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PLANNING AND PROGRAMMING COMMITTEE
October 18, 2006

SUBJECT: DEVELOPMENT OF WESTLAKE/MACARTHUR PARK REDLINE STATION

ACTION: APPROVAL OF MODIFIED TERMS AND CONDITIONS FOR JOINT DEVELOPMENT OF WESTLAKE/MACARTHUR PARK STATION PROPERTY

RECOMMENDATION

Authorize the Chief Executive Officer to enter into a Joint Development Agreement (“JDA”) and Ground Lease with MacArthur Park, LLC covering 2.75 acres of METRO-owned property at the Westlake/MacArthur Park METRO Red Line Station (the “Site”) for development of a mixed-use apartment/retail complex (the ‘Development’), having key terms and conditions as set forth on Attachment “A”

RATIONALE

The terms and conditions originally presented to the Metro Board for the development of the Westlake/MacArthur Park joint development have significantly changed to accommodate rising construction costs, the restrictions associated with the development of affordable housing funded through the State of California housing tax credits along with other housing subsidy funds and the conditions required by equity partners for the proposed development. Because the proposed changes to the terms and conditions of the joint development are significant, Metro Board review and approval is required prior to completing a Joint Development Agreement and four ground leases each between Metro and one of four discrete tenants under the control of Westlake/MacArthur Park, LLC, on the terms set forth in Attachment A.

BACKGROUND

In April, 2004, the Metro Board authorized the Chief Executive Officer to enter into a Joint Development Agreement (JDA) and two ground leases (each a Ground Lease) with MacArthur Park, LLC, for the development of certain Metro owned property near the MacArthur Park Metro Station. MacArthur Park, LLC, proposed that, on property leased from Metro, it build a mixed-use, transit-oriented development that would include 199 residential units, 50,400 square feet of retail space and 503 parking spaces (a minimum of 200 of which would be reserved for Metro transit users during regular commuting hours) all as set forth in Attachment B. The proposed development would have included 2.75 acres of the 3.65 acres of MTA owned property at near the MacArthur Park Metro Station as set forth in Attachment C.

Metro developed terms and conditions with MacArthur Park, LLC consistent with other Metro joint development projects. The irregular building site, the difficulty of building over the station, the limited revenue from the development of affordable housing, and the significant increases in building materials costs limited the flexibility in how the transaction and construction could take place. Modifications to the terms and conditions were required to coordinate the multiple factors impacting the completion of a development on this site. These modifications are significant enough to require a review and approval by the Metro Board. A highlight of changes is attached as Attachment D.

FINANCIAL IMPACT

The proposed modifications to the terms and conditions of the JDA and Ground Leases are not anticipated to have any significant impact on the 2006-2007 budget. Metro previously awarded \$4,000,000 to the City of Los Angeles through the Call for Projects for improvements in this station area and to increase parking at this location. The City of Los Angeles returned the management of this grant to Metro for inclusion in this joint development project.

ALTERNATIVES CONSIDERED

The Metro Board could: (1) reject the proposed modifications to the terms and conditions of the JDA and Ground Leases and request proposals for the development of the site through a request for proposals (RFP); (2) modify the proposed terms and conditions of the JDA and/or Ground Leases, (3) accept the proposed modifications to the terms and conditions of the JDA and Ground Leases and authorize the CEO to enter into a JDA and Ground Leases consistent with the terms and conditions set forth in the attached term sheet attached as Attachment A.

Staff has recommended that the Board accept the proposed modifications to the terms and conditions of the JDA and Ground Leases. Rejecting or modifying the proposed modifications is not likely to result in substantially different terms and conditions being developed. Rejecting the development and issuing an RFP is likely to require a lengthy process and a substantial "learning curve" by any other developer to overcome the difficult engineering and site limitations already solved by this developer. Based on the outside consultant review, an affordable housing project by any other developer is not likely to result in any significant changes in revenue to Metro.

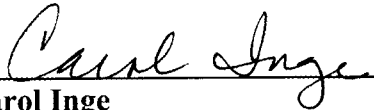
NEXT STEPS

Metro Board acceptance of the modified terms and conditions of the JDA and Ground Leases will allow for the completion and execution of a Joint Development Agreement and the Ground Leases, for the developer to submit the proposed project to the State of California for allocation of Low Income Housing Tax Credits and for the project to move forward.


ATTACHMENTS

- Attachment A: Term Sheet
- Attachment B: Conceptual Rendering
- Attachment C: Site Plan
- Attachment D: Significant Changes to Terms and Conditions

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ATTACHMENT A

Westlake/MacArthur Park Revised Summary of Key JDA and Ground Lease Terms and Conditions (“Term Sheet”)

1. Parties. MTA, as lessor (“MTA”) MacArthur Park Metro, LLC, as developer (“MPM”) (collectively the “Parties”). MPM will be a subsidiary of or controlled by McCormack Baron Salazar.

2. JDA and Ground Leases. MTA and MPM intend to enter into a Joint Development Agreement (the “JDA”) for the development of the JDA Premises (as defined in Section 4) under four separate stand-alone ground leases (each a “Ground Lease”). The form of residential Ground Lease and the form of commercial Ground Lease will be attached to the JDA.

2.1 JDA Effective Date. The JDA “Effective Date” will be the day the JDA is executed by both parties, which the parties intend to occur within 60 days after MTA Board approval of the general terms of the JDA and Ground Lease.

2.2 Phases. The Initial Improvements (as described in Section 7) will be constructed in two phases, known as Phase A and Phase B.

2.3 Certain Financial Obligations Not Cross Collateralized Among Tenants. The Ground Leases will not provide for cross-collateralization or cross default among the separate Ground Leases. However, the JDA will require MPM and/or some other McCormack Baron Salazar-related entity to provide sufficient security to reasonably assure MTA (in MTA's sole and absolute discretion) that all of MPM's obligations under the JDA will be satisfied. In addition, (a) the Ground Lease Tenants (as defined in Section 3) will share certain responsibilities and expenses under a reciprocal easement agreement (“REA”) and (b) as set forth in Sections 5.1, 5.3, 6.1 and 6.3, certain Ground Leases are contingent upon another Ground Lease having been made and in good standing (i.e., not in default).

2.3.1 With respect to the Initial Improvements to be completed under each respective Ground Lease, (a) MPM or an affiliate of MPM acceptable to MTA will provide a completion guarantee naming MTA as an obligee or as a co-obligee and (b) the respective Ground Lease Tenant or its contractor will provide (i) a performance bond and (ii) a payment bond, each of which will (1) name MTA as an obligee or as a co-obligee (with other parties such as MPM and/or a lender), (2) be in a form reasonably acceptable to MTA and (3) be issued by an issuer reasonably acceptable to MTA.

3. Tenants. Each Ground Lease will have a separate tenant (each a “Tenant”). The residential Ground Lease Tenants will be limited partnerships and the commercial Ground Lease Tenants will be limited liability companies; and each Tenant will be subject to the approval of MTA at its reasonable discretion.

3.1 Tenant Improvements. Each Tenant will own the improvements it constructs on its leasehold premises for the term of its Ground Lease.

3.2 Tenant Encumbrances. Subject to reasonable MTA approval, each Tenant will be able to encumber its leasehold interest in the land and its ownership interest in its improvements.

4. JDA Premises. The property which is the subject of the JDA, portions of which may be leased under the respective Ground Leases (the “**JDA Premises**”), will be the MTA-owned parcels located mid-block between Wilshire Boulevard and Seventh Street on both sides of Westlake Avenue, between Alvarado Street on the west and Bonnie Brae Street on the east. The JDA Premises encompass a total of approximately 2.75 acres plus approximately 16,400 square feet of plaza area along Alvarado Street (described as the “PA” in Section 7.2.1).

4.1 Phase A Premises. The “**Phase A Premises**” will consist of the L-shaped parcels fronting Seventh Street on the south, Bonnie Brae on the east and Westlake Avenue on the west (Los Angeles County Tax Assessor’s Parcel Numbers: 5142-002-900 and 5142-002-901); from which an airspace parcel coterminous with the Commuter Parking Structure (as defined in Section 7.1.2) will be reserved by MTA.

4.2 Phase B Premises. The “**Phase B Premises**” will consist of the parcels fronting Alvarado Street on the west and Westlake Avenue on the east (Los Angeles County Tax Assessor’s Parcel Numbers: 5141-002-900, 901, 902, 903, 904, and the PA).

5. Phase A Terms. Phase A will include (a) one residential Ground Lease requiring that the portion of the Phase A Premises leased thereunder be used for the construction and operation of affordable for-rent housing, parking and ancillary uses reasonably associated therewith and (b) one commercial Ground Lease requiring that (i) the portion of the Phase A Premises leased thereunder be used for the construction and operation of retail commercial space and ancillary uses reasonably associated therewith and (ii) the Tenant under such Ground Lease (1) construct, maintain, manage and operate the Commuter Parking Structure (as defined in Section 7.1.1) and (2) enter into a license agreement and parking management agreement with MTA pursuant to which such Tenant shall have the right to enter onto the airspace parcel reserved from the Premises and the obligation to manage, maintain, repair, and operate the Commuter Parking Structure to be located therein.

5.1 Contingent Right. The execution and delivery of the Phase A residential Ground Lease will be contingent upon the execution and delivery of the Phase A commercial Ground Lease (i.e., either both Phase A Ground Leases must be effective or neither will be effective).

5.2 Phase A Ground Lease Default. Each Phase A Ground Lease will provide that it is a default under that Ground Lease (a “**Phase A Ground Lease Default**”) if (a) the Tenant under that Ground Lease fails to commence construction of the Initial Improvements not more than six months after the commencement date of that Ground Lease or (b) all the Initial Improvements specified in that Ground Lease are not completed thirty-six months (or less) after the commencement date of that Ground Lease; provided, however the periods set forth in this sentence may be extended pursuant to any force majeure delay. In the event of a Phase A Ground Lease Default by either Phase A Ground Lease Tenant, that Tenant will lose all its rights under that Ground Lease and be liable for damages pursuant to the Ground Lease, at law or equity.

5.3 Phase A JDA Completion Guarantee. MPM will guarantee MTA (through the provision of security acceptable to MTA) that in the event of a Phase A Ground Lease Default prior to a Tenant's completion of the Initial Improvements, MPM will commence and/or complete the Initial Improvements required under the defaulting Phase A Ground Lease, and if MPM commences and/or completes the Initial Improvements required under that Ground Lease within the time periods specified in Section 5.2 (a "MPM Phase A Cure"), MPM's rights under the JDA will remain in force.

5.4 Phase A JDA Default. MPM will be in default under the JDA (a "**Phase A JDA Default**") if (a) either Phase A Ground Lease does not have a commencement date on or before March 31, 2009, or (b) any construction activity is not undertaken or completed in accordance with the performance milestones for Phase A set forth on Exhibit A to this Term Sheet, subject to force majeure delays. If, after all the Phase A Initial Improvements have been completed in accordance with the requirements of the JDA and the respective Ground Lease, there is a Phase A Ground Lease Default by either Phase A Tenant that does not result in a MPM Phase A Cure, then (in addition to termination of the defaulting Ground Lease as set forth in Section 5.2) the JDA will terminate, MPM will lose all of its rights under the JDA and MTA will be free to lease any portion of the Phase A or Phase B Premises (which has not already been leased to a non-defaulting Tenant) to any person or entity chosen by MTA on any terms acceptable to MTA.

5.4.1 For purposes of this Section 5.4, a default means a breach by MPM that continues for 30 days after written notice thereof has been delivered to MPM; provided, however, if such breach cannot reasonably be cured within such 30-day period, no default shall be deemed to exist if MPM commences to cure such breach within such 30-day period and thereafter diligently prosecutes such cure to completion.

6. Phase B Terms. Phase B will include (a) one residential Ground Lease requiring that the portion of the Phase B Premises leased thereunder be used for the construction and operation of affordable for-rent housing, parking and ancillary uses reasonably associated therewith and (b) one commercial Ground Lease requiring that the portion of the Phase B Premises leased thereunder be used for the construction and operation of for-rent commercial space, any related parking structures or areas and those ancillary uses reasonably associated therewith.

6.1 Contingent Right. The execution and delivery of the Phase B residential Ground Lease will be contingent upon the execution and delivery of both Phase A Ground Leases and the Phase B commercial Ground Lease.

6.2 Phase B Ground Lease Default. Each Phase B Ground Lease will provide that it is a default under that Ground Lease (a "**Phase B Ground Lease Default**") if (a) the Tenant under that Ground Lease fails to commence construction of the Initial Improvements not more than six months after the commencement date of that Ground Lease or (b) all the Initial Improvements specified in that Ground Lease are not completed thirty-six months (or less) after the commencement date of that Ground Lease; provided, however the periods set forth in this sentence may be extended pursuant to any force majeure delay. In the event of a Phase B Ground Lease Default by either Phase B Ground Lease Tenant, that Tenant will lose all its rights under that Ground Lease and be liable for damages pursuant to the Ground Lease, at law or equity.

6.3 Phase B JDA Completion Guarantee. MPM will guarantee MTA (through the provision of security acceptable to MTA) that in the event of a Phase B Ground Lease Default prior to a Tenant's completion of the Initial Improvements, MPM will commence and/or complete the Initial Improvements required under the defaulting Phase B Ground Lease and if MPM commences and/or completes the Initial Improvements required under that Ground Lease within the time periods specified in Section 6.2 (a "MPM Phase B Cure"), MPM's rights under the JDA will remain in force.

6.4 Phase B JDA Default. MPM will not be in default under the JDA if either of the Phase B Ground Leases is not entered into; however, if *both* Phase B Ground Leases have not been entered into on or before September 15, 2009, MPM will lose its right under the JDA to enter into the Phase B Ground Leases and MTA will be free to lease the Phase B Premises to any person or entity chosen by MTA on any terms acceptable to MTA. MPM will be in default under the JDA (a "**Phase B JDA Default**") if (a) a Tenant enters into a Phase B Ground Lease and (b) construction activity is not undertaken or completed in accordance with the performance milestones for Phase B set forth on Exhibit A to this Term Sheet, subject to force majeure delays. If, after all the Phase B Initial Improvements have been completed in accordance with the requirements of the JDA and the respective Ground Lease, there is a Phase B Ground Lease Default by either Phase B Tenant that does not result in a MPM Phase B Cure, then (in addition to termination of the defaulting Ground Lease as set forth in Section 6.2) the JDA will terminate, MPM will lose all of its rights under the JDA and MTA will be free to lease any portion of the Phase A or Phase B Premises (which has not already been leased to a non-defaulting Tenant) to any person or entity chosen by MTA on any terms acceptable to MTA.

6.4.1 For purposes of this Section 6.4, a default means a breach by MPM that continues for 30 days after written notice thereof has been delivered to MPM; provided, however, if such breach cannot reasonably be cured within such 30-day period, no default shall be deemed to exist if MPM commences to cure such breach within such 30-day period and thereafter diligently prosecutes such cure to completion.

7. Initial Improvements. The total improvements required to be initially constructed under all of the Ground Leases (the "**Initial Improvements**") will be approximately 185 - 210 apartment units, 38,000-54,000 square feet of ground-floor commercial space and 370-495 structured parking spaces (including the Commuter Parking Structure), which is equal to the project previous submitted to the Metro Board excepting that the number of structured parking spaces has been increased by 110. The JDA will allow the Tenants to seek the approval of the City of Los Angeles of an air-right subdivision so that the premises of the commercial Ground Leases and the Commuter Parking Structure will be separate legal parcels from the premises of the residential Ground Leases which may be located, all or in part, in the airspace above the commercial premises and/or Commuter Parking Structure.

7.1 Phase A Initial Improvements. The Initial Improvements under the Phase A residential Ground Lease will consist of approximately 111 affordable, for-rent housing units and 100 structured or unstructured parking spaces. The Initial Improvements under the Phase A commercial Ground Lease will consist of approximately 23,200 square feet of for-rent commercial space and the Commuter Parking Structure.

7.1.1 Commuter Parking Structure. The “**Commuter Parking Structure**” will provide at least 150 structured parking spaces, (a) of which a minimum of 100 (the “**MTA Priority Parking Spaces**”) will be available for use by MTA patrons, employees, contractors, and agents (“**Priority Parkers**”) during normal commuting hours and (b) of which 46 will be available for use by the Phase A commercial Ground Lease Tenant, its subtenants, patrons, employees, contractors, and agents at all times. During normal commuting hours, Priority Parkers will have priority access to the MTA Priority Parking Spaces; however, pursuant to a parking management agreement to be entered into between the Phase A commercial Tenant and MTA, to the extent that all Priority Parking Spaces are not being used by Priority Parkers, non-Priority Parkers may utilize the MTA Priority Parking Spaces in accordance with the terms of the parking management agreement. At all times other than normal commuting hours, the Phase A commercial Tenant may utilize all parking spaces in the Commuter Parking Structure.

7.1.1.1 Funding. MTA shall pay the actual prorated cost of constructing the MTA Priority Parking Spaces (which will not under any circumstance number less than 100) up to a maximum of \$4,000,000 (“**MTA Funding**”); provided, however, if MTA receives funding from the Los Angeles Community Redevelopment Agency or other public entity (“**CRA Funding**”) to be used to pay the actual prorated cost of constructing additional MTA Priority Parking Spaces, then such CRA Funding shall be combined with MTA Funding and will be used to pay (in the manner set forth in Section 7.1.1.2) the actual prorated cost of constructing additional MTA Priority Parking Spaces.

7.1.1.2 The total of such MTA Funding and CRA Funding may be paid for actual construction costs directly related to the MTA Priority Parking Spaces, as such costs are incurred, through a draw process acceptable to MTA, the CRA (if CRA Funding is received), MPM, the Phase A commercial Tenant and all then existing encumbrance holders. An acceptable draw process shall include provisions requiring (a) that a third-party accounting expert (who shall be a certified public accountant with substantial experience in construction accounting), reasonably acceptable to MTA, be retained by the Phase A commercial Tenant (at its sole cost and expense) for the purpose of identifying those costs (prorated or otherwise) which are directly related to the MTA Priority Spaces and those costs which are not so related (including all costs related to the construction or support of (i) any parking spaces other than MTA Priority Parking Spaces (ii) those portions of any elevators, stairways or other vertical shafts extending above the Commuter Parking Structure or which would be unnecessary if solely the MTA Priority Parking Spaces were located in the Commuter Parking Structure and (iii) any Initial Improvements (or other improvements) not directly related to the MTA Priority Parking Spaces and related vehicle and pedestrian ingress, egress and circulation), (b) that such third-party accounting expert be granted full access to the Phase A commercial Tenant’s construction-related books, records, plans, and specifications and (c) that MTA and its employees, consultants and counsel be granted reasonable access to the Phase A commercial Tenant’s construction-related books, records, plans, and specifications and the third-party expert’s work product related thereto.

7.1.1.3 Responsibility. MPM and the Phase A commercial Ground Lease Tenant will be responsible for the construction of the Commuter Parking Structure and the failure to construct the Commuter Parking Structure as required by the Ground Lease will

constitute a Tenant default under the Ground Lease and an MPM default under the JDA. After the completion of the Commuter Parking Structure, the Phase A commercial Ground Lease Tenant will be responsible for operating, maintaining, and repairing the Commuter Parking Structure (in accordance with the Ground Lease, parking management agreement and any license) for the duration of the Initial Term and any Option Period (as both are defined in Section 8). The Tenant will have no right to demolish or remove the Commuter Parking Structure, except if required to do so by the Ground Lease, parking management agreement, license, or pursuant to a mutual agreement of the parties. If Tenant is required to demolish the Commuter Parking Structure by the Ground Lease, parking management agreement, license, or if the parties otherwise agree that Tenant will demolish the Commuter Parking Structure, a demolition reserve fund will be established and held by MTA with funds paid into such reserve fund being considered an allowable expense under Section 7.1.1.5.

7.1.1.4 Allocation of Revenues. Beginning six (6) months after MPM's completion of the Commuter Parking Structure and at the end of each six (6)-month interval (each such designated period an "**Interval**") thereafter for the term of the Ground Lease and any extension thereof, all revenues derived from the MTA Priority Parking Spaces during normal commuting hours ("**MTA Parking Revenue**") (less the MTA Parking Expenses as defined in Section 7.1.1.5) will be paid within thirty (30) days after the end of each Interval to MTA by the Phase A commercial Tenant; provided, however, that on an annual basis, a reconciliation of MTA Parking Revenue less MTA Parking Expenses will be calculated for the prior year by an unaffiliated auditor (consisting of a CPA firm acceptable to both parties, with such audit being at no cost to MTA) and any adjustments required will be made to the payment due at the next Interval. During all times other than normal commuting hours, the Phase A commercial Tenant will receive all revenues arising from any usage of all parking spaces located within the Commuter Parking Structure.

7.1.1.5 Allocation of Expenses. After the Commuter Parking Structure has been completed, all reasonable expenses (including any demolition reserve established pursuant to Section 7.1.1.3) associated with the operation, maintenance, insuring, and repair of the Commuter Parking Structure will be allocated among MTA and the Phase A commercial Ground Lease Tenant pursuant to the following: at the end of each Interval, MTA will be assessed a sum equal to (a) the ratio of the number of MTA Priority Parking Spaces to the total number of parking spaces located in the Commuter Parking Structure multiplied by (b) .7 (the "**MTA Parking Expenses**"), the MTA Parking Expenses will be subtracted from the MTA Parking Revenue earned in that Interval and the remaining sum will be paid as additional rent by the Phase A commercial Tenant to MTA; provided, however, under no circumstance will MTA pay any shortfall resulting from the MTA Parking Expenses exceeding revenue from the MTA Priority Parking Spaces during an Interval, but any such shortfall will be carried forward and applied as a debit against any MTA Parking Revenue in excess of any MTA Parking Expense which occurs during any Interval ending within two (2) years after the Interval in which the shortfall originally occurred.

7.2 Phase B Initial Improvements. The Initial Improvements under the Phase B residential Ground Lease will consist of approximately 88 affordable, for-rent housing units. The Initial Improvements under the Phase B commercial Ground Lease will consist of

approximately 30,000 square feet of for-rent commercial space, 86 structured or unstructured parking spaces and the PA (as defined in Section 7.2.1).

7.2.1 PA. The Phase B Initial Improvements will include a plaza area identified in and as shown on the Plans as Plaza De Las Americas (“PA”) totaling approximately 16,400 square feet. The PA Initial Improvements will include one utility stub out (including water, gas, electric, and sewer) and may include (at MPM’s election and upon MTA’s approval) decorative concrete, paving, landscaping, or lighting. Once the Initial Improvements have been constructed on the PA, management, cleaning, maintenance, repairs (excluding only cleaning, maintenance and repairs to the MTA Facilities located on, under or over the PA), and insurance for the PA, and all costs and expenses thereof, will be provided by the Phase B commercial Ground Lease Tenant. Notwithstanding the preceding sentence, MPM will not be required to perform any structural repairs to improvements located on the PA, which were previously or are in the future constructed by MTA, unless such structural repairs are required as a result of MPM’s activities or negligent inactivity. MTA will indemnify and defend the Phase B Ground Lease Tenants against any claim of injury or damage brought by a patron, employee, contractor, or agent of MTA, which arises as a result of that party’s presence on the PA (while acting in the capacity of MTA patron, employee, contractor, or agent) unless the injury or damage results from MPM’s or a Tenant’s negligence or willful misconduct.

8. Term of Ground Leases. Each Ground Lease will have a 57 year “**Initial Term**.” MPM may elect to extend each Ground Lease for one period of 11 years (“**Option Period**”).

8.1 End of Term. Upon the expiration of a Ground Lease’s Initial Term, Option Period (if any) or on any earlier termination or expiration of a Ground Lease, title to any improvements then existing on the premises of such leasehold will become the property of MTA.

8.2 If a Tenant exercises its option to extend the Term on or before the date upon which it would be required to fully fund its demolition security as required under its Ground Lease, Tenant will not be required to fully fund its demolition security until five years prior to the expiration of the Option Period.

9. Rent.

9.1 Preconstruction Deposits. Prior to the commencement dates of the Phase A Ground Leases, MPM will pay deposits in the following manner:

- a. \$30,000, was paid by MPM to MTA on May 15, 2004, and (i) will be nonrefundable upon execution of the JDA and (ii) will not be considered a deposit of Ground Lease rent;
- b. As of the date the MTA Board authorizes the JDA and Ground Leases, MPM shall pay MTA \$150,000 as additional Phase A residential Ground Lease rent, which sum (i) MPM shall pay to MTA on the Effective Date and (ii) shall be added to the sum of Phase A residential Ground Lease rent set forth in Section 9.2.
- c. On March 31, 2008, if either Phase A Ground Lease has not commenced, MPM shall pay MTA \$100,000 as additional Phase A residential Ground Lease rent, which sum (i) MPM shall pay to MTA on March 31, 2008, and

- (ii) shall be added to the sum of Phase A residential Ground Lease rent set forth in Section 9.2.
- d. The payments described in Sections 9.1(b) and (c) will be nonrefundable unless (i) MPM has (1) timely performed all of its obligations under the JDA in conformance with the schedule of Performance Milestones (subject to force majeure delays) set forth in Exhibit A and (2) made commercially reasonable efforts to obtain investors in the Phase A residential Ground Lease Tenant and encumbrance holders for both Phase A Ground Leases, but has failed to obtain such investors or encumbrance holders, on commercially reasonable terms, prior to December 31, 2008, (ii) MTA is in default under the JDA and such default has reasonably prevented MPM's performance or (iii) an environmental circumstance is found to exist with an estimated cost of abatement in excess of the policy limit set forth in Section 12.2.
- e. MTA will have no obligation to invest any deposits made pursuant to Sections 9.1(a), (b) and (c), may commingle such monies with MTA's other funds and any income or loss resulting from MTA's investment of such deposits shall accrue solely to MTA.

9.2 Phase A Residential Ground Lease Rent. The Phase A residential Ground Lease Tenant will pay a one-time capitalized Ground Lease rent payment of \$1,145,000, plus the amount of the deposit made pursuant to Section 9.1(b), as rent for the entire Initial Term of the Phase A residential Ground Lease, on the commencement date of that Ground Lease; provided, however, that monies previously deposited with MTA pursuant to Section 9.1(b) shall be credited towards the Phase A residential Ground Lease rent.

9.3 Phase A Commercial Ground Lease Rent. Rent for the Phase A commercial Ground Lease will be 3.00% of gross rental income earned by Tenant from its subleasing of the Phase A commercial space, signage and ancillary parking. Phase A commercial Ground Lease rent will (a) commence the earlier of (i) 5 years after the issuance of a Certificate of Occupancy for the Phase A commercial Ground Lease Initial Improvements or (ii) on the date upon which 80% of the area of the Phase A commercial Ground Lease Initial Improvements has been subleased and (b) be paid by Tenant to MTA beginning within 30 days after the first 6 month interval after the commencement date described in Section 9.3(a) above and each 6-month interval thereafter; provided, however, that on an annual basis, a reconciliation of Phase A commercial Ground Lease rent will be calculated for the prior year by an unaffiliated auditor (consisting of a nationally recognized CPA firm acceptable to both parties, with such audit being at no cost to MTA) and any adjustments required will be made to the payment due at the next Interval.

9.4 MTA Priority Parking Spaces Rent. In each Interval that revenue earned from the MTA Priority Parking Spaces during normal commuting hours exceeds the MTA Parking Expenses for such Interval, the Phase A commercial Ground Lease Tenant will pay the amount of such excess to MTA as "**MTA Priority Parking Space Rent.**"

9.5 Phase A Option Period Rent. If the lease extension option is exercised, the rent payable will be:

9.5.1 Annual Phase A residential Ground Lease rent during the Option Period will be 9% of fair market land value payable annually in advance by Tenant to MTA.

9.5.2 Annual Phase A commercial Ground Lease rent during the Option Period will remain the same as during the Initial Term.

9.5.3 Annual MTA Priority Parking Space Rent during the Option Period will remain the same as during the Initial Term.

9.6 Phase B Residential Ground Lease Rent. The Phase B residential Ground Lease Tenant will pay a one-time capitalized Ground Lease rent payment of \$1,550,000, as rent for the entire Initial Term of the Phase B residential Ground Lease, on the commencement date of that Ground Lease.

9.7 Phase B Commercial Ground Lease Rent. Rent for the Phase B commercial Ground Lease will be 3.00% of gross rental income earned by Tenant from its subleasing of the Phase B commercial space, signage and ancillary parking. Phase B commercial Ground Lease rent will (a) commence the earlier of (i) five years after the issuance of a Certificate of Occupancy for the Phase B commercial Ground Lease Initial Improvements or (ii) on the date upon which 80% of the area of the Phase B commercial Ground Lease Initial Improvements has been subleased and (b) be paid by Tenant to MTA beginning within 30 days after the first 6 month interval after the commencement date described in Section 9.7(a) above and each 6-month interval thereafter; provided, however, that on an annual basis, a reconciliation of Phase B commercial Ground Lease rent will be calculated for the prior year by an unaffiliated auditor (consisting of a nationally recognized CPA firm acceptable to both parties, with such audit being at no cost to MTA) and any adjustments required will be made to the payment due at the next Interval.

9.8 Phase B Option Period Rent. If the lease extension option is exercised, the rent payable will be:

9.8.1 Annual Phase B residential Ground Lease rent during the Option Period will be 9% of fair market land value payable annually in advance by Tenant to MTA.

9.8.2 Annual Phase B commercial Ground Lease rent during the Option Period will remain the same as during the Initial Term.

10. Right of First Offer. If MTA elects to offer one or more of the Ground Lease Premises for sale (subject to Tenant's rights under such Ground Lease) to an entity other than a governmental entity or a quasi-governmental entity ("**MTA Sale Offer**") at any time during the Initial Term or Option Period, each Tenant occupying one or more of the Ground Lease Premises designated in the MTA Sale Offer will have the right to make the first purchase offer for the entirety of all Premises designated in the MTA Sale Offer; provided, however, if MTA designates more than one Premises in the MTA Sale Offer and if more than one Tenant makes a purchase offer, then any rights under this Section 10 shall accrue only to the Tenant making the highest all-cash purchase offer for the Premises designated in the MTA Sale Offer (the "**Offering Tenant**"). Under no event will any Tenant have a right of first offer for any portion less than the entirety of all the Premises designated in the MTA Sale Offer. If the offer

made by the Offering Tenant is not accepted by MTA, then MTA will have the right (without reoffering to the Offering Tenant) to sell all of the Premises designated in the MTA Sale Offer to any person or entity chosen by MTA, so long as the sales price of such Premises is equal to or greater than 95% of that proposed in the Offering Tenant's purchase offer. Notwithstanding the above, no Tenant will have any right of first offer under this Section 10, if such right of first offer would violate or conflict with any present or then-current law, rule, regulation, or policy applicable to the MTA or its activities.

10.1 Right of First Offer to Lease PA Retail Sites. The Phase B commercial Ground Lease Tenant will have the first right of offer to lease any PA retail sites pursuant to terms to be set forth in the Ground Lease.

11. Transfer.

11.1 Transfer During Construction. Prior to completion of all Initial Improvements required by each respective Ground Lease, a transfer of that Ground Lease will require the consent of the MTA in its sole and absolute discretion; however, Permitted Transfers and Permitted Encumbrances (as defined in this Section 11), will not require the MTA's consent.

11.2 Permitted Transfers. In addition to any other Permitted Transfers set forth in a Ground Lease, Permitted Transfers will include the following:

- a. The transfer of limited partnership interests in any residential Ground Lease Tenant (without the transfer of the general partnership interest or control of the partnership) to a passive investor for tax-credit purposes;
- b. A limited partner of any residential Ground Lease Tenant may remove the general partner of such Tenant for cause, in accordance with the terms of the individual Tenant's partnership agreement and replace such general partner with an entity approved by MTA, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that any such replacement general partner shall have at least 5 years experience in the development, operation and management of affordable housing developments of approximately the same size and character as the project operated by that Ground Lease Tenant;
- c. Residential subleases by any residential Ground Lease Tenant;
- d. Commercial subleases by any commercial Ground Lease Tenant; and
- e. A pledge of partnership interests in any residential Ground Lease Tenant as security.

11.3 Permitted Encumbrances. Subject to MTA's reasonable approval, a Tenant may encumber its leasehold interest in its premises or its ownership interest in any improvement located thereon, but may not encumber any of the MTA's fee interests. The MTA may pre-approve certain encumbrances ("**Permitted Encumbrances**"), but will retain the right to approve all final documents ("**Final Documents**") associated with such pre-approved Permitted Encumbrances, upon submission of all Final Documents to the MTA by the Tenant, which approval of all Final Documents will not be unreasonably withheld; provided, however, if all Final Documents are provided to the MTA as required by the Ground Lease, the MTA must

approve or disapprove such pre-approved Permitted Encumbrance within ten (10) business days of receipt of all required Final Documents.

12. Environmental Indemnity, Environmental Insurance, Right to Terminate. MPM's and Tenants' environmental indemnities (the "**Environmental Indemnities**") will generally apply as will be set forth in the Ground Lease, provided:

12.1 If an environmental condition (a) was not caused by MPM or a Tenant, (b) existed prior to the earlier of (i) the date MPM or a Tenant gained control over the respective leasehold premises or (ii) the commencement date of the respective Ground Lease (the "**Indemnity Date**") and (c) damage or harm occurred and liability accrued to a third party or MTA before the Indemnity Date (whether such damage or harm was discovered or undiscovered), then the Environmental Indemnities will not apply to a third-party claim brought pursuant to such damage or harm.

12.2 Environmental Insurance. MPM will purchase a policy of environmental insurance for the JDA Premises that insures against losses arising from the Environmental Indemnities and that names MTA as an insured party with a policy limit of not less than \$1,000,000.

12.3 Right to Terminate. If at any time prior to the completion of the Initial Improvements on any Ground Lease Premises, MPM or a Tenant discovers an environmental condition, the remediation of which would make development of the respective Ground Lease Premises commercially unreasonable, MPM or Tenant may elect to terminate the respective Ground Lease, provided that MPM or Tenant returns the respective Ground Lease Premises to the condition it was in prior to MPM's or Tenant's entry ("**Original Condition**"). Once MTA has reasonably determined that the respective Ground Lease Premises has been returned to its Original Condition at MPM or Tenant's expense, MTA will refund any Phase A or Phase B residential Ground Lease Rent previously paid to MTA by the respective Tenant for the right to occupy that premises.

13. Right to Demolish Portal. Subject to MTA approval, which may be conditioned or withheld at MTA's sole and absolute discretion, MPM may request that MTA close the north portal and authorize MPM to demolish such portal; provided, however, that such demolition will be conducted under the supervision and control of MTA and according to rules and policies applicable to work undertaken on MTA property (including labor rules). In addition, prior to closure and demolition of the north portal, MPM will be required to provide MTA with (a) insurance acceptable to MTA, (b) indemnities acceptable to MTA, (c) security for the completion of the contemplated work acceptable to MTA, and (d) a sum equal to MTA's estimate of its staff cost in undertaking the engineering and supervision of the demolition.

14. Signage. Each Tenant will have the right to place signage on its Ground Lease Premises provided that (a) no signage may be placed on the PA, (b) no signage may interfere with any of MTA's rights specified in a Ground Lease, and (c) a signage sublease will contain a signage sublease waiver (similar to the waiver being used in other MTA ground leases) pursuant to which the signage subtenant will waive certain future claims it might assert against MTA.

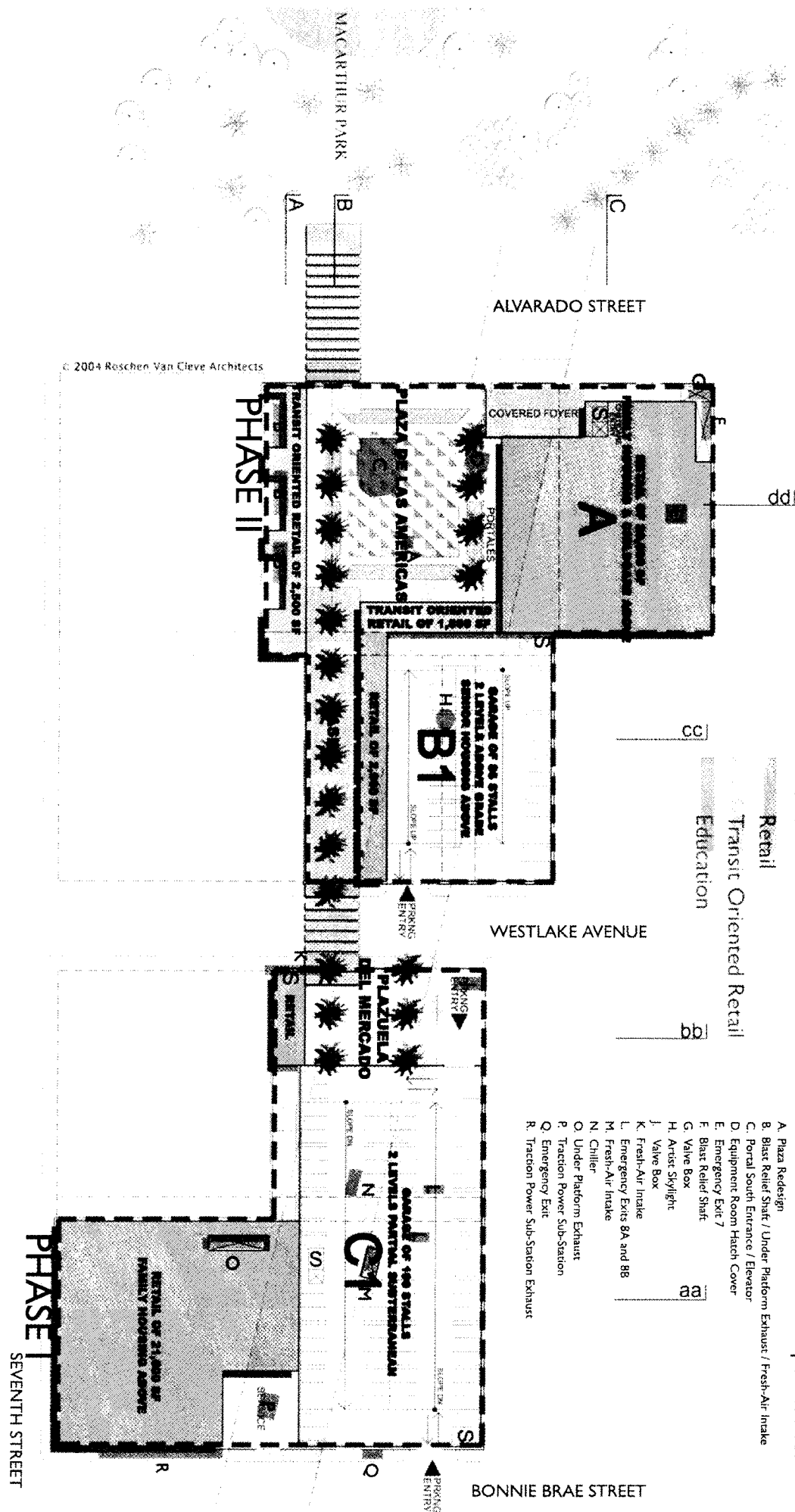
ATTACHMENT B

LEGEND

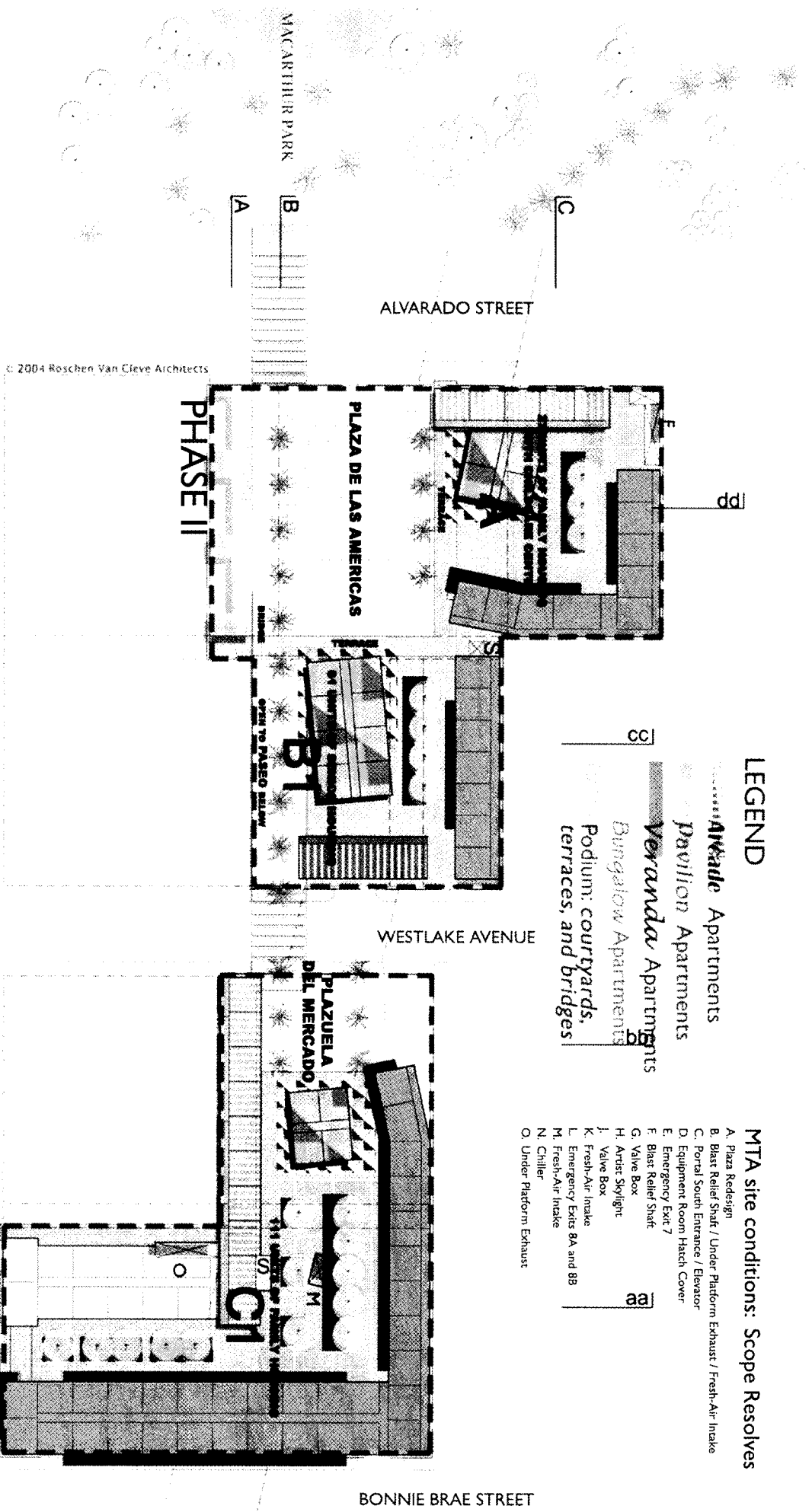
- Retail
- Transit Oriented Retail
- Education

MTA site conditions: Scope Resolves

- A. Plaza Redesign
- B. Blast Relief Shaft / Under Platform Exhaust / Fresh-Air Intake
- C. Portal South Entrance / Elevator
- D. Equipment Room Hatch Cover
- E. Emergency Exit 7
- F. Blast Relief Shaft
- G. Valve Box
- H. Artist Skylight
- J. Valve Box
- K. Fresh-Air Intake
- L. Emergency Exits 8A and 8B
- M. Fresh-Air Intake
- N. Chiller
- O. Under Platform Exhaust
- P. Traction Power Sub-Station
- Q. Emergency Exit
- R. Traction Power Sub-Station Exhaust



Alvarado Station
 mixed use of affordable housing, public plaza, adult education and retail
 designed by ROSCHEN VAN CLEVE ARCHITECTS
 planning by Suisman Urban Design
 joint development by McCormack Baron Salazar, Inc., POLIS Builders, LTD



LEGEND

- **Alvarado Apartments**
 - **Veranda Apartments**
 - **Bungalow Apartments**
 - **Podium, courtyards, terraces, and bridges**
-
- MTA site conditions: Scope Resolves**
- A. Plaza Redesign
 - B. Blast Relief Shaft / Under Platform Exhaust / Fresh-Air Intake
 - C. Portal South Entrance / Elevator
 - D. Equipment Room Hatch Cover
 - E. Emergency Exit 7
 - F. Blast Relief Shaft
 - G. Valve Box
 - H. Artist Skylight
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 - N. Chiller
 - O. Under Platform Exhaust

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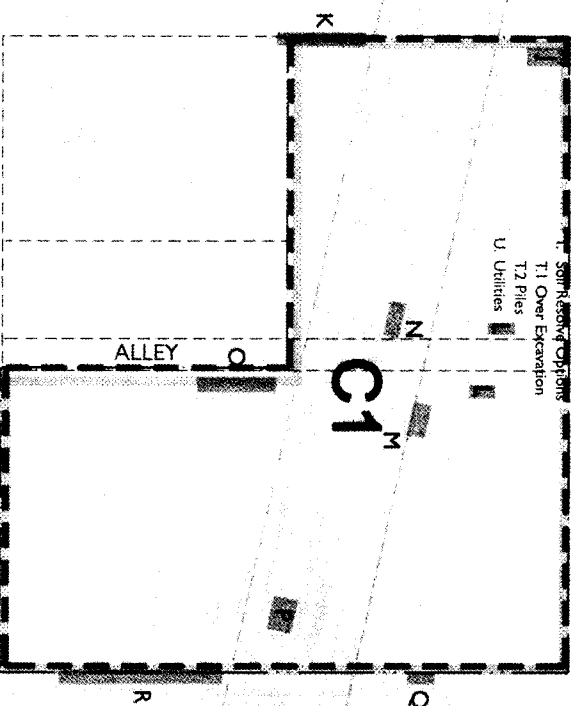
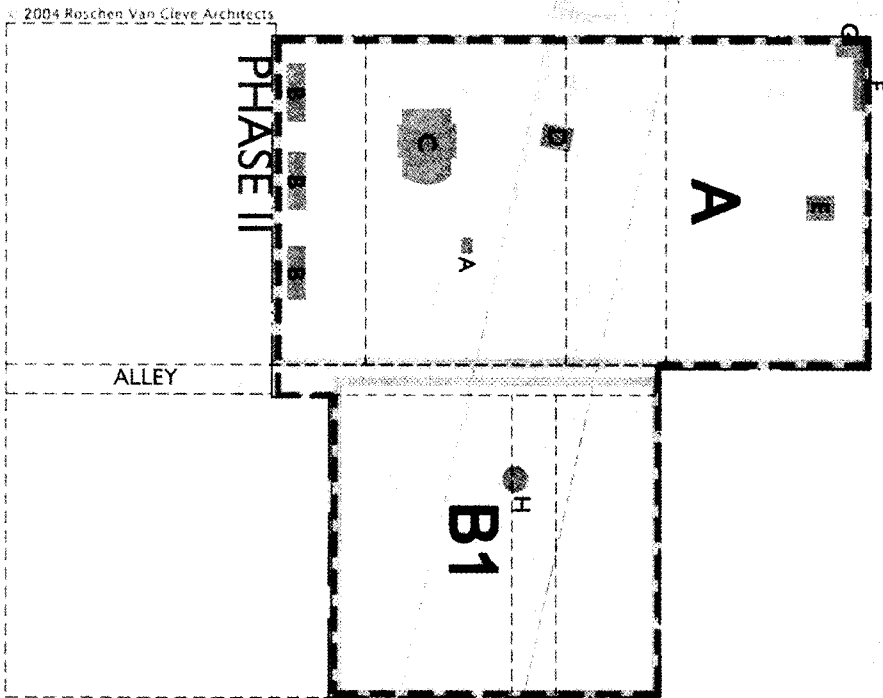
Alvarado Station
 mixed use of affordable housing, public plaza, adult education and retail. designed by ROSCHEN VAN CLEAVE ARCHITECTS. planning by Sulsman Urban Design
 joint development by McCormack Baron Salazar, Inc., POLIS Builders, LTD

PHASE I & PHASE II podium level / typical housing plan 1"=60' date 01.30.04

Attachment C

MTA site conditions: Scope Resolves

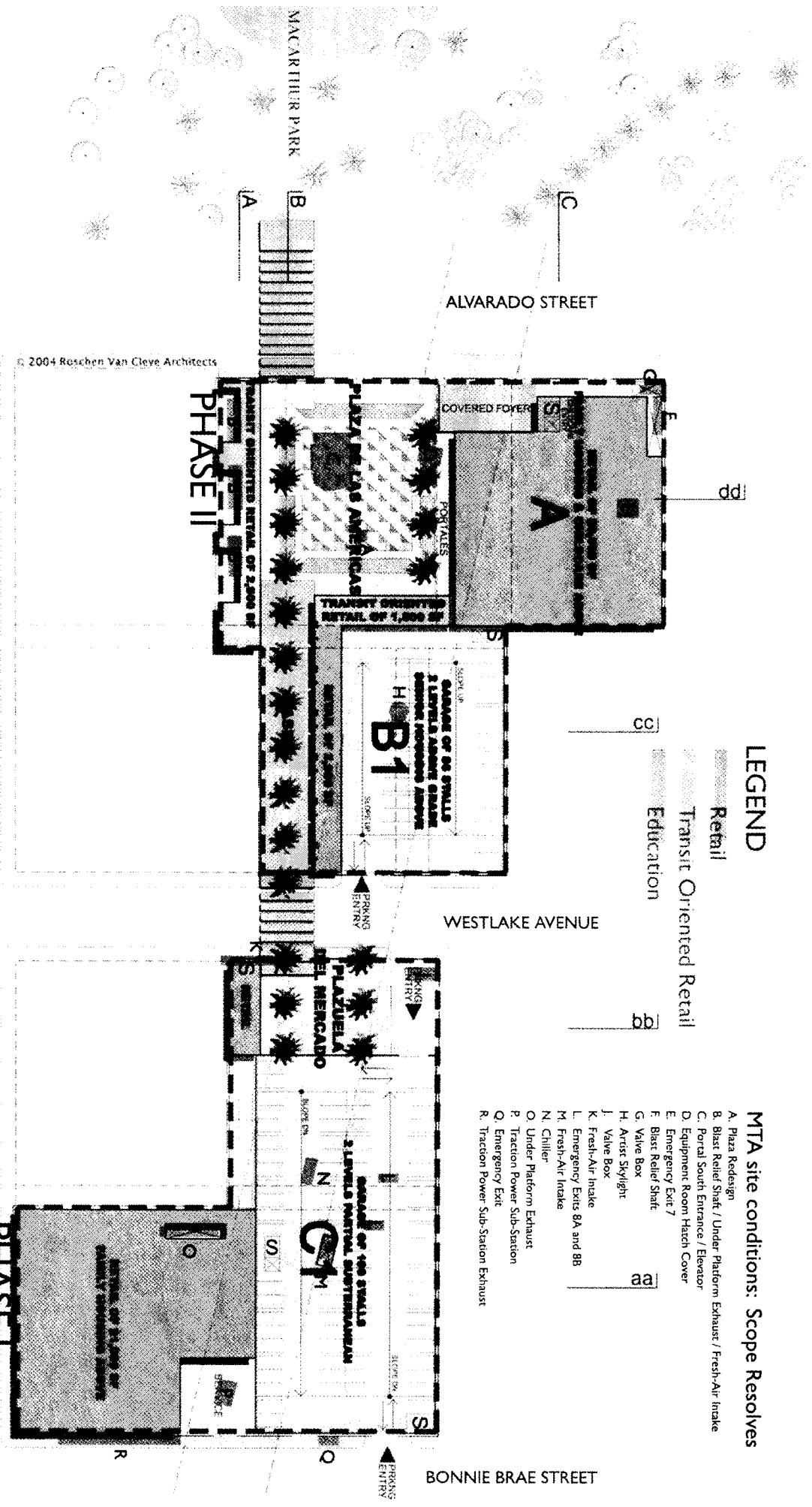
- A. Plaza Redesign
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- O. Under Platform Exhaust
- P. Traction Power Sub-Station
- Q. Emergency Exit
- R. Traction Power Sub-Station Exhaust
- S. Structural Options Required above MTA tunnels
- S.1 Detailed beam analysis and carefully locate new columns
- S.2 Span Foundation System
- S.3 Soil Resolving Options
- T.1 Over Excavation
- T.2 Piles
- U. Utilities



Alvarado Station
 mixed use of affordable housing, public plaza, adult education and retail
 designed by RUSCHEN VAN CLEVE ARCHITECTS
 planning by Suisman Urban Design
 joint development by McCormack Baron Salazar, Inc., POLIS Builders, LTD

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 mixed use of affordable housing, public plaza, adult education and retail
 designed by ROSCHEN VAN CLEVE ARCHITECTS
 planning by Susman Urban Design
 joint development by McCormack Baron Salazar, Inc., POLIS Builders, LTD

PHASE I & PHASE II street level plan 1"=60' date 02.02.04



LEGEND

- Retail
 - Transit Oriented Retail
 - Education
- MTA site conditions: Scope Resolves**
- A. Plaza Redesign
 - B. Blast Relief Shaft / Under Platform Exhaust / Fresh-Air Intake
 - C. Portal South Entrance / Elevator
 - D. Equipment Room Hatch Cover
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ATTACHMENT D

Westlake/MacArthur Park Substantive Changes To Terms and Conditions

The following substantive changes to the terms and conditions of the proposed JDA and Ground Lease have been made since the Metro Board previously approved a term sheet on April 22, 2004.

1. Rather than having one Ground Lease for each of the project's two phases, each phase will have two ground leases, one for the area of the commercial/retail space and one for the area of the residential units. This modification was required by the nature of the developer's affordable-housing financing.
2. The Premises will now include the plaza area along Alvarado Street; however, the tenant will not have the right to construct improvements on that plaza and will have limited rights of usage.
3. Adjustments have been made to the pre-construction rent and timing because of delays in moving forward with the project.
4. The minimum number of parking spaces to be used by Metro during commuting hours has been adjusted due to rising construction costs. The sum of \$4 million (previously awarded to the City of Los Angeles through the call for projects for improvements to the station area and to increase parking at this location) has been returned to Metro for inclusion in this project and will fund the actual cost of Metro exclusive parking (minimum 100 spaces, regardless of cost, with the actual number to be dependent on proportionate cost share of parking spaces constructed in the structure).
5. The initial Ground Lease term has been increased to 57 years in response to affordable housing financing requirements and Ground Lease rent has been increased accordingly.

