the Transit Center, and

**WHEREAS**, as a result of such review, on March 10, 2005, the Commission requested that a second Mandatory Referral be provided at approximately thirty-five percent (35%) of design in order for the Commission to review the Transit Center plans at a more advanced stage of project design, and

**WHEREAS**, in order to permit the construction of the Transit Center and the Private Development, the Commission has agreed to release and relinquish all right, title and interest in and to the Original Park Easement Area by Deed of Release, substantially in the form attached hereto as Exhibit B, to be executed simultaneously with this MOU; and in consideration therefore to accept two replacement permanent surface easements in accordance with the terms and conditions of this MOU, to be granted by WMATA to the Commission by Deed of Replacement Easements (the "Deed"), substantially in the form attached hereto as Exhibit C, to be executed simultaneously with this MOU which shall be a material part of the Deed, and together with this MOU and the Deed of Release to be recorded in the Land Records of Montgomery County.

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

**Section 1: Recitals.** The above recitals are incorporated herein by this reference to the same extent and with the same force and effect as if fully hereinafter set forth.

**Section 2: Mandatory Referral.** The County has agreed to voluntarily submit design plans for the Transit Center to the Commission for review, which plans will include the design for the Jughandle Replacement Park and the Transit Plaza Easement Area (as hereinafter defined and collectively referred to as the "Replacement Easement Areas.").



2.1 **Review Process.** The Commission will review the final design of the Transit Center and Replacement Easement Areas. The County has further voluntarily agreed that certain conditions as set forth on Exhibit D attached hereto and made a part hereof will be constructed by the County, subject to the terms of this MOU (the “Essential Elements”). The County commits to develop the Replacement Easement Areas in accordance with plans at 30% design drawings (the “Facility Plan(s)”) approved by the Planning Board, which shall be based upon the Concept Plans and Specifications for Materials for the Replacement Easement Areas as set forth on Exhibit E hereto and incorporated herein. WMATA consents to such development, subject to the terms and conditions of this MOU. If changes to, or deletions of any of those Essential Elements that apply to areas located outside the Replacement Easement Areas are necessary due to insufficient funding as a result of contract bid negotiations, the County Council and the State will be informed of the amount of insufficient funding, and the proposed change or deletion of the Essential Element and the impact to the Transit Center resulting therefrom. If the County Council or the State take action, or determine that either will take appropriate action to provide additional funds necessary for the County to construct such underfunded Essential Element, both the County and the Commission will provide such information and evaluation as necessary for the County Council and/or the State to act thereon. If the County Council and/or the State fail to provide the additional funds necessary for the County to construct such Essential Element, that Element will be deemed waived by the Commission. Notwithstanding the foregoing, as between WMATA and the County, nothing in this Section 2.1 shall modify WMATA’s review and approval rights under the WMATA/County MOU for the Transit Center, as amended.

**Section 3: Grant of the Replacement Easements.** WMATA hereby agrees and does grant to the Commission the following easements, subject to the terms and conditions herein:

3.1 **Transit Plaza Easement Area.** Consisting of an approximately Eleven Thousand Four Hundred Fifty-eight (11,458) square foot area more or less on the surface of a portion of the Transit Center Site in the area around the proposed

transit store (hereinafter referred to as the “Transit Plaza Easement Area”), excluding from such Transit Plaza Easement any and all WMATA facilities, not otherwise specifically addressed in this MOU. The Transit Plaza Easement shall be used as an open space area for ingress into and egress out of the Transit Center, serving as an attractive portal into the Silver Spring Central Business District. The County shall have the legal description of the Transit Plaza Easement Area prepared by a registered surveyor, and, once completed, such description will be attached as the property description of the Transit Plaza Easement portion of the Deed of Replacement Easement attached hereto as Exhibit C; and

- 3.2 **Jug Handle Replacement Park.** The Jug Handle Replacement Park shall be known as such for purposes of this MOU. The Commission reserves the right to name the Park with approval from the County and WMATA. Consisting of an approximately Eleven Thousand Five Hundred Ninety (11,590) square foot area more or less on the surface of the WMATA Jug Handle (referred to from time to time as the WMATA Tip) (hereinafter referred to as the “Jug Handle Replacement Park”), such easement to be used for purpose of a public park. The County shall have the legal description of Jug Handle Replacement Park prepared by a registered surveyor, and, once completed, such description will be attached as the property description of the Jug Handle Replacement Park portion of the Deed of Replacement Easement attached hereto as Exhibit C.

**Section 4: Standard of Design of Replacement Easement Areas.** In consideration of the Commission releasing the Original Park Easement, the County, on behalf of WMATA will provide an enhanced quality design and use of materials above the typical WMATA standards as shown on the Facility Plan approved by the Planning Board, which approval shall be granted subject only on the condition that such Plan is in accord with the Concept Plans and Specifications for Materials for the Replacement Park Easement Areas as set forth on Exhibit E attached hereto and incorporated herein.

**Section 5: Reservation of Rights for Purple Line.** WMATA hereby reserves to itself, its successors and assigns, the air rights above the Transit Plaza Easement Area and any necessary surface and subsurface rights over, across, through and under the Transit Plaza Easement Area

for purposes of potential future construction and operation of the Bi-County Transit Way (BCT), also known as the Purple Line, or any replacement thereof (the "Purple Line"), or any construction by or on behalf of WMATA, or another public entity, or any private development approved by WMATA. The Commission shall require that design plans for the Purple Line which include revisions to the Transit Plaza Easement Area, be submitted to the Commission for Mandatory Referral review. Any other construction by or on behalf of WMATA or any private development approved by WMATA shall be governed by Section 12.4. The Commission will not impede construction of the Purple Line. WMATA and the Commission agree to collaborate through the Purple Line planning process and advocate development and implementation of a design that does not render either the Transit Plaza Easement Area or the Jug Handle Replacement Park ineffectual as public open space. In the event that the modifications required for construction and operation of the Purple Line are so significant as to render the Transit Plaza Easement Area ineffectual as public open space, WMATA and the Commission will endeavor to reach an agreement to designate other property located in Montgomery County that is comparable to replace the Transit Plaza Easement Area no longer operative as public open space.

**Section 6: Reservation of Rights for Bus Loop Lanes (Area 2).** The County and WMATA hereby reserve the right to utilize the existing bus loop lanes through Jug Handle Replacement Park during construction of the Transit Center for bus stops as part of the Interim Operations Site.

**Section 7: Commission's Right to Construct Improvements on Jug Handle Replacement Park.** Subject to the Commission providing, or requiring its contractor to provide indemnity, insurance and bonding acceptable to WMATA, the Commission shall have the right to construct, or to have constructed, improvements on the Jug Handle Replacement Park, provided, however, such improvements shall be consistent with the Commission's use of such Area as an open space park facility. WMATA and the County will cooperate as necessary in the process to create a record lot if it is required in order to procure a building permit for such construction; provided that neither the County nor WMATA shall be required to incur any costs or liability as a result thereof or transfer any property without appropriate compensation therefor; and provided further that WMATA and the County's commitment to assist is in its capacity as a party to this MOU

only and shall not bind or limit WMATA, or the County in its governmental and regulatory functions.

**Section 8: Release of Original Park Easement.** The Commission hereby re-conveys and releases all of its right, title and interest in and to the Original Park Easement Area recorded in Liber 5262 at Folio 139 of the Montgomery County Land Records; the same to be evidenced by a Deed of Release substantially in the form attached as Exhibit B to be executed simultaneously with this MOU and recorded in the Montgomery County Land Records.

**Section 9: Construction of Replacement Easement Areas.** Within sixty (60) days of the date of execution of this MOU, the County will submit to the Planning Board for review and approval i) Facility Plans for the Replacement Easement Areas, which approval of the Facility Plans shall be granted subject only to the condition that such Plan is in accord with the Concept Plans and Materials Specifications attached as Exhibit E, and ii) a schedule for construction of each Replacement Easement Area, which approval of the construction schedule shall not be unreasonably withheld, conditioned or delayed. The County shall not commence construction on either Area until a Park Permit has been issued by the Montgomery County Parks Department, which Permit shall be issued subject only to the condition that the construction drawings are materially consistent with the Facility Plans and schedule for construction approved by the Planning Board. Provided further that as to the construction schedule the County will make all commercially reasonable efforts to conform to the construction schedule by requiring its contractor to do so but the County shall not be liable as a consequence of any delay or suspension of work as a result of the Transit Center construction which adversely impacts the construction schedule. And provided further that prior to the issuance of the Park Permit the County is hereby authorized to proceed with demolition and any and all other preconstruction activities and work on the Replacement Easement Areas.

- 9.1 **Restoration of Jug Handle Replacement Park.** After transferring buses into the newly constructed Transit Center, the County will remove the existing bus lanes from the Jug Handle Replacement Park and construct the Jug Handle Replacement Park in accordance with the construction plans approved as part of the Park Permit issued. As part of such plans, the County will extend the bike

path (also known as the green trail) that exists along the Discovery Communications, Inc. property on Wayne Avenue along the length of the Jug Handle Replacement Park; and provide sidewalks along Colesville Road and Wayne Avenue in accordance with the 1992 Approved Silver Spring Streetscape Standards. This construction work shall commence upon completion of the Transit Center by the County and acceptance of the Transit Center by WMATA, and shall be completed in accordance with the approved Facility Plan and construction schedule approved by the Planning Board, provided further that as to the construction schedule the County will make all commercially reasonable efforts to conform to the construction schedule by requiring its contractor to do so but the County shall not be liable as a consequence of any delay or suspension of work as a result of the Transit Center construction which adversely impacts the construction schedule.

**Section 10: Stabilization of Disturbed Private Development Site.** Upon completion of construction and acceptance by WMATA of the Transit Center, provided there is “no planned construction” on the Private Development Site, the County agrees to stabilize, grade and seed any portions of the Private Development Site disturbed during construction of the Transit Center to a condition typical for accessible vacant development sites and to provide walkway connections to the various levels of the Transit Center. For purposes of this Section 10, the term “no planned construction” shall mean that the Private Developer has not begun construction or closed on its construction financing for any portion of the Private Development Site and does not intend to do so within the next sixty (60) days. A letter from the Private Developer that it has received a formal commitment for construction financing and intends to close on such financing within sixty (60) days shall be deemed sufficient evidence of “planned construction.”

**Section 11: Maintenance of Replacement Easement Areas.**

11.1 **Jug Handle Replacement Park.** Within one (1) year of the execution of this MOU, the County shall, or shall cause the Silver Spring Urban District (“Urban District”) to enter into a maintenance agreement with the Commission and WMATA, to maintain the Jug Handle Replacement Park (the “Jug Handle Maintenance Agreement”), and the Commission shall pay the costs of such maintenance, whether

capital or operational. All materials used in the repair and maintenance of the Jug Handle Replacement Park will be equivalent materials to those used during construction of the Jug Handle Replacement Park. The Jug Handle Maintenance Agreement will continue until a Private Developer, as a condition of its site plan approval is required to “upgrade” the Jug Handle Replacement Park, and/or assume responsibility for maintenance or the cost of maintenance of the Jug Handle Replacement Park, at which time the Private Developer will be responsible for the maintenance or the costs of maintenance of the Jug Handle Replacement Park, at its sole cost and expense. Provided further that if the Private Developer is required to “upgrade” the Jug Handle Replacement Park or assume responsibility for its maintenance or the cost of its maintenance, the Jug Handle Replacement Park shall be counted by the Commission towards the Private Developer’s off-site amenity for the Private Development.

The County shall, or shall cause the Urban District to indemnify, defend and hold harmless the Commission and WMATA against and from all claims, liabilities, obligations, damages, fines, penalties, demands, costs, charges, and judgments that are made against or incurred by the Commission and/or WMATA arising from the Urban District’s negligence, wrongful conduct, negligent performance or failure to perform any of its obligations under the Jug Handle Maintenance Agreement; provided however that the indemnification provided under this paragraph is limited by the notice requirements, types of liabilities and damage limits provided in the Local Government Tort Claims Act, Cts. & Jud. Proc. Art., Sec. 5-301 through 5-304, Md. Code. The foregoing indemnification obligation shall be included in the Jug Handle Maintenance Agreement.

- 11.2 **Transit Plaza Easement Area.** WMATA exclusively shall be responsible for all snow removal in the Transit Plaza Easement Area. Within one (1) year of the execution of this MOU, the County shall, or shall require the Urban District to enter into a maintenance agreement with the Commission and WMATA for landscape maintenance, cleaning, sweeping, repair, and replacement, and such other maintenance of the Transit Easement Area (the “Transit Plaza Maintenance

Agreement”). All materials used for the repair and maintenance of the Transit Plaza Easement Area will be equivalent materials to those used during construction of the Transit Plaza Easement Area. Based upon invoices from the Urban District or its successor, if any, WMATA shall contribute Fifteen Thousand Dollars (\$15,000.00) per year, adjusted annually by the adjustment provided in WMATA’s union contract(s) covering employees who perform similar maintenance services, for the costs to maintain the Transit Plaza Easement Area that it would be required to bear were the design and improvements to the Transit Plaza Easement Area developed with WMATA standard design elements. All obligations of WMATA under this Agreement that directly or indirectly require, or may require, WMATA’s expenditure of any of its funds are, and shall be, subject to the appropriation and availability of funding through WMATA’s normal and customary budgetary procedures. The Commission shall contribute the maintenance costs, whether capital or operational, incurred as a result of the enhanced quality design and use of materials above the typical WMATA standards.

The Transit Plaza Maintenance Agreement between WMATA, the Commission and the Urban District shall include, among other things: i) the Commission’s annual contribution for maintenance shall not exceed Thirty-seven Thousand Five Hundred Dollars (\$37,500) per year, adjusted for inflation based upon the Washington-Baltimore Area CPI Urban Consumers Index (this limit shall not apply to costs incurred as described in Section 12.5 herein); ii) in the event the maintenance costs exceed the total of WMATA’s annual contribution as provided in this Section 11.2 plus the Commission’s annual contribution as provided in this Section 11.2, an amendment to the Transit Plaza Maintenance Agreement shall be negotiated and entered into between WMATA and the Commission to address the overage; iii) the County shall, or shall cause the Urban District to indemnify, defend and hold harmless the Commission and WMATA against and from all claims, liabilities, obligations, damages, fines, penalties, demands, costs, charges, and judgments that are made against or incurred by the Commission and/or WMATA arising from the Urban District’s negligence, wrongful conduct,

negligent performance or failure to perform any of its obligations under the Transit Plaza Maintenance Agreement; provided however that the indemnification provided under this paragraph is limited by the notice requirements, types of liabilities and damage limits provided in the Local Government Tort Claims Act, Cts. & Jud. Proc. Art., Sec. 5-301 through 5-304, Md. Code.

- 11.3 **Failure to Maintain Replacement Easement Areas.** In the event that the Urban District (or the Private Developer as the case may be) fails to maintain the Transit Plaza Easement Area and/or the Jug Handle Replacement Park as herein provided, then the Commission shall be responsible for maintaining such Replacement Easement Areas. In the event that the Commission fails to maintain the Transit Plaza Easement Area and/or the Jug Handle Replacement Park, as set forth in the Transit Plaza Maintenance Agreement, WMATA shall provide the Commission with notice of such failure. If the Commission fails to maintain the Transit Plaza Easement Area and/or the Jug Handle Replacement Park as required within thirty (30) days of such notice, WMATA shall have the right to terminate the easement over the Replacement Easement Area that has not been properly maintained.

**Section 12: Non-Interference With WMATA Operations.**

- 12.1 The parties acknowledge and agree that the Transit Plaza Easement Area is the entrance to WMATA's Silver Spring Transit Center that serves as the Metrorail Station (the "Metrorail Station"), and that the first priority is safe and efficient access to the Metrorail Station by transit passengers.
- 12.2 Subject to the Parties' rights and obligations under this MOU, The Commission shall not interfere with WMATA's current or future use, construction, maintenance, repair and operation activities at the Metrorail Station, including, but not limited to activities within the Transit Plaza Easement Area.
- 12.3 WMATA shall have the right to modify access to and from the Metrorail Station or features at the Transit Plaza Easement Area as provided in Exhibit F attached hereto and incorporated herein ("Approved Changes to the Transit Plaza Easement Area"). In the event of such modifications, WMATA shall notify the Director of Parks in writing within thirty (30) days of such modification.



- 12.4 In the event WMATA needs to make modifications to the Transit Plaza Easement Area for the purpose of accommodating its operational needs (or any other transit agency's operational needs if served by the Transit Center) that are not included on Exhibit F, WMATA shall submit the design plans for such modification to the Commission for Mandatory Referral review. In the event WMATA desires to make modifications to the Transit Plaza Easement Area that are not for the purpose of accommodating its operational needs and not included on Exhibit F, WMATA shall submit the design plans for such modification to the Commission, and such modification shall be subject to written approval by the Commission's Director of Parks, which approval shall not be unreasonably withheld, conditioned or delayed. In the event the Director does not approve the requested change, WMATA may appeal such decision to the Planning Board. The costs of any modifications at WMATA's request shall be the sole and exclusive responsibility of WMATA, including any increased maintenance costs as a result thereof beyond those maintenance costs as provided in Section 11.2. Repair or disturbance of the Area, other than WMATA's modifications to the Area themselves (which materials WMATA shall endeavor to be consistent with the character with the Area), shall be replaced with equivalent materials to those used during construction of the Transit Plaza Easement Area.
- 12.5 Excluding any renovations or reconstruction required for construction and operation of the Purple Line, in the event that the Commission desires to modify, renovate or reconstruct the Transit Plaza Easement Area, the Commission shall submit its plans for such modification, renovation or reconstruction to WMATA for review and approval. Additionally, WMATA shall require the Commission to comply with WMATA requirements for insurance, indemnification and adjacent construction as provided in WMATA's "Adjacent Construction Design Manual, Revision 1," and/or any revisions or the last edition of that manual. All costs for such modification, renovation or reconstruction shall be the sole and exclusive responsibility of the Commission, including any increased maintenance costs as a result thereof beyond those maintenance costs as provided in Section 11.2.

Neither WMATA nor the County shall be responsible for the costs associated with such modification, renovation or reconstruction.

**Section 13: Future Private Developer Amenities and Contributions.** Subject to i) the proposed improvements being built in accordance with WMATA's Adjacent Construction Design Manual, and ii) WMATA and the Private Developer, or any other private developer, entering into an access agreement in which the developer agrees to provide (or have provided) indemnity, insurance, bonding, and conditions of maintenance, including a maintenance agreement with the Urban District (or the County through the Urban District) acceptable to WMATA, WMATA shall provide access to the Private Developer or such other private developer to install certain improvements on the pedestrian and landscape areas of the WMATA property as required for off-site amenities in accordance with its optional method development approvals, which optional method development approvals shall contain conditions consistent with this Section 13. In the event that the Private Developer (or such other private developer) installs brick pavers or other items or materials that are not WMATA standard items or materials on any portion of the Transit Center as required by and in accordance with its optional method development approvals, then the Commission shall require the Private Developer (or such other private developer) to enter into an Agreement with the Urban District (or the County through the Urban District) pursuant to which the Urban District shall assume responsibility for maintenance of such improvements, at the Private Developer's (or such other private developer's) sole and exclusive cost, and the Private Developer shall indemnify, defend and hold WMATA harmless against and from all claims, liabilities, obligations, damages, fines, penalties, demands, costs, charges, and judgments that are made against or incurred by the WMATA arising from the Private Developer's negligence, wrongful conduct, negligence performance or failure to perform any of its obligations to provide maintenance whether caused by the Private Developer or the Urban District; provided however that the indemnification provided under this paragraph as to the Urban District is limited by the notice requirements, types of liabilities and damage limits provided in the Local Government Tort Claims Act, Cts. & Jud. Proc. Art., Sec. 5-301 through 5-304, Md. In the event that any of the Essential Elements are not funded in accordance with Section 2.1 of this MOU, as to such unfunded Essential Element, this Section 13.1 shall become null and void and the maintenance responsibility shall remain with WMATA. In all events, the maintenance of the drive aisles and other non-pedestrian areas of the top deck and the entrance

drive from Ramsey will remain the responsibility of WMATA. In the event the Urban District refuses or fails to accept responsibility for maintenance as herein provided, then the Commission shall be responsible for maintaining such improvements.

**Section 14: Effect on 1977 Agreement.** The 1977 Agreement (a copy of which is attached as Exhibit G) shall become immediately null and void and of no further force or effect upon the execution of this MOU and recordation of the Deed and Deed of Release.

**Section 15: Remedies.** If a party breaches any term of this MOU and does not cure such default after thirty (30) calendar days' written notice from the other party or, as to defaults not reasonably susceptible to being cured within thirty (30) calendar days, fails to diligently and continuously prosecute the cure of same, the non-breaching party may seek specific performance or other affirmative or negative injunctive relief against the breaching party and/or seek any other remedies available to it at law, in equity, under this MOU or otherwise. In addition to the remedies set forth in the preceding sentence, the non-breaching party may, following the expiration of the 30-day period or the failure of the breaching party to continuously and diligently prosecute the cure to completion, take action to correct the uncured default, including the right to enter on the Replacement Easement Areas to correct the same, and the breaching party shall pay the non-breaching party the costs thereof upon demand.

**Section 16: Miscellaneous.**

16.1 **Governing Law, Jurisdiction and Venue.** The law of the State of Maryland will govern the validity, interpretation, construction and performance of this MOU. The parties agree that the exclusive jurisdiction and venue for any suit between the parties, relating to this MOU, the Deeds of Easement or the Deed of Release, shall be in the United States District Court for the District of Maryland, and the parties hereto expressly consent to the venue and jurisdiction of such court.

16.2 **Compliance with All Laws, Rules and Regulations.** The parties shall comply with all applicable laws, rules and regulations, whether federal, state or local, relating to this MOU.

16.3 **Successors in Interest.** The terms and conditions of this MOU shall inure to the benefit of and be binding upon the heirs, successors and assigns of the parties hereto.

16.4 **Notices.** Notices in connection with this MOU, the Deed of Replacement Easements or the Deed of Release shall be in writing and shall be sent to the parties at the following respective address(es) or to such other address as either party shall notify the other in accordance with the provisions hereof by: (a) registered or certified mail, return receipt requested; (b) hand delivery with evidence of receipt; or (c) a nationally recognized overnight courier service with evidence of receipt. Notices and other communication shall be deemed to have been given on the earlier of actual receipt or, in the case of mailing by United States mail, the fourth business day after the date so mailed or, in the case of overnight courier, on the first business day after delivery to such courier.

If to WMATA:

Nat Bottigheimer  
Assistant General Manager  
Office of Planning & Joint Development  
Washington Metropolitan Area Transit Authority  
600 5<sup>th</sup> Street, NW  
Washington, DC 20001

With a copy (which does not constitute notice) to:

General Counsel  
Washington Metropolitan Area Transit Authority  
600 5<sup>th</sup> Street, NW  
Washington, DC 20001

If to County:

Director, Department of Public Works and Transportation  
101 Monroe Street, 10<sup>th</sup> Floor  
Rockville, Maryland 20850

With copies (which do not constitute notice) at the same address to:

The County Attorney on the 3<sup>rd</sup> Floor

and to:

The Chief Administrative Officer on the 2<sup>nd</sup> Floor

If to the Commission:

Director of Parks  
Montgomery County Department of Parks  
9500 Brunett Avenue  
Silver Spring, Maryland 20901

With a copy (which does not constitute notice) to:

Office of General Counsel  
M-NCPPC  
6611 Kenilworth Avenue, Suite 403  
Riverdale, Maryland 20737

- 16.5 **Invalid or Unenforceable Term.** If any provision of this MOU or the application to any person or situation shall be held invalid or unenforceable, the remainder of this MOU and the application of such provision to persons or situations other than those held invalid or unenforceable shall not be affected and shall continue valid and be enforced to the fullest extent permitted by law provided that to do so does not cause this MOU to fail of its essential purposes.
- 16.6 **Amendments.** This MOU and the attached Exhibits contain the entire agreement between the parties and shall not be amended or modified in any manner except by an instrument in writing executed by the parties as an Amendment to this MOU.
- 16.7 **Authority.** The undersigned individuals represent that they have the requisite authority to enter into this MOU on behalf of WMATA subject to Section 17, the County, and the Commission, respectively, and to bind WMATA, the County and the Commission hereby.
- 16.8 **Counterparts.** This Agreement may be signed in counterparts, each constituting an original. Photocopies or facsimile transmissions of signatures shall be deemed original signatures and shall be fully binding upon the Parties to the same extent as original signatures.

**Section 17: WMATA Board Approval.** The parties to this MOU acknowledge and agree that this MOU will require WMATA Board approval (or action). Execution of this MOU by WMATA, and its validity thereby shall be subject to such approval.

**[SIGNATURES FOLLOW]**

MARYLAND-NATIONAL CAPITAL PARK  
AND PLANNING COMMISSION

\_\_\_\_\_  
Patricia Colihan Barney  
Secretary-Treasurer

By: \_\_\_\_\_  
Oscar Rodriguez  
Executive Director

APPROVED AS TO LEGAL SUFFICIENCY  
*[Signature]*  
M-NCPFC Legal Department  
Date 12/13/07

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

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

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

MONTGOMERY COUNTY, MARYLAND

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

ATTEST: \_\_\_\_\_

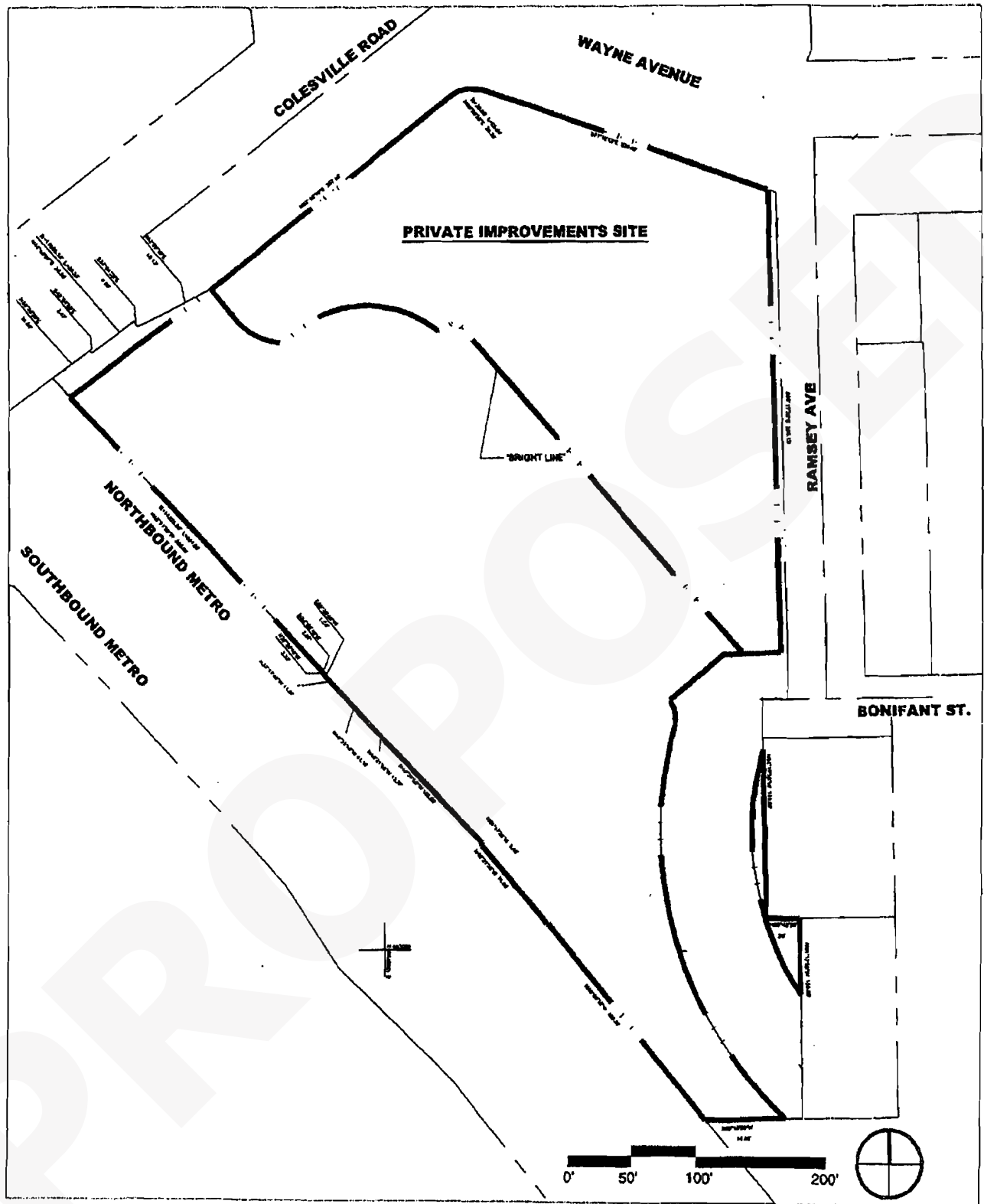
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**EXHIBIT A**  
**Transit Center Site with Private Development Site Delineated**

PROPOSED



**Exhibit - A**



EXHIBIT B  
Form of Deed of Release

**DEED OF RELEASE**

This **DEED OF RELEASE** is executed this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a body corporate and politic, (the "Releasor"); and the WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, a regional body corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of the General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of the District of Columbia Board of Commissioners adopted November 15, 1966 ("WMATA").

WHEREAS, certain property rights, in the form of a permanent surface easement, were acquired by Releasor by a deed dated January 22, 1978, and that Agreement by and between the Commission and WMATA dated July 19, 1977 (the "1977 Agreement"), together recorded among the Land Records of Montgomery County, Maryland, in Liber 5262 at Folio 139 (the "Easement Area"); and

WHEREAS, that property, being more particularly described in the attached Exhibit "1" (the "Property"), was included within the land area comprising the afore mentioned Easement Area conveyed to Releasor; and

WHEREAS, Releasor has determined that the Easement Area and the 1977 Agreement can and should be released so that WMATA may use the Property;

**NOW, THEREFORE, THIS DEED OF RELEASE WITNESSETH:**

That Releasor, in consideration of the sum of \$1.00 and other good and valuable consideration, hereby releases and quit claims any and all of its right, title and interest in the Property described on the attached Exhibit 1 for a permanent surface easement, and terms and conditions of the 1977 Agreement shall become null and void and of no future force or effect upon the execution of this Deed of Release.

**IN WITNESS WHEREOF**, Releasor has set its hand and seal this day, month, and year first above written.

Attest:

MARYLAND-NATIONAL CAPITAL PARK  
AND PLANNING COMMISSION

\_\_\_\_\_  
Patricia Colihan Barney  
Secretary-Treasurer

By: \_\_\_\_\_  
Oscar Rodriguez  
Executive Director

STATE OF MARYLAND:  
COUNTY OF MONTGOMERY:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned officer, personally appeared \_\_\_\_\_, personally known to me or satisfactorily proven to me to be the person whose name is subscribed to the foregoing instrument and acknowledged the foregoing to be his act and that he is duly empowered and authorized, as \_\_\_\_\_ for the Maryland-National Capital Park and Planning Commission, to execute this Deed on behalf of the Maryland-National Capital Park and Planning Commission.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

I HEREBY CERTIFY that this deed was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

\_\_\_\_\_  
John J. Fisher  
Associate County Attorney

PARCEL ID NUMBER: \_\_\_\_\_

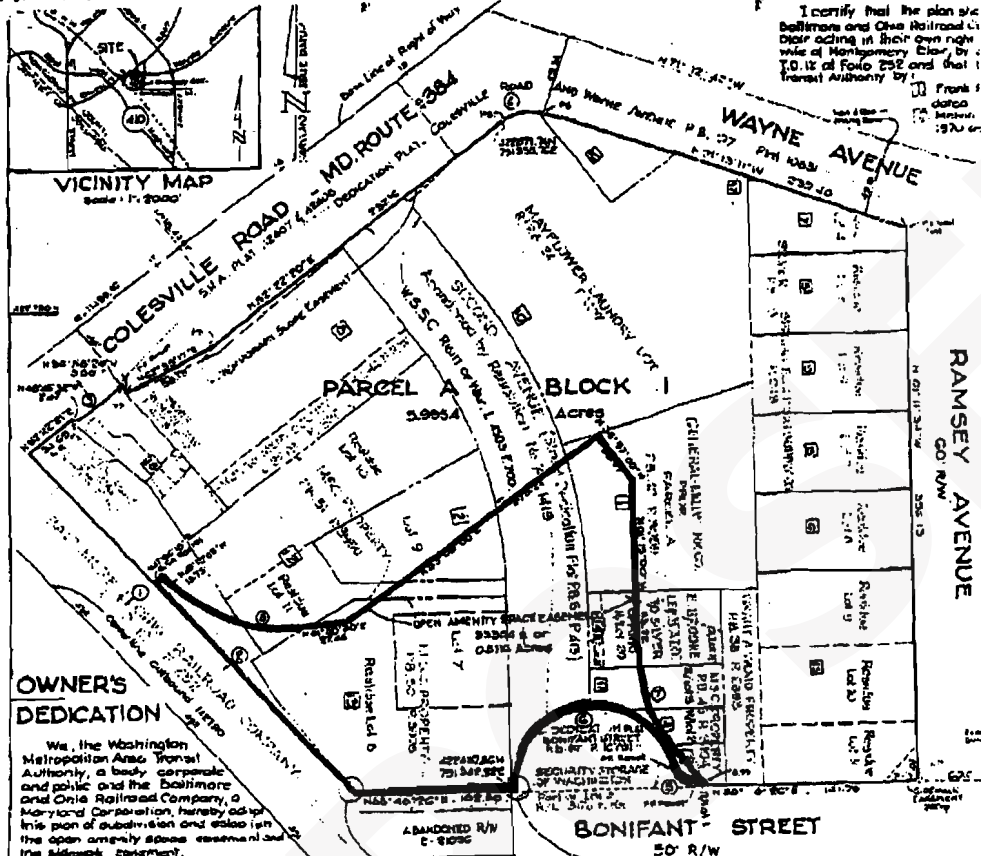
GRANTOR'S ADDRESS: \_\_\_\_\_

GRANTEE'S ADDRESS: \_\_\_\_\_

Return to: John J. Fisher, Associate County Attorney  
Office of the County Attorney  
101 Monroe Street, Third Floor  
Rockville, Maryland 20850

**EXHIBIT 1**  
**The Property**

**That 35,354, more or less, delineated as "Open Space Amenity Easement" on Plat No. 12175, Book 106 recorded on November 16, 1978 in Plat Book 106, Plat No. 12175 recorded on November 16, 1978 in the Land Records of Montgomery County, Maryland, a copy of which is attached hereto.**



I certify that the plan is  
 Baltimore and Ohio Railroad's  
 their acting in their own right  
 wife of Montgomery Blair by  
 TO is of Force 1952 and that  
 Transit Authority by  
 Frank J  
 dated  
 1974

**OWNER'S DEDICATION**

We, the Washington Metropolitan Area Transit Authority, a body corporate and public and the Baltimore and Ohio Railroad Company, a Maryland Corporation, hereby adopt this plan of subdivision and establish the open amenity space contained on the sidewalk easement.

There are no maps of action, leases, liens or trusts on the property included in this plan of subdivision.

September 19, 1978  
 THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

*Joseph J. Madigan*  
 Director  
 Office of Real Estate

September 19, 1978  
 THE BALTIMORE AND OHIO RAILROAD COMPANY

*J. A. Miller*  
 Appraiser  
 M.G. Trimble  
 Manager, Office Services  
 Real Estate/Industrial Dev

**CURVE TABLE**

No.	Station	Angle	Dist.	Chord	Dist. to	Station
1	1+00.00	112.00	31.100	100.00	112.00	1+31.10
2	1+31.10	112.00	31.100	100.00	112.00	1+62.20
3	1+62.20	112.00	31.100	100.00	112.00	1+93.30
4	1+93.30	112.00	31.100	100.00	112.00	1+24.40
5	1+24.40	112.00	31.100	100.00	112.00	1+55.50
6	1+55.50	112.00	31.100	100.00	112.00	1+86.60
7	1+86.60	112.00	31.100	100.00	112.00	1+17.70
8	1+17.70	112.00	31.100	100.00	112.00	1+48.80
9	1+48.80	112.00	31.100	100.00	112.00	1+79.90

LEGEND  
 M.D. Maryland  
 R/W Right of Way  
 P.A. Plat Book  
 P. Plat  
 L. Liber  
 F. File  
 P.S. Plat Set  
 P.P. Pipe found  
 S.S. Right of Way

MARYLAND NATIONAL CAPITAL PARK & PLANNING COMMISSION  
 MONTGOMERY COUNTY PLANNING BOARD  
 APPROVED: OCTOBER 26, 1978  
*Charles M. ...*  
 Chairman

MONTGOMERY COUNTY, MARYLAND  
 DEPARTMENT OF TRANSPORTATION  
 APPROVED: 14 November 1978  
*Richard L. Key*  
 Deputy Director

RECORDED: 11-16-78  
 PLAT BOOK: F-3054  
 PLAT NO.: 1773723

SILVER SPR  
 GLENM  
 THIRTEENTH  
 MONTGOMERY  
 SCALE: 1" = 50'  
 JOHN  
 CIVIL ENGINEER  
 2311 UNIVERSITY

210101

EXHIBIT C  
Form of Deed of Replacement Easements

**DEED OF REPLACEMENT EASEMENT AREAS 1 AND 2**

This DEED is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the Washington Metropolitan Area Transit Authority, a regional body corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of the General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of the District of Columbia Board of Commissioners adopted November 15, 1966, its successors or assigns, hereinafter referred to as "WMATA", and the Maryland-National Capital Park and Planning Commission, a public corporation organized and existing under the laws of the State of Maryland, hereinafter called "the Commission".

WITNESSETH that for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid by the Commission and other good and valuable consideration hereby acknowledged, WMATA does hereby grant and convey unto the Commission, its successors and assigns, a permanent surface easement on and over those areas hereinafter described for use as open space for the use and betterment of the general public, provided further, however, that the same shall not interfere in any manner with WMATA's Transit Center and Metrorail Station operation as specifically set forth in that Memorandum of Understanding for Vacating Original Park Easement And Granting Replacement Easements by and between the Maryland-National Capital Park and Planning Commission, the Washington Metropolitan Area Transit Authority, and Montgomery County, Maryland attached hereto and incorporated herein as Exhibit "1" (the "Memorandum of Understanding"); the said easement being defined as two separate easement areas. Replacement Easement Area 1 and Replacement Easement Area 2 being more particularly described in the attached Exhibit "2."

IT IS FURTHER UNDERSTOOD that WMATA, the Commission and Montgomery County Maryland, a body corporate and politic and subdivision of the State of Maryland (the "County") agree to abide by all conditions contained in the Memorandum of Understanding.

IN WITNESS WHEREOF, the parties hereto have caused this permanent surface easement to be signed by their respective authorized representatives, their corporate seal to be affixed and attested by their respective authorized representatives, all as of the day and year first written above.

[CORPORATE SEAL]

ATTEST:

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

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

\_\_\_\_\_  
Title

Attest:

MARYLAND-NATIONAL CAPITAL PARK  
AND PLANNING COMMISSION

\_\_\_\_\_  
Patricia Colihan Barney  
Secretary-Treasurer

By: \_\_\_\_\_  
Oscar Rodriguez  
Executive Director

[CORPORATE SEAL]

MONTGOMERY COUNTY, MARYLAND

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

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Title

Washington, D.C.

)

)

)

)

TO WIT:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me,  
\_\_\_\_\_, the undersigned Notary Public, personally  
appeared \_\_\_\_\_, of the Washington Metropolitan Area Transit  
Authority, a body corporate and Politic, and that he, as such \_\_\_\_\_,  
being authorized so to do, executed the foregoing instrument for the purposes therein contained,  
by signing the name of the corporate body by himself as \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF MARYLAND )  
 )  
COUNTY OF )  
 )

TO WIT:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me,  
\_\_\_\_\_, the undersigned Notary Public, personally  
appeared Oscar Rodriguez who acknowledged himself to be the Executive Director of the  
Maryland-National Capital Park and Planning Commission, a corporation, and that he, as such  
Executive Director, being authorized so to do, executed the foregoing instrument for the  
purposes therein contained, by signing the name of the corporate body by himself as Executive  
Director.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF MARYLAND )  
 )  
COUNTY OF )  
 )

TO WIT:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me,  
\_\_\_\_\_, the undersigned Notary Public, personally  
appeared \_\_\_\_\_ who acknowledged himself to be the  
\_\_\_\_\_ of the Montgomery County, Maryland, a corporation, and that he, as such  
\_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the  
purposes therein contained, by signing the name of the corporate body by himself as  
\_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

I HEREBY CERTIFY that this deed was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

\_\_\_\_\_  
John J. Fisher  
Associate County Attorney

PARCEL ID NUMBER: \_\_\_\_\_

GRANTOR'S ADDRESS: \_\_\_\_\_

GRANTEE'S ADDRESS: \_\_\_\_\_

Return to: John J. Fisher, Associate County Attorney  
Office of the County Attorney  
101 Monroe Street, Third Floor  
Rockville, Maryland 20850



**EXHIBIT 1**  
**Memorandum of Understanding**

**[TO BE ATTACHED TO RECORDATION DOCUMENT]**

PROPOSED

EXHIBIT 2  
Replacement Easement Area 1 and Replacement Easement Area 2

[TO BE ATTACHED TO RECORDATION DOCUMENT]

PROPOSED

**EXHIBIT D**  
The Essential Elements

Subject to the provisions of Section 2.1, it is the expectation of the County and the Planning Board that the Silver Spring Transit Center will be built in substantial conformance with the Permit Set Package, dated May 18, 2007, as presented during the Mandatory Referral hearing held on June 7, 2007. The following list of "Essential Elements" shall be included in the base bid documents or as "add alternates" and shall be constructed as part of the Silver Spring Transit Center Project in accordance with Section 2.1 of the MOU:

1. The Silver Spring Streetscape treatment shall be provided along Colesville Road from Wayne Avenue, south under the bridge to the limits of the project, except that the Transit Plaza shall incorporate the new paving pattern as indicated on EDAW's most current plan submitted May 21, 2007 and shall extend to the curb line of Colesville Road in the vicinity of the Transit Plaza.
2. The pedestrian areas in level 350 of the Transit Center, including the center island area (but excluding the pedestrian crosswalks), and the new access road from Ramsey Avenue shall be constructed with a concrete base, bond break and concrete surface so that in the future the top concrete surface can be removed and replaced with the Silver Spring Streetscape standard brick. The Silver Spring street light fixtures on level 350 and along the new access road will be installed as part of the transit center construction.
3. Specially paved (stamped modified asphalt) crosswalks shall be installed across Wayne Avenue and Ramsey Avenue (County roads). The County will seek approval by SHA for similar specially paved (stamped modified asphalt) crosswalks on Colesville Road, and will install the crosswalk if approved by SHA. The approved construction detail for these crosswalks will be reviewed and approved by M-NCPPC staff, however, M-NCPPC approval will be subject to approval by the authority having jurisdiction over the individual road improvement. The quality and type of installation shall be similar to the previously installed County crosswalks as located at the corners of Fenton Street and Ellsworth Drive in downtown Silver Spring.
4. Each shade tree planted over structure shall have a minimum of 250 cubic feet of soil to sustain and encourage healthy growth, and shall be designed to include proper drainage. The top level of the transit center deck and adjacent on-grade areas shall include a minimum of 25 shade trees as shown on sheet A2.02.
5. The canopies identified as Canopy 2-6, in the Pre-Bid Construction Documents Package, dated May 18, 2007 shall be constructed as shown as part of the base bid.
6. The canopy covers for Canopy 1-6, as shown in the Pre-Bid Construction Documents Package, dated May 18, 2007 shall be constructed using laminated glass roof panels with a fritted pattern, as shown as part of the base bid.

7. Canopy #1 at the entrance to the Metro Station shall be constructed (using laminated decorative glass roof panels) as described in Alternate 12 of Specification Section 01230 of RFP 7504510123.
8. The stair and escalator enclosures for Escalators 1 & 2 and stair 1 and 5 as shown in the Pre-Bid Construction Documents Package, dated May 18, 2007, shall be constructed as described in Alternate #10 (using glass panels only) of Specification Section 01230 of RFP 7504510123.
9. The Green Roof as shown as shown in the Pre-Bid Construction Documents Package, dated May 18, 2007 shall be constructed as shown allowing for minor adjustments for plant material substitutions as necessary.

**EXHIBIT E**  
**Concept Plans and Materials List**

The following construction materials are intended to be utilized in the Transit Plaza and the Jughandle Park. Samples of all construction materials proposed as part of the Facility Plan submission for the Replacement Easement Areas shall be provided to M-NCPPC staff for review no later than 60 days in advance of the Facility Plan hearing and will be included as part of the application for approval. The final materials list, which will be of similar quality and cost to those materials listed herein, will be determined by the Planning Board during approval of the Facility Plans.

Proposed Materials to be used in the Transit Plaza Easement Area

Paving Field:	Silver Spring standard brick unit paver – color A
Paving Bands:	Granite (Metro gray)
Paving Band Alternate:	Silver Spring standard brick unit paver – color B
Accent Paving:	Wausau precast concrete Terra Pavers with recycled glass aggregate
Steps:	Granite (Metro grey)
Transit Plaza Planters:	Planters to be designed as seat walls with a typical height in the range of 18” – 24”, and a minimum soil depth at tree locations of 36” (planter open at bottom). The planters should be a minimum of four feet wide and shall provide a minimum of 250 cubic feet of soil per tree. Planters to be irrigated and provided with adequate drainage. Planter walls to be Granite veneer (Metro grey)
Lighting:	As shown on the plans, pole mounted fixtures will be included in the planter areas or sloped grass area outside the paved plaza area. The type will be determined at the time of Facility Plan.
Trash cans:	‘Pitch’ receptacle by Landscape Forms or other appropriate receptacle as approved by WMATA and the M-NCPPC.
Bike racks:	WMATA standard
Seating:	The planter walls will provide approximately 150 linear feet of seating. Four (4) benches may be included provided that, in WMATA’s judgement, they can be located in an area that will not interfere with pedestrian traffic. ‘Sit’ or ‘Stay’ benches by Landscape Forms or other bench as acceptable to the M-

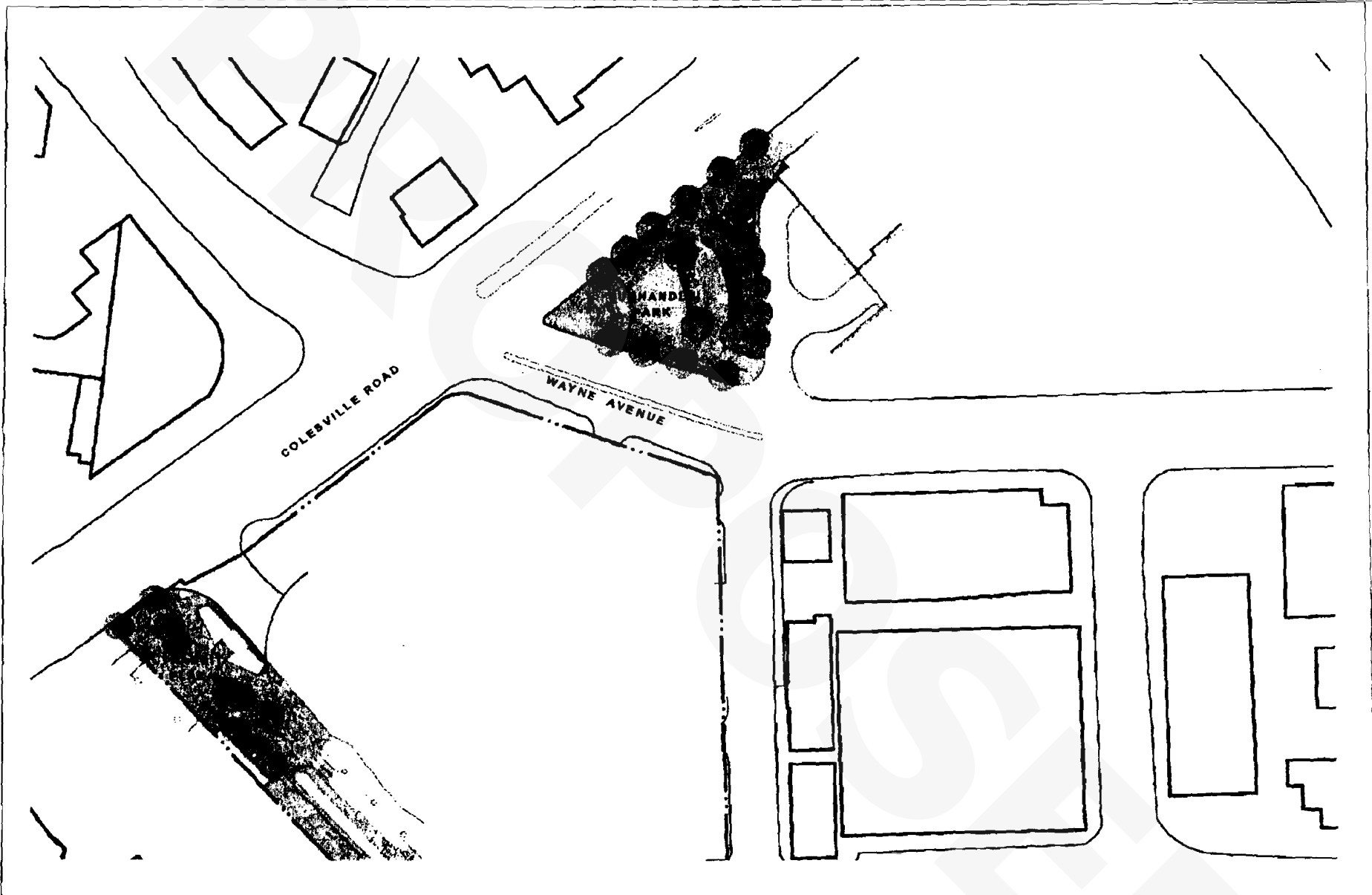
NCPPC as determined at the time of Facility Plan, to be coordinated with the Urban District.

- Tree grates/tree guards: The location and type of tree grates and/or tree guards, if necessary, will be determined at the time of Facility Plan approval.
- Plant Material: Numbers and species to be determined at the time of Facility Plan or Park Permit. Shade trees to be a minimum of 3-1/2"-4" in caliper.

Proposed Materials to be used in the Jughandle Replacement Park

- Paving Field: Silver Spring standard brick unit paver – color A
- Paving Bands: Granite (Metro gray)  
Paving Band Alternate: Silver Spring standard brick unit paver – color B
- Accent Paving: Wausau precast concrete Terra Pavers with recycled glass aggregate
- Retaining/seat walls: Jerusalem stone or other warm/buff color stone similar to that used in the adjacent Discovery Building such as: Idaho Quartz, Amherst Sandstone, Kasota Valley Limestone, etc.
- Turf Panel edging: Granite setts; brick; poured, colored concrete or warm/buff color stone as used in the retaining/seat walls.
- Drinking Fountain: Freeze resistant, handicap accessible drinking fountain. Type and model to be determined at the time of Facility Plan approval.
- Irrigation system: Fully automated system with concealed spray heads in lawn area and drip system in garden bed areas.
- Lighting: Silver Spring standard light pole
- Trash cans: Silver Spring standard or the 'Pitch' receptacle by Landscape Forms, or equivalent, as determined by the M-NCPPC. The number and model of trashcans will be determined at the time of Facility Plan.

<b>Pergola:</b>	<b>Cedar, Ipe Wood, or comparable cost concrete, stone or steel. Materials to be determined based on design at time of Facility Plan.</b>
<b>Tables and Chairs:</b>	<b>'Plateau' Chair and Table by Conceptual Site Furnishings, or equivalent depending on design development and Silver Spring Urban District furnishings. Additional seating is provided by the retaining walls and seat terraces.</b>
<b>Benches:</b>	<b>Up to ten (10) benches may be provided. 'Sit' or 'Stay' benches by Landscape Forms or other bench as acceptable to the M-NCPPC as determined at the time of Facility Plan, to be coordinated with the Urban District.</b>
<b>Turf:</b>	<b>High traffic sod installed over specially designed base to discourage compaction and promote good drainage</b>

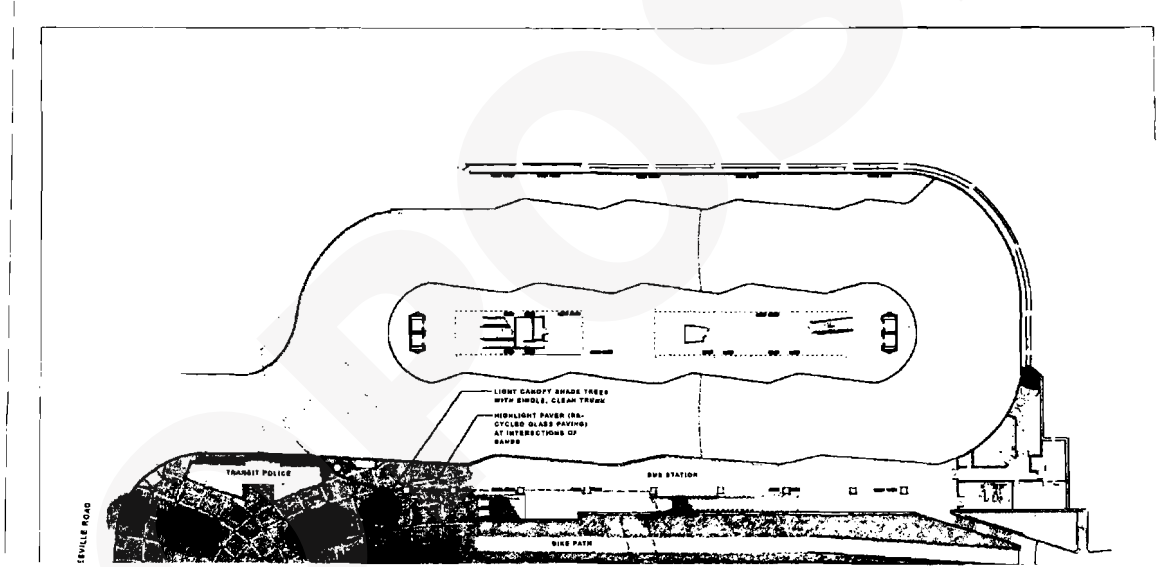


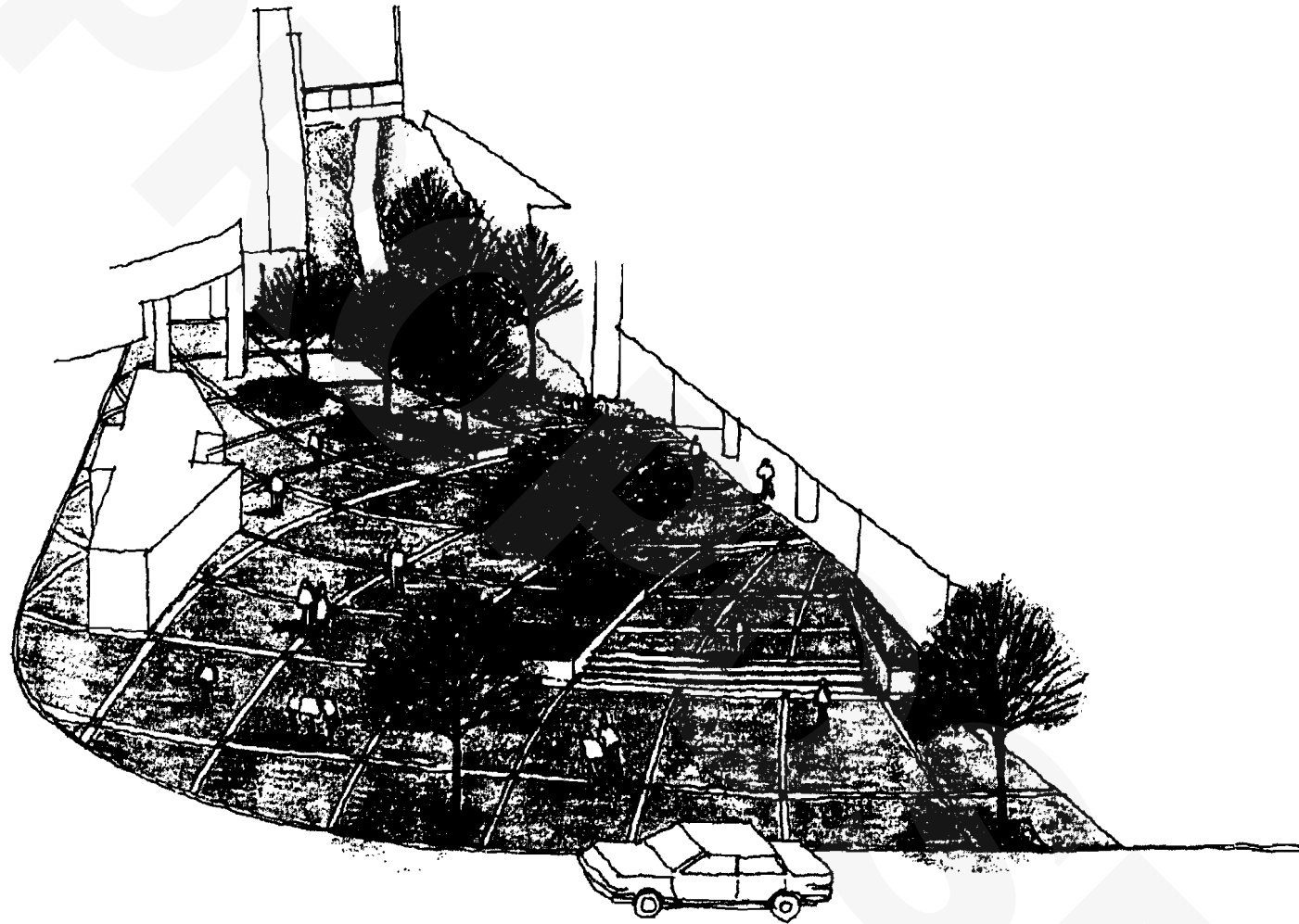
Silver Spring Transit Center Park

CONTEXT PLAN

10/10







AERIAL PERSPECTIVE VIEW

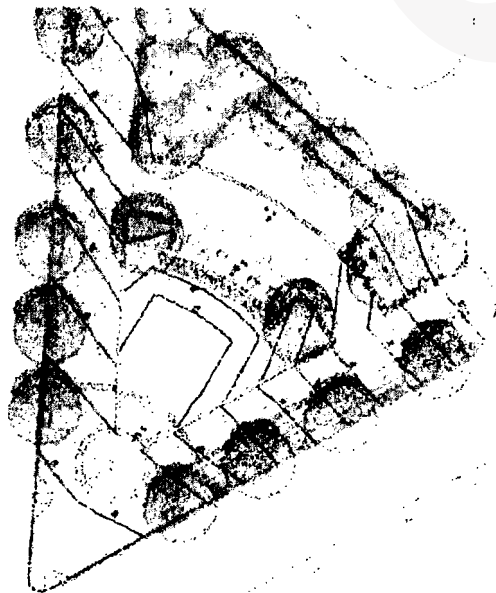
Silver Spring Transit Center Park

TRANSIT PLAZA

11/10/00



TRANSIT PLAZA



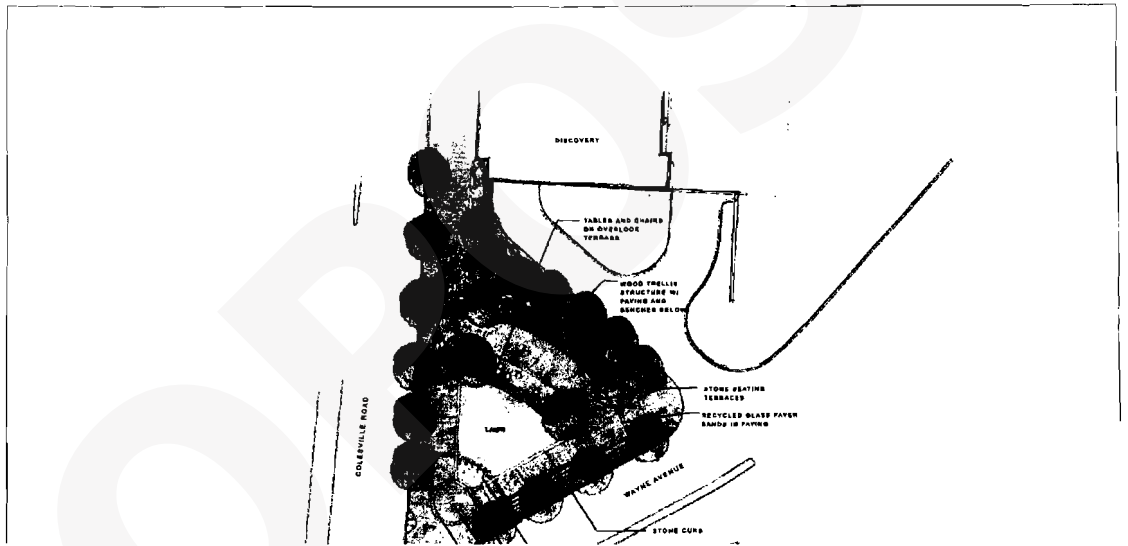
JUGHANDLE PARK - WITH BIKE STATION

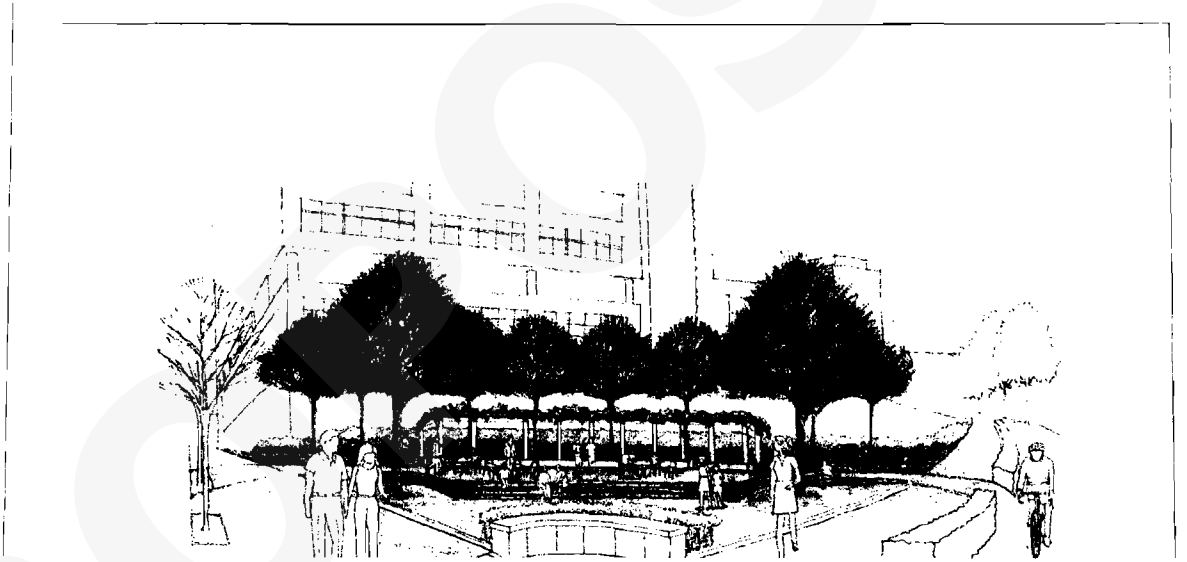


JUGHANDLE PARK - WITHOUT BIKE STATION

Silver Spring Transit Center Park

GRADING







STEEL THERM  
STRUCTURE W/  
BENCHES BELOW      BENTWOOD TERRAZZO      LAWN      GRAY WALL  
AT CORNER

SECTION A-A' WITHOUT BIKE STATION

SCALE 1/8" = 1'-0"



**EXHIBIT F**  
Pre-Approved Changes to the Transit Plaza Easement Area

Per Section 12.4 of the MOU, WMATA shall have the right to move, remove or add the following features to the Metro Transit Plaza Easement Area without obtaining the approval of any other party:

1. Trash Cans
2. Wayfinding and Transit Signage (excluding advertising)
3. Bike Racks
4. Pay Phones

**EXHIBIT G**  
**1977 Agreement**

PROPOSED



RECORDING OFFICE  
MONTG. CO., MD.

1978 DEC 28 AM 10:53

NSC-BCK

CLK.DI.H.C.

REC-78-70 PAID 2092

DEED OF EASEMENT FOR OPEN SPACE

THIS DEED made and entered into this 22<sup>nd</sup> day of January, 1978, by and between the Washington Metropolitan Area Transit Authority, a body corporate and politic, its successors or assigns, hereinafter referred to as "WMATA", and the Maryland National Capital Park and Planning Commission, a public corporation, organized and existing under the laws of the State of Maryland, hereinafter called "The Commission".

WITNESSETH that for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid by the Commission and other good and valuable consideration hereby acknowledged, said WMATA does hereby grant and convey unto the Commission, its successors and assigns, the easement hereinafter described for the construction, reconstruction, maintenance and operation of an open space park facility within said easement, but limited so as not to interfere in any matter with WMATA's operations; the said easement being as described on plat No. 12175, book 106, recorded on November 16, 1978 in the Land Records of Montgomery County, Maryland.

IT IS FURTHER UNDERSTOOD that both WMATA and the Commission agree to abide by all conditions contained in Agreement dated July 18, 1977, between WMATA and the Commission attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Deed to be signed by their respective authorized representatives, their corporate seal to be hereto affixed and attested by their respective authorized representative, all as of the day and year first above written.

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

[CORPORATE SEAL]

ATTEST:

BY: Delmer [son]  
Delmer [son]  
Secretary-Treasurer

BY: Joseph J. Muldoon  
Joseph J. Muldoon  
Director  
Office of Real Estate

MARYLAND-NATIONAL CAPITAL PARK  
AND PLANNING COMMISSION

[CORPORATE SEAL]

ATTEST:

BY: Donald C. Skerwin  
ASSISTANT SECRETARY-TREASURER

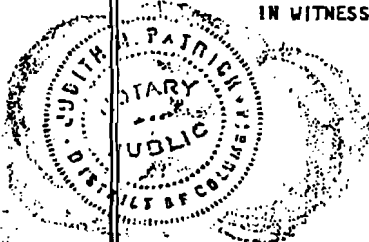
BY: Thomas H. Comtee, Jr.

WASHINGTON, D.C. )

TO WIT:

On this the 21<sup>st</sup> day of December, 1978, before me, JUDITH M. PATRICK, the undersigned Notary Public, personally appeared DELMER LEAN, of the Washington Metropolitan Area Transit Authority, a body corporate and politic, and that he, as such SECRETARY-TREASURER, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporate body by himself as SECRETARY-TREASURER.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Judith M. Patrick  
Notary Public

My Commission Expires October 14, 1983

STATE OF MARYLAND )

COUNTY OF )

TO WIT:

On this the 22<sup>nd</sup> day of Dec, 1978, before me, Wanda L. Wells, the undersigned Notary Public, personally appeared Thomas H. Countee, Jr., who acknowledged himself to be the Executive Director of The Md. North Cap. Park & Chan. Comm., a corporation, and that he, as such Executive Director being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Executive Director.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Wanda L. Wells  
Notary Public

My Commission expires:

July 1, 1983

[SEAL]

MARYLAND ATTORNEY'S CERTIFICATION

I hereby certify that this deed was prepared under my direction.

Richard H. McBurrows

Attorney-at-Law  
Richard H. McBurrows

Date 12-21-78

AGREEMENT

THIS AGREEMENT entered into this 18th day of July, 1977, by and between THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a public Corporation, organized and existing under the laws of the State of Maryland, hereinafter called "the COMMISSION", and WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, a body corporate and politic, hereinafter called "WMATA".

## WITNESSETH:

WHEREAS: The Commission is authorized and empowered to provide parks and recreation facilities for the inhabitants of the Maryland-Washington Metropolitan District, and

WHEREAS, the Silver Spring Metro Station Site consists of a total of 4.0 acres, more or less, of which .77 acre, more or less, of this total acreage shall be designated and hereinafter referred to as "Open Amenity Space". The remaining 3.23 acres, more or less, shall hereinafter be referred to as the "Silver Spring Station Access Area", and

WHEREAS, the exact description of the Open Amenity Space shall be governed by an independent survey by a registered surveyor as hereinafter provided.

NOW, THEREFORE WITNESSETH, in consideration of the premises and mutual promises of the parties herein, it is hereby agreed by and between the parties as follows:

1. WMATA agrees to grant without cost to the Commission a permanent surface easement containing .77 acre, more or less, with perpetual skylight for the purpose of constructing and maintaining a public park for Open Amenity Space purposes by the Commission within the area described as follows:

Part of the tract of land known as Silver Spring Metro Station Site, containing 4.00 acres, more or less, of which .77 acre, more or less, shall be designated for Open Amenity Space for public park purposes. Said Open Amenity Space area is outlined on the attached plat.

2. The Commission shall design a park facility for the Open Amenity Space in a manner which will not interfere with construction and operation of the Metro Silver Spring Station and related transit facilities nor any future air rights development of or on any part of the Silver Spring Metro Station site. Said design plans must be approved in writing by WMATA prior to any actual construction. In addition the Commission must provide WMATA with a detailed development feasibility study showing the physical adaptability of the Silver Spring Metro Station Site for accommodating a commercial building having a minimum gross floor area of approximately 1,000,000 square feet.

3. WMATA, its successors or assigns, shall reserve the right to enter upon the Park Open Amenity Space for the purpose of future air rights development of the Silver Spring Metro Station Site and the Open Amenity Space and if required by a future development design, reserves the right to modify the layout of the park facility in the Park Open Amenity Space to accommodate such a development. WMATA will to the extent possible restore the said park facility area to its pre-existing condition. If exact restoration is not possible, the modification of the park facility shall be accomplished in such a manner as to preserve the general integrity or overall purpose of the facility.

4. WMATA, its successors or assigns, agrees that any air rights development conducted by it, its successors or assigns, that occur on the Silver Spring Metro Station Site shall be submitted to the Commission and subject to the site plan review procedures of the CBD-3 Zone of the Montgomery County Maryland Zoning Ordinance.

5. WMATA agrees to explore the possibility of co-development of air rights on the Silver Spring Metro Station Site with the Commission and Montgomery County.

6. WMATA shall notify the Commission ~~within~~ 60 days in advance of the preparation of the final disposal plan recommendations relative to the sale, lease or disposal of the air rights on or over the Silver Spring Metro Station Site.

7. WHATA shall record the entire 4.00 acre Silver Spring Metro Station Site as one lot with the .77 acre Open Amenity Space recorded as a perpetual open space easement in the Land Records of Montgomery County, Maryland. ~~The Commission accordingly will permit the entire parcel (4.00 acres) to be considered in the calculation of the density permitted and the Open Amenity Space requirements necessary to conform with the CBD-3 zone.~~

8. The Commission shall have the right to review and approve development plans drafted by WHATA, its successors or assigns, for air rights development on or over the Silver Spring Metro Site, relative to the access to the park facility.

9. The invalidity or illegality of any provision of this Agreement shall not affect the remainder of this Agreement or any other provisions of this Agreement.

10. This Agreement shall be construed, interpreted and enforced according to the Laws of Maryland.

11. If for any reason the Commission fails to proceed in accordance with the terms of this Agreement by not completing the construction of the park facility within 24 months from execution of this Agreement, WHATA at its sole discretion may declare this Agreement null and void. In addition, no construction will be permitted by WHATA for the park facility until the Commission complies with all provisions of this Agreement.

If the Commission decides not to proceed under the terms of this Agreement prior to the commencement of construction of the park facility, they shall retain the right to do so upon written notice to WHATA at least ninety (90) days prior to the effective date of said termination. No termination by the Commission shall take place without prior consultation with WHATA and the Montgomery County Planning Board.

12. WHATA retains the right of review and approval of all plans for construction of improvements within the Open Amenity Space to ensure that said improvements will not interfere with abutting Metro facilities and that the improvements will be aesthetically compatible with the Silver Spring Metro Station.

13. The proposed park facility will be constructed at no cost to WHATA and the Commission agrees to accept sole responsibility for all expenses associated with its maintenance. If for any reason the Commission fails to properly maintain the park facility and if in WHATA's judgement said lack of maintenance adversely affects abutting Metro facilities, WHATA may at its sole

discretion after written notice to the Commission perform the necessary maintenance. If the Commission refuses to reimburse WMATA for the incurred maintenance costs or refuses to provide the necessary maintenance, the Commission's rights under the terms of this Agreement may be declared null and void by WMATA and all right, title and interest to the Open Amenity Space and Improvements thereon shall revert to WMATA.

14. The Commission agrees to save and hold harmless and indemnify WMATA against any and all liability claims, and costs of whatever kind and nature arising or alleged to arise for injury, including personal injury or death to any person or persons, and for loss or damage to any property, occurring in connection with or in any way incident to or arising out of the occupancy, presence, use, service and operations of said premises and its facilities by the Commission, resulting in whole or in part from the negligent acts, errors or omissions of the Commission, its principals or agents.

The Commission during the entire term of this Agreement shall procure and maintain, at its own cost and expense, the following type of insurance: General Liability - a standard (10/66 Edition) General Liability Insurance policy or policies or its equivalent issued to and covering the liability of the Commission in accordance with the provisions hereof and all obligations assumed by the Commission under this Agreement.

THE COVERAGE under such policy or policies should have not less than a combined single limit of \$500,000.00, Bodily Injury and Property Damage Liability, each occurrence.

15. This Agreement shall survive the execution and delivery of the Deed of Easement contemplated herein.

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

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

BY: Don V. Spicer  
Don V. Spicer, Executive Director

ATTEST: Roy [Signature]

BY: [Signature]  
via Chairman

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY 7/19/77

ATTEST: [Signature]

BY: [Signature]  
General Manager

