

**PLANNING AND PROGRAMMING COMMITTEE
FEBRUARY 21, 2007**

SUBJECT: VERMONT/SANTA MONICA JOINT DEVELOPMENT

**ACTION: AUTHORIZE THE EXECUTION OF A JOINT DEVELOPMENT AGREEMENT
("JDA") AND GROUND LEASE WITH VERMONT/SANTA MONICA, LLC.**

RECOMMENDATION

Authorize the Chief Executive Officer ("CEO") to enter into a Joint Development Agreement ("JDA"), Ground Lease and other ancillary agreements with Vermont/Santa Monica, LLC ("Developer"), for the purpose of leasing approximately 1.1 acres (the "Premises") of Los Angeles County Metropolitan Transportation Authority ("METRO") owned property, located at the Vermont/Santa Monica METRO Red Line station, for development, in conjunction with adjacent property owned by Developer, of a mixed-use residential/retail project, in accordance with the key terms and conditions as set forth, herein (the "Development").

ISSUE

In March 2005, METRO's Board authorized the CEO to enter into an Exclusive Negotiation Agreement ("ENA") with Developer for development of the Premises. METRO staff negotiated terms and conditions for the proposed JDA and Ground Lease, which are described in Attachment A. Execution of the JDA and the Ground Lease will allow the Development to be constructed and operated on the Premises.

BACKGROUND

METRO owns the Premises located at the Vermont/Santa Monica METRO Red Line station, which is approximately 46,000 square feet (1.1 acre) in size, is located on the southwest corner of Vermont Avenue and Santa Monica Boulevard, has a street address of 1015 North Vermont Avenue, and is depicted on Attachment B-2. The northeast portion of the Premises serves as a plaza and portal to the METRO Red Line station. The Premises consists of several separate parcels and is irregularly configured. The largest portion of the Premises fronts Vermont Avenue south of Santa Monica Boulevard, with additional frontage on Santa Monica Boulevard from Vermont Avenue approximately 150 feet west towards New Hampshire Avenue and on New Hampshire Avenue, approximately halfway between Santa Monica Boulevard and Willow Brook Avenue.

The Saint Nicholas Foundation owns or controls parcels (the "Foundation Parcels") adjacent to the northern and southern boundaries of the Premises on New Hampshire Avenue. The Foundation

Parcels include frontage along Santa Monica Boulevard, as depicted on Attachment B-1 and on Attachment B-2.

METRO transit structures above and below grade at the corner of Santa Monica Boulevard and Vermont Avenue limit the ability to develop directly above the station and its portal. Because of the physical constraints of the Premises, development options are limited without the assemblage of adjacent parcels. Development options for both the Premises and the Foundation Parcels would be substantially improved by their assemblage.

The proposed Development will be constructed on the combined area of the Premises and the Foundation Parcels (together, the "Site"). The Site (including the METRO portal area) totals 1.5 acres in area. The Development will include between 140 and 200 for-rent residential units and between 16,000 and 24,000 square feet of retail space, which will be constructed in two phases to allow for a potential lot line adjustment and relocation of the existing retail operator currently occupying improvements on the Foundation Parcel fronting Santa Monica Boulevard. The Development's site plan configuration locates the retail space in a single story adjacent to and surrounding the METRO station portal, and locates the residential units in five additional stories above the retail structure (see Attachment B-1). A conceptual rendering of the Development is attached hereto as Attachment C. The intensity of the proposed development is only possible with the inclusion of the Foundation Parcels.

Negotiations between staff and Developer resulted in the terms and conditions set forth on Attachment A. Staff recommends that the Board authorize the CEO to enter into the JDA, Ground Lease and other ancillary agreements with Developer in accordance with the terms and conditions set forth on Attachment A. Developer, Vermont/Santa Monica METRO Red Line Station, LLC, is a limited liability company and its members are the Saint Nicholas Foundation, Neiman Properties and Polis Builders, with Neiman Properties as Managing Partner.

Contacts for these entities are:

Saint Nicholas Foundation - Theodore Pappas
Neimann Properties, Inc - Daniel Neimann, President
Polis Builders, Ltd. - Nick Patsaouras

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. The goals of METRO's joint development program 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 to METRO based on a fair market return on public investment. METRO staff has concluded that the proposal meets the goals contained in the policies and procedures.

OPTIONS

The Board could choose not to authorize execution of the JDA, Ground Lease and ancillary documents, reject the current terms and conditions and elect to offer the Site to other potential developers. Staff is not recommending this option because:

1. A partnership with the adjacent property owner allows for a more substantial, better integrated and more intensive development;
2. It would delay development of the Premises; and
3. It is not likely that a more appropriate transit-serving development will be proposed.

The terms and conditions as listed in Attachment A provide a fair and reasonable financial return to METRO.

FINANCIAL IMPACT

Funding for the joint development activities is included in the FY06-07 Budget under Project 610011 task 01.01 in cost center 2210. The FY07-08 Budget will include a request to continue support of the Development. Revenues from Ground Lease rent and Developer deposits will support continued staff and consultant related costs. The financial returns gains to METRO over the term of the JDA and Ground Lease are detailed in Attachment A.

NEXT STEPS

Upon approval of the recommended actions, the Chief Executive Officer will complete the Joint Development Agreement and execute the JDA, Ground Lease and ancillary agreements in accordance with the terms and conditions set forth in Attachment A. Upon execution of the JDA, Developer will complete the process of securing the appropriate entitlements from the City of Los Angeles necessary to construct the Development consistent with the attached terms and conditions.

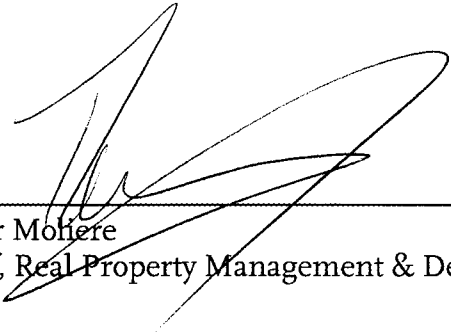
ATTACHMENTS

- A. **Summary Terms and Conditions of the Development Agreement and Ground Lease**
- B. **B-1- Conceptual Project Layout for the Development.**
B-2 - Premises and Development Site at Vermont/Santa Monica
- C. **Conceptual Rendering**

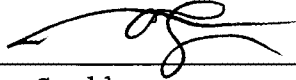
Prepared by: **Diego Cardoso, Director Central Area Planning Team**
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Carol Inge
Chief Planning Officer



Roger Mottiere
Chief, Real Property Management & Development



Roger Snoble
Chief Executive Officer

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

VERMONT/SANTA MONICA DEVELOPMENT SITE

DESCRIPTION:

- Lessor:** Los Angeles County Metropolitan Transportation Authority (“METRO”).
- Lessee:** Vermont/Santa Monica METRO Red Line Station, LLC, or another entity controlled and managed by Vermont/Santa Monica METRO Red Line Station, LLC, and approved by METRO at its sole and absolute discretion (“Developer”).
- Premises:** METRO-owned property which (a) is located at the Vermont/Santa Monica METRO Red Line station on the southwest corner of Vermont Avenue and Santa Monica Boulevard, (b) has a street address of 1015 North Vermont Avenue, (c) is approximately 46,000 square feet (1.1 acre) in area, and (d) is depicted on Attachment B-2 attached hereto (the “Premises”).
- Site:** The proposed Development (as defined below) will be constructed on the combined area of the Premises and adjacent parcels controlled by Developer (collectively, the “Site”). The Site (including the METRO station portal area) totals 1.5 acres in area and is depicted on Attachment B-2.
- Ground Lease:** The agreement governing the use of the Premises shall be an unsubordinated ground lease (the “Ground Lease”).
- Property Value:** The agreed upon value of the Premises as a result of an appraisal is three million four hundred thousand dollars (\$3,400,000), which equals seventy-four dollars (\$74) per each square foot of the total area of the Premises. However, METRO’s subterranean improvements, above ground portal and station entrance associated with the METRO Redline and METRO’s retained rights to use portions of the Premises and to restrict Developer’s usage of the Premises, render the equivalent of 11,830 square feet of the Premises unusable by Developer. Consequently, METRO and Developer agree that the current value of the Premises, when reduced to reflect the circumstances set forth in the preceding sentence is three million dollars (\$3,000,000) (the “Initial Value”). The Initial Value will be used to establish the initial Base Rent (as defined below).

Development:

Developer will construct between 140 and 200 for-rent residential units in 5 stories above 1 story containing between 16,000 and 24,000 square feet of ground floor retail space and a sufficient number of structured or unstructured parking spaces to satisfy all legal requirement, all as depicted on Attachment B-1 (the “**Development**”) Parking to be configured and at a number consistent with the City of Los Angeles requirements. The Development will be constructed in two phases to allow for the relocation of an existing tenant located on the larger of the Foundation Parcels and to coordinate a potential lot line adjustment. Phase I will be located on Metro property and a smaller Foundation parcel. Phase II will be located on the adjacent Foundation parcels. Both phases will be constructed as independent, self contained facilities.

Retained Rights:

METRO will retain certain rights of access for its patrons, employees, agents, and contractors, for members of the general public and for certain utilities and communications cables over, under, through and across certain areas of the Premises to and from, METRO’s Red Line Subway station, its above-ground portal and other facilities and the adjacent public streets and sidewalks all as will be set forth by METRO in the Ground Lease (the “**Retained Rights**”).

JOINT DEVELOPMENT AGREEMENT (“JDA”):

Predevelopment Period:

The terms of the JDA will control 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, that Developer (a) obtain all necessary entitlements, (b) obtain sufficient financing to construct and operate the Development and (c) complete all final design drawings required to construct the Development and obtain METRO’s approval of such final design drawings in accordance with the terms set forth in the JDA.

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 and entering into the Ground Lease. 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 and its successful on-going operation. 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 (a) the date the JDA is mutually executed and delivered (the "**Effective Date**") or (b) that date which is 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 an amount equal to twenty-five percent (25%) of the Base Rent.

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, conditioned or delayed 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 Ground Lease or any other agreement between the parties) and 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 the escrow holder of the mutually executed Ground Lease and related document(s), and the close of escrow (the "**Commencement Date**"), but in no event later than twelve (12) months following the date of Board approval of the JDA

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

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 configuration 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**”) in an amount equal to fifty percent (50%) of the Base Rent.

Lease-Up Period: If the Completion Date occurs on a date which is less than twenty-eight (28) months after the Commencement Date and if Developer is not otherwise then in breach or default under the Ground Lease, the JDA or any other agreement between the parties, then the period commencing on the Completion Date and ending on the date which is forty-six (46) months after the Commencement Date will be the “**Lease-Up Period**”. In the event that the Completion Date does not occur within twenty-eight (28) months after the Commencement Date, then there will be no Lease-Up Period and Lease-Up Rent (as defined in the next paragraph) will not apply.

Lease-Up Rent: During the Lease-Up Period, if Developer is not otherwise in breach or default under the JDA, Ground Lease or any other agreement between the parties, Developer will pay rent (“**Lease-Up Rent**”) calculated as follows: from the commencement of the Lease-Up Period to the date which is thirty-four (34) months after the Commencement Date, rent shall be payable in an amount equal to fifty percent (50%) of the Base Rent; during the succeeding six (6) month period, rent shall be payable in an amount equal to sixty-six and seven-tenths percent (66.7%) of the Base Rent and; for the next succeeding six (6) month period, rent shall be payable in an amount equal to eighty-three and four-tenths percent (83.4%) of the Base Rent after which the Lease-Up Period will terminate and Base Rent will apply as set forth below.

Base Rent: Beginning on (a) the date which is twenty-eight (28) months after the Commencement Date, if there is no Lease-Up Period, or (b) the date which is the next day following the last day of the Lease-Up Period, if

there is a Lease-Up Period, and continuing through the sixth (6th) anniversary of the date on which the JDA was entered into, Developer will pay rent to METRO in twelve equal monthly payments, which, on an annual basis, will total five percent (5.%) of the Property Value and beginning on day after the sixth (6th) anniversary of the date on which the JDA was entered into and continuing thereafter through the end of the Lease Term, Developer will pay rent to METRO in twelve equal monthly payments, which, on an annual basis, will total nine percent (9.%) of the Property Value (“**Base Rent**”), as such Base Rent may be increased pursuant to the terms of the next paragraph.

Base Rent Increases:

Subject to the minimum required rent adjustment (“Floor”) and maximum allowable rent adjustment (“Cap”) 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 (5th) anniversary of the end of the Construction Period. On the tenth (10th) 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 (15th) 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 (30th) 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 (35th) anniversary of the Commencement Date, there will be a Market Rate Adjustment (as defined below). From the fortieth (40th) 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 (55th) anniversary of the Commencement Date. On the sixtieth (60th) 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.

Schedule of Rent Adjustments Following Execution of the Joint Development Agreement

Rent Increase Commencing in Lease Year (as set forth above)	6	11,16	21, 26, & 31	36	41, 46 & 51	56	61
Maximum Ground Rent (“Cap”)	15%	17.5%	20%	Market Rate Adjustment	20%	Market Rate Adjustment	20%
Minimum Ground Rent (“Floor”)	7.5%	8.75%	10%		10%		10%

Percentage Rent:

In addition, beginning within sixty (60) days after the end of the first calendar year in which Developer has received a payment of rent from a non-residential subtenant, Developer will pay rent (“**Percentage Rent**”), annually, to METRO, in an amount equal to four percent (4%) of the gross rent received by Developer from all of its non-residential subtenants in the Development (including rent from signage rights) during the preceding calendar year, until the eighth anniversary of the date on which the first non-residential sublease was executed, after which Developer will pay METRO six percent (6%) of the gross rent received by Developer from its non-residential subtenants in the Development (including rent from signage rights) during the preceding calendar year, each year, for the remainder of the Lease Term.

Market Adjustment:

The Base Rent shall be adjusted to a fair market rate (the “**Market Rate Adjustment**”) as of the thirty-fifth (35th) anniversary of the Commencement Date and, if Developer exercises its option to extend the Lease Term, as of the fifty-fifth (55th) 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 and consistent with the improvements then constructed on the Premises (provided that such improvements have been approved by METRO and have been properly maintained in accordance with 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), which METRO will stipulate in the Ground Lease. If Developer's offer is not accepted, METRO will have the right to sell its fee interest in 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, at its sole cost and expense, 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.

Demolition Reserves:

At least five (5) years prior to the expiration of the Lease Term, Developer will demonstrate to METRO's reasonable satisfaction that the required demolition reserve (the funding schedule and the procedure for determining the amounts to be funded are to be set forth by METRO 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.

Renovation Fund:

Beginning on the sixth anniversary of the Completion Date and continuing annually each year thereafter, Developer shall deposit funds in an amount equal to one percent (1%) of gross revenues received by Developer during the preceding year into a renovation fund held by METRO or a third-party escrow holder (the "**Renovation Fund**"). Funds may be withdrawn by Developer from the Renovation Fund for the purpose of performing capital improvements to the Development; provided, however, unless METRO informs Developer in writing that METRO will elect to have Developer demolish the Development at the end of the Lease Term, Developer must expend all funds remaining in the Renovation Fund by performing capital improvements prior to the expiration of the Lease Term (including the Option Period, if exercised).

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:

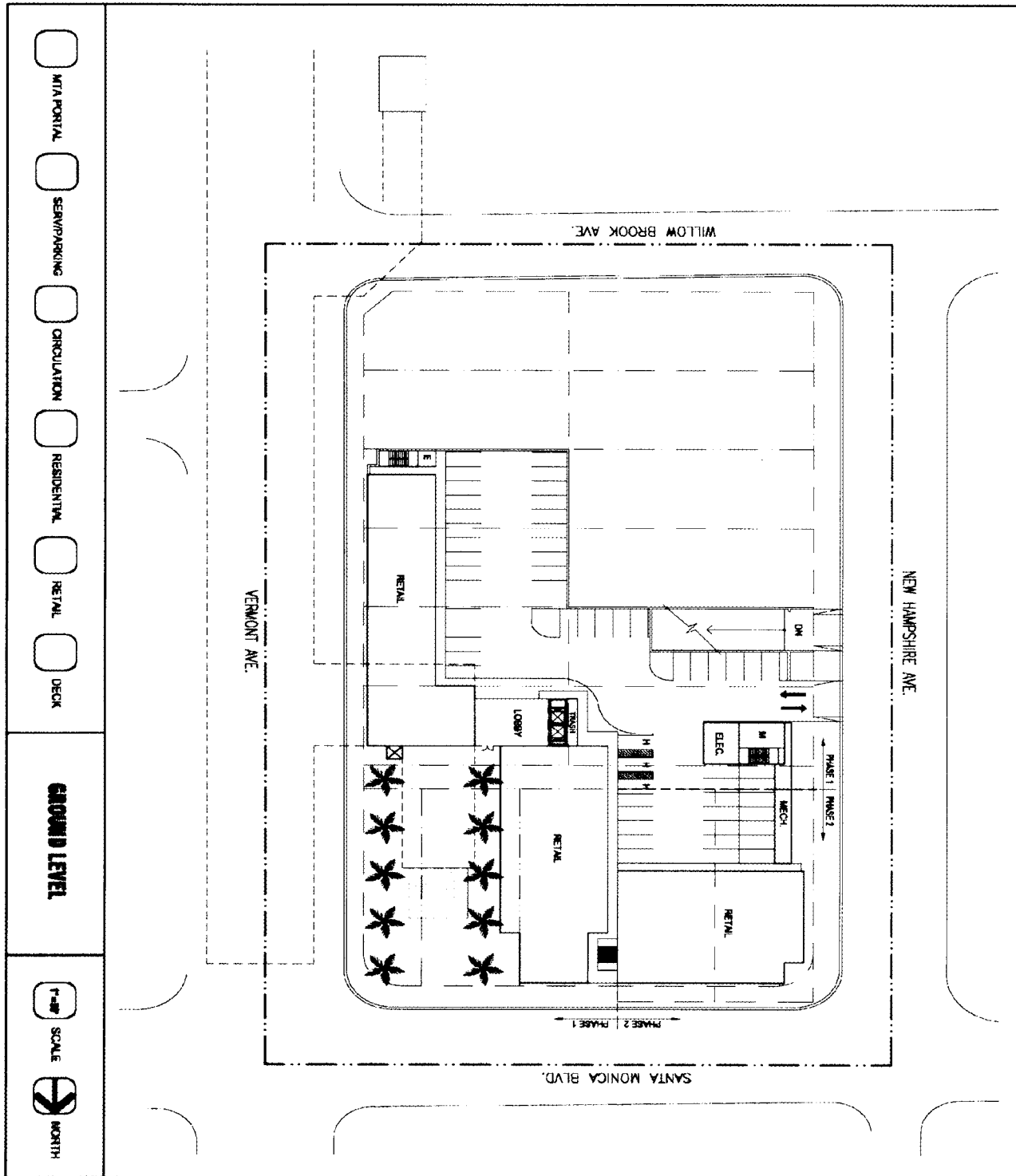
With limited permitted exceptions, to be set forth in the Ground Lease, Developer's right to assign the Ground Lease (a) prior to the Completion Date will be subject to METRO's approval at its sole and absolute discretion and (b) after the Completion Date will be subject to METRO's approval at its reasonable discretion, including METRO's satisfaction as to any proposed assignee's creditworthiness, experience and moral standing. METRO will provide any of Developer's retail 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 METRO ground leases (including provisions setting forth the Retained Rights, transit proximity waivers and signage liability indemnities) will be included in the Ground Lease.

ATTACHMENT B-1

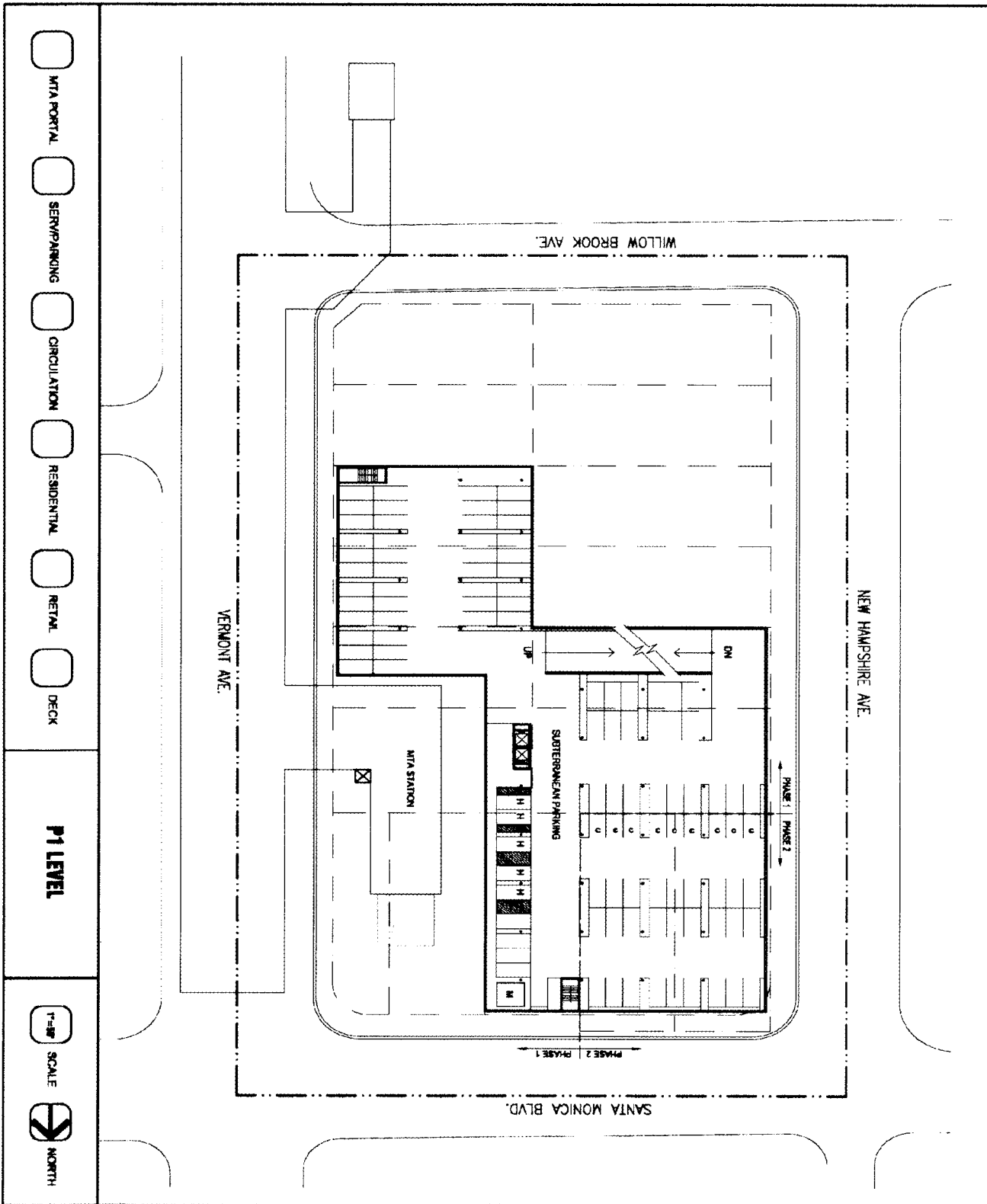
Conceptual Project Layout for the Proposed Apartment/Retail Development



ST. NICHOLAS FOUNDATION
 The McGregor Co.
 Polite Builders, Ltd.

SANTA MONICA-VERMONT STATION
 SANTA MONICA BLVD. & VERMONT AVE.

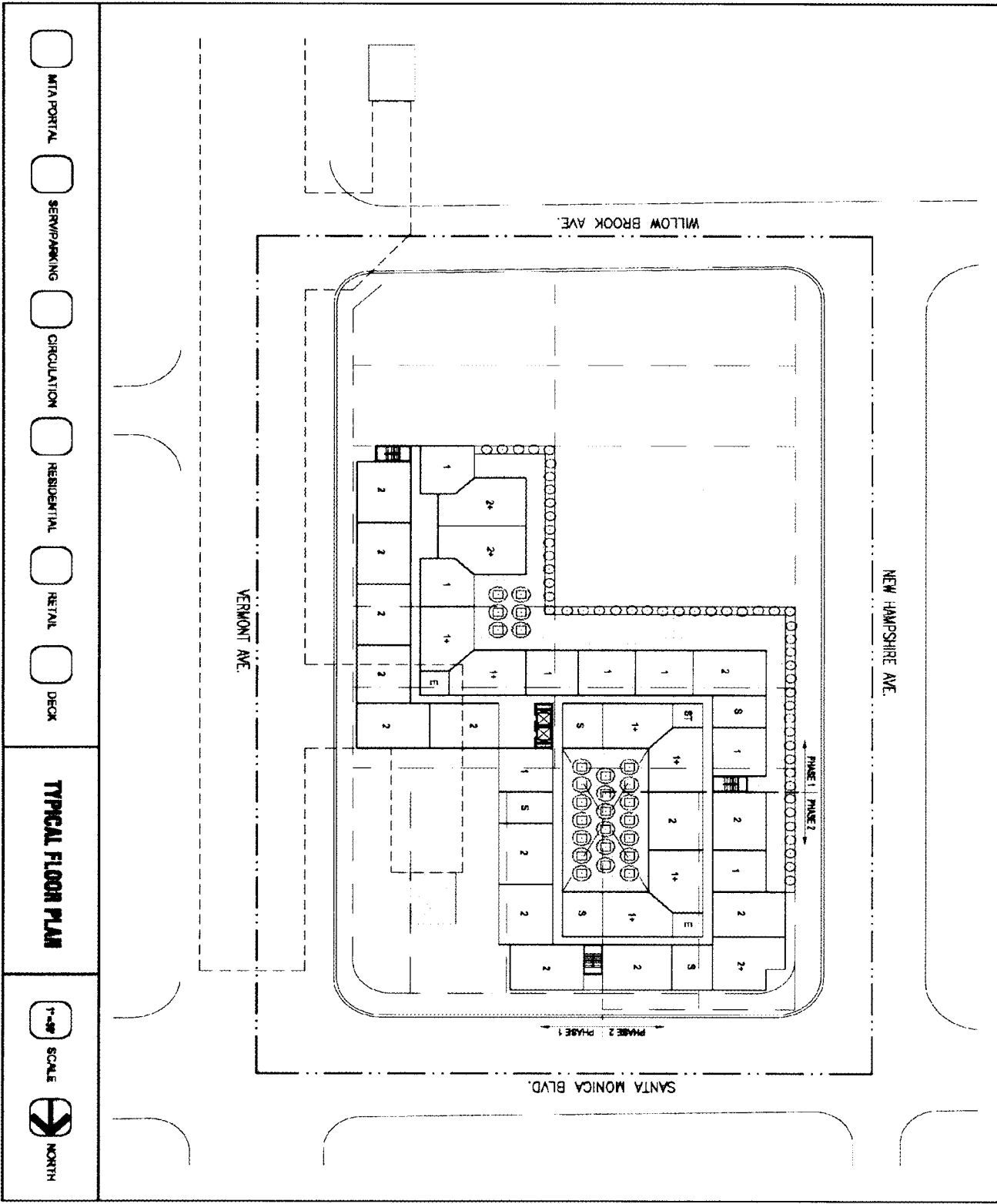
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METRO Properties and Development Site at Vermont/Santa Monica

Conceptual Site Plan for the Proposed Apartment/Retail Development

**METRO Joint Development Site
Vermont/Santa Monica
Property Ownership and Zoning
City of Los Angeles**

