



OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett  
County Executive

October 29, 2008

Timothy L. Firestine  
Chief Administrative Officer

Mr. Robert D. Youngentob  
President  
EYA LLC  
4800 Hampden Lane, Suite 300  
Bethesda, MD 20814

Mr. Jonathan B. Cox  
Senior Vice President  
AvalonBay Communities, Inc.  
2900 Eisenhower Avenue, Suite 300  
Alexandria, VA 22314

Re: Letter of Intent – Smart Growth Initiative

Dear Messrs. Youngentob and Cox:

This letter sets forth the basic terms and conditions under which Montgomery County, Maryland ("County") is prepared to enter into negotiations with Eakin - Youngentob Associates, Inc. ("EYA"), and AvalonBay Communities, Inc. ("AvalonBay"), concerning the acquisition and disposition of certain properties associated with the fulfillment of the County's Smart Growth Initiative ("Letter of Intent").

The County is the owner of a 91 acre parcel of land along Crabbs Branch Road in Gaithersburg, Maryland, known as the County Service Park ("CSP"). The CSP is bisected by Crabbs Branch Road so that approximately 45 acres lie on the West side of Crabbs Branch Road and approximately 45 acres lie on the East side of Crabbs Branch Road. Several County facilities currently occupy CSP West, including the County's Equipment Maintenance Operation Center, County Liquor Warehouse and the County's public schools food preparation facilities.

The County Executive announced his Smart Growth Initiative, a comprehensive strategy to better serve the public interests by relocating several County agencies from their current, outdated and inadequate facilities to other more functional sites in the County and to utilize the properties being vacated by these County agencies to promote the "Smart Growth" ideals of encouraging transit-oriented mixed-use development in close proximity to public transit facilities. One of the goals of the Smart Growth Initiative is to relocate the County facilities now occupying the CSP, and upon such relocation, to develop the CSP with a transit-oriented mixed-use development in accord with the 2005 Shady Grove Sector Plan ("Sector Plan").

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The Sector Plan, which designates the area of the CSP lying to the west of Crabbs Branch Road as "Metro North-CSP" ("Metro North-CSP") and the area of the CSP lying to the east of Crabbs Branch Road as "Jeremiah Park" ("Jeremiah Park"), calls for the relocation of the existing facilities now on the CSP and outlines a plan for the redevelopment that should occur on the CSP and nearby parcels. The Sector Plan specifically identifies the "Casey 6 & 7 Parcels," controlled by EYA, as suitable relocation sites for some of the uses now on the CSP West that need to remain in the vicinity of the Shady Grove METRO and expressly contemplates increasing the proposed density on the CSP if jointly developed with the Casey 6 & 7 Parcels. EYA was substantially involved in the Sector Plan process and proposed the use of Casey 6 & 7 Parcels to the County as potential relocation sites.

Under a joint development plan, the Sector Plan allows up to 40,000 square feet of retail development, 133,250 square feet of office development, and 2,240 residential units, including substantial numbers of MPDU, TDR, and Workforce units, to be developed on the total CSP. Of the total residential units allowed on the CSP by the Sector Plan, a maximum of 1,540 are allocated to Metro North-CSP, including all bonus densities.

AvalonBay Communities, Inc. ("AvalonBay") is the contract purchaser of a 51+/- acre property located at 100 Edison Park Drive in Gaithersburg, Maryland (the "GE Tech Property"). The GE Tech Property is improved with a 5-story, 375,000 square foot building that formerly served as the headquarters for the National Geographic Society. AvalonBay responded to a solicitation issued by the County that sought potential relocation sites for facilities at the CSP. AvalonBay proposed to sell the GE Tech Property to the County, for use as a relocation site for County facilities, in exchange for providing AvalonBay with an exclusive right to purchase a portion of the CSP. The County believes that the GE Tech Property is better suited to serve as the headquarters for the administrative offices of the County's public safety departments and is interested in acquiring the property for that purpose.

County, EYA, and AvalonBay enter into this non-binding Letter of Intent and further describe their respective intentions, in furtherance of the County's Smart Growth Initiative and the redevelopment of the CSP, as follows:

- (1) Purchase and Sale Agreement for the Casey 6 & 7 Parcels. County and EYA will use commercially reasonable efforts to enter into a binding Purchase and Sale Agreement, by December 1, 2008, for the County's acquisition of the Casey 6 and 7 Parcels. It is the intention of the parties that, in addition to such other terms as are mutually agreed to between the two parties, the Purchase and Sale Agreement will include the following provisions:
  - (a) The price to be paid for Casey 6 and 7 Parcels shall be the fair market value, as mutually agreed to by EYA and County, based on the amount of residential and office density permitted in the approved Phase II Preliminary Plan for the Casey 6 & 7 Parcels.

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- (b) Closing shall be all cash and shall occur on or before July 3, 2009.
- (c) EYA and County will enter into an exclusive negotiating period, for 180 days after execution of the Purchase and Sale Agreement, in which EYA and County shall use commercially reasonable efforts to enter into a Master Planning Agreement that would detail the role of EYA as the CSP Master Planner, as further described in paragraph (3) below.
- (2) Purchase and Sale Agreement for the GE Tech Property. County and AvalonBay shall use commercially reasonable efforts to enter into a binding Purchase and Sale Agreement, by December 1, 2008, for the County's acquisition of GE Tech Property. Both County and AvalonBay acknowledge that they have been in extended negotiations for the acquisition of the GE Tech Property. It is the intention of the parties that, in addition to such other terms as are mutually agreed to between the two parties, the Purchase and Sale Agreement will include the following provisions:
- (a) The price to be paid for the GE Tech Property shall be the fair market value, as mutually agreed to by AvalonBay and County in their respective sole discretion;
- (b) AvalonBay will deliver title to the GE Tech Property free and clear of all encumbrances, including, but not limited to, the existing financing that encumbers the property;
- (c) AvalonBay will terminate the existing lease of the GE Tech Property prior to closing.
- (d) In exchange for its agreement to sell the GE Tech Property, AvalonBay shall have the opportunity to enter into an agreement as the Multi-Family Component Developer to purchase land for 600 multifamily units and related retail on Metro North-CSP at the fair market value price, including mutually agreed escalations in that price, together with such other terms and conditions, that are contained in an agreement, in form and substance mutually agreeable to Avalon Bay and the County, to be entered into at the same time as the Purchase and Sale Agreement. Subject to an agreement between Avalon Bay and EYA as to how density should be allocated on the Metro North-CSP, AvalonBay may have a further first right of opportunity to purchase land for additional multi-family units approved for development on the Metro North-CSP pursuant to the terms and conditions of a purchase and sale agreement to be entered into at the same time as the Purchase and Sale Agreement.
- (3) Master Planning Agreement for the CSP. Following the execution of the Purchase and Sale Agreement contemplated in Paragraph (1), County and EYA shall use commercially reasonable efforts to enter into a Master Planning Agreement for the CSP. It is the intention of the parties that, in addition to such other terms as are mutually agreed to

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between the two parties, the Master Planning Agreement will include the following provisions:

- a) EYA shall serve as the CSP Master Planner. In its role as Master Planner, EYA shall be responsible to oversee the Pre-Development Design Work (to be defined in the Master Planning Agreement), which shall include creating a Redevelopment Plan for the CSP that substantially implements the Sector Plan vision for the CSP.
- b) The scope of work contemplated under the Master Planning Agreement in accordance with the Sector Plan shall be the Pre-Development Work necessary to create the redevelopment plan for the County Service Park that will implement the Sector Plan, maximize the allowable density on the CSP, and optimize the land value for the County. This work shall include (i) preparing and seeking approval of a preliminary development concept plan (the "Preliminary Concept Development Plan"), (ii) preparing and seeking approval of a Preliminary Plan Application ("Preliminary Plan Approval"), (iii) preparing and seeking approvals of a Final Site Plan Application ("Final Site Plan Approval"), and (iv) preparing and seeking approval of a plat of subdivision ("Subdivision Plat Approval).
- c) County and EYA shall mutually agree on a schedule of Performance Milestones for EYA to complete the Master Planning Work. Such milestones will include, but not be limited to, preparation of a preliminary development concept for the CSP, submission of a Preliminary Plan Application and submission of a Final Site Plan Application.
- (a) d) In exchange for performing its role as Master Planner, EYA shall have the right to purchase land on Metro North-CSP for 338 attached single family attached units, as provided in the Sector Plan, at the fair market value price (including mutually agreed additional price payments to compensate the County should the units sell for prices greater than in 2008) and under terms and conditions as contained in the Master Planning Agreement. Subject to an agreement between Avalon Bay and EYA as to how density should be allocated on the Metro North-CSP, EYA may have the further first right of opportunity to purchase land on the Metro North-CSP for additional single family attached units pursuant to the terms and conditions of a purchase and sale agreement entered into at the same time as the Purchase and Sale Agreement.

County, EYA and AvalonBay agree not to market their respective properties which are the subject of this Letter of Intent, or solicit, or negotiate for, or accept offers for the purchase of such properties, or enter into any agreements for sale of such properties with other potential purchasers, for a period of ninety (90) days after the date of this Letter of Intent. County, EYA and AvalonBay shall have the right, at any time prior to the expiration of such ninety (90) day period, to cancel or withdraw this Letter of Intent by written notice to the other party. If the parties have not entered into the Purchase and Sale Agreements contemplated by this Letter of Intent, on or before the end of such ninety (90) day period, then this Letter of Intent shall

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automatically fully and forever terminate and the parties shall have the right to market their properties which are the subject of this Letter of Intent, or solicit or accept offers for the purchase or lease of such properties, and to enter into and consummate agreements in connection therewith, and this Letter of Intent shall be null and void. The foregoing provisions are referred to as the "Exclusivity Provisions."

This Letter of Intent is and is intended only to be an expression of interest, by the parties signing and accepting this letter, to the transaction herein described, and in no event shall this Letter of Intent or any modifications hereof, or any correspondence in any form, negotiations, submissions of draft contracts or other documents, or any discussions, between the parties hereto or their agents, counsel or employees shall be deemed to be or constitute a binding contractual agreement or other legally enforceable obligation of any kind upon or among County, EYA and AvalonBay to any such or any other matters, or an express or implied duty of the parties to negotiate or agree upon, execute, deliver or consummate any agreement or any other documents concerning the properties which are the subject matter of this Letter of Intent. Any legally binding obligation, if any, shall be only as may be contained in the Purchase and Sale Agreements mutually agreed upon, executed and delivered by the parties concerning the properties that are the subject matter of this Letter of Intent. Notwithstanding anything to the contrary set forth in this Letter of Intent, the County expressly reserves the right to acquire the GE Tech Property and/or Casey 6 & 7 Parcels for a public purpose, in its sole judgment and absolute discretion, through any means legally available to the County, including the exercise of its power of Eminent Domain. All such rights are expressly reserved by the County.

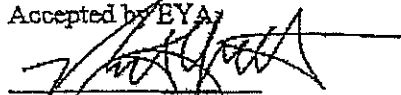
The County looks forward to working with EYA and AvalonBay on the County's Smart Growth Initiative. Please have EYA and AvalonBay execute the Letter of Intent and return it to me.

Sincerely,



Diane R. Schwartz Jones  
Assistant County Administrative Office for  
Montgomery County, Maryland

Accepted by EYA



Accepted by AvalonBay

