

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



2101 Morning Bright LLC
918 U Street NW
Washington, DC 20001
Attention: Ms. Suman Sorg

February 4, 2016

Re: Letter of Intent for the lease of premises at 2105-2107 10th Street NW and 933 V Street NW, Washington, D.C.

The Department of General Services (“DGS”), on behalf of the District of Columbia, presents this letter of intent (this “LOI”) to 2101 Morning Bright LLC for the lease of certain premises located at 2105-2107 10th Street NW and 933 V Street NW, Washington, D.C. 20001.

Outlined below are the principal terms and conditions that would serve as the basis for a lease agreement for such premises (the “Lease”).

TENANT

District of Columbia, a municipal corporation, acting by and through its Department of General Services (the “District”).

The District of Columbia agency initially occupying the Premises (defined below) shall be the District of Columbia’s Department of Human Services (“DHS”). The District shall have the right to substitute another District agency as occupant of the Premises without such substitution constituting a sublease of the Premises or an assignment of the Lease and shall not require the consent of Landlord (defined below).

LANDLORD

2101 Morning Bright LLC or such other entity that owns the fee interest in the Land and the Church (“Landlord”).

PREMISES

The “Premises” shall consist of the land located at 2105-2107 10th Street NW and 933 V Street NW, Washington, D.C. (SSL 0358 0005, 0358 0006 and 0358 0802; collectively, the “Land”),

and any improvements thereon, including the First African New Church, which is currently located on the Land (the “**Church**”). A site plan of the Land and the Church is depicted on Exhibit A, attached hereto and made a part hereof. The Land is to be delivered to the District as of the Lease Commencement Date (defined below) as-is, where-is. The parties acknowledge that the street addresses and SSLs set forth above for the Land and Church depicted on Exhibit A are subject to verification.

PERMITTED USE

The District shall develop a 29-unit apartment building with 2 to 3 bedroom units (together with parking and exterior amenities) on the Land (and shall maximize the floor area ratio (FAR) approved under the existing entitlements) and renovate the Church in order to provide housing and on-site supportive services for District of Columbia residents through programs administered by DHS (such improvements are hereinafter referred to as the “**Project**”). Notwithstanding the foregoing, subject to Landlord’s reasonable consent where Building is not used for emergency or supportive housing as stated below, the District shall be permitted to use the Premises for any lawful use and shall have the right to redevelop, expand or otherwise alter any improvements on the Land (subject to all applicable laws, including with respect to the Church); provided, however, that any such work shall be completed prior to the end of the Lease Term (as defined below). Landlord shall have no approval or consent rights with respect to the District’s development or any redevelopment on the Land, or the District’s operation or maintenance of the Premises, including, without limitation, with respect to contracts, signage, plans and budgets, so long as the same complies with all applicable laws and so long as any such development, redevelopment, operation and maintenance of the Premises are consistent with the Lease; provided, however that the District shall provide copies of development plans for the Project and operations and maintenance scopes and schedules to Landlord, when available; and, provided further, that if the Building is not to be used for emergency or supportive housing, Landlord’s prior consent shall be required for such other use, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord shall not be permitted to promulgate any rules or regulations as to the District’s use or occupancy of the Premises. The District shall (a) provide security for the Premises of such types and to the extent determined by the District, in its sole discretion, as necessary; and (b) keep the Premises in good order and repair during the Lease Term, all in accordance with commercially reasonable standards, and shall deliver the Building to Landlord at the end of the Lease Term vacant of residents and substantially in its condition upon Building completion, normal wear and tear excepted; provided, however that in no event shall the District be obligated to replace any item or component of the Premises at the end of the Lease Term based upon such item or component nearing or being at the end of its useful life, as shall be more fully described in the Lease.

The District may engage a “for fee” development consultant for the Project. The development consultant or any other private entity or person shall have no financial interest in the Project other than its fee and shall not be permitted to encumber the Land, the Project or any portion of or interest therein. No nongovernmental funds shall be used for the development of the Project.

DESIGNS, PERMITS AND RELATED MATERIALS

Within 10 business days of the date of this LOI, Landlord shall deliver to the District copies of all of the following (collectively referred to as the “**Development Materials**”):

- All architectural and engineering drawings and specifications and other documents approved by the applicable District agencies/offices relating to the foundation-to-grade permit for the Land;
- All drawings and other documents relating to all entitlements received for the Land and the Church, including BZA, public space and historic preservation review board approvals;
- All title commitments and policies;
- All surveys (including ALTA), geotechnical reports and environmental reports; and
- All drawings and specifications approved by the applicable District agencies/offices relating to the permits issued for the renovation of the Church.

The District shall use the Development Materials only in connection with the development of the Project. On or prior to the Lease Commencement Date (as defined below), Landlord shall deliver originals of any of the foregoing to the District, and all such copies and originals shall constitute the personal property of the District, at no additional cost or expense to the District, as such cost shall be included in Annual Rent (in order to provide for the District’s acquisition of such materials).

RENT COMMENCEMENT DATE; CONDITIONS PRECEDENT

The “**Rent Commencement Date**” for the Premises shall be the date upon which the Lease is fully executed by Landlord and the District (the “**Lease Commencement Date**”). Execution of the Lease shall be subject to authorization by the Council of the District of Columbia pursuant to § 451 of the District Charter (D.C. Official Code § 1-204.51 (2001)), as may be amended from time to time (“**Council Approval**”). Landlord acknowledges that (a) the District shall not execute the Lease until it has received Council Approval, and (b) Council Approval cannot occur without the parties having agreed upon an execution version of the Lease and Landlord having executed the Lease.

LEASE TERM

The term of the Lease shall commence upon the Lease Commencement Date and expire thirty (30) years thereafter (the “**Lease Term**”). The term “**Lease Year**” shall mean each twelve month period during the Lease Term; provided, however, that if the Rent Commencement Date occurs on a day other than the first of a month, the first Lease Year shall begin on the first day of the month following the Rent Commencement Date.

ANNUAL RENT

Annual Rent for the first Lease Year of the Lease Term shall be \$770,000.00 per year (based upon a current Land value of \$11,000,000.00), which amount shall be subject to change upon the agreement (after good faith discussions) of the parties pursuant to the “Designs, Permits and

Related Materials” and “Brokerage” sections of this LOI. Annual Rent shall be payable in monthly installments, in arrears (as the District is prohibited by law from making rental payments in advance).

Commencing one year following the Rent Commencement Date, and continuing on each anniversary thereafter until the first Reset Date (as defined below), the Annual Rent shall be increased by 2.0% of the previous year’s Annual Rent.

The Annual Rent shall be net to Landlord. As such, the District shall pay all costs and expenses relating to its development, operation, maintenance and repair of the Premises. The District shall pay all real estate taxes assessed against the Premises based upon paid receipts from Landlord.

The fifth (5th), tenth (10th), fifteenth (15th), twentieth (20th) and twenty-fifth (25th) anniversary of the Rent Commencement Date are each referred to as a “Reset Date.” On each Reset Date, the Annual Rent shall be reset to equal 110% of the then current Annual Rent. On the first anniversary of the first Reset Date and on each anniversary thereafter during the Lease Term (but not including each actual Reset Date), the then current Annual Rent shall be adjusted in an amount equal to the CPI percentage change from the first day of the then applicable Lease Year (using the most recently published CPI) through the first day of the previous Lease Year, applied to the then applicable Annual Rent (the “CPI Adjustment”). CPI means the Consumer Price Index (Washington-Baltimore, DC-MD-VA-WV, Urban Wage Earners and Clerical Workers, November 1996=100), as published by the Bureau of Labor Statistics of the United States Department of Labor.

“Additional Rent” means any sum other than Annual Rent payable by the District to Landlord under the Lease, such as real estate taxes.

PROJECT ARCHITECT

DLR Group | Sorg shall be the architect of record for the Project, subject to the mutual agreement of the parties as to the terms of such engagement and the enactment of legislation by the D.C. Council specifically setting forth the same.

LIABILITY

Landlord shall be liable to the District, and shall indemnify, defend and hold the District harmless from, any damage, injury, loss or claim based on or arising out of the Lease or any agreement executed in connection with the Lease if the same is due to the negligence or willful misconduct of Landlord or its agents, employees or contractors. Based upon the Anti-Deficiency Acts (defined below), the Lease shall not include any provision requiring the District to indemnify Landlord, reimburse Landlord or make any payment to Landlord other than Annual Rent and Additional Rent unless subject to the District’s prior approval (which payments are all subject to the Anti-Deficiency Acts).

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT

The Lease shall, by its terms, be subordinate to any existing mortgage affecting the Land (a “**Mortgage**”), provided that Landlord causes the mortgagee (the “**Mortgagee**”) to enter into a non-disturbance and attornment agreement, on the District’s form, with the District (a “**Non-Disturbance Agreement**”) within 60 days of the Lease Commencement Date. If the Non-Disturbance Agreement is not timely delivered to the District, the District shall have the right to terminate the Lease, effective immediately. The Lease shall, by its terms, be subordinate to any future Mortgage, provided that Landlord causes the Mortgagee to deliver a Non-Disturbance Agreement to the District.

ASSIGNMENT AND SUBLETTING

The District shall have the right, subject to Landlord’s consent, which consent shall not be unreasonably withheld, conditioned or delayed, to sublease all or any portion of the Premises, and shall have the right to assign the Lease, subject to Landlord’s consent, in its sole discretion. Any profit accruing to the District as the result of any such assignment or sublease shall be equally divided between the District and Landlord. In the event of an assignment, the District shall have no further liability under the Lease except with respect to any accrued but unpaid obligations.

Landlord shall not have the right to assign the Lease prior to the District’s completion of the Project (as evidence by a certificate of occupancy).

As stated above, subject to the Permitted Uses, the District shall have the right to substitute another District agency as occupant of the Premises without such substitution constituting a sublease of the Premises or an assignment of the Lease, and such substitution shall not require the consent of Landlord.

BROKERAGE

In the event Landlord is represented in this transaction by an agent or broker, Landlord shall pay such agent or broker its fees or commission pursuant to the terms of a separate written agreement between Landlord and its agent or broker. Landlord shall indemnify and hold the District harmless from and against all liabilities, obligations and damages arising, directly or indirectly, out of or in connection with a claim from a broker, finder or agent with respect to the Lease or the negotiation thereof, including costs and attorneys' fees incurred in the defense of any claim made by a broker alleging to have performed services on behalf of Landlord. The District has been represented by Savills Studley, Inc. (“**Broker**”) with respect to this transaction. The Annual Rent amount set forth above in this LOI shall be subject to change upon the agreement (after good faith discussions) of the parties in order to address any brokerage fee to Broker.

ANTI-DEFICIENCY

The following limitations exist as to each and every purported obligation of the District set forth in the Lease, whether or not expressly conditioned:

The obligations of the District to fulfill any financial obligation pursuant to the Lease or any subsequent agreement entered into pursuant to the Lease or referenced therein (to which the District is a party) are and shall remain subject to the provisions of (a) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 and 1511-1519 (2004), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (b) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2006 Supp.) ((a) and (b) collectively, the “**Anti-Deficiency Acts**”); and (c) § 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2006 Supp.), as each may be amended from time to time and each to the extent applicable to the Lease. Pursuant to the Anti-Deficiency Acts, nothing in the Lease shall create an obligation of the District in anticipation of an appropriation by the United States Congress (“**Congress**”) for such purpose, and the District’s legal liability for the payment of any financial obligation, including but not limited to any Annual Rent or Additional Rent, under the Lease shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress and the District of Columbia (references in this Section to “District of

Columbia” shall mean the District of Columbia as a sovereign entity, and not as tenant). During the term of the Lease, the District of Columbia agency authorized and delegated by the Mayor of the District of Columbia to administer the Lease shall, for each corresponding District of Columbia fiscal period, include in the then-current services funding level package a request sufficient to fund the District’s known potential financial obligations under the Lease for such fiscal period.

If no appropriation is made by the District of Columbia or Congress to pay any financial obligation, including but not limited to any Annual Rent or Additional Rent, for any period after the District of Columbia fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the District shall not be liable to make any payment under the Lease upon the expiration of any then-existing appropriation. In such case, the District shall promptly notify Landlord and the Lease shall immediately terminate upon the expiration of any then-existing appropriation as if such expiration were the expiration date of the Lease, and District shall immediately vacate the Premises.

Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District or the District of Columbia shall have any personal liability in connection with the breach of these provisions or in the event of a default by the District under the Lease.

The Lease shall not constitute an indebtedness of the District of Columbia nor shall it constitute an obligation for which the District of Columbia is obligated to levy or pledge any form of taxation or for which the District of Columbia has levied or pledged any form of taxation. No agent of the District is authorized to obligate or expend any amount under the Lease unless such amount has been appropriated by act of Congress and is lawfully available.

COUNTERPARTS

This LOI may be executed in multiple counterparts and delivered by e-mail .pdf transmission, each of which shall be deemed an original and all of which together shall constitute one and the same document.

NON-BINDING PROVISIONS

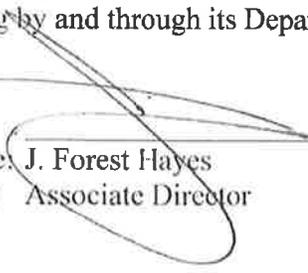
Notwithstanding any provision of this LOI to the contrary, this LOI constitutes a general, non-binding letter of intent and is not intended to, and does not, create a legal, binding commitment or obligation on the part of Landlord or the District or any of their affiliates to pursue the transaction contemplated by this LOI or any other transaction. Each of Landlord and the District understand and agree that neither of them is or shall be legally bound to the other by reason of this LOI, nor shall any rights, liabilities or obligations (including the obligation to negotiate in good faith) arise as a result of this LOI or any other written or oral communications between Landlord and the District, whether directly or through a broker. It is further understood that the only agreement binding upon Landlord and the District would be the Lease, subject to prior District of Columbia Council approval, if applicable.

[SIGNATURE PAGES AND EXHIBIT FOLLOWS]

If the terms and conditions set forth in this LOI are acceptable to you, please sign and date below and return one (1) original to my office.

Sincerely,

DISTRICT OF COLUMBIA,
a municipal corporation,
acting by and through its Department of General Services

By: 

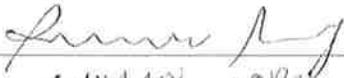
Name: J. Forest Hayes

Title: Associate Director

[LANDLORD SIGNATURE PAGE AND EXHIBIT FOLLOW]

AGREED AND ACCEPTED:

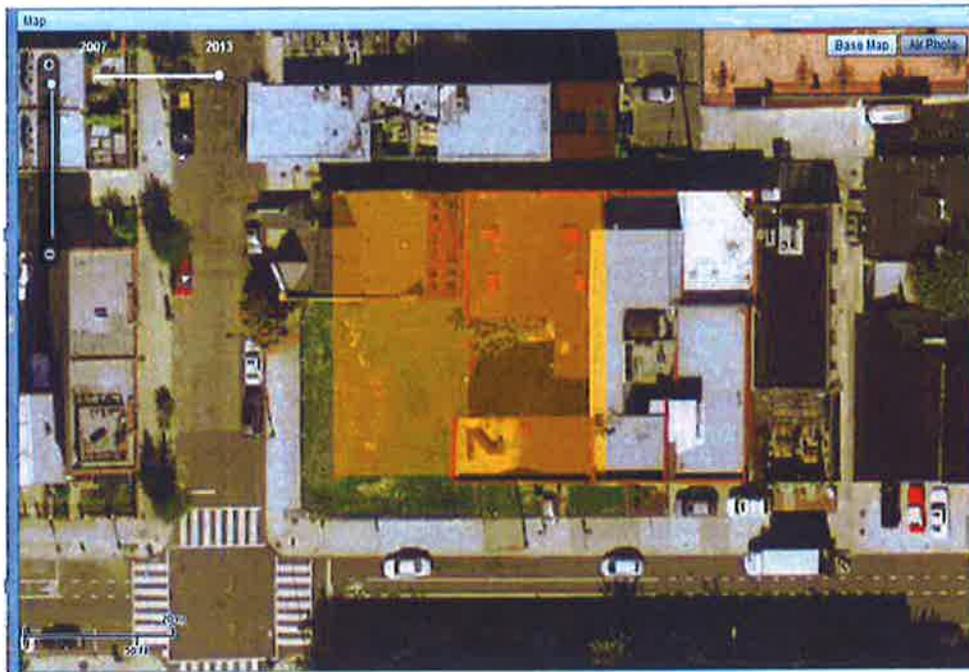
2101 MORNING BRIGHT LLC

By: 
Name: S. J. M. A. W. S. O. R. E.
Title: PR. G. I. O. C. W.
Date: 2/4/16

[EXHIBIT FOLLOWS]

Exhibit A

Site Plan



Highlighted area shows Land and Church.