



**PLANNING AND PROGRAMMING COMMITTEE**

**April 20, 2006**

**SUBJECT: CESAR CHAVEZ AND SOTO JOINT DEVELOPMENT**

**ACTION 1: WAIVE THE REQUIREMENT FOR AN EXCLUSIVE RIGHT TO NEGOTIATE (ENA) BETWEEN METRO AND CESAR CHAVEZ AND SOTO, LLC.**

**ACTION 2: AUTHORIZE THE NEGOTIATION AND EXECUTION OF A JOINT DEVELOPMENT AGREEMENT AND GROUND LEASE WITH CESAR CHAVEZ AND SOTO, LLC.**

**RECOMMENDATION**

- A. Waive the requirement for an Exclusive Right to Negotiate with Cesar Chavez and Soto, LLC (**Developer**) for the development of the Cesar Chavez and Soto sites.
- B. Authorize the Chief Executive Officer to: enter into a Joint Development Agreement (“**JDA**”) with Cesar Chavez and Soto, LLC (“**Developer**”), covering approximately 3.5 acres of Los Angeles County Metropolitan Transportation Authority (“**Metro**”) owned properties located near the intersection of Cesar Chavez Avenue and Soto Avenue (“**Site**”) for development of a mixed-use, entertainment, apartment/commercial complex. The key terms and conditions of the proposed JDA are set forth on Attachment “A” (the “**Development**”) and;
- C. Authorize the Chief Executive Officer to enter into a Ground Lease and other agreements as may be necessary to implement the Ground Lease subject to Developer meeting the contingencies and requirements of the JDA.

**ISSUE**

In December 2004, the Board voted six to zero to approve an Exclusive Negotiation Agreement (“**ENA**”) with Developer for development of the Site. While the six to zero vote represented a majority to approve this item, the six voting members did not represent a quorum of the Metro Board. If the negotiated agreement is to be accepted, the Metro Board must waive the need for an ENA. Staff negotiated terms and condition assuming approval of the ENA. Staff has negotiated terms and conditions for the proposed JDA and Ground Lease, and is recommending acceptance of the terms and conditions described in Attachment “A”.

## **BACKGROUND**

The Site contains approximately 3.5 total acres and consists of various parcels on the south side of Cesar Chavez Avenue, commencing on the east side of Soto Street and extending two-blocks eastward across Matthews Street to the west side of Fickett Street as depicted on Attachment "B". The Development (depicted on Attachment "C") will consist of 90 to 100 for-rent housing units located above 40,000 to 50,000 square feet of ground floor retail/entertainment space, and sufficient parking spaces to satisfy all legal requirements.

The Site was originally purchased as part of the Metro Red Line Eastside Extension, development of which was halted in 1998. Upon re-scoping that project, Metro determined that the Site should be used as a construction office and parking area for the contractor constructing the Metro Gold Line Eastside Extension ("Metro Contactor") and the Site is currently being used for those purposes. Because of the Site's current usage, the Developer will be required, at its sole expense, to provide for the relocation of the Metro Contractor's operations from the Site in order to obtain use of the Site prior to the completion of the Metro Gold Line Eastside Extension (scheduled for 2009). The Developer will pay "Holding Rent" (defined in Attachment A) from the date of execution of the JDA to the commencement of construction. However if the Developer is unable to effect the proposed relocation and commence construction by July 1, 2007, while the Developer will continue to pay a Holding Rent, the "Initial Value of the Premises" (defined in Attachment A) on which the computation of rent is computed (and thus the "Base Rent" defined in Attachment A) will also be increased so as to reflect any increase in the CPI from 2006 that occurs during the period between execution of the JDA and execution of the Ground Lease and attendant commencement of construction of the Development. Execution of the JDA, and the Ground Lease will allow the Developer to construct and operate the Development on the Site.

The Developer's project team includes the following firms and firm contacts:

JSM Construction, Inc (Craig Jones, President)  
Polis Builders, Ltd. (Nick Patsaouras)  
Prudential Real Estate Investors (Damian Manolis, Principal)  
Citibank, N.A. (Patricia Davis, Senior Relationship Manager)  
Barrio Planners Incorporated (Frank Villalobos, President)

## **POLICY IMPLICATIONS**

The recommended action is consistent with the goals of the Joint Development Policies and Procedures approved by the Board at its April, 2002 meeting ("Joint Development Policy"). The Metro Joint Development Policy requires that the Board approve an ENA as part of the Joint Development process. The wavier is to insure that the intent of the policy was carried out. The goals of the Joint Development Policy are to promote and enhance transit ridership, enhance and protect the transportation corridor and its environs, enhance the land use and economic development goals of surrounding communities, conform to local and

regional development plans, and generate value for Metro based on a fair market return on public investment. Metro staff has concluded that the Development meets the goals contained in the Joint Development Policy.

## **OPTIONS**

The Board could choose not to authorize the negotiation and execution of the JDA and Ground Lease, reject the current terms and conditions and elect to offer or not to offer the Site to other potential developers. Staff is not recommending any of these options as the Development represents a sound development scenario for the Site and, in order to select another developer, Metro would be required to undertake a new solicitation, selection and negotiation process for development on the Site, which might not result in a reasonable alternative to the Development. In addition, Staff has determined that the terms and conditions of the Development (as set forth in Attachment "A") will provide a fair and reasonable financial return to Metro.

## **FINANCIAL IMPACT**

Funding for the joint development activities is included in the FY06 Budget under Project # 405510 and Task# 06.001.07 in cost center 4320. The financial benefits to Metro over the term of the agreement are detailed in Attachment "A."

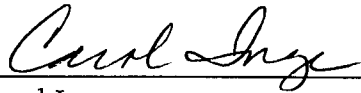
## **NEXT STEPS**

Upon approval of the recommended actions, the Chief Executive Officer will complete the detailed negotiation and documentation of the specific terms of the JDA and Ground Lease in accordance with the terms and conditions set forth in Attachment "A." Upon completion and execution by the Chief Executive Officer of the JDA, the Developer will commence the process of securing the necessary entitlements from the City of Los Angeles to construct the Development consistent with the attached terms and conditions.

## **ATTACHMENTS**

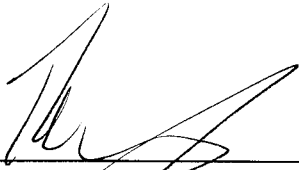
- A. Summary of Terms and Conditions of the Development Agreement and Ground Lease.
- B. Metro Properties and Development Site at Cesar Chavez and Soto.
- C. Conceptual Layout for the Development.
- D. Conceptual Rendering.

Prepared by: Robin Blair, Transportation Planning Manager  
Diego Cardoso, Director  
Central Area Planning Team



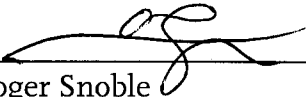
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Carol Inge  
Interim Chief Planning Officer



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Roger Moliere  
Executive Officer, Real Property Management & Development



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Roger Snoble  
Chief Executive Officer

**ATTACHMENT A**  
**GROUND LEASE TERM SHEET**

**Summary of Terms and Conditions of Joint Development Agreement and Ground Lease**

***CESAR CHAVEZ AND SOTO DEVELOPMENT SITE***

**DESCRIPTION:**

- Lessor:** Los Angeles County Metropolitan Transportation Authority (“METRO”).
- Lessee:** Cesar Chavez and Soto, LLC (“Developer”).
- Premises:** Parcels 1-4 (approximately 154,638 square feet) as depicted on Exhibit “A” attached hereto (the “Premises”).
- Ground Lease:** The agreement governing the use of the premises shall be an unsubordinated ground lease (the “Ground Lease”).
- Property Value:** The current value of the Premises has been determined to be \$5,412,330 – equal to \$35 per square foot (“Initial Value”), which will be used to establish the initial Base Rent (as defined below). Beginning July 1, 2007, and annually thereafter, the Initial Value will be increased in accord with increases in the Consumer Price Index (CPI) above base year 2006, if the Ground Lease is not executed prior to July 1, 2007.
- Development:** The “Development” will consist of 90 to 100 for-rent housing units located above 40,000 to 50,000 square feet of ground floor retail/entertainment space, and a sufficient number of structured or unstructured parking spaces to satisfy all legal requirements for parking at the Development.

## JOINT DEVELOPMENT AGREEMENT (“JDA”):

### **Predevelopment Period:**

The terms of the JDA will encompass the period during which the parties will enter into an escrow and Developer and METRO will complete all conditions precedent to entering into the Ground Lease (the “**Predevelopment Period**”). Major conditions precedent to the close of escrow and entering into the Ground Lease are, among others, the requirement that Developer obtain all necessary entitlements, complete arrangements and commitments for financing and complete construction, and completion (and METRO approval) of the design of the Development.

The JDA will address, among other matters, all of the below listed issues through the date that Developer has satisfied the conditions for execution of the Ground Lease and is ready to commence construction and METRO has received the required assurances that the Development will go forward, at which time Developer and METRO will enter into the Ground Lease (the form of which will be an exhibit to the JDA).

### **Design Review:**

During the Predevelopment Period, METRO will review and have the right to approve the design of the Development and all improvements, as well as the final construction documents as a condition to the close of escrow. Approval of schematic plans, including the design elements, will be at METRO’s sole and absolute discretion and approval of construction documents will be at METRO’s reasonable discretion, provided any proposed modifications represent a natural evolution from the approved schematic plan.

### **Financial Assurances:**

Prior to close of escrow, Developer shall provide, for the benefit of METRO, acceptable financial assurances as to Developer’s ability to design, construct and operate the Development. Such financial assurances will survive the close of escrow, be included in the Ground Lease, and will ensure, among other things, the completion of construction of the Development. The determination of the form and amounts of such assurances will be in the sole discretion of METRO.

**Holding Rent:**

During the Predevelopment Period, Developer will pay rental amounts (“**Holding Rent**”), which shall begin on the earlier of the date the JDA is mutually executed and delivered (the “**Effective Date**”) or six (6) months after Board approval of authorization to negotiate and enter into the JDA and Ground Lease, and will continue until the Commencement Date (as defined below). Monthly Holding Rent during the Predevelopment Period will be twenty-five percent (25%) of the Base Rent. If, however, developer is unable to effect the relocation of the existing construction related uses and enter into the Ground Lease prior to July 1, 2007, the Developer may extend its right to satisfy the conditions to enter into a ground lease by paying an annual holding rent equal to 10% of the Base Rent, but the Land Value upon which the Base Rent is computed will be increased annually in accord with increases in the Consumer Price Index (CPI) above base year 2006 until the Commencement Date (below defined) of the lease,

**Transfers:**

During the Predevelopment Period, Developer may not transfer its rights or obligations under the JDA, or any portion thereof, without METRO’s consent, which consent may be withheld at METRO’s sole and absolute discretion.

**GROUND LEASE:**

**Term:**

Fifty-five (55) year initial term with (if Developer is not in default under the JDA, the Ground Lease or any other agreement between the parties) a single ten (10) year option (the “**Option Period**”) to extend (collectively the “**Lease Term**”).

**Lease Commencement:**

The Ground Lease will commence after satisfaction of all of the conditions to closing set forth in the JDA, the delivery to escrow of the mutually executed Ground Lease and related document(s), and the close of escrow (the “**Commencement Date**”), but in no event later than the earlier of January 3, 2011, or six (6) months after the Premises cease to be used to support construction of the Metro Gold Line Eastside Extension.

**Construction Period:**

The Ground Lease will require commencement of construction immediately after the Commencement Date

and the construction period (“**Construction Period**”) will commence on the Commencement Date and extend to the earlier of (a) completion of construction of the Development or, (b) **twenty-eight (28)** months after the Commencement Date.

**Construction Review:**

During the Construction Period, METRO will have the right to review, inspect and approve any changes to the design of building exterior or bulk in its sole and absolute discretion and will also have the right to review, inspect and approve changes to the design of the Development’s interior features at its reasonable discretion. METRO will retain the same design-approval rights for any improvements later sought to be added to the Development at any time during the Lease Term.

**Construction Rent:**

During the Construction Period, Developer will pay monthly rent (“**Construction Rent**”) at the rate of fifty percent (50%) of the Base Rent.

**Lease-Up Period:**

Completion of construction in fewer than twenty-eight (28) months shall entitle the Developer to a phased rental period (the “**Lease-Up Period**”), that will commence on the date halfway between the actual date of completion of construction and the date that is twenty-eight (28) months from the Commencement Date. During the Lease-Up Period, the Developer will be entitled to the benefit of a phased “**Lease-Up Rent**” (defined below). The Developer’s failure to complete construction within twenty-eight (28) months, however, will result in the immediate imposition of full Base Rent and Developer shall not have the benefit of Lease-up Rent.

**Lease-Up Rent:**

During the Lease-Up Period, if Developer is not otherwise in default under the JDA, Ground Lease or any other agreement between the parties, Developer will pay “**Lease-Up Rent**” calculated as follows: from commencement of the Lease-Up Period to the date thirty-four (34) months after Commencement Date, rent equal to fifty percent (50%) of the Base Rent; during the succeeding six (6) month period, rent equal to sixty-six and seven-tenths percent (66.7%) of the Base Rent and; for the next succeeding six (6) month period, rent equal to eighty-three and four-tenths percent



(83.4%) of the Base Rent after which full Base rent will apply for the remainder of the Lease Term.

**Base Rent:**

Initial annual Base Rent will be the sum equal to 9.00% of the Initial Value to be paid by Developer to METRO, payable in twelve (12) equal monthly payments, until increased in accordance with the provisions set forth below (“**Base Rent**”). However if the Lease Commencement Date extends beyond July 1, 2007, the Initial Value (and, thus, Base Rent) shall be increased in accordance with increases in the CPI over base year 2006 through the Lease Commencement Date.

**Base Rent Increases:**

Subject to the minimum required and maximum allowable increased rental percentages set forth in the table below, Base Rent increases will be computed as follows:

Base Rent will be increased by the amount of the initial Base Rent multiplied by the percentage of the cumulative increase in the CPI plus two percent (2%) on the fifth (5<sup>th</sup>) anniversary of the end of the Construction Period. On the tenth (10<sup>th</sup>) anniversary of the end of the Construction Period, the then-current Base Rent will be increased by the amount of the then-current Base Rent multiplied by the percentage of the cumulative increase in the CPI during years six (6) through ten (10) plus two percent (2%). Beginning on the fifteenth (15<sup>th</sup>) anniversary date of the end of the Construction Period and every five (5) years (on the anniversary date of the end of the Construction Period) thereafter through the thirtieth (30<sup>th</sup>) anniversary date of the end of the Construction Period, the then-current Base Rent will be increased by the amount of then-current Base Rent multiplied by the percentage of the cumulative increase in the CPI during the preceding five (5) year period.

On the thirty-fifth (35<sup>th</sup>) anniversary of the Commencement Date, there will be a Market Rate Adjustment (as defined below). From the fortieth (40<sup>th</sup>) anniversary of the Commencement Date until the commencement of the Option Period, the then-current Base Rent will be increased every five (5) years (on the anniversary date of the Commencement Date) by the amount of the then-current Base Rent multiplied by the percentage of the cumulative increase in the CPI during the preceding five (5) year period.

If Developer exercises its option to extend the Lease Term, there will be a Market Rate Adjustment on the fifty-fifth (55<sup>th</sup>) anniversary of the Commencement Date. On the sixtieth (60<sup>th</sup>) anniversary of the Commencement Date, the then-current Base Rent will be increased by the amount of the then-current Base Rent multiplied by the percentage of the cumulative increase in the CPI during the preceding five (5) year period.

Rent Increase Commencing in Lease Year:	6	11	16, 21 and- 31	36	41 – 51	56	61
Maximum Increase	15% + 2%	17.5% +2%	20%	Market	20%	Market	20%
Minimum Increase	7.5%	8.75%	10%	Market	10%	Market	10%

**Percentage Rent:**

The Developer shall also pay, as additional rent, a sum equal to four percent (4%) of annual gross retail/commercial rent received by Developer (“**Percentage Rent**”) during the first eight (8) years following the execution of the first retail/commercial sublease in the Development. Beginning on the eighth (8<sup>th</sup>) anniversary of the execution of the first retail/commercial sublease, and continuing through the remaining Lease term, the annual Percentage Rent shall be increased to a sum equal to 6% of annual gross retail/commercial rent.

**Market Adjustment:**

The Base Rent shall be adjusted to a fair market rate (the “**Market Rate Adjustment**”) as of the thirty-fifth (35<sup>th</sup>) anniversary of the Commencement Date and, if the Developer exercises its option to extend the Lease Term, as of the fifty-fifth (55<sup>th</sup>) anniversary of the Commencement Date

The Market Rate Adjustment will be based on an appraisal of the Premises in which the appraiser will assume that the Premises is vacant and usable only for those uses permitted under the Ground Lease.

**Right of First Offer:**

METRO will provide Developer with a first right to make a purchase offer for the Premises if (a) such right of first offer would not violate or conflict with any present or then-

current law, rule, regulation, or policy applicable to METRO or its activities, (b) METRO elects to offer the Premises for sale at any time during the Lease Term, (c) Developer is not in default under the JDA, the Ground Lease or any other agreement between the parties, and (d) Developer responds in accordance with the procedure set forth in the Ground Lease (including time limits and monetary deposits). If Developer's offer is not accepted, METRO will have the right to sell the Premises to a third party without further rights of Developer, so long as the sale price meets or exceeds ninety-five percent (95%) of the sale price at which the Premises was previously offered to Developer.

**Reversion:**

At the expiration of the Lease Term (including the Option Period, if exercised) and at METRO's election, Developer will be responsible for the demolition and removal of the Development and any other improvements then located on the Premises and for returning the Premises to METRO in its original condition.

**Reserves:**

At least five (5) years prior to the expiration of the Lease Term, Developer will provide a demonstration that its required demolition reserve (the funding schedule and the procedure for determining the amounts to be funded are to be included in the Ground Lease) is adequate to demolish and remove the Development, and any subsequent improvements, from the Premises at the end of the Lease Term, and Developer will be required to immediately fund any shortfall in such reserves.

**Encumbrances:**

Subject to METRO's reasonable approval, Developer may encumber its leasehold estate with mortgages, deeds of trust or other financing instruments. The Ground Lease will include mutually acceptable mortgagee protection provisions. In no event will METRO's fee title or rent payable to METRO, or any portion thereof, be subordinated or subject to Developer's financing or other claims or liens.

**Assignment and Subletting:**

With limited permitted exceptions, to be set forth in the Ground Lease, Developer's right to assign the Ground Lease (a) prior to completion of all Development construction will be subject to METRO's approval at its sole and absolute discretion and (b) after completion of all Development construction will be subject to METRO's approval at its

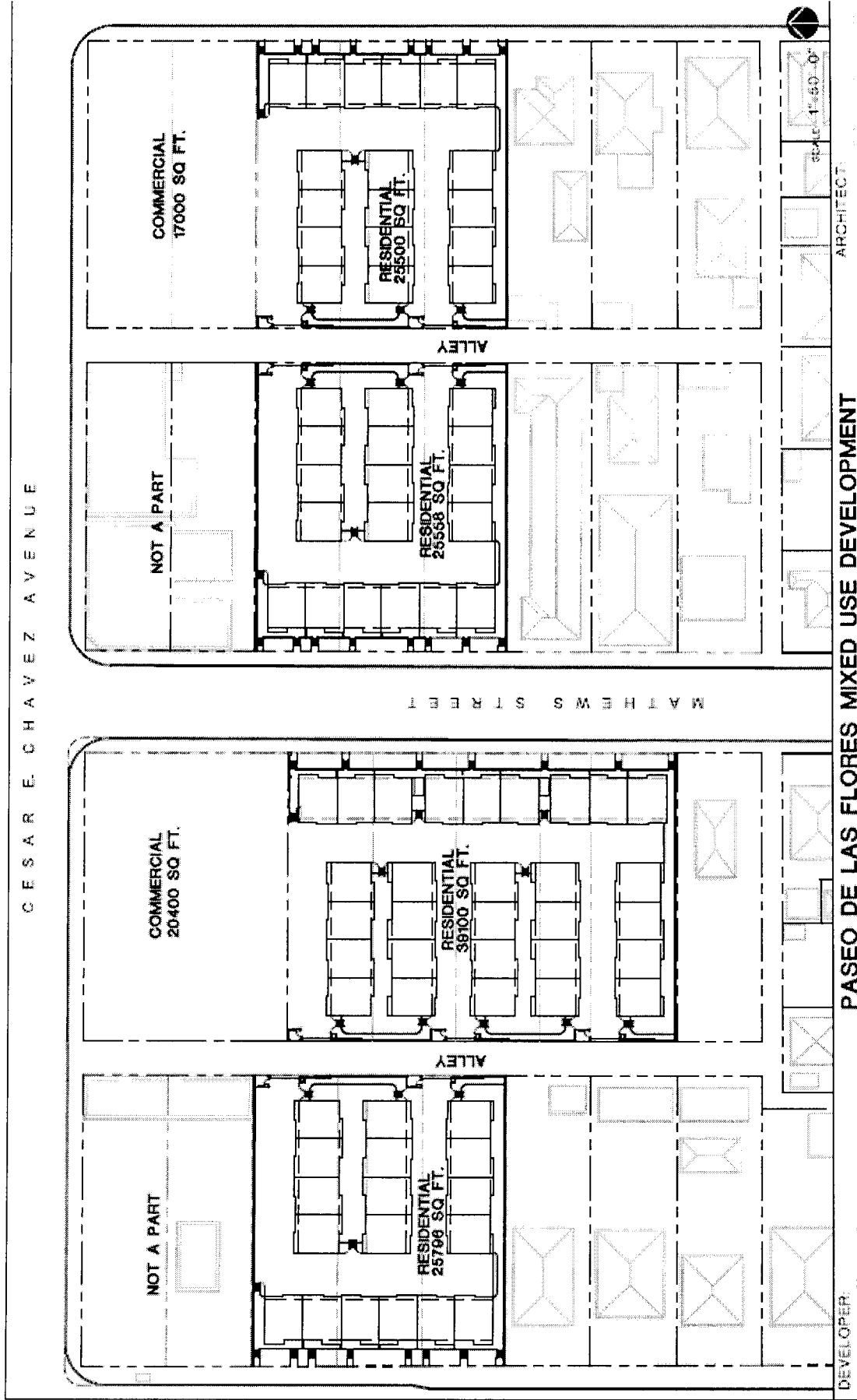
reasonable discretion including METRO's satisfaction as to any proposed assignee's creditworthiness and experience. METRO will provide any of Developer's retail/commercial or signage subtenants who have subleased space in excess of Twenty five hundred (2,500) square feet for a period of at least five (5) years a non-disturbance agreement.

**Other:**

Other customary provisions contained in recent MTA ground leases will be included in the Ground Lease.

# ATTACHMENT B

## Metro Properties and Development Site at César Chavez and Soto



# ATTACHMENT C

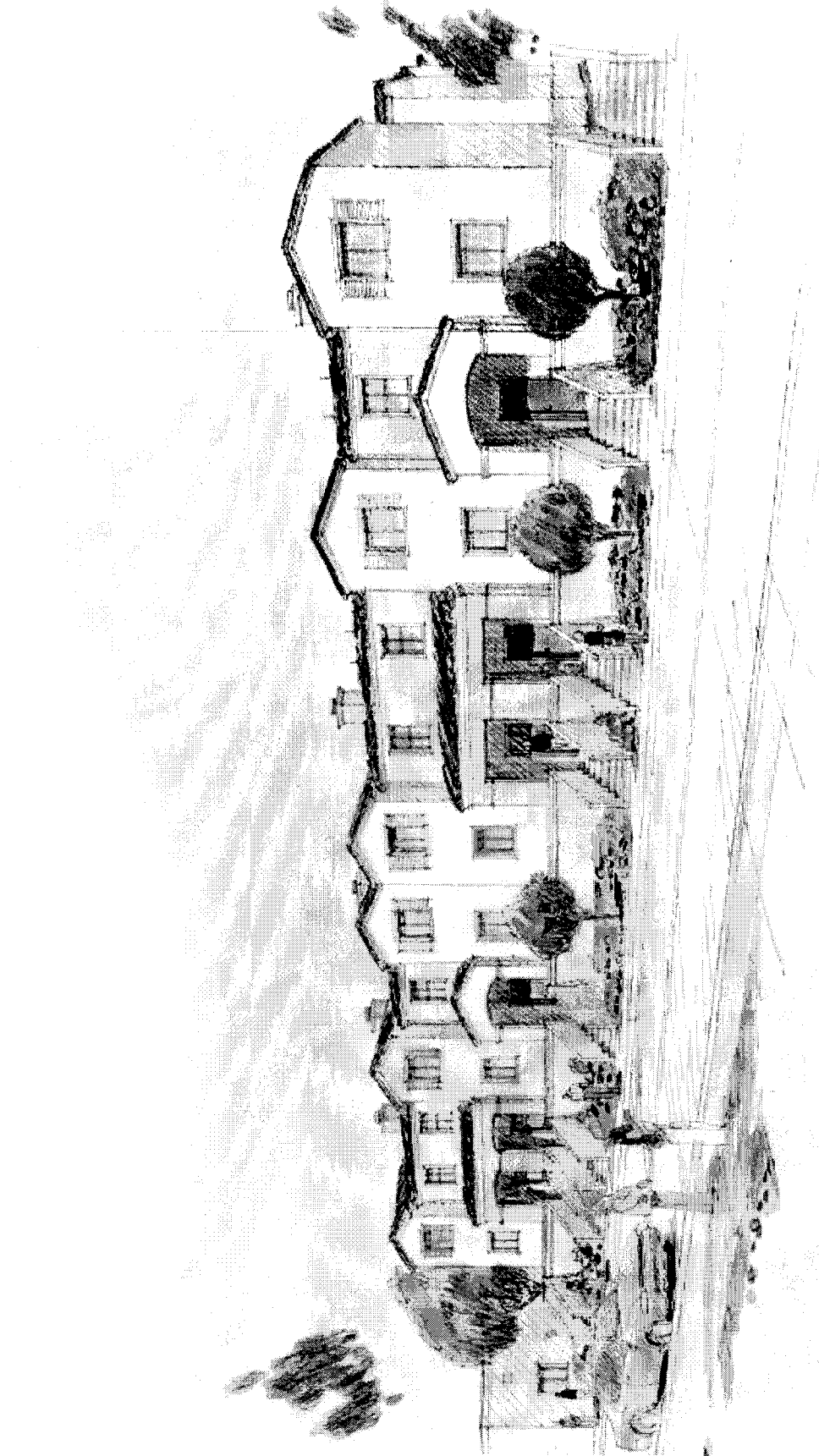
## Conceptual Development Layout for the Development



**PASEO DE LAS FLORES DEVELOPMENT**  
A FOLUS BUILDERS, LTD & JSM CONSTRUCTION CORP PROJECT  
ARCHITECT: BARRIO PLANNERS INCORPORATED

ATTACHMENT D

Conceptual Rendering



PASEO DE LAS FLORES DEVELOPMENT  
A POLIS BUILDERS, LTD & JSM CONSTRUCTION CORP PROJECT  
ARCHITECT: BARRIO PLANNERS INCORPORATED

